

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

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

**September 12, 2017, at 3:00 p.m.**

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<b>1.</b>	<b><u>17-24407-E-13</u></b> <b>DPC-1</b>	<b>PATRICK/MARGUERITE</b> <b>SEEHUETTER</b> <b>Robert Huckaby</b>	<b>OBJECTION TO CONFIRMATION OF</b> <b>PLAN BY DAVID P. CUSICK</b> <b>8-9-17 [14]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 9, 2017. By the court's calculation, 34 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 -----.

<b>The Objection to Confirmation of Plan is sustained.</b>
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David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that:

A. All pay advices are not provided;

- B. Patrick Seehuetter and Marguerite Seehuetter (“Debtor”) will fail to complete the Plan within sixty months;
- C. The Plan is not Debtor’s best effort; and
- D. The Plan fails to list Debtor’s Financial Affairs

Dckt. 14.

The Chapter 13 Trustee’s objections are well-taken. Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv).

The Trustee alleges that under the Proposed Plan, Debtor is in material default because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 324 months due to a Class 5 priority debt of \$5,504.00 to the Internal Revenue Service, secured debt of \$29,146.00, priority unsecured debt of \$7,149.69, and general unsecured debt of \$45,994.23. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

The Plan proposes to pay a zero percent dividend to unsecured claims, though Debtor’s projected disposable income under 11 U.S.C. § 1325(b)(2) totals \$45,840.00. Thus, the court may not approve the Plan.

Debtor has supplied insufficient information relating to the assets to assist the Chapter 13 Trustee in determining the value of the assets. Debtor failed to report total income for 2016, as well as total income for the past two years. Moreover, 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 has not provided the required attachment, even though Debtor’s 2016 federal tax return shows gross business income of \$879.00.

### **Review of Schedules I and J**

Debtor reports having a combined monthly gross income of \$12,115.00. Schedule I, Dckt. 1 at 27. After what does not appear to be unreasonable withholding, Debtor reports monthly take-home income

of \$9,273.36. *Id.* However, that includes paying (\$473.00) for family support. *Id.* It is not specified whether this is support to a former spouse or a child from a former marriage.

On Schedule J, Debtor states having reasonable and necessary monthly expenses of (\$9,143.00). Schedule J, *Id.* at 29. That leaves only \$130.00 per month in monthly net income with which to fund a plan. Some of the expenses may appear questionable, including (\$1,000.00) for childcare and child's education costs, (\$1,390.00) for transportation, and (\$900.00) for food and housekeeping supplies (in light of (\$473.00) paid for what may be child support).

The Chapter 13 Plan requires monthly plan payments of \$128.00 for sixty months. Dckt. 5. That totals \$7,680.00. After subtracting an estimated (7%) (\$537.60) for Chapter 13 Trustee fees and (\$2,500.00) for counsel for Debtor, that leaves \$4,642.40 to fund the Plan. According to the Plan, the only claim to be paid is a \$5,504.00 priority tax claim of the Internal Revenue Service. On its face, the funding of this plan is insufficient.

As it turns out, the Internal Revenue Service has filed Proof of Claim No. 1 asserting a \$77,581.55 claim. Of this, Proof of Claim No. 1 asserts a secured claim for \$29,146.00 and a priority claim for \$2,441.32.

At the hearing, XXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 12, 2017. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Schools Financial Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$12,059.45**

The Motion filed by Anthony Gonzalez and Laura Gonzalez ("Debtor") to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Ford F-150 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$5,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

#### CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on August 28, 2017. Dckt. 24. The Chapter 13 Trustee notes that no vehicle style has been provided and that Creditor filed a claim for \$12,059.45 secured against a vehicle value of \$12,170.00. The Chapter 13 Trustee also notes that there may be a discrepancy in the Vehicle's description because it is referred to as a 2005 vehicle and as a 2006 vehicle at other times.

## CREDITOR'S OPPOSITION

Creditor filed an Opposition on August 29, 2017. Dckt. 29. Creditor argues first that Vehicle cannot be valued in this case because Creditor's claim secured by the Vehicle is part of a confirmed plan in Debtor's other case. Case No. 16-24461. Second, Creditor argues that Debtor has not provided any reason to adjust the Kelley Blue Book retail value down to \$5,500.00. Creditor argues that value should be \$12,170.00. *See* Exhibit 1, Dckt. 31.

## DISCUSSION

The prior case that Creditor refers to was dismissed on August 29, 2017—the same day Creditor filed its Opposition. Case No. 16-24461, Dckt. 24. Therefore, there is no confirmed plan in a prior case affecting Creditor's claim against the Vehicle in this case.

The lien on the Vehicle's title secures a purchase-money loan incurred on January 7, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$12,059.45. Claim 2-2. Creditor's Claim also includes the original loan documents and indicates that the Vehicle is a 2006 model year.

In the Robin Boyce Declaration (Dckt. 30), Ms. Boyce authenticates the Kelley Blue Book valuation of the 2006 vehicle with 140,000 miles. Declaration, ¶ 20, *Id.* The Kelley Blue Book retail value, adjusted for the mileage is stated to be \$12,170.00. Exhibit 1, Dckt. 31 at 2.

Though one might surmise that a vehicle owned by someone who needs to seek the extraordinary relief available under the Bankruptcy Code would not have a vehicle with 140,000 miles that is "showroom ready" for a dealer to sell at the Kelley Blue Book retail value, Debtor provides no testimony as to any condition issues relating to the Vehicle. Declaration, Dckt. 10. Debtor's value testimony is limited to:

"5. I estimate that the value of the Property is currently \$5,500.00, and is the same at the time of filing this case.

6. I estimate the value of the Property from first-hand knowledge and experience with the Property. I estimate the value of the Property according to our use of the Property as a personal vehicle."

*Id.* In providing this testimony, the court is unsure how a valuation "as a personal vehicle" provides the necessary testimony to provide evidence for the court to

"(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to **property acquired for personal, family, or household purposes**, replacement **value shall mean the price a retail merchant would charge for property of that kind** considering the age and condition of the property at the time value is determined."

as required by 11 U.S.C. § 506(a)(2).

Based on the evidence presented, the court determines that the value of the collateral securing Creditor's claim is \$12,170.00. Therefore, Creditor's claim of \$12,059.45 secured by a lien on the Vehicle is fully secured. *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 Anthony Gonzalez and Laura Gonzalez ("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 Schools Financial Credit Union ("Creditor") secured by an asset described as 2006 Ford F-150 ("Vehicle") is determined to be a secured claim in the amount of \$12,059.45. The value of the Vehicle is \$12,170.000, which is more (though slightly) than the claim secured by said Vehicle.

3. [17-25309-E-13](#)      **ANTHONY/LAURA GONZALEZ**      **MOTION TO VALUE COLLATERAL OF**  
**MRL-2**      **Mikalah Liviakis**      **SCHOOLS FINANCIAL CREDIT UNION**  
8-11-17 [[11](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 12, 2017. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Schools Financial Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$9,449.00.**

The Motion filed by Anthony Gonzalez and Laura Gonzalez ("Debtor") to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Acura TL ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$6,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

#### **CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick ("the Chapter 13 Trustee") filed a Response on August 28, 2017. Dckt. 21. The Chapter 13 Trustee notes that no vehicle title has been provided and that Creditor filed a claim for \$9,457.25, with \$9,449.00 secured and \$8.25 unsecured.

## CREDITOR'S OPPOSITION

Creditor filed an Opposition on August 29, 2017. Dckt. 34. Creditor argues first that Vehicle cannot be valued in this case because Creditor's claim secured by the Vehicle is part of a confirmed plan in Debtor's other case. Case No. 16-24461. Second, Creditor argues that Debtor has not provided any reason to adjust the Kelley Blue Book retail value down to \$6,500.00. Creditor argues that value should be \$9,449.00. *See* Exhibit 1, Dckt. 37.

## DISCUSSION

The prior case that Creditor refers to was dismissed on August 29, 2017—the same day Creditor filed its Opposition. Case No. 16-24461, Dckt. 24. Therefore, there is no confirmed plan in a prior case affecting Creditor's claim against the Vehicle in this case.

The lien on the Vehicle's title secures a purchase-money loan incurred on August 21, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,457.25. Claim 1-2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. In this case, Debtor's Declaration does not contain any information for why the Vehicle's retail value should adjusted downward. Creditor's secured claim is determined to be in the amount of \$9,449.00, 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 Anthony Gonzalez and Laura Gonzalez ("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 Schools Financial Credit Union ("Creditor") secured by an asset described as 2009 Acura TL ("Vehicle") is determined to be a secured claim in the amount of \$9,449.00, 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 \$9,449.00 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2017. By the court's calculation, 46 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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><b>The Motion to Confirm the Amended Plan is denied.</b></p>
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Sharry Stevens-Goree ("Debtor") seeks confirmation of the Amended Plan, which further reduces food, personal care, and entertainment expenses. Dckt. 83. The Amended Plan proposes payments of \$4,595.76 for two months, \$0.00 for one month, \$3,655.00 for three months, and \$3,864.62 for fifty-four months, which will result in a 1% dividend to unsecured claims. Debtor explains that the one month without a plan payment is because a Homeowners Association required her to repair her broken garage door. Dckt. 83 at 3:2–7. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee"), filed an Opposition on August 15, 2017. Dckt. 87. The Chapter 13 Trustee asserts that Debtor is \$7,085.38 delinquent in plan payments, which represents multiple months of the \$3,864.62 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Santander Consumer USA and avoiding the lien of Citibank. Those matters were heard at the August 29, 2017 hearing and were granted. Dckts. 93–97.

The Chapter 13 Trustee asserts that this Plan (as with the prior proposed plan) makes a student loan provision for payment to the U.S. Department of Education, but claims for student loans have also been filed by Navient Solutions. The Chapter 13 Trustee asserts that it is not clear whether the claims of Navient Solutions are affected by the additional student loan plan provision. The Chapter 13 Trustee argues that if the additional plan provision does not affect the claims of Navient Solutions, then the Plan appears to unfairly discriminate against those unsecured claims. *See* 11 U.S.C. § 1322(b)(1).

While Section 6.01 of the Plan calls for adequate protection payments of \$1,620.48 to Citizens Equity First Credit Union, the Chapter 13 Trustee does not know when those payments began. Additionally, the Chapter 13 Trustee notes that the stipulation for the adequate protection payments has not been set for hearing for the court's review, despite Debtor's counsel being contacted on July 6, 2017, according to the docket.

Finally, the Chapter 13 Trustee questions whether Wells Fargo has been listed properly in Class 1 when a description for the claim states that collateral was reconveyed to Wells Fargo.

## **RULING**

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 Sharry Stevens-Goree ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2017. By the court’s calculation, 48 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

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

Larry Rizzio and Elizabeth Rizzio (“Debtor”) seek confirmation of the Amended Plan because they believe plan payments increasing per month is affordable with the new corrections to their expenses. The Amended Plan proposes to increase plan payments from \$358.00 to \$507.00 per month beginning August 2017 and continuing in that amount for the remainder of the sixty-month plan. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

David Cusick (“the Chapter 13 Trustee”), filed an Opposition on August 28, 2017. Dckt. 63.

The Chapter 13 Trustee asserts that Debtor is \$149.00 delinquent in plan payments, which represents one month of the \$507.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 1.01 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).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of OneMain Financial Services, Inc., which was set for hearing on August 29, 2017. The Motion to Value Collateral and Secured Claim of OneMain Financial Services, Inc., was granted, and the creditor's secured claim was determined to have a value of \$9,875.00 on August 29, 2017. Dckt. 66.

The Chapter 13 Trustee notes that Debtor's second amended plan lists two separate secured claims for OneMain Financial Services, Inc. in Class 2, one for a 2012 Hyundai Elantra and the other for a 2005 Chevrolet Silverado. The creditor filed one claim that is secured by both vehicles.

No evidence has been provided that the delinquency has been cured. 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 Larry Rizzio and Elizabeth Rizzio ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the September 12, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2017. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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 granted.**

The Motion to Approve Loan Modification filed by Travis Manhart and Kari Manhart (“Debtor”) seeks court approval for Debtor to incur post-petition credit. US Bank National Association as Trustee for CMALT REMIC Series 2006-A5-REMIC Pass-Through Certificates Series 2006-A5 (“Creditor”), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$2,917.81 per month to \$2,689.34 per month. The modification will bring the loan current, add the past due interest and escrow advances of \$251,781.56 to the balance of the loan, defer \$156,147.38, interest free, to the new maturity date and re-amortize the non-deferred portion of the loan over the next forty years at a fixed interest rate of 3.00%.

#### TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on August 28, 2017. Dckt. 78. The Chapter 13 Trustee has no basis for opposing the Motion.

## DISCUSSION

The Motion is supported by the Declaration of Kari Manhart. Dckt. 62. 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 Travis Manhart and Kari Manhart ("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 Travis Manhart and Kari Manhart to amend the terms of the loan with US Bank National Association as Trustee for CMALT REMIC Series 2006-A5-REMIC Pass-Through Certificates Series 2006-A5 ("Creditor"), which is secured by the real property commonly known as 1601 Grove Creek Court, Roseville, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 63).

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 7, 2017. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on **October xxxx 2017**. On or before **September xxxx, 2017**, Debtor shall file supplemental pleadings, and Replies, if any, will be filed and served on or before **September xxxx, 2017**.**

Travis Manhart and Kari Manhart ("Debtor") seek confirmation of the Modified Plan because they obtained a loan modification, because their business generates more income now, and because their living expenses have increased as their five children have aged. Dckt. 67. The Modified Plan proposes that Debtor make one payment of \$551.00 in August 2017, and it increases the monthly payment to CitiMortgage from \$1,335.00 to \$2,917.81 while also moving the claim from Class 1 to Class 4, pursuant to a proposed loan modification. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

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

David Cusick ("the Chapter 13 Trustee"), filed an Opposition on August 28, 2017. Dckt. 75. The Chapter 13 Trustee notes that Debtor has paid \$89,309.04 through August 7, 2017, which is more than the \$86,127.91 listed in the Plan. He also notes that the Plan states that unsecured claims will receive a 0.00%

dividend, but they will actually receive a 17% dividend. Unsecured claims total \$47,425.09, but the Plan lists \$213,744.00. The Chapter 13 Trustee states that he has paid \$3,990.34 to unsecured claims, which is 5%, and he suggests an amendment to the Plan that unsecured claims receive at least 5%.

The Chapter 13 Trustee also objects on the ground that confirmation relies upon the court granting a motion to approve loan modification. That motion was heard and granted at the September 12, 2017 hearing, thus resolving this ground of the Objection.

The Chapter 13 Trustee notes that the increased income and expenses indicated by Debtor appear to be reasonable, but he questions the increase in charitable contributions from \$300.00 to \$850.00 without explanation.

## **DEBTOR'S REPLY**

Debtor filed a Reply on September 4, 2017. Debtor agrees to amendments in the order confirming for the correct amount paid so far and for increasing the unsecured dividend to 5%. Debtor also agrees that confirmation relies upon granting of the motion to approve loan modification. Finally, Debtor explains that 10% of gross income is set aside for charitable contributions, which explains the increase with the increase in Debtor's business income.

However, in making this Reply, Debtor fails (or refuses) to provide testimony of actually making \$850.00 per month charitable contributions or provide evidence (such as cancelled checks or tax returns showing such contributions) of such charitable contributions actually having been made. Rather, they merely have their attorney argue that such charitable contributions are to be made by Debtor.

## **DISCUSSION**

The Trustee has noted that the Plan (or any order confirming) needs to be amended to reflect that \$89,309.04 has been paid into the Plan as of August 7, 2017, and he notes that the dividend to unsecured claims should be increased to the amount he has paid through the Plan so far, which is 5%. Debtor agrees to both of those amendments. The court has also addressed and approved of the loan modification in this case. The only real remaining ground is the increase in charitable contributions. Debtor has explained that 10% of gross business income is set aside for charitable contributions, meaning that the contributions vary as business varies. Right now, business has increased; so, contributions have increased.

While charitable support is laudable, a "newly found" desire to contribute to charities rather than to see creditors be paid is inconsistent with the good faith requirement under the Bankruptcy Code. On Schedule J, Debtor stated having a \$300.00 per month charitable contribution. Dckt. 1 at 35. That is based on gross income of \$4,500.00 per month stated on Schedule I. *Id.* at 33. A \$300.00 per month charitable contribution would be 6.66% of the gross income.

On Schedule J, Debtor lists having (\$2,775.00) in expenses monthly. Dckt 1 at 35. However, no expense is shown for Debtor's income taxes and self-employment taxes (both debtors being self-employed).



Now, Debtor has reduced the monthly mortgage payment, with the arrearage reamortized over the new loan term, including property taxes and insurance, to (\$2,689.34) per month. In support of the current Motion, Debtor provides new income and expense information. Declaration and Income/Expense Exhibits A and B, Dckts. 67 and 68. Debtor testifies that over the past four years the photography business has “grown.” Dckt. 67. In the Declaration, Debtor testifies that they now have to pay “income taxes,” but provides no testimony about the required self-employment taxes (including funding their required Social Security and unemployment tax payments).

Looking at the self-employment income from the business, Debtor reports having \$81,584.00 in net income from their business in 2016. Exhibit B, Dckt. 68 at 5. Debtor does not provide income and expense information for the eight most recent months in 2017. Given Debtor’s testimony of the increasing revenue from the business it is likely that the income has increased.

On the latest statement of Expenses (Exhibit A, Dckt. 68), Debtor now lists \$500.00 in “Self-Employment Taxes” for the two debtors, but does not indicate the payment of income taxes for the two debtors.

Before confirming this Plan, Debtor must show not only feasibility but that it is proposed in good faith. Debtor needs to document for the court not only the actual income and self-employment taxes paid during this case and the actual income and expenses for Debtor’s business in 2017, but also document the payment of the 10% charitable contribution during this case.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Travis Manhart and Kari Manhart (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Confirm the Modified Plan is continued to 3:00 p.m. on **October xxxx 2017**. On or before **September xxxx, 2017**, Debtor shall file supplemental pleadings, with competent, admissible, credible evidence of the actual income and self-employment taxes paid during this case, and the actual income and expenses for Debtor’s business in 2017, and the payment of the 10% charitable contribution during this case.

**Final Ruling:** No appearance at the September 12, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2017. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Robert Ryan and Sandra Ryan (“Debtor”) has filed evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on August 25, 2017. 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 Robert Ryan and Sandra Ryan (“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 July 28, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9.     16-20740-E-13     **EMMA MCZEEK-TANKO**     **MOTION TO INCUR DEBT**  
          TLA-3           **Thomas Amberg**           8-22-17 [\[72\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 22, 2017. By the court's calculation, 21 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, -----.

<b>The Motion to Incur Debt is denied.</b>
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Emma McZeek-Tanko ("Debtor") seeks permission to purchase a 2016 Chevrolet Malibu, with a total purchase price of \$15,498.00 with a seventy-two month loan at 22.29% interest rate and monthly payments of \$493.20.

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).

## CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on August 25, 2017. Dckt. 77. The Chapter 13 Trustee argues that the interest rate proposed for the auto loan may not be commercially reasonable at 22.29%. The Chapter 13 Trustee is not sure if Debtor formally applied with various vendors or whether Debtor knows the reason for the high interest rate.

The Chapter 13 Trustee also notes that Debtor cannot make plan payments if the Motion is approved. Debtor's projected disposable income is \$356.00 and the auto payment is \$493.20, while the plan payments are \$356.00 per month. Transportation expenses were \$80.00, but now may increase to \$150.00.

## DISCUSSION

Despite Debtor pleading in the Motion that she was not able to get a lower interest rate, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge—22.29%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a car and attempt to borrow money at a 22.29% interest rate.

Under Debtor's confirmed Plan, she is to make a \$356.00 per month plan payment. Plan, Dckt. 47. The Plan provides for a 100% dividend to creditors holding general unsecured claims.

Debtor is proposing to buy a used vehicle from Enterprise Car Rental. Contract, Exhibit A; Dckt. 75. The 2016 vehicle is stated to have 41,798 miles on it. Unfortunately, the proposed lender finds Debtor to be such a poor credit risk for purchasing this 2016 vehicle, that the lender needs to extract 22.29% interest for six years from Debtor. The vehicle, valued at a \$15,498 contract price, will cost Debtor \$35,518 over the six years of the loan.

As noted by the Chapter 13 Trustee, Debtor's \$356.00 in projected disposable income with which to fund the plan makes no provision for a vehicle payment. If Debtor incurs the \$493.20 per month loan payment under the proposed credit, Debtor will be unable to fund the plan.

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXX**.

The Motion is denied.

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

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

The Motion to Incur Debt filed by Emma McZeek-Tanko (“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.

10. <a href="#"><u>17-24045-E-13</u></a> <b>PAULINE ABBOTT</b> <b>DPC-1</b> <b>Harry Roth</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> <b>8-16-17 [25]</b>
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**Final Ruling:** No appearance at the September 12, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 16, 2017. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. 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 3:00 p.m. on September 19, 2017.**

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

- A.        The Plan proposes to use money from a thrift savings plan without a plausible explanation, and
- B.        The Plan fails the liquidation analysis.

**PROPOSED STIPULATION**

On August 28, 2017, the parties filed a Stipulation to continue the hearing on this matter to 3:00 p.m. on September 19, 2017. Dckt. 37.

## **ORDER GRANTING STIPULATION**

On August 30, 2017, the court entered an order granting the parties' Stipulation and continuing the hearing to 3:00 p.m. on September 19, 2017. Dckt. 38.

## **RULING**

The court having ruled previously that the hearing be continued, this matter is continued to 3:00 p.m. on September 19, 2017, by prior order. *See* Dckt. 38.

**NO APPEARANCE OF COUNSEL REQUIRED FOR  
SEPTEMBER 12, 2017 HEARING IF THEY CONCUR  
WITH THE COURT CONTINUING THE HEARING TO  
ALLOW ADDITIONAL TIME TO DOCUMENT THE SETTLEMENT**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2017. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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 hearing on the Objection to Notice of Mortgage Payment Change is  
continued to 3:00 p.m. on October 3, 2017.**

Nicole Kimbrough ("Debtor") objects to the Notice of Mortgage Payment Change issued on July 11, 2016, by CAM IX Trust ("Creditor"). Debtor believes that the escrow and escrow shortage amounts were increased incorrectly to include collection for pre-petition debts. Debtor argues that the monthly payment should be \$805.63, comprised of \$661.75 for principal and interest and \$143.88 for escrow, effective August 1, 2016.

## **ORDER CONTINUING HEARING**

On June 28, 2017, the court entered an order continuing the hearing on the Objection 3:00 p.m. on August 29, 2017, pursuant to parties' stipulated request for a continuance. Dckt. 57. The court also ordered that the deadline to object is August 22, 2017.

## **JULY 11, 2017 HEARING**

The hearing having been continued to 3:00 p.m. on August 29, 2017, the court removed the matter from calendar. Dckt. 60.

## **JULY 11, 2017 NOTICE OF MORTGAGE PAYMENT CHANGE**

Creditor filed a new Notice of Mortgage Payment Change on July 11, 2017. The Notice states that it is effective on August 1, 2017. Creditor appears to agree with Debtor's Objection because the Notice lowers total payments to \$805.63, with \$143.88 for escrow. An attached statement of anticipated escrow payments also shows that there is an escrow surplus of \$4,748.52.

## **STIPULATION TO CONTINUE HEARING**

On August 22, 2017, Debtor and Creditor submitted a Second Stipulated Request to Continue Hearing requesting that the hearing be continued to 3:00 p.m. on September 12, 2017. Dckt. 61. The parties report that they have reached a resolution that involves preparing an Amended Notice of Payment Change that retroactively adjusts payments as well as reallocating payments made by Debtor through the Chapter 13 Trustee. The parties state that reallocation is necessary because of an error on Debtor's part and because of an amended notice of payment change.

The parties are preparing a stipulation to resolve this Objection and request that the hearing be continued while they finalize and file that stipulation.

## **AUGUST 29, 2017 HEARING**

At the hearing, the court entertained the parties' report that they had resolved this matter and were preparing a stipulation, and the court continued the hearing on this matter to 3:00 p.m. on September 12, 2017. Dckt. 66.

## **RULING**

Nothing further has been filed since the August 29, 2017 hearing. The parties have reported that they resolved this Objection and that they were preparing a stipulation to resolve retroactive adjustments to payments, but no stipulation has been filed with the court. The parties have been actively litigating this matter, and the court does not want this matter to be forgotten by them. Rather than rule at this time, the court *sua sponte* continues the hearing to 3:00 p.m. on October 3, 2017, to allow the parties slightly more time to document their stipulation.



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

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

The Objection to Notice of Mortgage Payment Change filed in this case by Nicole Kimbrough, Chapter 13 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 Objection to Notice of Mortgage Payment Change is continued to 3:00 p.m. on October 3, 2017.

12.	<a href="#"><u>17-24453-E-13</u></a> RSA-1	MICHELLE QUINLIVAN Mark Briden	<b>OBJECTION TO CONFIRMATION OF PLAN BY PNC BANK, N.A. 8-10-17 [28]</b>
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**Final Ruling:** No appearance at the September 12, 2017 hearing is required.  
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 10, 2017. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

<p><b>The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on September 19, 2017.</b></p>
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PNC Bank, N.A., Successor by Merger to National City Bank, Creditor with a secured claim, opposes confirmation of the Plan on the basis that it relies upon the court granting a motion to value, specifically of Michelle Quinlivan's ("Debtor") real property and therefore of Creditor's claim.

Debtor filed a motion to value in this case, which was heard on August 15, 2017. Dckt. 37. At the hearing, Creditor requested a continuance to conduct an appraisal. The court granted the request and continued the hearing to 3:00 p.m. on September 19, 2017. Dckt. 39.

Creditor's only ground in the Objection is that the Plan relies upon a motion to value that is scheduled to be heard. Continuing the hearing on this Objection is appropriate so that the court can hear and determine the motion to value. The hearing on the Objection is continued to 3:00 p.m. on September 19, 2017.

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 PNC Bank, N.A., Successor by Merger to National City Bank, Creditor with 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 hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on September 19, 2017.

**Final Ruling:** No appearance at the September 12, 2017 hearing is required.  
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 16, 2017. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. 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 3:00 p.m.  
on September 19, 2017.**

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

- A. Michelle Quinlivan (“Debtor”) failed to appear at the meeting of creditors;
- B. The Plan relies on a pending motion to value; and
- C. Page two of the Plan is missing.

In reverse order, first, the court notes that a full copy of the Plan was filed on August 30, 2017, resolving the Chapter 13 Trustee’s ground. Dckt. 41. Second, the pending motion to value is scheduled for hearing on September 19, 2017. Dckt. 39. PNC Bank, N.A., Successor by Merger to National City Bank (“Creditor”), objected to the Plan solely on the ground that the Plan relies on a motion to value, and the court has continued the hearing on that objection.

Third, the continued meeting of creditors is scheduled to be conducted at 10:00 a.m. on September 14, 2017. Debtor has not responded to the Objection, but the filing of a complete plan suggests to the court that Debtor is attempting to prosecute this case. The court has continued a separate objection, and continuing this one for the court to hear the motion to value and for the continued meeting of creditors

to be conducted is appropriate. The hearing on the Objection is continued to 3:00 p.m. on September 19, 2017.

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

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

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

**IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on September 19, 2017.

14.	<a href="#">12-24857</a> -E-13 EGS-2	DONALD/JULIANA EMUKPOERUO Mark Shmorgan	<b>MOTION TO APPROVE LOAN MODIFICATION</b> 8-7-17 [ <a href="#">150</a> ]
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**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2017. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Approve Loan Modification is <span style="color: red;">XXXX</span>.</b>
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The Motion to Approve Loan Modification filed by Bayview Loan Servicing, LLC (“Creditor”), seeks court approval for Donald Emukpoeruo and Juliana Emukpoeruo (“Debtor”) to incur post-petition credit. Creditor, whose claim the completed Plan provided for in Class 4, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$3,144.96 per month to \$1,802.90–2,160.58 per month depending on the year, shown as follows:

- A. Years 1–5: \$1,802.90,
- B. Year 6: \$1,978.49,
- C. Year 7: \$2,156.36, and
- D. Years 8–29: \$2,160.58.

The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 5.326% to 7.350% over the next twenty-nine years.

The Motion is supported by the Declaration of Elizane Ribeiro. Dckt. 153. The Declaration sets for the change to payment amounts that will occur over the life of the modified loan and states that Debtor entered into the loan on January 1, 2017, and payments have been made ever since then.

Discharge was entered in this case on August 4, 2017. Dckt. 148. This Motion (filed on August 7, 2017) is the only pending matter keeping the case from being closed. Dckt. 150. Without a case, the parties would not need court approval for this modification. The court does not know why Creditor has pursued this Motion. At the hearing, Creditor addressed the filing of this Motion by stating **XXXXXXXXXXXXXXXXXX**.

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 Bayview Loan Servicing, LLC (“Creditor”), 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 **XXXXXXXXXXXXXXXXXX**.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF THE PARTIES PROVIDE SUFFICIENT REASON FOR FILING THIS MOTION**

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor’s ability to fund that Plan, especially with the Plan being completed. 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 Bayview Loan Servicing, LLC ("Creditor"), 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 Donald Emukpoeruo and Juliana Emukpoeruo ("Debtor") to amend the terms of the loan with Bayview Loan Servicing, LLC ("Creditor"), which is secured by the real property commonly known as 9760 Waterfowl Drive, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit E in support of the Motion (Dckt. 154).

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 23, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

<p><b>The Motion to Extend the Automatic Stay is granted.</b></p>
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Dulon Stevens, Sr. ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) 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. 15-26548) was dismissed on June 2, 2017, on the basis that Debtor's plan exceeded sixty months. *See* Order, Bankr. E.D. Cal. No. 15-26548, Dckt. 44, June 2, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

#### **CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick ("the Chapter 13 Trustee") filed a Response on August 25, 2017. Dckt. 12. The Chapter 13 Trustee does not oppose the Motion.

## DISCUSSION

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because: 1) Debtor's attorney did not file a timely opposition to the Chapter 13 Trustee's Motion to Dismiss; and 2) Debtor's plan was overextended due to certain priority tax claims being filed higher than estimated. Dckt. 10.

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 rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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



The Motion to Extend the Automatic Stay filed by Dulon Stevens, Sr. (“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.

16. 16-26568-E-13 ALICIA LOFTIN MOTION TO INCUR DEBT  
ALF-1 Ashley Amerio 8-28-17 [31]

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

**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, parties requesting special notice, and Office of the United States Trustee on August 28, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

**The Motion to Incur Debt is granted.**

Alicia Loftin ("Debtor") seeks permission to refinance real property commonly known as 9055 Concerto Court, Elk Grove, California, with a total mortgage amount of \$153,439.00 after a \$1,432.00 cash down payment. Debtor proposes monthly payments of \$1,242.00 per month for the first eleven years of the loan and \$1,143.00 per month for the final nine years of the loan. The interest rate on the loan will be fixed at 3.75%.

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).

## **CHAPTER 13 TRUSTEE’S NON-OPPOSITION**

David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on September 5, 2017. Dckt. 38.

## **RULING**

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 Alicia Loftin (“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 Alicia Loftin is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 34.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2017. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (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.**

Marlin Stark and Marcella Stark ("Debtor") seek confirmation of the Modified Plan because they want to bring payments current due to unawareness of the process for the first payment due under the plan. Dckt. 27. The Modified Plan proposes Plan payments that commence on May 25, 2017, in the amount of \$1,515.00 monthly for the duration of the Plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

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

David Cusick ("the Chapter 13 Trustee") filed an Opposition on August 25, 2017. Dckt. 31.

The Chapter 13 Trustee notes that Debtor made three payments of \$1,515.00 each, totaling \$4,545.00 through July 2017. The Chapter 13 Trustee has no opposition to an amendment that plan payments of \$1,515.00 will commence on August 25, 2017, and continue for the remaining fifty-six months of the Plan.

The Chapter 13 Trustee states that the Additional Provisions box was checked to indicate additional provisions were attached in Section 6, but no attachments were included with the Plan.

## **DISCUSSION**

The Chapter 13 Trustee's proposed amendment clarifies what payments have been made and payments will be made. Also, his notation that the additional provisions box was checked incorrectly can be modified. The Modified Plan—as amended to state that Debtor has paid \$4,545.00 through July 2017; that plan payments will be \$1,515.00 commencing on August 25, 2017, and continuing for the remaining fifty-six months of the Plan; and that the Modified Plan does not include additional provisions—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 Marlin Stark and Marcella Stark (“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 July 20, 2017—as amended to state that Debtor has paid \$4,545.00 through July 2017; that plan payments will be \$1,515.00 commencing on August 25, 2017, and continuing for the remaining fifty-six months of the Plan; and that the Modified Plan does not include additional provisions—is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the September 12, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 21, 2017. By the court's calculation, 53 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Brandon Livingston ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on August 28, 2017. Dckt. 34. 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 Brandon Livingston ("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 July 21, 2017, is confirmed. Debtor's Counsel shall prepare

an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. [17-20775](#)-E-13      **JAMES/ROSINA MARKS**      **MOTION TO CONFIRM PLAN**  
EJS-1      **Eric Schwab**      **7-26-17 [32]**

**Final Ruling:** No appearance at the September 12, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and the Office of the U.S. Trustee on July 26, 2017. By the court’s calculation, 48 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. James Marks and Rosina Marks (“Debtor”) has provided evidence in support of confirmation. David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on August 28, 2017. Dckt. 40. 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 James Marks and Rosina Marks (“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 July 26, 2017, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick (“the Chapter 13 Trustee”) for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20.	<a href="#"><u>17-24379</u></a> -E-13 DPC-1	<b>MARCIS/MARTI BEUTLER</b> <b>Gabriel Liberman</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> <b>8-9-17 [13]</b>
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**Final Ruling:** No appearance at the September 12, 2017 hearing is required.  
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 9, 2017. By the court’s calculation, 34 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 3:00 p.m. on October 3, 2017.**

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

- A. Marcis Beutler and Marti Beutler (“Debtor”) failed to appear at the First Meetings of Creditors.
- B. Tax returns were not provided.
- C. Pay advices were not provided.

D. Debtor failed to file a Motion to Value Secured Claim.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on August 11, 2017. Dckt. 22. Debtor states that they attended the Continued Meeting of Creditors on August 31, 2017.

Regarding the unprovided documents, Debtor explains counsel's office moved the date to send the tax returns and pay advices to August 31, 2017, the date of the Continued First Meetings of Creditors. However, upon receipt of the Chapter 13 Trustee's objections, Debtor provided the necessary documents.

Finally, Debtor filed the Motion to Value Secured Claim of Ally Financial on August 11, 2017, the hearing for which is scheduled for 3:00 p.m. on August 29, 2017.

## **CHAPTER 13 TRUSTEE'S STATUS REPORT**

The Chapter 13 Trustee filed a Status Report on September 1, 2017. Dckt. 32. He reports that Debtor attended the meeting of creditors, that tax returns and pay advices were provided, and that a motion to value was filed, heard, and continued to 3:00 p.m. on October 3, 2017. The Chapter 13 Trustee requests that the hearing on this Objection be continued to a date after October 3, 2017.

## **DISCUSSION**

The court agrees with the Chapter 13 Trustee's request that a continuance is appropriate, but the court does not see any reason why this Objection cannot be heard concurrently with the Motion to Value. Therefore, the hearing on the Objection is continued to 3:00 p.m. on October 3, 2017.

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

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

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

**IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on October 3, 2017.



21. [17-24979](#)-E-13      **MARIO LOPEZ AND LEAH**      **OBJECTION TO CONFIRMATION OF**  
**VVF-1**      **ALBERTO**      **PLAN BY HONDA LEASE TRUST**  
      **Lucas Garcia**      **8-9-17 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 9, 2017. By the court's calculation, 34 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 3:00 p.m. on October 3, 2017, to be heard in conjunction with the Chapter 13 Trustee's Objection to Confirmation (Dckt. 26).**

Honda Lease Trust ("Creditor"), holding a secured claim, opposes confirmation of the Plan on the basis that the Plan attempts to reclassify Creditor's claim as being for a vehicle from a purchase money security interest, when that claim actually arises from a lease agreement. Creditor argues that Mario Lopez and Leah Alberto ("Debtor") have proposed a plan term that violates 11 U.S.C. § 365(a).

#### **CHAPTER 13 TRUSTEE'S RESPONSE**

David Cusick ("the Chapter 13 Trustee") filed a Response on August 28, 2017. Dckt. 20. The Chapter 13 Trustee notes that the meeting of creditors is scheduled for 11:00 a.m. on August 31, 2017, and that the confirmation hearing date, according to the Notice of Commencement of Case, is scheduled for 3:00 p.m. on October 3, 2017. The Chapter 13 Trustee requests that this hearing be continued to 3:00 p.m. on October 3, 2017.

## **RULING**

The confirmation hearing in this case is scheduled for October 3, 2017. The Chapter 13 Trustee's request to continue the hearing until then is not an unreasonable delay. Additionally, continuing the hearing will allow Debtor time to address Creditor's Objection, if possible. The hearing is continued to 3:00 p.m. on October 3, 2017.

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 Honda Lease Trust ("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 hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on October 3, 2017.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 16, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
--

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

- A. Kenneth Jimenez ("Debtor") failed to appear at the Meeting of Creditors;
- B. Debtor failed to provide tax returns;
- C. Debtor failed to provide business documents;
- D. Debtor cannot afford the plan payment; and
- E. The Plan lists Siskiyou County Property Taxes improperly in both Class 1 and Class 2.

Dckt. 25.

The Chapter 13 Trustee's objections are well-taken. 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. To attempt to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary tax transcript. This is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

- A. Questionnaire,
- B. Six months of profit and loss statements, and
- C. Profit and loss statements;

11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). 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 may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not provided sufficient evidence of total monthly expenses and net income. While Debtor has listed business income on Schedule I (line #8a in the amount of \$1,200.00), Debtor has failed to provide an attachment showing gross receipts, ordinary and necessary business expenses, and the total monthly net income. In addition, Debtor's Plan proposes to pay in net proceeds from an anticipated sale of parcel, but Debtor has failed to file a motion for approval of sale. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Finally, the Trustee alleges that Debtor has improperly classified property taxes to Siskiyou County in both Class 1 and Class 2.

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

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

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

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

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

23. [17-24282](#)-E-13      **KENNETH/JENNIFER  
MOREFIELD  
Douglas Jacobs**      **OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
8-16-17 [17](#)**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 16, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

**The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on September 19, 2017, to allow Debtor to file the amended Statement of Financial Affairs.**

David Cusick ("the Chapter 13 Trustee") opposes confirmation of the Plan on the basis that Kenneth Morefield and Jennifer Morefield ("Debtor") did not disclose their prior business on their Schedules or Statement of Financial Affairs.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response on August 22, 2017. Dckt. 21. Debtor states that the omission was an oversight and that an amendment has been filed to properly list the closed business in the Statement of

Financial Affairs. Debtor's Declaration states that she is no longer working as a message therapist or deriving any income as one. Dckt. 22.

## **DISCUSSION**

The Chapter 13 Trustee's objections are well-taken. The Trustee reports that Debtor failed to disclose a prior business on the petition. Debtor's 2016 tax return reflects income from massage therapy. Even though Debtor might no longer be working as a message therapist, Debtor is required to list the business on the Statement of Financial affairs because Debtor's license expires on March 27, 2018. Debtor was required to report any prior businesses that might have produced income.

Debtor states that an amendment has been filed, but a review of the docket shows that nothing has been filed with the court.

As the Objection now stands, there is cause to sustain the Objection. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

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

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

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

**IT IS ORDERED** that the hearing on the Objection to Confirmation is continued to 3:00 p.m. on September 19, 2017.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 29, 2017. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Impose 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><b>The Motion to Impose the Automatic Stay is granted.</b></p>
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Cheryl Hansen (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) imposed in this case. This is Debtor’s third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor’s prior bankruptcy cases (Nos. 16-24976 and 17-24252) were dismissed on April 3, 2017, and August 8, 2017, respectively. *See* Order, Bankr. E.D. Cal. No. 16-24976, Dckt. 60, April 3, 2017; Order, Bankr. E.D. Cal. No. 17-24252, Dckt. 61, August 8, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(i), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

#### CHAPTER 13 TRUSTEE’S NON-OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on September 5, 2017. Dckt. 22. The Chapter 13 Trustee believes Debtor has shown a change in circumstances and that Debtor now has an ability to pay. Debtor now has a third party contributing, is at full capacity in her business, and Debtor’s adult daughter will join the business.

## DISCUSSION

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because of failure to make Plan payments due to the fact that Debtor could not afford the payments, which included mortgage arrears on Debtor's primary residence.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if two or more of Debtor's cases were both pending within the year preceding filing of the instant case. *Id.* § 362(c)(4)(D)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(4)(D).

Debtor's prior cases were dismissed after Debtor failed to bring the plan current by March 29, 2017 (No. 16-24976), and after Debtor failed to meet the terms of an Order Granting Extensions (No. 17-24252).

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay. Debtor has provided evidence to substantiate the asserted changes in circumstances and that Debtor is proceeding in good faith.

The Motion is granted, and the automatic stay is imposed 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 Impose the Automatic Stay filed by Cheryl Hansen ("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 imposed pursuant to 11 U.S.C. § 362(c)(4)(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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 9, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of First Investors Servicing Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$5,675.00.**

The Motion filed by Janelle Gilmore ("Debtor") to value the secured claim of First Investors Servicing Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Toyota Camry ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$4,000.00 as of the petition filing date.

In her Declaration, Debtor states that the Vehicle is in poor condition. Dckt. 28 at 2:2. Debtor claims that the Vehicle's mileage is 130,000 miles and that there are several items that are broken or in need of repair, including:

- A. "Motor in passenger window not working/doesn't go up and down
- B. Paint off of front end of car
- C. Rear left door doesn't close all the way

- D. A/C comes on and off while driving
- E. Takes 2 tries to start vehicle.”

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). FN.1.

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FN.1. The court notes that in her Declaration Debtor has provided the court and Creditor with specific information about the Vehicle’s condition, which are taken into account in determining the value of the Vehicle as required under 11 U.S.C. § 506(a). Such disclosure not only assists the court as the finder of fact, but also the creditor in putting in the record such testimony of condition by the debtor.  
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## **CREDITOR’S OPPOSITION**

Creditor filed an Opposition on August 24, 2017. Dckt. 40. Creditor opposes Debtor’s valuation of the Vehicle and argues that the valuation should be no less than \$7,775.00. Creditor objects to Debtor claiming a dollar amount for the work to be done on the Vehicle without providing any supporting evidence, such as a mechanic’s estimate.

Creditor provided the Declaration of Nancy Waters in support of its arguments. Dckt. 41. Ms. Waters states that she accessed the NADA Used Car Guide and obtained a retail value report for the Vehicle with the mileage and adjustments listed by Debtor. *See* Exhibit C, Dckt. 42. That report lists an adjusted retail value of \$7,775.00. *Id.*

## **CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed a Response on August 28, 2017. Dckt. 44. The Chapter 13 Trustee states that Debtor has not provided any information about the style of the Vehicle, and he notes that Creditor filed a claim in a secured amount of \$8,900.46.

## **DEBTOR’S REPLY**

Debtor filed a Reply on September 5, 2017. Dckt. 47. Debtor states that the parties have arranged for Creditor to inspect the Vehicle, and Debtor requests that this hearing be continued until after that inspection.

## **DISCUSSION**

Debtor and Creditor are not that far apart in their contentions. Creditor asserts that the retail value for a showroom-ready 2011 Toyota Camry is \$7,775.00.

Debtor testifies that the car, to be showroom-ready for retail sale, must be repaired to address the following: (1) “Motor in passenger window not working/doesn't go up and down,” (2) “Paint off of front end of car,” (3) “Rear left door doesn't close all the way,” (4) “A/C comes on and off while driving,” and

(5) “Takes 2 tries to start vehicle.” Based on these identified condition issues, Debtor argues that the value of the Vehicle is, in its “as is” condition, \$4,000.00. Debtor further testifies that the 2011 vehicle has 130,000 miles on it. (The court estimates that this equates to approximately 19,000 miles per year.)

Creditor’s NADA report states that the “clean” retail value for the vehicle would be \$7,775.00. Dckt. 42 at 20. This is computed based on the 130,000 miles reported by Debtor. However, the evidence is that the Vehicle is not in “clean” retail value. From the NADA Report, it appears that Debtor’s \$4,000 value is for a “rough” or “average” condition trade-in value. *Id.*

Starting with the \$7,775.00 “clean” retail value provided by Creditor and taking into account the actual condition as reported by Debtor, the court computes the retail value based on its actual condition to be \$5,675.00. For the “dealer,” repairs need to get it to the \$7,775.00 value. The court allows \$2,100.00 for such repairs.

The lien on the Vehicle’s title secures a purchase-money loan incurred on June 12, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$8,900.46. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized based on either party’s valuation of the Vehicle. In this case, Debtor has provided reason for the valuation to be adjusted downward from the retail value, but Debtor has not provided any support for the reduction she has claimed. Creditor’s secured claim is determined to be in the amount of \$5,675.00, 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 Janelle Gilmore (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of First Investors Servicing Corporation (“Creditor”) secured by an asset described as 2011 Toyota Camry (“Vehicle”) is determined to be a secured claim in the amount of \$5,675.00, 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 \$5,675.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Final Ruling:** No appearance at the September 12, 2017 hearing is required.

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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, Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2017. By the court's calculation, 48 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 Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services is sustained, and the claim is disallowed in its entirety.**

La Tonya Rosboro, Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$2,869.96.

Objector asserts that the claim was paid in full on January 24, 2017. *See* Exhibit B, Dckt. 47. Additionally, she asserts that she received a clear Certificate of Title to the securing property—a 2014 Chevrolet Impala. Exhibit C, Dckt. 47.

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).

Claimant filed Claim 1-1 on October 20, 2016, in the amount of \$2,869.96 as an automobile loan as stated in the Proof of Claim. Exhibit A. Dckt. 47. Objector received a letter from Claimant to confirm that the automobile loan was paid in full on January 24, 2017. Exhibit B. Dckt. 47. Then, Objector received a clear Certificate of title on the vehicle. Exhibit C. Dckt. 47. Creditor has not amended or withdrawn its claim, however.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. 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 Objector") requests that the court disallow the claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services, Creditor filed in this case by La Tonya Rosboro, Chapter 13 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 Objection to Proof of Claim Number 1-1 of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services is sustained, and the claim is disallowed in its entirety.