

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

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

**September 15, 2020 at 2:00 p.m.**

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<b>1.</b>	<b><u>20-24027-E-13</u></b> <b><u>MOH-1</u></b>	<b>CATHERINE LUCU</b> <b>Michael Hays</b>	<b>MOTION TO VALUE COLLATERAL OF</b> <b>CFAM FINANCIAL SERVICES, LLC</b> <b>9-1-20 [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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 1, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of CFAM Financial Services, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$7,524.00.**

The Motion filed by Catherine Marie Lucu ("Debtor") to value the secured claim of CFAM

Financial Services, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 16. Debtor is the owner of a 2015 Dodge Dart Aero Sedan (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$7,524.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## **DISCUSSION**

The lien on the Vehicle’s title secures a purchase-money loan incurred on December 26, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$20,495.48. Declaration, Dckt. 14. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$7,524.00, 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 Catherine Marie Lucu (“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 CFAM Financial Services, LLC (“Creditor”) secured by an asset described as 2015 Dodge Dart Aero Sedan (“Vehicle”) is determined to be a secured claim in the amount of \$7,524.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$7,524.00 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 31, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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The debtor, Robert Edward Carnegie and Penelope Sue Carnegie (“Debtors”) seek confirmation of the Modified Plan to make up for missed payments after their restaurant closed for dine-in sales as a result of COVID-19 and thus extend plan payments as allowed under the CARES Act. Declaration, Dckt. 36. The Modified Plan provides for monthly plan payments of \$1,250.00 for 84 months, and a 0 percent dividend to unsecured claims totaling \$74,355.40. Modified Plan, Dckt. 35. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 26, 2020. Dckt. 43. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.

## DISCUSSION

### Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,345.72 delinquent in plan payments, which represents over one month of the \$1,250.00 plan payment.

Prior to Trustee's Limited Opposition, Debtor filed a Supplement to the Motion to Confirm Plan explaining that there should have been a nonstandard provision providing for the payment for the month of August under the confirmed plan to be made under the terms of the proposed plan in the amount of \$1,250.00, and requesting that the language in the Order Confirming Plan state the following:

Debtors propose to pay \$22,404.28 through month 19 (July 2020). Debtors propose to pay \$1,250.00 per month for months 20-84 (August 2020 through December 2025).

As Debtor's Amendment to the Plan accounts for Trustee's concern, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Robert Edward Carnegie and Penelope Sue Carnegie ("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 31, 2020, as amended,

Debtors propose to pay \$22,404.28 through month 19 (July 2020). Debtors propose to pay \$1,250.00 per month for months 20-84 (August 2020 through December 2025).

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2020. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of Yolo Federal Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$19,903.00.**

The Motion filed by Francisco Segura and Denise E. Segura (“Debtors”) to value the secured claim of Yolo Federal Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 51. Debtor is the owner of a 2015 Ford Expedition (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$19,903.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on June 30, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a

balance of approximately \$31,594.15. Proof of Claim, No. 2. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$19,903.00, 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 Francisco Segura and Denise E. Segura ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Yolo Federal Credit Union ("Creditor") secured by an asset described as 2015 Ford Expedition ("Vehicle") is determined to be a secured claim in the amount of \$19,903.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$19,903.00 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's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2020. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Francisco Segura and Denise E. Segura ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$501.00 for months one (1) through four (4), followed by monthly plan payments of \$1,800.00 for months five (5) through sixty (60), and a 4% dividend to unsecured claims totaling \$237,996.00. Amended Plan, Dckt. 34. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 25, 2020. Dckt. 44. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor may not be able to comply with the Plan.
- B. Debtor failed to report the value of the Corporation in their Schedules.

## **DISCUSSION**

### **Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). It is unclear what payments the Debtor made to Wells Fargo on the debtor's residence and to Yolo Federal Credit Union on the Debtor's car. In particular, the Debtors' First Amended Plan has a Class 1 for claim which lists "Wells Fargo" for a debt secured by "Residence" but the Debtors do not specify if they have made any mortgage payments to creditor since the case was filed on March 12, 2020. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Debtor's Reliance on Motion to Value Collateral**

A review of Debtor's Plan shows that it relies on the court valuing the collateral of Yolo Federal Credit Union. Debtor filed a Motion to Value Collateral to be heard the same date as the instant motion. The court granted Debtor's Motion and Creditor's secured claim is valued at \$19,903.00.

Thus, this objection is resolved in favor of Debtor.

### **Insufficient Information**

Debtor has supplied insufficient information relating to Advantage Carriers, Inc., to assist the Chapter 13 Trustee in determining the value of Debtor's business. Debtor listed the value of the Corporation in their Schedules as "unknown" and Trustee requests that Debtor formally state what they believe the value is so the court can determine if unsecured claims received what they should in the event of hypothetical Chapter 7.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Francisco Segura and Denise E. Segura ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied without prejudice, and the proposed Chapter 13 Plan is not confirmed.



**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 28, 2020. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

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<b>The Motion to Incur Debt is granted.</b>
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Richard Jay Cummings and Paula Rae Cummings ("Debtor") seeks court approval to incur post-petition credit. Debtors have been approved for an FHA reverse mortgage through Plaza Home Mortgage ("Creditor"). The loan amount is \$187,590, with no monthly payments required and an adjustable interest rate with an initial rate of 3.682%. The loan interest rate is tied to the 1-year Libor index. The loan is 30 year loan.

The Motion is supported by the Declaration of Richard Jay Cummings and Paula Rae Cummings. Dckt. 134. The Declaration affirms Debtor's desire to obtain the post-petition financing and to use approximately \$38,158.00 of the proceeds to pay off their Chapter 13 plan so as to complete it.

The Declaration of Mary Ellen Terranella, counsel for Debtor, is provided where she declares that she requested additional information on the adjustable loan and the loan officer involved with the transaction verified that the loan is attached to the 1-year Libor index and has a cap of 5.00%.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c)

requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

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

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

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

The Motion to Incur Debt filed by Richard Jay Cummings and Paula Rae Cummings (“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 Richard Jay Cummings and Paula Rae Cummings is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 136.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 21, 2020. By the court’s calculation, 25 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of LVNV Funding, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$365.00.**

The Motion filed by Milton Raul Perez (“Debtor”) to value the secured claim of LVNV Funding, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 14. Debtor is the owner of a 2007 Yamaha Dirt Bike (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$365.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## **DISCUSSION**

The lien on the Vehicle’s title secures a purchase-money loan incurred on May 2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$2,210.00. Declaration, Dckt. 14. Therefore, Creditor’s claim secured by a lien on the

asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$365.00, 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 Milton Raul Perez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of LVNV Funding, LLC ("Creditor") secured by an asset described as 2007 Yamaha Dirt Bike ("Vehicle") is determined to be a secured claim in the amount of \$365.00, 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 \$365.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on August 28, 2020. By the court's calculation, 18 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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Farris M. Collier and Alisa A. Melendez-Collier ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-27842) was dismissed on June 16, 2020, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 19-27842, Dckt. 35, June 16, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because of a loss in income due to an interruption of Debtor's job as a result of the COVID-19 pandemic.

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

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

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

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

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

Debtor has sufficiently demonstrated the case was filed in good faith/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 Farris M. Collier and Alisa A. Melendez-Collier (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 31, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Barbara Williams ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$5,125.00.**

The Motion filed by Barbara Williams ("Debtor") to value the secured claim of Creditor Loan Mart ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2009 Honda Civic ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$5,125.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## **DISCUSSION**

The lien on the Vehicle's title secures a non-purchase money loan incurred in 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$2,500, with a 98% interest rate, leading to a balance at the time of filing of \$12,000.

Declaration, Dckt. 10. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$5,125.00, 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 Barbara Williams ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Creditor Loan Mart ("Creditor") secured by an asset described as 2009 Honda Civic ("Vehicle") is determined to be a secured claim in the amount of \$5,125.00, 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 \$5,125.00 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 10, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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The debtor, Nicholas Baker ("Debtor") seek confirmation of the Modified Plan to adjust his monthly plan payments in consideration of updated income and expenses after their employment was reduced due to COVID-19 which has reduced their income and transportation expenses. Declaration, Dckt. 28. The Modified Plan provides for:

1. monthly plan payments of \$2,900.00 per month for 12 months,
2. followed by \$0 per month for one (1) month, and
3. then \$3,200 per month for 71 months,
4. with a 100% dividend to unsecured claims totaling \$11,072.00.

Modified Plan, Dckt. 26. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on August 26, 2020. Dckt. 33. Trustee opposes confirmation of the Plan on the basis that:

- A. The proposed payments in the plan do not match the actual payments made by the debtor.

## DISCUSSION

Trustee notes that the total paid into the plan is inaccurate. Debtor had thirteen payments due through July, 2020 totaling \$34,800.00. However, Debtor has paid a total of \$36,861.02 through July 2020. Trustee explains that the prior plan also provided for \$2,900 per month payments for the first 12 months with ongoing mortgage payments in the amount of \$1,988.00 to Chase Mortgage. JP Morgan Chase's Proof of Claim No. 16 disclosed the ongoing payment was \$2,150.89, so the Debtor's payment under the original plan changed to \$3,071.82. Trustee would not object to correcting the total amount paid into the plan in the order confirming the modified plan.

Debtor filed a Response on September 2, 2020 agreeing with Trustee's assertion and requesting that the court clarify the total payments in the order confirming the modified plan.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Nicholas Baker ("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 August 7, 2020, and as amended,

Plan payments of \$36,861.02 through July 2020.

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

**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 19, 2020. 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 -----  
-----.

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

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

- A. Debtor's plan may unfairly discriminate unsecured claims.
- B. Debtor's plan fails to provide for the curing of the default on the Creditor's claim.
- C. Debtor's plan fails to provide for two (2) secured claims.
- D. Debtor's plan fails the liquidation analysis.
- E. Debtor's monthly disposable income is unclear.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Debtor's Reliance on Motions to Value Collateral**

A review of Debtor's Plan shows that it relies on the court valuing the collateral of Travis Credit Union. Debtor filed two Motions to Value Collateral of Travis Credit Union and set them for hearing on August 25, 2020. The court granted both of Debtor's motions at the values being sought. Thus, this objection is resolved in favor of Debtor.

### **Unfair Discrimination Against Unsecured Claims**

Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay 0.10% to unsecured claims; however, Debtor will be paying \$400.00 a month to "Student loans" outside of the plan. Thus, creditors with similar claims will be receiving disparate monthly payments inside and outside the Plan.

### **Failure to Cure Arrearage of Creditor**

Creditor, PNC Bank, National Association, holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$33,565.67 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

### **Failure to Provide for Secured Claims**

Trustee alleges that Debtor cannot make the payments are required under 11 U.S.C. § 1325(a)(6). Creditor Wells Fargo Bank asserts a claim of \$5,478.20 in this case. Additionally, Creditor Travis Credit Union asserts a claim of \$4,635.00 in this case. Debtor's Schedule D fails to list both creditors and the Plan fails to provide for the secured claim.

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

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

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

options:

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

### **Debtor Fails Liquidation Analysis**

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that the Debtor's Plan may not pay unsecured claims that they would receive in a hypothetical Chapter 7. In Debtor's prior Chapter 13 plan, Debtor scheduled his house on Schedule A/B with a value of \$660,000 with \$34,363.00 "Available to Creditors." Debtor now asserts that \$1,994.00 would be "Available to Creditors" because the value is offset by a projected \$15,000.00 for Trustee's Attorney fees and \$2,000.00 for Trustee's Accounting Fees in a Chapter 7 case.

Additionally, Debtor has proposed a dividend of 0.10% to unsecured claims under the proposed plan. Trustee believes that Debtor's value of real property may be understated based on Trustee's preliminary value search of the real property through Zillow.com and Trulia.com.

### **Failure to Provide Disposable Income**

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 0.10 percent dividend to unsecured claims, which total \$259,469.00, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals negative (-) \$86.77. Trustee contends that items on Debtor's Form 122C-2 are unclear. Thus, the court may not approve the Plan.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 11, 2020. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

-----.

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

PNC Bank, National Association, by and through its servicing agent Select Portfolio Servicing, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan fails to cure arrearage of the Creditor.

## DISCUSSION

Creditor's objections are well-taken.

### Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$33,565.76 in pre-petition arrearage. The Plan does not

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

The 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 PNC Bank, National Association, by and through its servicing agent Select Portfolio Servicing, Inc. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



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

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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 August 3, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is [granted](#).**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Yvonne Rose Richards ("Debtor"), has filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition to the confirmation of the plan on August 31, 2020. Dckt. 77. However, Trustee notes that Debtor has failed to provide him with a copy of "The Revocable Living Trust of Yvonne R. Richards (est.. June 5, 2008)" or any information regarding the Trust as previously requested at the Meeting of Creditors.

At the hearing, [XXXXXX](#)

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Yvonne Rose Richards (“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 31, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.~~

**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's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2020. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<b>The Motion to Confirm the Modified Plan is denied.</b>
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The debtor, Edward C. Casarino and Janet L. Casarino ("Debtor") seek confirmation of the Modified Plan to pay the ongoing mortgage of their home until the home is sold. Declaration, Dckt. 102. The Modified Plan provides for:

1. monthly plan payments of \$1,260.00 for months thirty-one (31) through thirty-seven (37),
2. followed by committing the necessary funds from the sale of their residence to pay off all allowed claims by month thirty-eight (38), and
3. 100% dividend to unsecured claims totaling \$36,956.23.

Modified Plan, Dckt. 105. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on August 26, 2020. Dckt. 107. Trustee requests the court into consideration that Debtor does not state a specific amount for the payment on month 38 from the sale of their property. *Id.* Trustee calculates the approximate amount needed is \$68,000. *Id.*

### DISCUSSION

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, the Plan is for Debtor to sell their residence by February 2021, and make payments of \$0.00 a month to creditors holding claims secured by the property that is to be sold six months in the future.

Debtor's declaration filed in support of the Motion causes the court some concern. The two debtors first testify under penalty of perjury that their plan "complies with applicable laws." Declaration, ¶ 3; Dckt. 102. Nothing in the record relating to this Motion provides any information about Debtor's legal training and expertise to provide such a legal conclusions. Debtor continues, providing more legal opinions, stating under penalty of perjury that the Modified plan "complies with the provisions of this chapter and with other applicable provisions of title 11 of the United States Code." *Id.*, ¶ 3a. Again, no basis for Debtor having such legal knowledge and ability to testify to such under penalty of perjury.

Debtor then testifies under penalty of perjury the value to be distributed under the Plan is not less than would be received through a Chapter 7 liquidation and directs the court to read a "Liquidation Analysis." *Id.*, ¶ 3d., 3e. No such analysis could be identified. Debtor also appears to not know the terms of the plan as it relates to secured claims, stating that the Debtor is either paying the claim or surrendering the property - but cannot say what is being provided for which creditor. *Id.*, ¶ 3e.

Presumably, since the plan provides for a 100% dividend for creditors holding unsecured claims, it meets the liquidation test, but Debtor was unable to make that simple statement of fact, as opposed to stating a conclusion of law. Second Modified Plan, ¶ 3.14; Dckt. 105.

Debtor's most recent Supplemental Schedules I and J were filed on May 14, 2019. Dckt. 82. Based on those, Debtor has \$2,358.85 in monthly net income to fund a plan. Though having \$2,358.85 to fund the plan, Debtor proposes to make payments of \$1,260.00 for the next six months, and make no payments to the creditors for the property which is to be sold (with Debtor providing evidence that the sale has been attempted since January 2020 but has been difficult to sell). It is unclear why Debtor proposes six months free housing with no adequate protection payments.

At the hearing, **XXXXXXX**

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

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

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

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

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

**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, and Office of the United States Trustee on August 10, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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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The debtor, Timothy Tobias Trocke ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,705.00 for three (3) months, followed by monthly plan payments of \$2,975.00 for fifty-seven (57) months, and a 100% dividend to unsecured claims totaling \$0.00. Amended Plan, Dckt. 58. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 13, 2020. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor will not complete plan within the allotted time.
- B. Debtor cannot comply with the plan.

## CREDITOR'S OPPOSITION

Roger Anderson ("Creditor") holding a secured claim filed an Opposition on August 18, 2020. Dckt. 73. Creditor opposes confirmation of the Plan on the basis that:

- A. The proposed plan payments are insufficient to pay Secured Creditor's allowed claim in full.

Creditor has filed Proof of Claim No. 2-1 in which the secured claim of \$126,635.02 is asserted, for which Creditor states that there is an 18% interest rate. POC 2-1, ¶ 7. Proof of Claim 2-1 has been signed by the attorney for Creditor. Proof of Claim 2-1 states that the loan matures September 1, 2020 during the pendency of this case and is due in full during the sixty month maximum term of this case. Creditor confirms this in the Opposition.<sup>FN. 1</sup>

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FN. 1. This court recently issued a published decision concerning claims secured only by a debtor's residence that are due in full during the term of a plan, and the ability of a debtor to modify the terms of such claim. *In re Collier-Abbott*, 616 B.R. 117 (Bankr. E.D. Cal. 2020). The parties may want to review that decision and the authorities cited therein and not rely on prior discussions of the non-modification of claims secured by a debtor's residence.  
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Creditor has attached a copy of the Note upon which the claim is based as an exhibit to Proof of Claim No. 2-1. The terms stated in the Note are that it is a 36 month, interest only, note, dated August 1, 2018, with the entire obligation owing due and payable September 1, 2020 (the "Maturity Date"). Note, ¶ 2.1.

## DISCUSSION

### Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, under the monthly proposed dividend in the amount of \$2,491.00 with an interest rate of 18% to Wells Fargo (Class 2 creditor), the Plan will complete in 96 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's amended Schedule I (DN 62) increased the contribution from Penelope Trocke, Debtor's sister, from \$1,249.00 to \$1,520.00 per month. Dckt. 62. Trustee notes that the plan relies in this contribution and no declaration in support of this increase was filed.

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

## **Insufficient Plan Payments**

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). As noted by Trustee, the proposed \$2,491.00 monthly payments for the balance of the plan term are insufficient to pay the Class 2 claim in full. Thus, the Plan may not be confirmed.

## **Plan Provision for 18% Interest**

In Class 2(A) Debtor proposes to pay an 18% interest rate for a \$126,635.02 claim to be paid over the sixty months of the Plan with monthly payments of \$2,491.00. Amended Plan, ¶ 3.08; Dckt.80. To fully pay that obligation over 60 months, the monthly plan disbursement to that creditor would need to be \$3,215.70. (Computed using the Microsoft Excel Loan Calculator program.) However, if the interest rate is reduced to 1.8%, then the monthly payment drops to \$2,208.57.

It appears that the Amended Plan has a typographical error with respect to the interest rate to be paid by Debtor.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Timothy Tobias Trocke (“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.

**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 **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Office of the United States Trustee on August 25, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Certificate of Service references an attached mailing matrix but no such attachment was included. The court is unable to ascertain whether creditors or parties requesting special notice were served.

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

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<b>The Motion to Extend the Automatic Stay is <del>granted</del>.</b>
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Anthony Edward Lewis and Lindsey Elaine Lewis ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 20-23575) was dismissed on August 19, 2020, after Debtors failed to file the appropriate schedules and documents. *See* Order, Bankr. E.D. Cal. No. 20-23575, Dckt. 6, August 19, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtors state that the instant case was filed in good faith and explain that the previous case was dismissed because Debtors failed to file the financial schedules and documents after their bookkeeper, who maintains their records, was on medical leave, and as such Debtors could not gather

their documents to complete the required information. Dckt. 12.

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

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

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

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

~~Debtor has sufficiently demonstrated the case was filed in good 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 Anthony Edward Lewis and Lindsey Elaine Lewis (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and 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. [19-25218](#)-E-13      **MARCUS BUCKNER**      **CONTINUED MOTION TO MODIFY**  
[PGM-2](#)      **Peter Macaluso**      **PLAN**  
6-26-20 [[101](#)]

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Modified Plan is ~~xxxx~~.**

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

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

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

The court deemed the Debtor's unilateral statement that it was removing something from this court's calendar as an *ex parte* motion for a continuance. The court granted such request and continued the hearing to September 14, 2020.

#### **REVIEW OF THE MOTION**

The debtor, Marcus Da Mone Buckner ("Debtor") seeks confirmation of the Modified Plan to

cure the default in plan payments after being affected by COVID-19. Declaration, Dckt. 104. The Modified Plan provides monthly plan payments of \$1,100 commencing July 25, 2020 for 50 month, and a 0.0 percent dividend to unsecured claims totaling \$25,209.84. Modified Plan, Dckt. 105. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 14, 2020. Dckt. 110. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent since January 2020 and may not be able to pay.
- B. Service was not made on the Internal Revenue Service.

## **TRUSTEE'S STATUS REPORT**

Trustee filed a Status Report on September 1, 2020 where he continues to oppose confirmation of the Plan and informs the court that Debtor is still delinquent \$1,1000 and that the August 25, 2020 payment, as of September 1, 2020, had not yet been received. Dckt. 126.

Moreover, Debtor has failed to file a supplemental declaration explaining whether rental expenses remain.

Trustee notes that the IRS has now been served at the proper address. *Id.* See Dckt. 118.

## **DISCUSSION**

The Chapter 13 Trustee asserts that Debtor is \$5,000.00 delinquent in plan payments, which represents multiple months of the \$1,000 plan payment. Trustee is uncertain if Debtor's ability to pay where the last payment posted on January 7, 2020. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Moreover, Trustee notes that Debtor has moved from Fairfield to Antioch yet the rental expense remained the same in Debtor's amended Schedule J. Trustee requests that the Debtor explain if the rent has indeed remained the same.

Trustee asserts that Debtor failed to serve the Internal Revenue Service. A review of the Certificate of Service shows that service was not made to United States Department of Justice Tax Division Civil Trial Section Western Region Box 683 Ben Franklin Station Washington, DC 20044 and United States Attorney (For Internal Revenue Service) 501 I St Ste 10-100 Sacramento, CA 95814.

After the hearing on this Motion was continued on August 11, 2020, Debtor addressed two Trustee's concerns. Debtor filed a Declaration testifying that indeed though he had moved, the rental expense in the amount of \$1,200 remained the same. Dckt. 128. Additionally, Debtor has now properly served the Internal Revenue Service. Dckt. 118.

Delinquency remains.

**September 15, 2020 Hearing**

At the hearing, **xxxxx**

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

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

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

~~\_\_\_\_\_ The Motion for Confirmation of a Modified Chapter 13 Plan filed by Marcus Buckner, the 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 Motion to Confirm the Modified Plan is **xxxxx**.~~

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

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

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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 26, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor failed to provide tax returns.
- B. Debtor Plan term exceeds 60 months.
- C. Debtor failed to file a Motion to Value the Secured claim.

## DISCUSSION

Trustee's objections are well-taken.

### **Failure to Provide Tax Returns**

At the meeting of creditors, Debtor failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. §521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Meeting of Creditors was continued to September 10, 2020 at which time Debtor must provide Trustee with copies of her tax returns.

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

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 73 months due to claims being filed for amounts higher than the Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Debtor's Reliance on Motion to Value Secured Claim**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Westlake Financial Svcs. Debtor has failed to file a Motion to Value the Secured Claim of Westlake Financial Svcs, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 29, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<b>The Motion to Confirm the Modified Plan is denied.</b>
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The debtor, David Matthew Windmiller and Donna Laura Windmiller ("Debtor") seeks confirmation of the Modified Plan to make up for missed payments due to COVID-19 and extend plan payments as allowed under the CARES Act. Declaration, Dckt. 50. The Modified Plan provides for monthly plan payments of \$1,850.00 for 84 months, and a seventy (70) percent dividend to unsecured claims totaling \$39,470.00. Modified Plan, Dckt. 52. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), holding a secured claim filed an Opposition on August 26, 2020. Dckt. 56. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's plan will not be completed within the allotted time.
- B. Debtor may not be able to afford the plan payment.



- C. Debtor's plan fails to provide for the curing of the default on the Creditor's claim.

## **DISCUSSION**

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

Debtor's Plan will complete in more than the permitted 84 months under the CARES ACT. According to the Chapter 13 Trustee, the Plan will complete in 106 months due to \$49,037.00, excluding the Post-Petition Monthly Payment on the Class 1 Claim, remains to be paid. Thus, the Plan exceeds the maximum 84 months allowed under the CARES Act, 11 U.S.C. § 1329(d)(1).

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

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Per the amended/supplement to Schedule I, the Debtor reports gross income of \$3,619.25 and tax deductions of \$97.02. Trustee asserts that Medicare and social security taxes should be approximately \$276.87.

Further, Debtor does not report expenses for real estate taxes and insurance. Additionally, Trustee asserts that Debtor's monthly net income of \$1,853.06 appears to be overstated by a minimum of \$525.85. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Failure to Cure Arrearage of Creditor**

Creditor CitiMortgage, Inc./Cenlar FSB holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$165,787.55 in pre-petition arrearage and \$4,843.40 in post-petition arrearage. The Plan does not propose to cure the full amount in post-petition arrearage and does not include which months are included in the amounts. Thus, Trustee is unable to comply with Section 3.07(b) of the Plan.

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

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, David Matthew Windmiller and Donna Laura Windmiller ("Debtor") having been presented to the court, and upon review of the pleadings, evidence,

arguments of counsel, and good cause appearing,

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

19. [19-26636-E-13](#)      **JENNIFER ROSS**      **OBJECTION TO CLAIM OF INTERNAL**  
[DPC-1](#)                      **Paul Bains**      **REVENUE SERVICE, CLAIM NO. 5**  
7-30-20 [\[37\]](#)

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

**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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, and Debtor's Attorney on July 30, 2020. By the court's calculation, 47 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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**The Objection to Amended Proof of Claim Number 5-2 of Internal Revenue Service is sustained without prejudice, and Amended Proof of Claim 5-2 is disallowed.**

**This does not alter or disallow Proof of Claim 5-1 filed by the Internal Revenue Service.**

David P. Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of

Claims in this case. The Claim is asserted to be unsecured in the amount of \$3,652.80. Objector asserts that:

- A. Debtor's Attorney cannot file an amended claim on behalf of the Creditor on the basis that Trustee is unaware that Debtor has the legal authority to do so, and even if Debtor could, said authority (11 U.S.C. § 591(d)) is restricted to when a creditor does not timely file a claim and here the IRS has filed a timely claim.
- B. Debtor filed a claim for taxes that were due post-petition as the claim states "Taxes - Amending to Add 2019 Tax Obligation. Debtor has no right to file a claim under 11 U.S.C. § 1305.
- C. Debtor fails to provide sufficient documentation such as attachment, a billing from the IRS, redacted 2019 tax returns, or a detailed declaration evidencing the amount of the claim.

## DISCUSSION

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

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

The Internal Revenue Service of the United States of America filed Proof of Claim No. 5-1 on November 20, 2019. On July 8, 2020, Debtor filed an Amended Proof of Claim 5-2 "for" the Internal Revenue Service which changes the amount of the claim to \$3,652.80. This increases the amount from the \$641.80 stated in Proof of Claim No. 5-1.

As the Trustee first objects, no basis is given for the Debtor having the ability to reach out and amend a creditor's claim. Congress provides in 11 U.S.C. § 501(c) that if the creditor does not timely file a proof of claim, then the debtor or trustee may file a claim for that creditor. It does not provide for allowing the trustee or debtor to amend the claim previously filed by the creditor.

As the Trustee further points out, the obligation which the Debtor seeks to add to the Internal Revenue Service claim is for the post-petition 2019 income taxes. This bankruptcy case was filed on October 25, 2019, so it would not be surprising that Debtor may have had some tax liabilities from that year. However, Debtor is a high income bankruptcy debtor (\$7,869 in monthly gross income, which

does not include her bonus; Schedule I, Dckt. 1 at 37). Though Debtor lists a fiancé as a “dependent,” no monthly contributions are shown for the fiancé for household expenses. Schedule J, Dckt. 1 at 40-41.

It may be that it has been Debtor’s practice to have her taxes under withheld during the tax year and then just pay the balance due in the next year with her tax return for the prior year. Unfortunately, that does not work under a bankruptcy plan.

As the Trustee notes, 11 U.S.C. § 1305 provides for the filing of proofs of claim for post-petition claims, allowing the creditor to file the claim. A question may exist as to whether the taxes at issue for 2019 are for amounts owed prior to filing, thus pre-petition, or for a period after filing (in November and December 2019). It has been awhile since the court has reviewed the bifurcation of taxes issue, and will leave that to (as the Hon. Christopher M. Klein notes) the genius of counsel.

Thus, rather than amending what the Internal Revenue Service has filed, if this can be in good faith identified as a pre-petition obligation, then possibly a second claim for the Internal Revenue Service could be filed by the Debtor. The Debtor should be able to document as part of the claim what is the amount due for the pre-petition 2019 taxes.

Additionally, Debtor and counsel should review Debtor’s withholding and make sure that all taxes are properly paid and that the Debtor is not “robbing Peter” in the next year to “pay Paul” for taxes due in the prior year.

The Objection to Amended Proof of Claim No. 5-2 is sustained and it is disallowed without prejudice.

Original Proof of Claim No. 5-1 filed by the Internal Revenue Service is not altered or disallowed by the ruling on this Objection.

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 Internal Revenue Service (“Creditor”), filed in this case by David P. Cusick, the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Amended Proof of Claim Number 5-2 of Internal Revenue Service is sustained without prejudice, and Amended Proof of Claim 5-2 is disallowed.

**IT IS FURTHER ORDERED** that this Order does not alter or disallow Proof of Claim 5-1 filed by the Internal Revenue Service.

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

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

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

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

The debtor, Kimberly Jeanette Williams-Brito (“Debtor”) seeks confirmation of the Modified Plan to catch up with payments due to financial hardship as a result of state legislation AB 705 (did not receive payment for extra teaching units), new expenses (paying for her son’s college tuition), and COVID-19 (purchasing equipment for remote teaching). Declaration, Dckt. 33. The Modified Plan provides for monthly plan payments of \$525.00 commencing on August 2020 for 36 months, and a 0.5 percent dividend to unsecured claims totaling \$201,839.90. Modified Plan, Dckt. 34. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 14, 2020. Dckt. 40. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor may not be able to make payments.

#### **DISCUSSION**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has failed to explain the extra teaching units she referred to in her Declaration in support of the confirmation. Debtor’s original Schedule I did not itemize payments related to “extra-

teaching units.” Debtor has also failed to provide the amounts or any relevant details related to son’s tuition and purchase of equipment. Additionally, Debtor’s Declaration refers to two different number of months for the plan.

Trustee requests that Debtor adequately address the issues discussed above by filing a Supplemental declaration and current Schedules I and J.

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

Debtor filed a Reply explaining that due to COVID-19 restrictions and precautions, counsel has been unable to meet with Debtor to review Debtor’s schedules and draft a declaration that addresses the Trustee’s concerns. Dckt. 43, ¶ 1. Debtor requests a 14 day continuance in order to meet with counsel to address these matters thoroughly. *Id.*

## **TRUSTEE’S STATUS REPORT**

Trustee continues to oppose confirmation of the plan on the basis that Debtor is delinquent \$525.00, has not filed Supplemental Schedules I and J, or a supplemental declaration in support of the motion to address Trustee’s original concerns. Dckt. 47.

## **DEBTOR’S RESPONSE AND DECLARATION**

Debtor filed a Declaration testifying under penalty of perjury that she was unable to make plan payments due to COVID-19 affecting her teaching workload and later not working the additional work hours that would have given her the extra income to make her plan payments. Dckt. 48. Debtor testifies that she now has her regular teaching “over-load” and has received her first full pay check since the COVID-19 pandemic affected her workload. *Id.*, ¶ 3. Debtor further declares having attempted to make a payment to the Trustee in person which was not accepted and was then mailed on August 25, 2020. *Id.*, ¶ 3.

In her Response, Debtor argues that she has become current in plan payments under the proposed Chapter 13 plan by remitting the \$525.00 payment which posted on September 3, 2020.

Debtor also filed Supplemental Schedules I and J on September 1, 2020. Dckt. 51.

## **September 15, 2020 Hearing**

At the hearing, **xxxxxx**

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Kimberly Jeanette Williams-Brito (“Debtor”) having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**XXXXX.**

21.	<a href="#"><u>19-21741-E-13</u></a> <a href="#"><u>MJD-5</u></a>	<b>ROLDAN SEBEDIA</b> <b>Matthew DeCaminada</b>	<b>MOTION TO MODIFY PLAN</b> <b>7-30-20 <a href="#"><u>[92]</u></a></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.

-----  
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 30, 2020. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is denied.</b></p>
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The debtor, Roldan Sebedia ("Debtor") seeks confirmation of the Modified Plan to provide payments for attorney's fees applied for by the mortgage lender on the property, provide for HOA payments previously omitted, and to cure default in plan payments. Declaration, Dckt. 94. The Modified Plan provides for monthly plan payments of \$2,850 commencing August 25, 2020 to be paid through the remainder of the plan, and a 20.81% dividend to unsecured claims totaling \$206,725.83. Modified Plan, Dckt. 96. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

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

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on August 26, 2020. Dckt.102. Trustee opposes confirmation of the Plan on the basis that:

- A. The Debtor's Plan may not be the Debtor's best effort.
- B. Debtor is delinquent in plan payments.

### **DISCUSSION**

#### **Not Best Effort**

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

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

Debtor filed a supplement to Schedule I reporting gross income of \$11,000.00 and monthly income of \$8,827.67. However, according to Trustee, the last time Debtor provided pay advices (October 27, 2018 through March 2, 2019) his gross income for the period averaged \$25,122.48 per month and monthly income averaged \$16,006.18 per month. Debtor has not accounted for this nearly \$8,000 a month discrepancy.

Debtor's Schedule I discloses a retirement loan to be paid off in September 2020 and the debtor will increase the plan payment, yet this is not accounted for in the proposed plan. In addition, Debtor disclosed in his declaration the purchase of a motorcycle that is not disclosed in Schedule B. The Debtor's Schedule J still includes a \$500.00 transportation cost without support for this expense.

#### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$2,850.00 delinquent in plan payments, which represents one month of the \$2,850.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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



hearing.

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

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

22. [20-23445-E-13](#) **DEMETRIUS BELLAMY** **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#) **George Burke** **PLAN BY DAVID P. CUSICK**  
**8-26-20 [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 26, 2020. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

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

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

- A. Debtor's plan may not be proposed in good faith.
- B. Debtor unfairly discriminates against unsecured claims.
- C. Debtor has failed to provide evidence related to family support.

## DISCUSSION

Trustee's objections are well-taken.

### Unfair Discrimination Against Unsecured Claims

Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay \$2,950.00 per month for 60 months with 10.00% to unsecured claims. However, the nonstandard provisions of the Plan indicate that Debtor is to make payments directly to ECMC for a student loan that totals approximately \$22,600.00.

### Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule I identifies \$700.00 from "Parent Support" with no evidence provided that the parents can and will contribute this amount to the Debtor over the duration of the plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is

nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

**9) The frequency with which the debtor has sought relief under the Bankruptcy code;**

**10) The motivation and sincerity of the debtor in seeking Chapter 13 relief;**  
and

11) The burden which the plan's administration would place upon the trustee.

*In re Warren*, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

Trustee asserts that Debtor is a serial filer. Debtor has filed eleven prior Chapter 13 cases since 2000, and five of those cases have been filed since 2016. Ten of these cases were dismissed, and only one was completed with a discharge in May 21, 2004. Trustee asserts that Debtor has not explained why this case will work when the ten prior have not.

Moreover, Trustee is uncertain that the amounts listed for **arrearage in Class 1 for Carrington Mortgage are accurate as in the prior case Creditor filed a proof of claim for arrearage significantly higher than as listed by Debtor in this case**. Trustee is concerned as to the feasibility of the plan given that in the prior proof of claim Creditor listed arrearage in the amount of \$61,920.15 and Debtor having failed to make plan payments, Trustee believes the arrearage amount will be much higher. If this turns out to be correct, Trustee argues that the Plan will not be feasible as Debtor does not have sufficient income to increase the Plan payment in order to account for the entire amount in arrearage.

Lastly, Trustee informs the court that at the Meeting of Creditors, Debtor admitted that he is unemployed and as stated in his Schedule I, Debtor relies on a variety of income sources as to which Trustee is uncertain if they are reliable and given Debtor's history of previously dismissed cases, Debtor may not be able to make plan payments for the next 60 months.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on September 8, 2020 stating that he would file a new plan addressing Trustee's concerns. As of the court's September 12, 2020 review of the Docket, Debtor had not filed a new plan. Unfortunately for Debtor, a promise to file an amended plan is not evidence that resolves the Motion.

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

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

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

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

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

23.	<a href="#"><u>20-23353-E-13</u></a> <a href="#"><u>DPC-1</u></a>	<b>WILLIAM SCHROYER</b> Eric Schwab	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> 8-26-20 <a href="#"><u>[20]</u></a>
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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).**

-----  
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 26, 2020. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

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

- A. Failure to provide proof of social security number
- B. Plan is incomplete and contains errors.

- C. Plan may not be Debtor's best effort.
- D. Petition and Schedules are inaccurate.
- E. Failed to provide spousal waiver for exemptions.
- F. Debtor is delinquent.

## **DISCUSSION**

Trustee's objections are well-taken.

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

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

The First Meeting of Creditors held on August 20, 2020 has been continued to September 17, 2020.

### **Plan Incomplete and Filled Out in Error**

The Plan filed July 20, 2020 contains neither the Debtor's, nor the Debtor's attorney's, original wet signatures or electronic signatures. Trustee is unable to fully assess the feasibility of the Plan or effectively administer the Plan as it does not comply with Local Bankruptcy Rule 9004-1(c)(1)(B).

The Debtor's plan calls for the Debtor to pay \$700.00 a month to "Long Term Debt to Family Trust," which is an unsecured debt. Trustee believes Debtor has improperly listed this creditor in Class 4 as Class 4 is for all secured claims paid directly by the Debtor, which would not comply with 11 U.S.C. § 1322(b)(1).

While the Chapter 13 Trustee characterizes this as a possible drafting error, the court notes that on Schedule D Debtor states under penalty of perjury that he has no creditors with secured claims. Dckt. 10 at 14. It is unclear how Debtor, consistent with the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, could file a plan that provides for diverting \$700.00 a month to preferred family members.

Debtor's plan states the Debtor's attorney has been paid \$1,425 with unpaid administrative fees of \$2,750 which are to be paid through the Plan. However, the administrative expenses listed in Section 3.06 state Debtor's attorney will receive \$0.00 in each monthly plan payment. The Rights and Responsibilities and the Disclosure of Compensation of Attorney for Debtors both state that Debtor agreed to \$4,000.00 for legal services and the Debtor's attorney received \$1,425.00 from ARAG, prior to the filing statement, with a balance of \$2,750.00. Neither the Plan nor the Rights and Responsibilities indicate if ARAG has paid \$1,425 to the attorney prior to filing the case or if it is still owing and it is unclear to the Trustee what the Debtor's attorney will be receiving each month in attorney's fees.

## **Not Best Effort**

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

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

Debtor did not identify any gross income on Form 122C-1 and may have additional disposable income to pay toward the Plan. Debtor's non-filing spouse has a monthly income of \$6,905.00 according to Schedule I and Debtor's monthly business gross income is \$24,768.00 as stated in the Business Income and Expenses Statement the Debtor provided the Trustee. Therefore, Debtor's monthly gross income may be \$31,673.00 and not \$0.00 as stated on Form 122C-1. If so, Debtor is required to complete and file the Form 122C-2, which has not been done.

## **Petition and Schedules Are Inaccurate**

The Business Income and Expenses lists income in the amount of \$4,651.00 as "Net income from rental property and from operating business, profession, or farm." Debtor's Schedule I does not have any attached statements that reflect Debtor's gross monthly income, monthly expenses or net monthly income.

Schedule I lists non-filing spouse deductions in the amount of \$1,347.00. However, according to the pay advices that Trustee has received, this amount appears to be additional compensation (income), instead of a deduction.

Debtor admitted at the First Meeting of Creditors that his non-filing spouse has her own separate debt, which is not listed as in expenses under Schedule J.

Schedule H states Debtor does not live in a community property state and that he is not married. Debtor admitted at the First Meeting of Creditors that he is married and lived in Woodland, California at the time of filing.

## **Failed to File Spousal Waiver**

Debtor admitted at the First Meeting of Creditors that he is married but has not filed a Spousal Waiver for use of California State Exemptions under Cal. Code of Civ. Proc. § 703.140. The Trustee will be filing an objection to exemptions.

## **Delinquency**

Debtor's first plan payment of \$3,173.00 is currently due and unpaid. The case was filed July 6, 2020. The Plan calls for payments to be received no later than the 25th of each month under §2.01,

yet no payments have yet been made into the Plan.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on August 26, 2020. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor may require a third party to assist her with her financial affairs.
- B. Debtor is delinquent.
- C. Debtor's Plan miscalculates time needed to complete the Plan.
- D. Debtor may be unable to make payments.
- E. Debtor's plan fails Chapter 7 liquidation analysis.
- F. It is unclear how much Debtor's attorney has been paid prior to filing.



## DISCUSSION

Trustee's objections are well-taken.

### Next Friend Needed

According to Trustee, during the First Meeting of Creditors on August 20, 2020, Debtor had extreme difficulty hearing and did not remember much about the bankruptcy documents filed. A family member was present trying to assist the Debtor. Debtor may require a third party to assist her with her financial affairs (a *next friend*, which is recognized by the Supreme Court in *Whitmore v. Arkansas*, (495 U.S. 149, 162)).

The meeting was continued to October 8, 2020 in order to allow Debtor to file a Declaration explaining her current circumstances and potentially to seek court approval to proceed with a *next friend*. Trustee believes such motion may be brought under FRBP 1004.1 or 1016.

### Delinquency

Debtor is \$1,320.00 delinquent in plan payments, which represents one month of the \$1,320.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by 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).

### Failure to Complete Plan Within Allotted Time

The Plan does not work mathematically because the Plan will complete in more than the proposed sixty months. According to Trustee's calculations, it would take 999+ years to complete the plan, rather than 60 months. Debtor listed Ajax Mortgage Loan Trust as a delinquent secured claim in the amount of \$24,338.77, under Class 1 of the Plan. Debtor proposes to pay a monthly dividend of \$8.00 toward arrearage with 3.5% interest (where interest may not be appropriate on arrears under 11 U.S.C. §1322(e)). Debtor would need to increase mortgage arrears to \$445.00 and the Plan Payment to \$1,733.84 per month in order for the Plan to complete in 60 months.

### Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor's Schedule I indicates Debtor's only source of income is social security in the amount of \$1,870.00. Debtor's total expenses listed under Schedule J is \$624.00. Trustee believes that \$624.00 per month in expenses is insufficient, especially considering Debtor owns real property.

### Plan Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that while Debtor's non-exempt equity total in the amount of \$359,826.63, Debtor is proposing a 0.00 percent dividend to unsecured claims. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a 0.00 percent dividend

when there may be upward of \$359,826.63 in non-exempt equity.

Moreover, Trustee is unsure why the following non-exempt assets have been valued at the their stated amounts: \$20,000.00 in furniture, \$5,000.00 in artwork, and an \$3,500.00 insurance policy.

Debtor's Plan fails Chapter 7 liquidation analysis under 11 U.S.C. §1325(a)(4).

### **Payment for Attorney's Fees Unclear**

Section 3.05 of the Plan fails to indicate whether Debtor's attorney is opting to the flat fee or seeking court approval of fees. On the other hand, Section 3.06 of the Plan states that the attorney is accepting a fee of \$0.00, \$0.00 prior to filing the case, and \$0.00 to be paid through the plan at \$25.00 a month, under §3.06.

In turn, the Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorney indicates that attorney agreed to \$2,900.00 and \$0.00 was paid prior to the case. The Disclosure of Compensation indicates the attorney has agreed to accept \$2,900, \$0.00 was paid prior to the filing, and \$2,900.00 is due.

The court takes Trustee's uncertainty as objection to the payment of fees and thus Debtor's counsel must request the court for approval of compensation and fees will be reviewed under the standard loadstar analysis.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2020. By the court’s calculation, 56 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

The debtors, Ronald James Ludington and Patricia Ann Ludington (“Debtor”) seek confirmation of the Modified Plan to account for a higher than anticipated amount in mortgage arrearage. Declaration, Dckt. 30. The Modified Plan provides for monthly payments of \$1,790.00 for 22 months, followed by \$2,208.00 for 38 months, and a 100 percent dividend to unsecured claims totaling 19,793.00. Modified Plan, Dckt. 27. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 6, 2020 Dckt. 34. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. The Plan exceeds the proposed 60 months.
- C. Debtor has not filed supplemental Schedules I and J.

#### **DISCUSSION**

## **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$200.00 delinquent in plan payments, which represents a fraction of the \$2,208.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 63 months due to Debtor's proposed payments will total \$81,696.00, where \$75,247.32 is required to pay creditors and Trustee fees are approximately \$8,169.60. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

## **Supplemental Schedules I and J**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes plan payments of \$1,790.00 for 22 months followed by plan payments of \$2,208.00 for 38 months.

Debtor's last schedules I and J, filed August 2018, indicate a monthly net income of \$1,790.00. Debtor's Declaration states that "the payments are close to the most that we can afford to pay," but fails to explain how they will be able to afford payments of \$2,208.00. *See*, Dckt. 30, at 2. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

## **August 25, 2020 Hearing**

At the hearing, the Trustee reported that the delinquency has been cured, but no supplemental Schedules I and J have been

The Parties agreed to continue the hearing to afford Debtor the opportunity to continue in the prosecution of this case.

## **September 15, 2020 Hearing**

As of the court's September 13, 2020 review of the Docket, no Supplemental Schedules I and J have been filed. The court notes that the Schedule I and J forms have been used for Exhibits filed by Debtor, but not filed as Supplemental Schedules. Dckt. 40. The Exhibits are marked as being an "Amended" filing, which would mean that the changes date all the way back to the August 23, 2018 hearing, and require the court to review what is the "corrected" financial information dating all the way back to 2018.

Additionally, Debtor has provided a Supplemental Declaration (Dckt. 41) in support of confirmation.

At the hearing, **xxxxxx**

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Ronald James Ludington and Patricia Ann Ludington (“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 Modified Plan is  
**XXXXXX.**

26. <a href="#"><u>19-25192</u></a> -E-13 <a href="#"><u>MC-2</u></a>	<b>ERIKA WILLIAMS</b> <b>Muoi Chea</b>	<b>MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH NPRTO CALIFORNIA, LLC 8-5-20 [45]</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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 5, 2020. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion to Approve Compromise 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 Compromise is <b>XXXXXX</b>.</b>
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Erika Wallace, Chapter 13 Debtor, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses with NPRTO California, LLC dba Prog Leasing, LLC and

Progressive Leasing (“Settlor”). The claims and disputes to be resolved by the proposed settlement are a lease to own agreement for a sofa, a recliner, mattress with headboard and frame, a dresser, two night stands, two lamps, and a table with 4 chairs (“Furniture”) purchased by Debtor on March 2017.

Debtor explains that on June 23, 2020 Settlor filed Proof of Claim 13. Motion, at ¶ 6. However, Debtor decided to refile Settlor’s claim as Proof of Claim 14 because the deadline for creditors to file a proof of claim had passed and Debtor thought that Settlor’s claim would be ignored or objected to by Trustee like in prior cases. *Id.*

Movant and Settlor have resolved these claims and disputes, subject to approval by the court. However, no settlement agreement has been provided to the court.

A single Exhibit A has been filed in support of the Motion. Dckt. 48. Exhibit A begins with Proof of Claim No. 13-1 filed by Settlor on June 24, 2020.

Then on June 29, 2020, Proof of Claim No. 14-1 was filed by Debtor for Settlor, which would be a separate, additional claim for another obligation owed by Debtor. This was filed by Debtor’s counsel, who states under penalty of perjury that Debtor is obligated to pay Settlor \$4,428.61. However, the documentation for this \$4,428.61 obligation filed by Debtor against herself appears to be just the obligation on Proof of Claim No. 13-1 filed by Creditor.

Debtor states in the Motion that counsel filed Proof of Claim No. 14-1 stating that Debtor is obligated to pay Settlor \$4,428.61 because Settlor’s filing of its proof of secured claim was after the October 28, 2019 deadline in this case.

The Motion states that Settlor’s claim is compromised to \$1,200.00 to be paid as a Class 2 claim through the Plan. Motion, ¶ 6; Dckt. 45.

## **TRUSTEE’S RESPONSE**

Trustee filed a Response on September 1, 2020. Dckt. 50. Trustee does not oppose the settlement but requests that the first claim be deemed timely as the second claim is timely and that the second claim be deemed withdrawn. Otherwise, Trustee will object to both claims, where the second claim duplicates the first and was filed before a judicial determination that the first claim was not timely.

## **DISCUSSION**

The court joins Trustee’s concerns regarding Proofs of Claim 13 and 14.

At the hearing, Counsel for Debtor explained **xxxxxxxxxx**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

### **Probability of Success**

Debtor argues that without the settlement, Debtor would have to litigate the claim and there is no guarantee of a favorable outcome.

### **Difficulties in Collection**

Even if Debtor received a favorable outcome through litigation of the claim, Settlor could file an appeal.

### **Expense, Inconvenience, and Delay of Continued Litigation**

Litigating the claim will result in unnecessary consumption of time and resources and attorneys' fees. Further arguing that given the amount of debt and value of furniture involved, litigation will prove to be wasteful.

### **Paramount Interest of Creditors**

The agreement would benefit creditors because it reduces the amount of debt that Debtor has to pay and increases the probability of completing her plan.

### **Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it resolves on an economic basis the amount owed on a secured claim that is advantageous to Debtor and provides a solid economic resolution agreed to by Settlor.

To address the duplicate claim issue, the court begins with Federal Rule of Bankruptcy

Procedure 3004 enacted by the Supreme Court providing when a debtor or trustee may file a proof of claim for a creditor. Such debtor or trustee filed proof of claim must be made within thirty (30) days after the expiration of the deadline for the creditor to file the claim. Since the deadline expired in October 2019 and Proof of Claim No. 14-1 was filed in June 2020, it is as untimely as Settlor's Proof of Claim.

The court authorizes the June 23, 2020 untimely filing of Proof of Claim No. 13-1 by Settlor in light of the Compromise of such claim. Such June 23, 2020 could be viewed as an amendment of Settlor's secured claim that existed in this case.

The court dismisses Proof of Claim No. 14-1 as being untimely and not authorized in light of Proof of Claim No. 13-1, which the court has expressly authorized the filing of pursuant to this Settlement.

The Motion is granted and the Settlement for the claim in the amount of \$1,200, is to be paid as a Class 2 Claim through the Debtor's Chapter 13 Plan.

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 Compromise filed by Erika Williams, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Approve Compromise between Movant and NPRTO California, LLC dba Prog Leasing, LLC and Progressive Leasing ("Settlor") is granted, and the claim of Settlor that is the subject of Proof of Claim No. 13-1 filed by settlor in this case is determined to be in the amount of \$1,200.00, which shall be paid as a Class 2 Secured Claim, and disallowed in all amounts in excess thereof.

**IT IS FURTHER ORDERED** that pursuant to this Compromise the court authorizes the filing of Proof of Claim No. 13-1 on June 23, 2020, with the amounts claimed therein allowed only as provided in this Order.

**IT IS FURTHER ORDERED** that Proof of Claim No. 14-1 filed by Debtor is dismissed, the court having authorized the June 23, 2020 filing of Proof of Claim No. 13-1 which is for the same claim as the one that is the subject of Proof of Claim No. 13-1.



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

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

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

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

The debtors, Ara Hovakimyan and Anahit Hovakimyan (“Debtor”) seek confirmation of the Modified Plan to resume making plan payments in August 2020 after loss of disability benefits related to a car accident and after returning to work, loss of employment due to COVID-19. Declaration, Dckt. 44. The Modified Plan provides for monthly plan payments of \$2,327.00 commencing August 2020 for months 21 through 60, and a 0.0 percent dividend to unsecured claims totaling \$168,692.37. Modified Plan, Dckt. 43. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 28, 2020. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s scheduled vehicle payment as a Class 4 claim no longer applies.

## DISCUSSION

### Class 4 Claim

Debtor schedules a monthly payment of \$728.00 to GM Financial to be paid directly by

Debtor. This vehicle was declared a total loss by Debtor's insurance after Debtor was involved in a collision on January 13, 2019. *See* Dckt. 20, 24. Creditor GM Financial filed an amended proof of claim on August 7, 2019 reducing the secured claim from \$39,331.35 to an unsecured deficiency claim with a balance of \$2,345.76 (after accounting for insurance proceeds in the amount of \$36,985.59). Proof of Claim, 2-2.

Debtor filed a Supplemental Declaration on August 4, 2020 agreeing with Trustee that the \$728.00 loan payment no longer exists and that its inclusion was an oversight they missed while working on the proposed plan. Dckt. 54, ¶ 4. After careful review of the filed schedules, Debtors discovered other information pertaining to Debtor's income that needed to be updated and amended Schedules I and J have been filed. *Id.*, at ¶ 5.

## **TRUSTEE'S SUPPLEMENTAL RESPONSE**

Trustee filed a Supplemental Response stating that Debtor has addressed Trustee's concerns regarding the Class 4 GM Financial loan payment and has filed Supplemental Schedules I and J. Dckt. 60.

However, Trustee notes that Schedule I now includes a voluntary retirement contribution for \$216.67 where the two pay stubs filed as Exhibit B to Debtor's Declaration reflect a 401K payroll deduction of \$100.00 on each pay stub. *Id.* Trustee also notes that for Debtor Anahit, who is now employed, the Schedule reflects monthly insurance of \$2,006.36, which appears to be supported by the pay stub filed as Exhibit B to Debtor's Declaration.

Lastly, Trustee notes that it appears Debtor Anahit may be under-withholding Federal and State taxes. The latest pay stub reflects \$0.00 withheld in taxes with a filing status of Married - 12, where Debtor had previously provided her exemption allowance as Married - 3.

## **September 15, 2020 Hearing**

At the hearing, **XXXXXX**

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

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

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

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

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

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

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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 19, 2020. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor has failed to file tax returns.
- B. Amount of attorney's fees paid are unclear.
- C. Debtor has failed to provide current pay advices.

## DISCUSSION

Trustee's objections are well-taken.

Debtor has not provided Trustee with employer payment advices for the sixty-day period

preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, Debtor admitted at the Meeting of Creditors that he has not filed federal income tax return for the last four tax years. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). Debtor has failed to provide all necessary pay stubs. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

#### **“No Look” Fee**

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

Trustee objects on the basis that the amounts paid to Debtor’s attorney are inconsistent between the Statement of Rights and Responsibilities of Chapter 13 Debtors and their Attorneys and the Disclosure of Compensation of Attorney for Debtor. Trustee is uncertain as to how much Debtor’s counsel was paid prior to filing and the amount to be paid through the Plan.

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

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

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

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

**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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2020. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Sell Property is <span style="color: red;">XXXXX</span>.</b></p>
--

The Bankruptcy Code permits Jerline Wallace Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 3195 Dover Avenue, Fairfield, California ("Property").

The proposed purchaser of the Property is Da Wen Zeng, and the terms of the sale are (the full terms of the sale are set forth in the Purchase Agreement, Exhibit A, Dckt. 148):

- A. Purchase price of \$760,000.
- B. Buyer to provide an initial deposit of \$22,500.
- C. Closing to take place 45 days after acceptance.

#### **Creditor US Bank's Non-Opposition**

US Bank Trust National Association, Not In Its Individual Capacity But Solely As Owner Trustee For VRMTG Asset Trust, holder of the senior lien secured by the Property filed a Non-Opposition on August 31, 2020 as the sale will pay its claim in full from escrow. Dckt. 151. But notes

that out of abundance of caution, it does not consent to any sale free and clear of its lien unless it receives full payment which is to be determined by the lien's full loan balance and corresponding payoff demand. *Id.*, at 2.

### **Trustee's Response**

Trustee filed a Response seeking clarification as to whether Creditor Evan's claim will be paid through the plan or from the proceeds of this sale.

Moreover, Trustee requests the following terms be included in the order granting the sale:

- A. Trustee to approve Title Company for escrow. Debtor is required to provide Trustee with contact information for the company upon opening of escrow.
- B. Escrow is not permitted to close without Trustee submitting a demand to the title company that complies with the Chapter 13 Plan. Trustee must approve the final closing statement prior to any close of escrow.
- C. Trustee reserves the right to submit an *ex parte* application requesting the motion to sell be denied if Debtor fails to meet the conditions above or Trustee cannot participate in the escrow in a way that complies with the Chapter 13 Plan.

Debtor filed a Response addressing Trustee's clarification and additional terms. Dckt. 158. Debtor explains that Debtor and Creditor Evans had agreed for Debtor to use the sale of the Property to pay off all liens and encumbrances on the Property from escrow, and split the net proceeds of the sale, where Debtor can use her half of the net proceeds to pay all valid claims at a 100% dividend.

Debtor does not oppose the additional terms proposed by Trustee.

### **Creditor Charles Evans' Response**

Creditor Charles Evans filed a Response on September 1, 2020 where he asserts that he is not opposed to the sale but requests the order approving the sale include terms providing that as part of the Marital Settlement Agreement he is entitled to receive one-half share of the seller's net proceeds of sale directly through escrow, and not through Debtor's plan.

In her Response, Debtor does not oppose including the language suggested by Creditor Evans.

### **DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the

best interest of the Estate because **it will allow Debtor to pay the Chapter 13 Plan at a 100% dividend to all creditors.**

Movant has estimated that a 3.0 percent broker's commission from the sale of the Property will equal approximately \$22,800. Movant has estimated that a 2.5 percent broker's commission from the sale of the Property will equal approximately \$19,000. As part of the sale in the best interest of the Estate, the court permits Movant to pay the Debtor's broker an amount not more than 3.0 percent commission and Buyer's broker an amount no more than 2.5 percent commission.

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

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

The Motion to Sell Property filed by Jerline Wallace, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Jerline Wallace, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Da Wen Zeng or nominee ("Buyer"), the Property commonly known as 3195 Dover Avenue, Fairfield, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$760,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 148, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. **After payment of taxes and costs of sale, the net proceeds of the sale shall be split equally between Creditor Charles Evans and the bankruptcy estate and each shall receive their respective shares through escrow.**
- D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5.5 percent of the actual purchase price upon consummation of the sale. The 3.0 percent commission shall be paid to Chapter 13 Debtor's broker, Keller William Realty, and a 2.5 percent commission shall be paid to Buyer's broker, Prime Meridian Realty & Mortgage.

- F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.
- G. Trustee to approve Title Company for escrow. Debtor is required to provide Trustee with contact information for the company upon opening of escrow.
- H. Escrow is not permitted to close without Trustee submitting a demand to the title company that complies with the Chapter 13 Plan. Trustee must approve the final closing statement prior to any close of escrow.
- I. Trustee reserves the right to submit an *ex parte* application requesting the motion to sell be denied if Debtor fails to meet the conditions above or Trustee cannot participate in the escrow in a way that complies with the Chapter 13 Plan.



**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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on August 4, 2020. By the court’s calculation, 42 days’ notice was provided. 30 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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**The hearing on the Objection to Proof of Claim Number 5 of The Bank of New York Mellon is XXXXXXXXXX**

Paul Wilson and Jessica Lucia Mainvoille-Wilson, Chapter 13 Debtor (“Objector”) requests that the court disallow the claim of The Bank of New York Mellon (“Creditor”), Proof of Claim No. 5 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$275,005.92.

Objector asserts that Creditor’s proof of claim should not be allowed in its entirety and objects specifically to Creditor’s escrow charges, amount of pre-petition arrearage, and “FC” costs.

Creditor filed an Opposition on September 1, 2020. Dckt. 62. The Opposition is discussed below.

## DISCUSSION

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

Debtor explains that prior to filing they requested an accounting of payments to Creditor from their credit union, The Golden One Credit Union. Debtor provides a copy of this accounting as Exhibit B. Exhibit B is a letter dated August 28, 2019 with a series of transactions made by Debtor Jessica to "Shellpoint Mort" for payments of \$1,022 on different dates during the years 2018 (September through December) and 2019 (January through July).

According to Debtor, the accounting shows that Debtor made payments of \$1,022.00 between September 2018 and July 2019, except for a \$1,539.90 in April 2019. Between February and October 2019, Debtor made payments totaling \$7,671.00 to Shellpoint Mortgage. Thus, according to Debtor, the total owed in arrearage in both principal and interest should be \$3,065.31, not \$9,195 as Creditor's Proof of Claim states.

### **Issues Identified by Debtor and Responses**

Creditor has filed an Opposition to the Objection to the Claim, asserting in large part that the prima facie evidentiary value of Proof of Claim 5-1 has not been overcome. Dckt. 62. As of the filing of the Opposition, Creditor stated that it was in the process of reviewing its records and requests additional time for discovery.

The Debtor identifies several other objections to the Proof of Claim filed by Creditor. First, Debtor alleges that not all payments shown in the Proof of Claim have been applied to the loan. In particular, Debtor questions the amount on hand (\$865.44) versus the application of payments on October 23, 2019. Debtor notes that according to the Proof of Claim, there were \$865.44 on hand as of the date of the petition; however, the Creditor applied four (4) payments of \$1,331.75 on October 23, 2019; two days after the petition was filed.

Creditor responds that it is industry standard to hold in suspense any payments made after the recording of the Notice of Default. Because of this practice in anticipation of the foreclosure, Creditor did not apply the \$6,192.44 into Debtor's account. After the filing of the bankruptcy, the funds were applied, only leaving \$865.44 in suspense.

Second, Debtor alleges that Creditor's Proof of Claim fails to provide evidence as to the "FC Costs." According to Debtor, Creditor applies unexplained "FC costs" in the amount of \$1,781.25: late

charges totaling \$153.27, recording costs of \$199.00, and certified mail costs of \$74.70.

Here, Creditor contends that Debtor does not provide evidence to refute the amounts listed and explains that “FC costs,” presumed abbreviation for foreclosures costs, are the actual, reasonable costs incurred by Creditor for recording and publishing the Notice of Default and Notice of Sale.

Third, Debtor alleges that they maintain hazard insurance and made the property tax payments. The Proof of Claim states that the Debtor owed four (4) escrow payments of \$309.98 prior to the filing of the Debtors’ bankruptcy petition. Debtor argues that Creditor fails to show what these delinquent escrow payments are for. Debtor maintains their own hazard insurance on the subject property and pay the real property taxes to the Sacramento County Tax Collector semi-annually.

Debtor provides a copy of the receipt for the real property taxes paid as Exhibit C. The receipt appears to be a webpage printout purported to be of the Sacramento County Tax Collector with a tax payment of \$1,913.01 with a posted date of October 30, 2018.

Debtor requests an accounting from Creditor showing that it has incurred insurance or real property taxes on the subject property.

As for this part of the objection, Creditor points to the Proof of Claim. Creditor argues that the Proof of Claim provides an escrow analysis which documents the escrow deficiency and calculated shortage.

## **FURTHER PROCEEDINGS AND DISCOVERY**

It appears that the disputes relate to factual items that can be easily proven. 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).

“Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is “deemed allowed,” the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more.”

*Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that

offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

At the end of the day, if there is evidence of a dispute, the creditor has the burden of proof. Here, it appears that Creditor is claiming taxes and insurance amounts that Debtor provides evidence supporting Debtor's contention that Debtor has actually paid them.

Proof of Claim No. 5-1 is signed by Daniel Fujimoto, Esq., an attorney with the Wolf Firm in Irvine, California. It appears that it is not signed by someone employed by Creditor who would have personal knowledge of the claim. The attachment to Proof of Claim No. 5-1 includes various documents that Creditor has a claim and that it has a security interest - which Debtor has not disputed. It also includes a chart prepared by someone at the Creditor showing various payments, charges and "FC costs." Debtor has presented evidence disputing these amounts.

At the hearing, **XXXXXXXXXX**

CASE DISMISSED: 01/20/2020

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

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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, and Creditor, on July 30, 2020. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion to Authorize Disbursement of Funds 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 Authorize Disbursement of Funds is granted and the Chapter 13 Trustee is authorized to disburse the \$3,361.47 in insurance proceeds to OneMain Financial Services, which shall be applied to the obligation which is the basis for Proof of Claim 8-1 filed by OneMain Financial Services in this case.**

David P. Cusick, the Chapter 13 Trustee ("Trustee") requests authority from the court to disburse funds in the amount of \$3,361.47 currently held in this case pursuant to a cash collateral order obtained by Debtor after Debtor had filed a claim for OneMain Financial Services, Inc. ("Creditor") and then Creditor filed a claim.

The instant case was dismissed on January 20, 2020 and no other party has sought the release of these funds. Debtor has since filed two cases: Case No. 20-21696 (dismissed) and Case No. 20-23627 (assigned to Judge Clement, and currently without a plan).

### **Debtor's Opposition**

Debtor filed an Opposition on September 1, 2020. Dckt. 109. Debtor argues that One Main Financial's claim has been paid in full pursuant to its claim being valued at \$3,200.

Moreover, Debtor argues that OneMain was not a designated loss payee on the USAA auto insurance policy, further adding that according to internet resources (but unable to pinpoint legal authority), if there is no loss payee designation, then the insurance company pays the insured instead of paying the auto finance company.

Though there is no authority for this proposition, Debtor requests that the funds either be refunded to her or else be disbursed under the confirmed plan in this bankruptcy case. The Opposition is merely a set of arguments, conjecture, and speculation that Debtor's counsel throws at the court as part of a "wish to win."

Debtor has provided an unauthenticated copy of what is represented to be an insurance policy pertaining to the funds held by the Trustee. The court is reluctant to ignore the Federal Rules of Evidence adopted by the United States Supreme Court and assume as credible whatever documents are dumped on the court for which nobody can or is willing to authenticate under penalty of perjury.

## DISCUSSION

The court begins with the Trustee's Motion for an order directing the Trustee on how to disburse the monies he is currently holding. The Motion makes reference to some prior orders and the dismissal of the case, but does not attempt to "connect the legal dots" of how the court gets to issuing a specific order. Rather, it appears to assign to the court the responsibility to analyze the law and the facts, assemble for the Trustee, much as the Debtor does in the "wish" opposition, the relief that should be requested, and then rule on the court's own "motion."

The Trustee appears to have stated other grounds (allegations of fact) in a declaration filed in support of the Motion. Dckt. 102. The grounds upon which the relief is based must be stated with particularity in the motion (Fed. R. Bankr. P. 9013), not sprinkled throughout pleadings for the court to uncover, organize, and then prosecute for one party over the other.

The court begins with the Order (Dckt. 86) that has caused the monies to be in the hands of the Trustee. The Debtor filed a motion to use cash collateral (which necessarily admits that someone has a lien on the cash), in which Debtor's grounds (subject to the certifications of Federal Rule of Bankruptcy Procedure 9011) include:

- A. "[Debtor] seeks to allow the cash collateral of OneMain to be applied to Chapter 13 plan payments after the allowed secured claim of OneMain is satisfied[.]" Motion to Use Cash Collateral, p. 1:22.5-24.5; Dckt. 76.
- B. "This cash collateral is \$7288.71 that was paid over to trustee David Cusick." *Id.*, p. 1:26.5-27.5.
- C. "The 2006 Chevy Tahoe Automobile was once financed by Springleaf and it is commonly known that OneMain is the successor to most if not all of the Springleaf Accounts." *Id.*, p. 2:9-12.
- D. "An order docketed as 27 values Claim 8 [filed by Onemain Financial] at \$3200, where the 2006 Chevy Tahoe Automobile is cross collateralized in the same document granting a security interest, along with a 2002 Honda Accord 2D V6

Coupe Automobile.” *Id.*, p. 2:14-18.

- E. “ In this instance, OneMain was NOT a designated loss payee on the USAA auto insurance policy on the automobiles owned by the debtor and her husband, and her husband did not join in the bankruptcy.” *Id.*, p.2:21-25. No evidence of this allegation is provided with the Motion to Use Cash Collateral.
- F. “It is appropriate that this cash collateral be utilized to the extent required to pay OneMain’s allowed secured claim, and the rest be paid into the plan in order to bring the payments under the confirmed plan current.” *Id.*, p. 4:21-24.

As Debtor notes, this court valued OneMain’s secured claim in this bankruptcy case to be \$3,200.00, and the balance as an unsecured claim to be paid through Debtor’s plan. Dckt. 27. Unfortunately, Debtor has not performed her plan, the case has now been dismissed, and the valuation of the claim for purposes of the plan is now ineffective for the rights and interests of the parties outside of bankruptcy. See, *Gold Coast Asset Acquisition, L.P. v. 1441 Veteran Street Co. (In re 1441 Veteran Street Co.)*, 144 F.3d 1288 (9th Cir. 1998).

Thus, Debtor’s valuation of the secured claim to \$3,200.00 for bankruptcy plan purposes does not work to reduce the obligation owed to Debtor outside of the plan now that the case has been dismissed.

OneMain Financial Services has filed Proof of Claim No. 8-1, asserting its total claim secured by the collateral to be \$13,014.23. Attached to Proof of Claim No. 8-1 is a Loan Agreement that includes a Security Agreement provision, identifying the two vehicles, including the Chevrolet from which the insurance proceeds relate. Loan Agreement, p. 1, Security Section; Proof of Claim 8-1 Attachment at 3.

On page 5 of the Loan Agreement under the SECURITY AGREEMENT heading, it provides (emphasis added) that Debtor and her non-debtor spouse:

[g]rant Lender a security interest under the Uniform Commercial Code or other applicable law in: (1) the property identified in the "Security" disclosure of the Truth in Lending Disclosures on page 1 of this Agreement; (2) any substitutions or replacements of that property; and (3) **the proceeds and products of that property** (collectively referred to as the "Collateral"). I also grant Lender a security interest in any unearned premiums from any insurance I have elected and purchased through Lender in connection with this transaction which protects the loan account or Collateral (including, but not limited to, voluntary credit and personal property) insurance). Lender's security interest shall remain in effect until I have paid in full all amounts due under this Agreement and subject to any modifications, renewals, extensions, and future advances thereof.

Then, also on page 5 of the Loan Agreement under the heading REQUIRED PROPERTY INSURANCE heading, Debtor and non-debtor spouse further:

**[a]gree to insure any automobiles**, all terrain vehicles, snowmobiles, watercraft, other titled vehicles, large equipment, and dwellings and other structures attached

to real property ("Property"), in which I **have granted Lender an interest to secure my loan**, against all risks of physical damage, including loss by fire and other hazards, for the term of the loan, in amounts and with deductibles approved by Lender ("Required Insurance"). **Required Insurance must:** (1) be issued by an insurer and have terms and conditions satisfactory to Lender; (2) **name Lender as loss payee** or mortgagee; (3) not permit the addition of any other loss payee or mortgagee to the insurance policy unless Lender consents in writing; (4) provide that such insurance will not be canceled or modified without at least 15 days prior written notice to the loss payee or mortgagee; and (5) not include any disclaimer of the insurer's liability for failure to give such notice. . . **I agree to keep Required Insurance in force until all amounts I owe Lender under this Agreement are paid in full.** In the event of damage to or loss of the Property, I agree to give prompt notice to Lender and the insurance carrier. If I fail to promptly notify or make proof of loss to the insurance carrier, Lender may, but is not required to, do so on my behalf. **I agree Lender may use any insurance proceeds to reduce any amounts I owe under this Agreement.** To the extent permitted by law, I authorize Lender to adjust my losses and sign my name to any check, draft, or other papers necessary to obtain such insurance payments. If insurance proceeds paid to Lender do not pay off all amounts I owe Lender under this Agreement, I remain responsible for payment of the balance of any amounts due under this Agreement

In addition to the security interest, Debtor and her non-debtor spouse are contractually obligated to have the insurance proceeds paid to OneMain Financial Services, even if they "forgot" or "neglected" to comply with their obligation to list the Lender to whom the security interest was granted as a loss payee.

Debtor offers no legal basis for the obligation to have the insurance proceeds paid to OneMain Financial Services as agreed by Debtor and her non-debtor spouse to be ignored and have the monies diverted to Debtor.

OneMain Financial Services having a security interest in the 2006 Chevrolet Tahoe Automobile from which the insurance proceeds relate, the insurance proceeds being from the 2006 Chevrolet Tahoe Automobile, Debtor and her non-debtor spouse having contracted to have the insurance proceeds paid to OneMain Financial Services, and the valuation of the secured claim not modifying OneMain Financial Services secured claim (for which Proof of Claim No. 8-1, which includes the Loan and Security Documents, is *prima facie* evidence of such obligation, *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)), the court determines that OneMain Financial Service is the correct party to whom the insurance proceeds held by the Chapter 13 Trustee should properly be distributed.

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 Authorize Disbursement of Funds filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



**IT IS ORDERED** that the Motion to Authorize Disbursement of Funds is granted and the Chapter 13 Trustee is authorized to disburse the \$3,361.47 in insurance proceeds to OneMain Financial Services, which shall be applied to the obligation which is the basis for Proof of Claim 8-1 filed by OneMain Financial Services in this case.

# FINAL RULINGS

32. [19-26200-E-13](#) **ERIC HUTTON** **MOTION TO MODIFY PLAN**  
[DBJ-1](#) **Douglas Jacobs** **7-28-20 [23]**

**Final Ruling: No appearance at the September 15, 2020 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2020. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<b>The Motion to Confirm the Modified Plan is granted.</b>
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The debtor, Eric Eugene Hutton (“Debtor”) seeks confirmation of the Modified Plan to account for the amount owed to his mortgage company and for the claim filed by the Franchise Tax Board. Declaration, Dckt. 25. The Modified Plan provides for monthly plan payments of \$2,105.00 commencing August 2020 for the remainder of the plan, and a 100 percent dividend to unsecured claims totaling \$9,165.00. Modified Plan, Dckt. 26. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 26, 2020. Dckt. 31. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s plan will not be completed within the allotted time.

## DISCUSSION

### Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 75 months. Trustee asserts that the monthly plan payment needs to be increased to \$2,239.00 per month to timely complete the plan. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor proposes to address Trustee's objection by increasing his monthly plan payment to \$2,239.00 as suggested by the Trustee beginning with the August 2020 plan payment and continue through the remaining term of the plan. This amendment shall be included in the court's order confirming the plan. Dckt. 34. Thus, this objection is resolved in favor of Debtor.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Eric Eugene Hutton ("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, 2020, as amended:

Plan payment is increased to \$2,239.00 beginning with the August 2020 Plan payment and continue for the remaining term of the Chapter 13 Plan

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

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Avoid Judicial Lien is granted.</b>
--

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of the debtor, Juan Ruben Lopez ("Debtor") commonly known as 1830 Wentworth Avenue, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$10,710.06. Exhibit A, Dckt. 82. An abstract of judgment was recorded with Sacramento County on February 28, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$300,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$193,514.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(2) in the amount of \$100,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption

of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Juan Ruben Lopez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Discover Bank, California Superior Court for Sacramento County Case No. 34-2011-00101150, recorded on February 28, 2012, Book 20120228 and Page 0499, with the Sacramento County Recorder, against the real property commonly known as 1830 Wentworth Avenue, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
---

This Motion requests an order avoiding the judicial lien of Department Stores National Bank ("Creditor") against property of the debtor, Juan Ruben Lopez ("Debtor") commonly known as 1830 Wentworth Avenue, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,096.75. Exhibit A, Dckt. 89. An abstract of judgment was recorded with Sacramento County on April 16, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$300,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$193,514.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(2) in the amount of \$100,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no

equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Juan Ruben Lopez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Department Stores National Bank, California Superior Court for Sacramento County Case No. 34-2011-00115278, recorded on April 16, 2012, Book 20120416 and Page 0363, with the Sacramento County Recorder, against the real property commonly known as 1830 Wentworth Avenue, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2020. By the court’s calculation, 32 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><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. The debtor, Lori Denise Mickens (“Debtor”) has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick (“Trustee”), or by creditors. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Lori Denise Mickens (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended



Chapter 13 Plan filed on June 24, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

36. [20-23416-E-13](#)      **JESUS GUZMAN**      **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#)                      **Steele Lanphier**      **PLAN BY DAVID P. CUSICK**  
8-26-20 [\[17\]](#)

**In Light of the Continued 341 Meeting Set for September 17, 2020  
the Court Continues the Hearing on the Objection for the Convenience  
of the Parties and Counsel**

**Final Ruling: No appearance at the September 15, 2020 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 26, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

**The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m.  
on September 29, 2020.**

**Continuance of September 15, 2020 Hearing**

The Trustee reports that the First Meeting of Creditors has been continued to September 17, 2020. Debtor has no other bankruptcy filings in this District and there is nothing to indicate that Debtor and her counsel are not working to diligently prosecute this case. To save Debtor, Debtor's counsel, and the Trustee from having to appear on September 15, 2020 for the court to continue the hearing to afford Debtor the opportunity to attend the continued Meeting of Creditors, the court issues this final ruling continuing the hearing on the Objection to Confirmation in light of the only grounds for the Objection (at this point in time) being Debtor not attending the originally scheduled First Meeting of Creditors.

## REVIEW OF OBJECTION

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

- A. Debtor failed to appear at the First Meeting of Creditors.

## DISCUSSION

Trustee’s objections are well-taken.

### Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by 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 court shall issue a minute order substantially in the following form holding that:

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

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

**IT IS ORDERED** that the hearing on the Objection to Confirmation of Plan is continued to **2:00 p.m. on September 29, 2020.**

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 4, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Gracie Reyes Ortiz ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on August 26, 2020. Dckt. 29. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Gracie Reyes Ortiz ("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 August 4, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

38. [20-20430-E-13](#)      **RAFAEL DE LA TORRE**      **MOTION TO EMPLOY CHAD. M.**  
[BLG-11](#)      **Chad Johnson**      **JOHNSON AS ATTORNEY(S)**  
8-11-20 [[151](#)]

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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.

<b>The Motion to Employ is granted.</b>
---

Rafael Palos De La Torre ("Debtor") seeks to employ Chad M. Johnson, of Bankruptcy Law Group, PC ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Counsel to represent Debtor in an adversary proceeding to determine the security interest of Independence Bank in the assets of Debtor's business.

Debtor argues that Counsel's appointment and retention is necessary for representation in an adversary proceeding. The court summarizes the terms of employment as follows (the full terms are stated in the Agreement, Exhibit A, Dckt. 154):

- A. Representation includes legal services related to an adversary proceeding against Independence Bank.
- B. The Firm's fees are based on an hourly rate with attorneys, including Chad M. Johnson at \$400.00, paralegals and law clerks at \$185.00, and legal assistants at \$85.00.
- C. Fees earned will be paid through the Chapter 13 Plan and will be subject to the court's approval.
- D. Any dispute related to fees will be submitted to arbitration. If the case has been filed, disputes will be resolved by this court.

Chad M. Johnson, an Attorney of Bankruptcy Law Group, PC, testifies that Bankruptcy Law Group, PC currently represents Debtor in the Chapter 13 case, and the representation of the Chapter 13 Debtor poses no conflict with the representation of the Debtor in the adversary proceeding. Chad M. Johnson testifies that the firm does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Chad M. Johnson as Counsel for the Chapter 13 Estate on the terms and conditions set forth in the Hourly Fee Agreement/Legal Representation Contract filed as Exhibit A, Dckt. 154. Approval of the hourly rate based compensation is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Rafael Palos De La Torre ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Chad M. Johnson as Counsel for Debtor on the terms and conditions as set forth in the Hourly Fee Agreement/Legal Representation Contract filed as Exhibit A, Dckt. 154.

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

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

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

**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

**WITHDRAWN BY M.P.**

**Final Ruling: No appearance at the September 15, 2020 Hearing is required.**

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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, Creditor, and Office of the United States Trustee on June 22, 2020. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

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

<p><b>The Motion to Value Collateral and Secured Claim of Travis Credit Union  (“Creditor”) is dismissed without prejudice.</b></p>
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#### **NOTICE OF DISMISSAL**

Donald Bryant (“Debtor”) and Travis Credit Union filed their Joint Dismissal of this Motion as provided in Federal Rule of Civil Procedure 41(a)(1)(A)(ii), as incorporated into Federal Rule of Bankruptcy Procedure 7041 and 9014(b). The Parties having dismissed this Motion without prejudice, it is removed from the Calendar. No order of the court is required for a dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

**Final Ruling: No appearance at the September 15, 2020 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 19, 2020. 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

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

A. Debtor cannot comply with the Plan.

## DISCUSSION

Trustee's objections are well-taken.

### Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan depends on the debtor selling or refinancing real property prior to the completion of the plan. Debtor explained at the Meeting of Creditors that he does not intend to sell his residence.

Additionally, Debtor admitted at the Meeting of Creditors a Chevy Avalanche was not included on Schedule A/B. Without an accurate picture of Debtor's financial reality, the court cannot



determine whether the Plan is confirmable.

On September 10, 2020, Debtor filed an Amended Plan (Dckt. 22) and Motion to Confirm (Dckt. 19). The filing of the Amended Plan is a *de facto* dismissal of the prior plan, with the Debtor no longer prosecuting confirmation thereof.

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

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

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

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

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

Debtor has filed an Amended Plan (Dckt. 22) and Motion to Confirm (Dckt. 19). The court has reviewed Debtor’s Declaration in support of confirmation and it appears long on Debtor stating his legal opinion and short of providing personal knowledge, factual testimony (and not have the lay person Debtor provide legal conclusion testimony). F.R.E. 601, 602. Debtor and Counsel may want to consider supplementing the Declaration in advance of the October 20, 2020 hearing on the Motion to Confirm (serving the Chapter 13 Trustee and U.S. Trustee) to avoid having it denied or continued for such personal knowledge testimony.

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 31, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Aaron & Angel Corona (“Debtor”) have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on August 24, 2020. Dckt. 41. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Aaron & Angel Corona (“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 31, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

42. 18-27965-E-13      **LORELL LONG**      **MOTION TO MODIFY PLAN**  
GEL-1      **Gabriel Liberman**      **7-31-20 [25]**

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 31, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Lorell Long ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 26, 2020. Dckt. 30. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Lorell Long (“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 31, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

43.	<a href="#"><u>19-26567</u></a> -E-13 <a href="#"><u>DBJ</u></a> -4 43 thru 44 CASE DISMISSED: 8/10/20	<b>WALTER FLETSCHER</b> Douglas Jacobs	<b>OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NO. 2</b> 7-28-20 [ <a href="#"><u>105</u></a> ]
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**Final Ruling:** No appearance at the September 15, 2020 hearing is required.

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**The case having previously been dismissed, the Motion is dismissed as moot.**

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

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

The Objection to Claim of Internal Revenue Service having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

**CASE DISMISSED: 8/10/20**

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.  
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<p><b>The case having previously been dismissed, the Motion is dismissed as moot.</b></p>
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The court shall issue a minute order substantially in the following form holding that:

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

The Objection to Claim of Bank of America having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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Chad M. Johnson, the Attorney ("Applicant") for Steven Daniel Date, the Chapter 13 Debtor ("Client"), makes an Interim Request for the Allowance of Fees and Expenses in this case. Debtor and Counsel have opted out the Chapter 13 Flat Fee compensation option. Dis. of Comp., Dckt. 1 at 68.

Fees are requested for the period July 24, 2019, through July 16, 2020. The order of the court confirming the plan and for Applicant to seek attorneys' fees via motion was entered on July 28, 2020. Dckt. 15. Applicant requests fees in the amount of \$3,788.50 and costs in the amount of \$355.00.

Debtor entered into an agreement with Applicant on February 19, 2020. Exhibit A, Dckt. 19.

The Chapter 13 Trustee does not oppose Applicant's request for attorney's fees and expenses. Dckt. 21.

## APPLICABLE LAW

### Reasonable Fees

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

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

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

### Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include preparing and filing a complete Petition, Schedules, and providing representation at the meeting of creditors. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

General Case Administration (Pre-Filing and Post-Filing): Applicant spent 11.8 hours in this category. Applicant communicated extensively with Debtor; prepared petition; and engaged in income analysis.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Chad M. Johnson, Attorney	7.70	\$400.00	\$3,080.00
Tina Perez, Paralegal	3.60	\$185.00	\$666.00
Jennifer Walden, Office Staff	0.50	\$85.00	\$42.50
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees for Period of Application</b>			<b>\$3,788.50</b>



### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$355.00 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Credit Report		\$45.00
Court Filing Fee		\$310.00
		\$0.00
<b>Total Costs Requested in Application</b>		<b>\$355.00</b>

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Interim Fees in the amount of \$3,788.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan, after first applying credit for the monies paid by Debtor through the retainer in the amount of \$1,880.00.

#### **Costs & Expenses**

Interim Costs in the amount of \$355.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$3,788.50
Costs and Expenses	\$ 355.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Chad M. Johnson (“Applicant”), Attorney for Steven D. Date, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Professional employed by Chapter 13 Debtor

Fees in the amount of \$3,788.50

Expenses in the amount of \$355.00,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. The Chapter 13 Trustee is authorized to pay such interim fees, after crediting the \$1,880.00 retainer paid to Applicant, which Applicant may disburse and apply to these authorized interim fees.

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted.**

Chad M. Johnson, the Attorney ("Applicant") for Maisha Nyota Anderson, the Chapter 13 Debtor ("Client"), makes an Interim Request for the Allowance of Fees and Expenses in this case. Debtor and Applicant opted out of the Flat Fee option for compensation in this case. Disclos. of Comp., Dckt. 10 at 49.

Fees are requested for the period November 12, 2019, through July 20, 2020. The order of the court confirming the plan and for Applicant to seek attorneys' fees via motion was entered on July 23, 2020. Dckt. 79. Applicant requests fees in the amount of \$4,873.30 and costs in the amount of \$408.70.

Debtor entered into an agreement with Applicant on November 13, 2019. Exhibit A, Dckt. 83.

The Chapter 13 Trustee does not oppose Applicant's request for attorney's fees and expenses. Dckt. 88.

## **APPLICABLE LAW**

### **Reasonable Fees**

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

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

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

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign

to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include preparing and filing a complete Petition, Schedules, and providing representation at the meeting of creditors. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

General Case Administration: Applicant spent 17.78 hours in this category. Applicant communicated extensively with Debtor and Trustee; prepared petition; engaged in income and plan analysis; prepared motions to confirm plan and accompanying documents; prepared response to motion to dismiss; prepared motion to value; and appeared at hearings.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Chad M. Johnson, Attorney	7.60	\$400.00	\$3,040.00
Tina Perez, Paralegal	9.68	\$185.00	\$1,790.80

Jennifer Walden, Office Staff	0.50	\$85.00	\$42.50
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees for Period of Application</b>			<b>\$4,873.30</b>

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$408.70 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Credit Report		\$45.00
Copies	(\$0.05 per page)	\$17.00
Court Filing Fee		\$310.00
Postage		\$36.70
<b>Total Costs Requested in Application</b>		<b>\$408.70</b>

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Interim Fees in the amount of \$4,873.30 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan, after first applying credit for the monies paid by Debtor through the retainer in the amount of \$900.00.

#### **Costs & Expenses**

Interim Costs in the amount of \$408.70 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$4,873.30
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Costs and Expenses                      \$408.70

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Chad M. Johnson (“Applicant”), Attorney for Maisha Nyota Anderson, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Professional employed by Chapter 13 Debtor

Fees in the amount of \$4,873.300

Expenses in the amount of \$408.70,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. The Chapter 13 Trustee is authorized to pay such fees from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan, after first applying credit for the monies paid by Debtor through the retainer in the amount of \$900.00. Applicant is authorized to apply such retainer to the allowed interim fees.

47. [19-26096](#)-E-7      **CHRISTOPHER MCINTOSH**      **OBJECTION TO CLAIM OF INTERNAL**  
[RJ-5](#)      **Richard Jare**      **REVENUE SERVICE, CLAIM NO. 6**  
7-28-20 [[98](#)]

**CASE CONVERTED TO CHAPTER 7  
WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.  
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Christopher G. McIntosh (“Debtor”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Claim of Internal Revenue Service, Claim No. 6 was dismissed without prejudice, and the matter is removed from the calendar.**

48. [20-23299](#)-E-13      **RENE MAXON**      **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#)      **Julius Cherry**      **PLAN BY DAVID P. CUSICK**  
8-19-20 [[14](#)]

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.  
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The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on July 1, 2020, is confirmed.**

Counsel for the debtor, Rene Sylvia Maxon (“Debtor”) shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.



**Final Ruling:** No appearance at the September 15, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 24, 2020. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of John and Tesibel Frey, The Trustees of The Frey Family Trust; Elizabeth Kreuger, Trustee of The Elizabeth Kreuger Living Trust; Leslie & Ruth Frey, Trustees of The Leslie Merl And Ruth Elizabeth Frey revocable Trust ("Creditors") is granted, and Creditors' secured claim is determined to have a value of \$0.00.**

The Motion to Value filed by Mercedes Perez ("Debtor") to value the secured claim of John and Tesibel Frey, The Trustees of The Frey Family Trust; Elizabeth Kreuger, Trustee of The Elizabeth Kreuger Living Trust; Leslie & Ruth Frey, Trustees of The Leslie Merl And Ruth Elizabeth Frey Revocable Trust ("Creditors") is accompanied by Debtor's declaration. Declaration, Dckt. 256. Debtor is the owner of the subject real property commonly known as 6 Fourth Avenue, Isleton, California ("Property"). Debtor seeks to value the Property at a fair market value of \$150,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result of this

Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

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

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

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

## **NO PROOF OF CLAIM FILED**

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

## **OPPOSITION**

Creditor has not filed an Opposition.

## **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$161,000.00. Amended Schedule D, Dckt. 111. Creditor's second deed of trust secures a claim with a balance of approximately \$109,000.00. Schedule D, Dckt. 1. Therefore, Creditors' claim secured by a junior deed of trust is completely under-collateralized. Creditors' secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

hearing.

The Motion to Value Collateral and Secured Claim filed by Mercedes Perez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of John and Tesibel Frey, The Trustees of The Frey Family Trust; Elizabeth Kreuger, Trustee of The Elizabeth Kreuger Living Trust; Leslie & Ruth Frey, Trustees of The Leslie Merl And Ruth Elizabeth Frey Revocable Trust (“Creditors”) secured by a second in priority deed of trust recorded against the real property commonly known as 6 Fourth Avenue, Isleton, California, is determined to be a secured claim in the amount of \$0.00, and the balance of any allowable unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$150,000.00 and is encumbered by a senior lien securing a claim in the amount of \$161,000.00, which exceeds the value of the Property that is subject to Creditor’s lien.

**Final Ruling:** No appearance at the September 15, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2020. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion to Reconsider 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 Amend the prior order granting the Motion to Confirm Modified Plan (Dckt. 36) is granted.** The court shall enter a separate amended order granting the Motion to Confirm Modified Plan.

David P. Cusick, the Chapter 13 Trustee ("Trustee") requests the court reconsider its ruling on Debtor's Motion to Modify the Chapter 13 Plan that was granted by order on July 20, 2020. Dckt. 36.

Debtor's Motion to Modify was granted with changes based on Trustee's representations, which indicated the Debtor had continued to pay \$1,100 per month, paying a total of \$8,800 prior to the hearing which overpaid the modified plan requiring \$8,060. Debtor's counsel did not appear at the hearing.

According to Trustee based on these representations, the court ordered the modified payments to be \$8,800 through June 2020 then \$740.00 thereafter.

## **REVIEW OF MOTION AND APPLICABLE LAW**

The Motion is titled one for the court to “reconsider” a prior final ruling. A general reference is made in the Motion to Federal Rule of Bankruptcy Procedure 9023 and 9024. No discussion of the applicable law thereunder.

The Motion does explain a simple human error in the information provided to the court upon which the prior order was based. Such human error occurs and the ability to address it exists under federal law, but that law needs to be addressed.

Beginning with Federal Rule of Bankruptcy Procedure 9023, the Supreme Court incorporates (with an exception not applicable here) therein the provisions of Federal Rule of Civil Procedure 59 for a new trial or to alter or amend a judgment (which includes an order), which is pertinent part provides:

Rule 59. New Trial; Altering or Amending a Judgment  
(a) In General.

(2) Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

...

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Here, the order at issue was entered on July 20, 2020 (Dckt. 36) and the present Motion was promptly filed on July 30, 2020 - well within the time limits imposed by Federal Rule of Civil Procedure 59(e). Using Moores’ Federal Practice as a shortcut for an explanation as to how this Rule is applied, it states:

[5] Grounds for Granting Motion

[a] Four Basic Grounds

[i] Overview of Four Grounds

Courts may grant a motion to alter or amend a judgment in any of the following circumstances:

- To take account of an intervening change in controlling law (see [ii], below).
- To take account of newly discovered evidence (see [iii], below).
- To correct clear legal error (see [iv], below).
- To prevent manifest injustice (see [v], below).

The Fifth Circuit holds that a court may grant a Rule 59(e) motion on the basis of

a manifest error of law or fact, newly discovered evidence, or an intervening change in the law (see [b], below).

...

[v] Fourth Ground: Prevention of Manifest Injustice

A Rule 59(e) motion to alter or amend a judgment may be granted when the judgment, absent amendment, creates or results in a manifest injustice. This ground is something of a catch-all basis for relief and is often coupled with another ground. Serious misconduct of counsel may be addressed by a Rule 59(e) motion based on this concern (see § 59.13[2][b]).

12 Moore's Federal Practice, Civil § 59.30. It appears that the fourth prong, prevent manifest injustice, supports granting the requested relief to have the court amend the prior order so that it accurately provides for the correct plan terms to which the parties agreed and for which there was a breakdown in such terms being communicated to the court.

The second basis is stated to be Federal Rule of Bankruptcy Procedure 9024, which incorporates the provisions of Federal Rule of Civil Procedure 60 which allows a federal judge to correct a "mere" clerical error committed by the court, Rule 60(a), and to vacate or give relief from a final judgment or order for specified grounds, Rule 60(b). For the Rule 60(b) relief, that would just vacate the prior order, with no order being entered in its place. Additionally, the prior order does not appear to be the result of the court's clerical error in mistyping what the stated ruling was at the hearing.

The court proceeds with ruling on the Trustee's Motion to Amend the prior order.

## **DISCUSSION**

Here, the Trustee's Counsel informs the court that on the morning of the hearing Trustee's Counsel had communicated with Debtor's counsel through a series of emails where he agreed to the proposed order's language indicating that "Plan payments shall be a total of \$8,800 through month 9 (July 2020), then \$730.00 for months 10 through 84." At the time of the hearing, Trustee's Counsel did not recall the communications.

Amendment of the prior order is necessary to prevent manifest injustice of having a plan that inaccurate states what is to be performed.

Trustee's request for the court to amend the July 20, 2020 is granted. The court recognizes that mistakes happen and Trustee has worked to correct it.

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

**IT IS ORDERED** that the Motion is granted and the court shall enter an

Amended Order granting Debtor's Motion to Confirm Modified Plan, which provides:

Plan payments shall be a total of \$8,800 through month 9 (July 2020), then \$730.00 for months 10 through 84.

The Amended Order shall replace in its entirety the prior order of this granting the Motion to Confirm Modified Plan (Dckt. 36).

## **SEPARATE AMENDED ORDER**

### **AMENDED ORDER GRANTING MOTION TO CONFIRM MODIFIED CHAPTER 13 PLAN**

The court having granted the Chapter 13 Trustee's Motion to Amend the order of this court granting Debtor's Motion to Confirm Modified Plan (Order, Dckt. 36), this Amended Order accurately stating the amendments to the proposed Modified Plan as agreed by the Trustee and Debtor, and good cause appearing;

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 20, 2020, as amended:

Plan payments shall be a total of \$8,800 through month 9 (July 2020), then \$730.00 for months 10 through 84.

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

This Amended Order replaces the prior Order of this court (Dckt. 36) in its entirety and is given full force and effect from the July 20, 2020 entry of the prior Order.