UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 17, 2019 at 3:00 p.m.

1.	**19-24116-E-13** **AP-1** **2 thru 3**	**MICHELLE ROSILES** **Peter Cianchetta**	**OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.** **7-17-19 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 17, 2019. By the court's calculation, 62 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the debtor, Michelle Annette Rosiles's ("Debtor") plan only provides for Creditor's arrearages in the amount of $7,406.61. Creditor's Proof of Claim, No. 1, establishes that the arrearages total $18,342.09 as of the filing date.

DISCUSSION

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 $18,342.09 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

The court's review of the Plan discloses that it is not adequately funded to pay the $18,342.09 arrearage. The monthly plan payment is $1,353.41. Plan ¶ 2.01, Dckt. 2. From this there is to be paid the Chapter 13 Trustee fees (estimated at 7%) and $3,845.00 in attorney's fees for Debtor's counsel. If the attorney's fees are amortized over sixty months of the Plan, that would be $64.10 a month and there would be $94.74 in Chapter 13 Trustee fees. That leaves $1,194.61 of the monthly plan payment for creditors.

The Plan provides that the currently post-petition monthly payment to Creditor on its secured claim is $1,065.63. Plan ¶ 3.07(c). Amortizing the $18,342.09 arrearage over sixty month results in a monthly payment of $305.70 to creditor to cure the arrearage.

The current monthly post-petition payment and the arrearage cure payment total $1,365.63 exceeds the $1,353.41 plan payment. While not exceeded by much, Schedules I and J show that raising the payment, and possibly even making the payment, will be impossible for Debtor.

On Schedule I Debtor states that she has $0.00 income. Dckt. 18, filed July 15, 2019. However, Debtor notes on Schedule I that she was just hired to work as a para-transit driver in Alameda county. No statement of what Debtor's income will be is given.

In the two months that have now passes since the filing of Schedule I, the Debtor has not filed a Supplemental Schedule I to provide that information to the court.

On Schedule I, Debtor states that she has monthly expenses of ($1,150.00). *Id.* at 32-34. These expenses do not appear realistic for an adult.

Based on the Schedules provided by Debtor, there is no money to adequately fund the Plan in this case.

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

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

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

hearing.

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

2. **19-24116-E-13 DPC-1** **MICHELLE ROSILES** **Peter Cianchetta** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-13-19 [25]**

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

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 13, 2019. 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 ----------.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the debtor, Michelle Annette Rosiles's ("Debtor") proposed Plan on the basis that:

A. Debtor's Schedule I lists no income, and Debtor admitted at the Meeting of Creditors that she is only working part-time on Saturdays.

B. Debtor's Schedule J reflects a monthly disposable income of ($1,150).

C. Given the claims in this case, the plan would take 148 months to complete.

DISCUSSION

Debtor's Schedule J reflects a monthly disposable income of ($1,150). Dckt. 18. The plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Trustee has not raised whether the plan and case were filed in good faith–the Debtor here appearing to be running a significant deficit and not being able to fund any 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.

3.	**19-25324-E-13** **PGM-1**	**BETHANY SANDERS-JOHNSON** **Peter Macaluso**	**MOTION TO EXTEND AUTOMATIC STAY** **9-2-19 [11]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Bethany Elaine Sanders-Johnson ("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. 19-24071) was dismissed on July 15, 2019, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 19-24071, Dckt. 13, July 15, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

APPLICABLE LAW

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.

DISCUSSION

In Debtor's Declaration, Debtor testifies that the prior case was dismissed because she was proceeding in *pro se*, and that since the prior case circumstances have changed, Debtor having hired counsel, such that the present case will be successful. Declaration, Dckt. 14. The Motion provides an overview of the Debtor's schedules, and a proposed plan was filed as Exhibit B along with the Motion. Dckts. 11, 13.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Bethany Elaine Sanders-Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and 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.

4. **19-23828-E-13 DPC-1** | **RICHARD ACOSTA** **Michael Hays** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-13-19 [31]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 13, 2019. 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 ----------.

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. the debtor, Richard Acosta ("Debtor") is delinquent $2,460.00 (one payment) under the proposed plan.

B. Debtor lists the claim of Specialized Loan Servicing as a Class 4. However, Debtor admitted at the Meeting of Creditors the property securing this debt was transferred to his brother's trust.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $2,460.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, Debtor admitted that he is paying a claim secured by property he transferred to his brother. This not being a necessary expense, the plan fails the liquidation test. 11 U.S.C. § 1325(a)(4). [FN. 1.]

FN. 1. On Schedule A/B Debtor states that he is the sole owner of the 3235 Dry Creek Road Property. Dckt. 16 at 1. This is the property stated to secure the Specialized Loan Servicing Claim listed in Class 4. Plan ¶ 3.10, Dckt. 15; Schedule D, Dckt 16 at 11. On Schedule A and D Debtor states under penalty of perjury that he owns the Property and is the only owner of the Property.

If the Trustee's assertions are true that the Debtor transferred the Property to his brother six months before filing, then these statements under penalty of perjury are false.

On the Statement of Financial Affairs Debtor further states under penalty of perjury that (1) he did not make gifts of more than $600 to anyone in the two year period prior to filing; (2) he did not make any payments to an insider (like his brother) within one year of filing bankruptcy; and (3) he did not make any transfers outside the ordinary course of business within two years of filing bankruptcy. The asserted transfer stated to have been made six months prior to filing this case, it is well within each of the above period. Stmt of Fin Affrs, Dckt. 28.

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.

5.	**17-27640-E-13 WW-4**	**ROBERT RODNI Mark Wolff**	**CONTINUED MOTION TO MODIFY PLAN 7-2-19 [67]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 2, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Robert James Rodni ("Debtor") seeks confirmation of the Modified Plan to cure payment delinquencies caused by unexpected expenses, and to provide for direct payment on the mortgage. Declaration, Dckt. 69. The Modified Plan provides for payments of $2,201.12 for 18 months, 315 for 42 months, and an 8 percent dividend to unsecured claims totaling $44,765.00. Modified Plan, Dckt. 71. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 30, 2019. Dckt. 73. Trustee opposes confirmation on the following grounds:

1. The Plan calls for the claim of Wells Fargo Home Mortgage/Specialized Loan Servicing LLC to be paid as a Class 4. However, given the existence of pre- and post-petition arrearages, Trustee does not believe Debtor is capable of making payments without supervision.

2. The proposed plan is not signed by Debtor's attorney.

3. Debtor indicates constant vehicle maintenance is necessary, but only increased the Vehicle expense $150. Furthermore, Debtor states he incurred expenses related to the discharge of a firearm but has not listed those expenses.

DEBTOR'S DECLARATION

Debtor filed an additional Declaration on August 6, 2019. Dckt. 76. Debtor testifies that the repair done to his Vehicle was brake replacements which have been completed; that he anticipates no expenses from disarming a firearm; and making mortgage payments through the plan will make the payments more difficult due to added expense.

AUGUST 13, 2019 HEARING

At the August 13, 2019 hearing, the court continued the hearing to allow Debtor additional time to file proposed amendments. Civil Minutes, Dckt. 77.

DISCUSSION

Debtor has not filed any additional amendments since the prior hearing.

Trustee argues that based on the case history, and the existence of pre- and post-petition arrearages on Debtor's mortgage, Debtor is not capable of making the monthly payments directly as a Class 4. Debtor argues he cannot make the payments with the added expense.

This argument can be made by every debtor - paying the trustee fees (approximately 7%) on the defaulted, delinquent mortgage payment and the current payment is an expense of the Debtor in seeking the extraordinary relief under the Bankruptcy Code. Debtor has a demonstrated history of choosing or having to pay other debts with his mortgage payment and just letting the mortgage payment "slide."

It appears that the trustee's fees on the arrearage payment would be $15 a month and for the current monthly payment $134. Under the plan now before the court, Debtor strips down his plan payments to a mere $315 a month for forty-two (42) months. Plan, Additional Provisions, Dckt. 71. This artificially stated necessary plan payment to restructure Debtor's delinquent obligation is one in which Debtor seeks to evade the cost of bankruptcy and shift to all other debtors in the Eastern District of California the costs of the Chapter 13 Trustee in administering Debtor's case. Possibly, Debtor is attempting to construct a negative economic incentive for the Chapter 13 Trustee, believing that the Trustee will look the other way since Debtor has made his case a "money losing proposition."

The above provision is not presented in good faith and demonstrates that the Debtor is not prosecuting this plan and case.

In looking at Supplemental Schedules I and J, Debtor states that he has monthly income, after taxes, of $3,942. Dckt. 70 at 3. Debtor seeks to spend fifty percent (50%) of his monthly income just for the current mortgage payment. To do this, Supplemental Schedule J shows stripped down, unrealistic

expenses which indicate that Debtor's plan is not feasible. *Id.* at 5.

Additionally, Debtor has not addressed Trustee's argument that the Second Modified Plan has not been signed by Debtor's counsel.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor Robert James Rodni ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

6. **18-20345-E-13 GEL-2** **MATTHEW THOMPSON Gabriel Liberman** **MOTION TO MODIFY PLAN 8-13-19 [67]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Matthew Blair Thompson ("Debtor") seeks confirmation of the Modified Plan to cure a delinquency in plan payments. 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 28, 2019. Dckt. 80. Trustee opposes confirmation on the following grounds:

1. Trustee has filed four (4) dismissal motions–the most recent motion brought due to a $13,218.00 delinquency under the confirmed plan. Debtor is also $2,470.00 delinquent under the proposed plan. Debtor's declaration in support of the Motion (Dckt. 70) provides testimony Debtor is still unemployed and relying on support.

2. The Second Modified Plan filed was incomplete.

3. Section 7.01, 3.07 of the Modified Plan adds in post-petition

delinquency payments for Debtor's mortgage at the detriment of unsecured claims.

DISCUSSION

In this case filed January 22, 2018, four (4) dismissal motions have been filed. Dckts. 20, 29, 38, 61. Each dismissal motion was brought due to a plan payment delinquency of several thousand dollars. *Id.*

Debtor's original Schedules I and J showed a net monthly income of $3,650.93 and expenses of $1,850.93, resulting in a disposable income of $1,800.00 to go into the plan. Dckt. 9. However, that Schedule I stated "Debtor stopped working for the past 5 months to care for his mother. Debtor is expected to start working full time on 2/5/2018." *Id*.

At the hearing on the Trustee's second dismissal motion, the Debtor stated he fell delinquent because of family issues, but Debtor was able to become current by the hearing date. Civil Minutes, Dckt. 36.

On April 23, 2019, a Supplemental Schedule I and J were filed. Dckt. 53. The Supplemental Schedule I indicated that Debtor was only receiving income in the form of assistance from several family members, resulting in $3,200.00 of monthly net income. *Id.* Supplemental Schedule J reflected a decrease in expense by nearly 50 percent, to $924.00. The result was a monthly disposable income of $2,276.00–an amount higher than reported when filing the case, despite Debtor relying solely on contributions.

In Debtor's Supplemental Schedule J, it is clear that expenses were underestimated. For example, only ($275.00) a month was provided for food. That leaves roughly $10 a day, $3 per meal, for the Debtor to eat. With such tight expenses and a plan relying solely on contributions, it is not surprising the Debtor constantly falls delinquent in monthly plan payments.

On August 13, 2019, Debtor filed Amended Schedules I and J. Dckt. 74. While it is unusual to see amended schedules so late in a case (amended schedules providing information as of the date of filing), it appears Debtor never was employed and always was relying on contributions–thus the amended schedules are likely accurate.

In Debtor's Amended Schedules I and J, Debtor is receiving $3,394.00 a month from his son and daughter. Dckt. 74. Debtor's expense were amended to be $924.00, the same (unrealistic) amount Debtor's Supplemental Schedule J reported.

One of the unintended effects of the filing of amended schedules is that the plan is no longer Debtor's best efforts. With Debtor's disposable income of $2,470.00, $148,200.00 would be paid over 60 months. Amended Schedule I and J, Dckt. 74. The Plan provides for monthly payments of $2,470.00 for 42 months (totaling $103,740.00), plus $24,744.74 from the first 18 months. Second Modified Plan, Dckt. 76. Those amounts total only $128,484.74, roughly $20,000.00 less than Debtor's demonstrated ability to pay. Thus, the plan violates 11 U.S.C. § 1325(b)(1).

Even notwithstanding the aforementioned, the plan is simply not feasible. Debtor has overstated income from the start of this case, then later understated expenses to try to make up the

difference. The plan payments necessary to complete a plan continue to grow due to Debtor's inability to make the payments. At this point in the case, it is unclear how Debtor can propose such a plan in good faith. [FN. 1]

FN. 1. This plan is one in which the Debtor is working hard to stave off the foreclosure on the 930 North Camino Alto Property. In the Plan now before the court, the pre and post-petition arrearages now total ($35,237.31), having grown from the ($31,767.39) arrearage from when this case was filed. POC 7-1. The family support, which is Debtor's only "income" is placing this Property deeper and deeper in the hole.

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, Matthew Blair Thompson ("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.

7. **19-24254-E-13 RPZ-1** **STEVEN OULICKY** **Mikalah Liviakis** **OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON TRUST, NATIONAL ASSOCIATION** **8-15-19 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 15, 2019. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

Wilmington Trust, National Association, not in its individual capacity, but solely as trustee for MFRA Trust 2016-1 ("Creditor") holding a secured claim filed this Objection opposing confirmation of the debtor, Steven Keith Oulicky's ("Debtor") proposed Chapter 13 plan.

Creditor argues that the plan should not be confirmed because there is no stay in effect (the stay having terminated as to the Debtor 30 days after filing pursuant to 11 U.S.C. § 362(c)(3)), and because confirming the plan would subject Creditor to a reinstated stay.

Amended Objection

Creditor filed an Amended Objection on September 6, 2019. Dckt. 22. In the Amended Objection, Creditor argues the plan was not proposed in good faith because:

1. Debtor failed to seek imposition of the stay after its expiration.

2. "It's evident the Debtor is misusing the bankruptcy code and the automatic stay to prevent Creditor from proceeding with its state law remedies."

3. Outside of bankruptcy Debtor has used the California Homeowner Bill of Rights to avoid foreclosure and not make payments on his obligations owed to Creditor by negotiating and defaulting on modifications.

4. Debtor's Schedule J fails to list the monthly mortgage payment owed to Creditor, thereby reducing the alleged disposable income by $1,033.27.

Creditor also opposes confirmation on the basis that the plan does not provide equal monthly payments towards its secured claim.

DISCUSSION

Amended Pleadings

Creditor filed an "Amended" Objection on September 6, 2019, 11 days before the hearing. In the Amended Objection, there is no reference to any authority to make an amendment to pleadings *sua sponte*, and there is no request made to the court for authority to do so.

Federal Rule of Civil Procedure 15, incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7015, relates to the right to amend and supplement pleadings. That rule provides for amendments as a matter of course and otherwise. Fed. R. Civ P. (a)(1)–(2).

However, this proceeding is a contested matter. *See* FED. R. BANKR. P. 9014. Federal Rule of Civil Procedure 15 does not automatically apply to contested matters. FED. R. BANKR. P. 9014(c).

At the hearing, xxxxxxxxxxxxxx.

Objection to Confirmation

Creditor's primary argument is that there is no stay in effect, confirmation of the plan would reinstate the stay, and therefore the plan should not be confirmed.

However, Creditor's position is not fully fleshed out. Creditor does not point to any provision in the proposed plan that states (something in the nature of), "the automatic stay provisions of 11 U.S.C. § 362 shall apply to Creditor's claim." It is unclear what provision in the plan provides for the reinstatement of the automatic stay, overwriting the provisions of the Bankruptcy Code.

With respect to the automatic stay having terminated and being of no force and effect in this case, Creditor hangs its hat on 11 U.S.C. § 362(c)(3)(A), which states that the stay, if not extended, terminates as to the **Debtor**. It does not state that the stay terminates in its entirety in the bankruptcy case, or terminates as to the Debtor and the bankruptcy estate.

The Supreme Court has been very clear in reading and applying the "plain language" stated

by Congress in statutes. *Hartford Underwriters Insurance Company v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000); *United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989)*. The basic direction is that Congress says in a statute what it means and means in a statute what it says. *Connecticut Nat. Bank v. Germain, 503 U.S. 249, 254, 117 L. Ed. 2d 391, 112 S. Ct. 1146 (1992);* (quoting *Caminetti v. United States, 242 U.S. 470, 485, 61 L. Ed. 442, 37 S. Ct. 192 (1917))*; *United Savings Association of Texas v. Timbers of Inwood Forest Associates, LTD.*, 484 U.S. 365, 371 (1988).

The term "debtor" is not one subject to confusion or lack of statutory definition. Congress expressly defines the term "debtor" to be,

> "(13) The term "debtor" means person or municipality concerning which a case under this title has been commenced."

11 U.S.C. § 101(3). The "debtor" is that person who has commenced a case or had an involuntary case commenced against him/her/it. Congress clearly provides in 11 U.S.C. § 362(a) of the automatic stay as it applies to the "debtor" and to the bankruptcy estate and property of the bankruptcy estate. In 11 U.S.C. § 362(c)(3)(A) Congress provides for the termination of the stay if not extended only as to the "debtor." FN. 1.

FN. 1. The court acknowledges that a minority of decisions have gone beyond the plain language of 11 U.S.C. § 362(c)(3)(A), delved into the legislative history of the 2005 amendments and concluded that what Congress means when it says "debtor" is not the statutorily defined terms it enacted, but must have meant that the stay terminates in the "bankruptcy case." This not only ignores the plan language of the statute, but also that in 11 U.S.C. § 362(c)(4) enacted as part of the same 2005 amendments, that Congress knew in that provision to say that the stay does not go into effect in the "bankruptcy case," and did not use the same language of and say "the automatic stay does not go into effect as to the debtor" while really intending to say that the stay did not go into effect in the bankruptcy case.

More significantly, Creditor misses on the key point - if the plan is confirmed then it becomes the modified contract between the parties. *Trulis et al v. Baron et al*, 107 F.3d 685, 691 (9th Cir. 1995). If confirmed there would not be a default and no basis to proceed with a foreclose sale.

While taking a long, winding path, Creditor's real argument is that the Plan is not feasible and cannot be performed. Part of this is based on Debtor's prior track record of failing to perform plans. Further, that Debtor has been unsuccessful with his non-bankruptcy attempted modifications of the obligation.

Key provisions of the proposed Chapter 13 Plan in this bankruptcy case include the following:

A. Monthly Plan Payment.....$1,750 for months 1-12
.....$1,875 for months 13-60

Plan ¶ 2.01 and § 7.01 Additional Provisions, Dckt. 10.

B. Debtor's attorney to be paid $3,900.00 through the Plan, in addition to the $2,100 paid prior to the filing of this case. Plan ¶ 3.05. Administrative expenses of $354.55 are to be paid each month toward these fees and trustee fees. This computes to have the attorney's fees paid within 12 months.

C. For Creditor's secured claim provided for in Class 1 Debtor is to pay $1,242.75 commencing immediately for the current post petition payment. Plan ¶ 3.07(c), *Id.* However, the cure payment to Creditor for the arrearage will only commence in month 13, after Debtor's counsel extracts $3,900 in fees from the case. *Id.* This having to delay begin making the arrearage payment to accelerate Debtor's counsel's fees creates the appearance that there is doubt in the Debtor's camp that this plan can be performed.

On Schedule I, in addition to his employment income of $3,791.67, Debtor lists two other business income sources: (1) his business that generates $510 a month in net income and (2) room rental income of $600. Schedule I, Dckt. 12. Though listing $13,320 in income, Debtor does not list any expense for self-employment taxes or taxes of this additional $13,320 in income. Schedules I and J, Dckt. 12 at 18-22. On the Statement of Financial Affairs Debtor does not list any such business or rental income in 2019 prior to this bankruptcy case being filed, or in 2018 or 2017. Statement of Financial Affairs Question 4, *Id.*

11 U.S.C. § 1325(a)(5) provides that payments made on secured claims are to be in "equal monthly amounts." While the court has somewhat "liberally" construed "equal" to address practical considerations (which creditors generally go along with), zero payments for a year that then a bunch of payments later is not even within a liberal construction of the word "equal" in this case.

The proposed Chapter 13 Plan does not comply with the provisions of 11 U.S.C. § 1322 and § 1325 and is not confirmed. The Objection is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Wilmington Trust, National Association, not in its individual capacity, but solely as trustee for MFRA Trust 2016-1 ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

8. **19-23771-E-13 AP-1** **11 thru 12** | **WILLIAM MONSON** **Jeffrey Ogilvie** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 8-9-19 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 9, 2019. By the court's calculation, 39 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the plan does not provide for the payment of property taxes and insurance for the real property securing Creditor's claim.

Creditor's argument is well-taken. On Schedule J, Debtor lists no expense for real estate taxes or insurance. Dckt. 1. Furthermore, the plan provides for payments of $1,348.90, and Debtor's disposable monthly income is only $1,362.00. Plan, Dckt. 4.

Given that nearly all Debtor's current disposable income is put into the plan, the plan is not likely feasible once the increased monthly expense from real property taxes and insurance is considered.

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

9. **19-23771-E-13 DPC-1** **WILLIAM MONSON** **Jeffrey Ogilvie** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 8-14-19 [16]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 14, 2019. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Debtor failed to appear at the Meeting of Creditors on August 8, 2019.

Trustee's argument is well-taken. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Plan does not 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.

10. **19-23971-E-13 DPC-1 13 thru 14** | **JUANITA SHACKLEFORD David Ritzinger** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-13-19 [27]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 13, 2109. 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 ----------.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the debtor, Juanita Shackleford ("Debtor"), is delinquent $3,050.00 in plan payments.

DISCUSSION

Trustee's argument is well-taken. Debtor is $3,050.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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.

11. **19-23971-E-13 MAM-1** **JUANITA SHACKLEFORD** **David Ritzinger** **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY UNITED HOME MORTGAGE CORPORATION 8-7-19 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and the Chapter 13 Trustee on August 7, 2019. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

United Home Mortgage Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the plan does not provide for the full amount of its arrearages.

Creditor argues the plan provides for $15,100.00, where the Proof of Claim, No. 4, shows that arrearages total $32,362.27.

Creditor's argument is well-taken. 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 does not contain adequate monies to provide for the full payment of arrearages.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by United Home Mortgage Corporation ("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.

12. 18-26475-E-13 RJ-3 | **AMANDA SHRINER** **Richard Jare** | **MOTION TO USE CASH COLLATERAL 8-30-19 [76]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, Chapter 13 trustee, and Office of the United States Trustee on August 30, 2019. By the court's calculation, 18 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

The Motion for Authority to Use Cash Collateral is granted.

The debtor, Amanda C. Shriner ("Debtor") moves for an order approving the use of cash

collateral from personal property identified as a 2006 Chevy Tahoe ("Vehicle") pursuant to 11 U.S.C. § 363.

Debtor's Vehicle was in a collision, resulting in insurance proceeds of $7,288.71 (the "Insurance Proceeds"). Declaration, Dckt. 78; Exhibit 2, Dckt. 80. By this Motion, Debtor seeks authority to pay off the portion of creditor OneMain Financial Services' ("Creditor") claim that is secured by the Vehicle with the Insurance Proceeds. The court issued an Order on November 7, 2018, valuing Creditor's claim at $3,200.00.

With the remaining Insurance Proceeds, Debtor seeks authority to put those funds towards the Chapter 13 plan payments.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on September 5, 2019. Dckt. 83. Trustee generally agrees with the Motion, but notes Trustee is unclear whether Creditor's unsecured claim should also be paid, and whether Creditor has waived any interest in the unsecured portion.

DISCUSSION

The Chapter 13 debtor, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. 11 U.S.C. § 363; *See also* 11 U.S.C. § 1303. The proposed use of the Insurance Proceeds is in the best interest of creditors and the Estate.

The court shall issue an order authorizing the Debtor to use the insurance proceeds amounting to $7,288.71 to pay the $3,200.00 claim of OneMain Financial Services, and to distribute the remainder of the insurance proceeds to the Chapter 13 trustee to be paid into the Chapter 13 plan.

However, the Chapter 13 Trustee will have to hold the monies until the final payment of the Plan. The modification of Creditor's secured claim and valuation thereof is subject to becoming ineffective if Debtor does not complete the 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 for Authority to Use Cash Collateral filed by debtor, Amanda C. Shriner ("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 Debtor shall use the insurance proceeds amounting to $7,288.71 to: (1) pay the $3,200.00 claim of OneMain Financial Services ("Creditor"), and to (2) distribute the remainder of the insurance proceeds to the Chapter 13 trustee to be paid into the Chapter 13 plan, subject to the limitations of this Order stated below.

IT IS FURTHER ORDERED that the Chapter 13 Trustee shall hold the additional funds and distribute them in the final distribution when the Trustee knows with that final payment the Plan will be completed and the modification of Creditor's contract with the Debtor by the confirmed plan and the valuation order is permanent.

13. 19-24178-E-13 DPC-1 | **JOSE HERNANDEZ** | **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** | **8-14-19 [20]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 14, 2019. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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. the debtor, Jose Luis Hernandez ("Debtor") has $25,175.00 in non-exempt equity, but proposes a zero percent dividend.

B. Debtor did not provide a completed business questionnaire and proof of license and insurance.

DISCUSSION

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that the Debtor has $25,175.0 in non-exempt equity. Declaration, Dckt. 22. Because the Debtor does not provides 0 percent to unsecured claims in the plan, the plan is not confirmable.

On this point, Debtor has filed an extensive Schedule C exhaustively claiming exemptions. Dckt. 14 at 9-10. This arises in Debtor's accounts receivable, a non-exempt asset clearly identifiable. This raises the question how Debtor in good faith can propose the current plan and try to slip such significant non-exempt assets by the Chapter 13 Trustee, creditors, and ultimately the court.

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

A. Questionnaire,
B. Proof of license and insurance or written statement that no such documentation exists.

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

The 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.

14. 18-24881-E-13 RK-1 **BILLIE BAILEY** **Richard Kwun** **MOTION TO VACATE DISMISSAL OF CASE 9-2-19 [33]**

DEBTOR DISMISSED: 08/26/2019

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 2, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Vacate 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 Vacate is xxxxxxxxx, and the order dismissing the case (Dckt. 30) is ~~not vacated~~.

The debtor, Billie Jean Bailey ("Debtor") filed the instant case on August 2, 2019. Dckt. 1. An order confirming the plan was entered on October 26, 2018. Dckt. 18.

On July 18, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to a delinquency in plan payments of $1,965.16. Dckt. 25. On August 21, 2019, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckts. 29, 30. The ruling was final because Debtor did not file any opposition.

On September 2, 2019, Debtor filed this instant Motion to Vacate. The Motion states that Debtor did not know how to address the delinquency initially and for that reason did not contact her attorney. However, the Debtor ultimately was able to cure the delinquency prior to the hearing.

Because Debtor did not get in touch with her attorney, no opposition to the dismissal motion

was filed, and the matter was decided as a final ruling.

Declarations of the Debtor and Debtor's counsel were filed in support of the Motion. Dckts. 35, 36.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on September 4, 2019. Dckt. 38. Trustee confirms Debtor was current before the case was dismissed, but notes that Debtor borrowed monies without court authorization, which going forward could be problematic.

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

APPLICABLE LAW

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

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious.

12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Debtor has presented testimony that essentially describes a miscommunication between her and her counsel. Debtor found a way to cure her delinquency in plan payments, resolving the motion. However, it was not understood that the Motion would be resolved without a hearing based on the non-opposition of the Debtor. This constitutes excusable neglect.

In considering vacating an order, the court needs to consider whether there is a likelihood of the party being able to successfully prosecute the matter if the order is vacated. Here, Debtor explains that there was a $3,950 default in her plan. She "cured" the default by borrowing $3,950 from her brother and sister in law. Motion, Dckt. 33. Neither in the Motion nor in Debtor's Declaration (Dckt. 36) is any explanation provided as to why the Debtor defaulted on the plan; why that is not likely to occur again; and how the Debtor, in her bankruptcy case, will repay the loan.

Debtor's Chapter 13 Plan requires monthly payments of $1,705 from the Debtor. Plan ¶ 2.01, Dckt. 2. The $3,950 default was for more than two months of payments. All of the plan payments are to be used to: (1) pay Debtor's counsel, (2) pay Chapter 13 Trustee fees, and (3) cure the arrearage and make the current monthly mortgage payment on Debtor's residence.

Looking at Schedule I, Debtor's income is from Social Security and pension/retirement income. Dckt. 1 at 27-28. Thus, it appears unlikely that the defaults occurred because Debtor did not get paid her Social Security or retirement/pension.

On Schedule J, Debtor did a fair job of listing expenses (even going so far as her vehicle gas, registration, and maintenance expenses are $600 a month = $7,200 a year), so it does not appear that a default would be caused by an unrealistic budget.

Without knowing what caused the default, what has been done to correct that cause, and how Debtor intends to repay the loan, the court is left at a loss in finding a basis to grant the relief requested.

At the hearing, **xxxxxxxxxxxxxxxxxxx**

Therefore, in light of the foregoing, the Motion is granted, and the order dismissing the case (Dckt. 30) is vacated.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Billie Jean Bailey ("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/denied~~, and the order dismissing the case (Dckt. 30) is ~~not vacated~~.

15. **19-21298-E-13 GEL-1** **JERRI LOWDEN** **Gabriel Liberman** **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.** **8-20-19 [39]** **23 thru 24**

Final Ruling: No appearance at the September 17, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of the debtor, Jerri Serina Lowden ("Debtor") commonly known as 9458 Sidesaddle Drive, Wilton, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,185.84. Exhibit B, Dckt. 42. An abstract of judgment was recorded with Sacramento County on July 30, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $850,000.00 as of the petition date, for which Debtor has a 50 percent interest. Dckt. 1. The unavoidable and senior liens that total $795,379.85 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 § 703.140(b)(5) in the amount of $22,948.79 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 Jerri Serina Lowden ("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 Capital One Bank (USA), N.A., California Superior Court for Sacramento County Case No. 34-2014-00159838, recorded on July 30, 2014, Document No. 20140730, with the Sacramento County Recorder, against the real property commonly known as 9458 Sidesaddle Drive, Wilton, 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.

16. **19-21298-E-13** **JERRI LOWDEN** **MOTION TO AVOID LIEN OF**
GEL-2 **Gabriel Liberman** **SYNCHRONY BANK**
8-20-19 [44]

Final Ruling: No appearance at the September 17, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Synchrony Bank fka GE Capital Retail Bank ("Creditor") against property of the debtor, Jerri Serina Lowden ("Debtor") commonly known as 9458 Sidesaddle Drive, Wilton, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,536.74. Exhibit B, Dckt. 47. An abstract of judgment was recorded with Sacramento County on February 5, 2014, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $850,000.00 as of the petition date, for which Debtor has a 50 percent interest. Dckt. 1. The unavoidable and senior liens that total $795,379.85 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 § 703.140(b)(5) in the amount of $22,948.79 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 Jerri Serina Lowden ("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 Synchrony Bank fka GE Capital Retail Bank , California Superior Court for Sacramento County Case No. 34-2013-00142854, recorded on February 5, 2014, Book 20140205 and Page 1269, with the Sacramento County Recorder, against the real property commonly known as 9458 Sidesaddle Drive, Wilton, 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.

17. **19-25098-E-13 MRL-1** **THOMAS MCSPEDDEN** **Mikalah Liviakis** **MOTION TO VALUE COLLATERAL OF AMERICA FIRST CREDIT UNION 8-14-19 [8]**

Final Ruling: No appearance at the September 17, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 15, 2019. By the court's calculation, 33 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 America First Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $4,500.00.

The Motion filed by Thomas Wayne McSpedden ("Debtor") to value the secured claim of America First Credit Union("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 10. Debtor is the owner of a 2003 GMC Sierra 1500 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $4,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on October 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $6,045.19 . 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 $4,500.00, 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 Thomas Wayne McSpedden ("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 America First Credit Union ("Creditor") secured by an asset described as 2003 GMC Sierra 1500 ("Vehicle") is determined to be a secured claim in the amount of $4,500.00, 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 $4,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

18. **14-32002-E-13 MJD-5** | **KAO SAECHAO AND MYHANH NGUYEN** | **MOTION TO MODIFY PLAN 8-12-19 [115]**
Matthew DeCaminada

Final Ruling: No appearance at the September 17, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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, Kao Ching Saechao and Myhanh Thi Nguyen ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating the plan is confirmable with changes made in the language of the order confirming the plan. 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, Kao Ching Saechao and Myhanh Thi Nguyen ("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 12, 2019, 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.

19. 14-28961-E-13 MLA-6 — RODEL MAULINO AND MIMSY ABARA-MAULINO — Mitchell Abdallah — MOTION TO MODIFY PLAN — 8-6-19 [177]

Final Ruling: No appearance at the September 17, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 6, 2019. 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.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Rodel Montevirgen Maulino and Mimsy Descallar Abara-Maulino ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on August 28, 2019. Dckt. 183. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors,Rodel Montevirgen Maulino and Mimsy Descallar Abara-Maulino ("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 6, 2019, 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.

20. 19-23962-E-13 DBL-1 — ANGELIQUE HOELCK — Bruce Dwiggins — MOTION TO CONFIRM PLAN — 8-12-19 [17]

Final Ruling: No appearance at the September 17, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 12, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Angelique Cynthia Hoelck ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Response indicating non-opposition on August 28, 2019. Dckt. 22. 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, Angelique Cynthia Hoelck ("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 August 12, 2019, 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.

21. 19-25193-E-13 SDH-1 — DAMON TURNER — Scott Hughes — MOTION TO EXTEND AUTOMATIC STAY — 8-20-19 [9]

Final Ruling: No appearance at the September 17, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Damon Turner ("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. 18-20779) was dismissed on February 25, 2019, after Debtor fell delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 18-20779, Dckt. 71, February 25, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed after Debtor fell ill, requiring emergency surgery and resulting in a temporary inability to work. Declaration, Dckt. 11.

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

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Damon Turner ("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.

22.	**19-23781-E-13** **DPC-1** **15 thru 16**	**VERLIN JOHNSON** **Bonnie Baker**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** 8-14-19 [31]

Final Ruling: No appearance at the September 17, 2019 Hearing is required.

Local Rule 9014-1(f)(2) Objection—No 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 14, 2019. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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 Debtor has responded stating that a new plan will have to be filed

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. the debtor, Verlin K. Johnson's ("Debtor") plan proposes to value the secured claim of Members 1st Credit Union, but no valuation motion has been filed.

B. No Rights and Responsibilities has been filed.

C. Debtor is over median income and has not completed the Statement of Current Monthly Income.

DEBTOR'S REPLY

Debtor's counsel filed a Reply on September 13, 2019. 36. Among other information provided in Reply, Debtor's counsel states that a new plan will have to be filed to address arrearages on the Bank of New York Mellon's secured claim that were greater than scheduled.

DISCUSSION

Debtor's Reply indicates a new plan will be filed.

The current 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. **19-23781-E-13 ETL-1** **VERLIN JOHNSON** **Bonnie Baker** **OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON** **7-10-19 [23]**

Final Ruling: No appearance at the September 17, 2019 Hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 10, 2019. By the court's calculation, 69 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 Debtor has responded stating that a new plan will have to be filed.

The Objection to Confirmation of Plan is sustained.

The Bank Of New York Mellon fka The Bank Of New York As Trustee For The Certificate holders Of CW ABS, Inc., Asset Backed Certificates, Series 2005-2 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the plan understates Creditor's arrearages.

DEBTOR'S REPLY

Debtor's counsel filed a Reply on September 13, 2019. 36. Among other information provided in Reply, Debtor's counsel states that a new plan will have to be filed to address arrearages on the Creditor's secured claim that were greater than scheduled.

DISCUSSION

Debtor's Reply indicates a new plan will be filed.

The current 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 Bank Of New York Mellon fka The Bank Of New York As Trustee For The Certificate holders Of CW ABS, Inc., Asset Backed Certificates, Series 2005-2("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.

24. 17-20494-E-13 MET-2 — THOMAS/COZETTE CRAVENS — Mary Ellen Terranella — MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELL, DEBTORS ATTORNEY(S) — 8-23-19 [99]

Final Ruling: No appearance at the September 17, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2019. By the court's calculation, 25 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees 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.

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. Here, there are very modest fees being requested. As discussed below, there were necessary and meet the standards for allowance of such fees. Further, counsel for Debtor has reduced the fees requested to be authorized to be paid very substantially based on Debtor's ability to pay such fees.

The Motion for Allowance of Professional Fees is granted.

Mary Ellen Terranella, the Attorney ("Applicant") for Thomas Nicklas Cravens and Cozette Dee Cravens, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period July 31, 2018, through July 17, 2019. Applicant requests a reduced fee in the amount of $936.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's for the Estate include substituting into the case, reviewing the case, responding to a dismissal motion, and prosecuting a modified plan to confirmation. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request

additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 73. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a summary in the Application of all services provided. Those services included Applicant's substituting into the case, reviewing the case, responding to a dismissal motion, and prosecuting a modified plan to confirmation.

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

compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Mary Ellen Terranella	10.65	$350.00	$3,727.50
Total Fees for Period of Application			$3,727.50

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $58.14 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Copies	$58.14
Total Costs Requested in Application	$58.14

FEES AND COSTS & EXPENSES ALLOWED

While Applicant states that fees in the amount of $3,785.64 and costs of $58.14 were incurred for substantial and unanticipated work that was necessary and reasonable, Applicant only requests a reduced fee of $936.00.

The unique facts surrounding the case, including responding to a dismissal motion and prosecuting a modified plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees and costs, discounted to the amount of $936.00, is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay the fees and costs allowed by the court.

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

Discounted fees of $936.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Mary Ellen Terranella ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Mary Ellen Terranella is allowed the following fees and expenses as a professional of the Estate:

Mary Ellen Terranella, Professional Employed by Thomas Nicklas Cravens and Cozette Dee Cravens("Debtor")

Discounted fees of $936.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

25. **19-21995-E-13** **NEKESHIA JOHNSON** **MOTION TO CONFIRM PLAN**
JMM-3 **Jeffrey Meisner** **8-2-19 [44]**

Final Ruling: No appearance at the September 17, 2019 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 5, 2019. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Nekeshia Nekicon Johnson ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Response indicating non-opposition on September 3, 2019. Dckt. 65. 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, Nekeshia Nekicon Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on August 2, 2019, 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.