UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 23, 2018 at 3:00 p.m.

1.	**18-26313-E-13** **PSB-1**	**JENNEL HARRIS** **Paul Bains**	**MOTION TO EXTEND AUTOMATIC STAY** **10-5-18 [9]**

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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 5, 2018. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Jennel Harris, fka Jennel Fejeran ("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. 18-23972) was dismissed on July 13,

2018, after Debtor failed to timely file all required documents for the petition. *See* Order, Bankr. E.D. Cal. No. 18-23972, Dckt. 13, July 13, 2018. 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 she has retained counsel since her prior case (wherein she proceeded *Pro Se*) and provided him with the majority of the documents necessary for filing. Dckt. 12.

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor previously proceeded with her Chapter 13 case *Pro Se.* Since her prior case, Debtor has retained counsel and provided him with most of the documents necessary in a Chapter 13 case.

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 Jennel Harris ("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.

2. **15-23046-E-13 MAC-1** | **STEVEN/MARGARET LAWRENCE** **Marc Carpenter** | **MOTION TO MODIFY PLAN 9-13-18 [42]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 13, 2018. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

Steven and Margaret Lawrence ("Debtor") seek confirmation of the Modified Plan because their health is declining and they would like to resolve their Chapter 13 obligations as soon as possible by drawing a large lump sum from their retirement accounts. Dckt. 46. The Modified Plan seeks to make a final lump-sum payment of $31,372.00 to the Chapter 13 Trustee, David Cusick (the "Trustee"), on or before October 23, 2018 to satisfy their outstanding obligations on the Plan. Dckt. 44. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Trustee filed an Opposition on October 5, 2018. Dckt. 48. The Trustee alleges that the Plan is not feasible under 11 U.S.C. § 1325(a)(6). The Trustee calculates that the lump-sum payment less Trustee fees leaves only $29,144.58 to be paid to unsecured creditors, which cannot satisfy the 76 percent dividend called for in the Plan. Thus, the Trustee requests the Motion be granted with an order modifying the Plan to provide for 66 percent dividend to unsecured creditors; or, in the alternative, granted with an order modifying the Plan to provide for no less than 76 percent to unsecured creditors and the lump-sum payment increased to $39,500.00 to properly account for the above shortfall.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition concurring that a calculation error occurred and requesting the Order confirming the Modified Plan correct the error by stating unsecured claim holders will receive no less than a 66 percent dividend.

RULING

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 Steven and Margaret Lawrence ("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 September 13, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan with language correcting the Plan to provide no less than a 66 percent dividend to unsecured creditors, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

3. **18-24546-E-13 APN-1** | **SUSAN/KEITH MADSON** **Michael Hays** | **OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION** **8-29-18 [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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 29, 2018. By the court's calculation, 55 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Toyota Motor Credit ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The $17,251.00 valuation of the collateral under the proposed Plan will severely diminish its security interest on property that already rapidly depreciates in value.

B. The value provided is substantially below the value given in the NADA Guide, and no evidence has been provided by Debtor to support this determination.

C. The $323.00 proposed adequate protection payment will not provide adequate protection to Creditor because of the rapid depreciation in value of the collateral.

D. The proposed 4.00 percent interest rate is less than what should be provided following the guidelines of *Till v. SCS Credit Corp.,* 541 U.S. 465 (2004)

TRUSTEE'S RESPONSE

David Cusick (the "Chapter 13 Trustee") filed a Response to this Objection indicating the Plan was feasible according to his calculations only if Debtor's motion to value collateral is successful. Dckt. 45. The Trustee also states that Debtor now agrees that any annual tax refunds in excess of $2,000 will be paid into the Plan.

STIPULATION

Debtor and Creditor filed a Stipulation on October 18, 2018. Dckt. 57. The Stipulation provides Creditor's claim shall be $20,395.00, shall receive 6 percent interest, and shall be paid $394 in monthly. This will increase the required plan payment by $71 a month to cover the stipulated amount. Thus, the plan payment must be increased to $1,004 a month from the $933.00 provided in the Plan. Dckt. 10.

DISCUSSION

The Stipulation accounts for Creditor's grounds for objection herein. However, Debtor's solution of just increasing the Plan payment raises new problems for the court. On Schedules I and J Debtor, under penalty of perjury, establishes that Debtor has only $933.00 in net monies with which to fund a plan. Dckt. 13 at 22-16.

Debtor's budget is very tight, leaving Debtor only able to provide for a 1% dividend on general unsecured claims. Over the 60 months of the plan that dividend would total only $1,761, equating to only $29.35 a month - well short of the increased payment that Debtor wants to now pay creditor.

Debtor's situation may be even more dire, in that the income listed for the first debtor, $4,600 a month (Dckt. 13 at 22) is not her actual income, but "Wife's income is projected based on expected pay and hours at hoped for new job." There is no evidence that the "projected" income "hoped for" at a "new job" is actual income to fund a plan or income with which to increase the payment to Creditor.

Additionally, this $4,600 is 83% of the income coming into Debtor's household. If the amount is even slightly short of the hoped for income, it dramatically reduces the projected disposable income to fund a plan.

With this brought to the court's attention in the documents filed under penalty of perjury with the court, it is not for the court to ignore the evidence presented and the law. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

Additionally, the Debtor's ability to quickly produce an additional $71 a month to meet Creditor's demand, without any explanation, is an indication that this plan is not being prosecuted, and the plan not being filed, in good faith.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Toyota Motor Credit ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained, and Susan and Keith Madison's ("Debtor") Chapter 13 Plan filed on July 25, 2018, is not confirmed.

4.	**18-26255-E-13** **MET-1**	**REBECCA SCHLOSSAREK** **Mary Ellen Terranella**	**MOTION TO EXTEND AUTOMATIC STAY** **10-7-18 [8]**

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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 7, 2018. By the court's calculation, 16 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.

Rebecca Schlossarek ("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. 18-23531) was dismissed on September 6, 2018, after Debtor became delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 18-23531, Dckt. 29, September 6, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she was unemployed when she commenced the case and was unable to secure employment thus precipitating her failure to commence plan payments prior to its dismissal. Dckt. 10. Since the prior dismissal, Debtor has been employed by Express Employment and is also seeking season work. *Id*.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C.

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

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

A. Why was the previous plan filed?

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

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

Debtor has demonstrated the case was filed in good faith. Whereas Debtor previously could not secure employment in time to commence payments, she now has been employed and continues to seek additional employment. 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 Rebecca Schlossarek ("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.

5. **18-24856-E-13 AP-1** **EVANGELINA CLARIZA** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 9-18-18 [29]**

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 September 18, 2018. 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 hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on April 2, 2019.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's Chapter 13 Plan fails to provide for Creditor's pre-petition arrears under the request that the Creditor capitalize said arrears in a HAMP loan modification that the Debtor alleges is currently under review. Creditor has no records of any open loan modification applications and cannot even review the Debtor for HAMP as the program is no longer in effect. As the Debtor's Plan fails to provide for a cure of Creditor's pre-petition arrears, it fails to satisfy 11 U.S.C. ' 1325(a)(5)(B)(ii) and cannot be confirmed as proposed.

B. Because Debtor's plan fails to provide for Creditor's arrears, it also fails 11 U.S.C. § 1322(b)(5) requiring prompt cure of arrears.

Creditor's objections are well-taken.

Creditor asserts a claim of $470,330.65 in this case. The Plan provides for treatment of this as a Class 1 claim, but notwithstanding that classification proposes to rely on a loan modification to make arrearage payments. In the event the loan modification is denied by Creditor, Debtor proposes to give itself 14 days to file a Modified Plan. It appears that Debtor's intention is to not include this claim in Class 1, but to limit it to an "Ensminger Provision" in the Additional Provisions of the Plan, make adequate protection payments while diligently prosecuting a loan modification, and preserve the creditor's right to obtain relief from the automatic stay. Thus, the claim and Creditor should not have been listed in Class 1, which requires, under the terms of the Plan a $2,100 a month payment, as well as the $2,100 a month adequate protection payment set out in the Additional Provision.

Creditor's Objection

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

If Debtor had clearly limited the treatment to the adequate protection provision, preserving Creditor's right to relief from the stay, Creditor's objection could easily be overruled. If Creditor believes that Debtor is not pursuing a loan modification, confirmation of the Plan would not bar it from seeking relief from the automatic stay. If Debtor was pursuing a loan modification and Creditor denied it, Creditor could seek relief from the automatic stay. If Creditor believed that any other grounds existed for relief from the automatic stay, then Creditor could seek relief from the automatic stay.

As this court has previously held and numerous creditors have successfully navigated, a debtor may provide adequate protection payments while a creditor is held at bay from foreclosing on property (usually the debtor's home). Congress expressly provides for the court to specify the necessary adequate protection to be afforded a creditor. 11 U.S.C. § 361.

This can be done as part of a confirmed plan. The creditor's debt is not modified by the confirmation, but with the provisions as set forth in the Additional Provisions, the debtor is locked in to diligently prosecuting a loan modification and making substantial adequate protection payments (generally which are in the amount of the anticipated, good faith computed, amount of the modified loan). The creditor's rights are protected, with some specific loan modification request performance grounds in addition to all the other rights to seek relief from the stay, as well as the substantial adequate protection payment (even if there is an equity cushion in the collateral).

This was done instead of the practice for keeping bankruptcy cases open for more than a year without a confirmed plan, without adequate protection payments, because there was a "modification request in process" and such modification could not be forced through a confirmation. This also did not follow the practices of some judges in denying confirmation and dismissing cases because the debtor could not make the then current mortgage payment and arrearage cure, even if the debtor could seek a loan modification in

good faith. There was a perception that some loan services and some loan creditors use requirements of such judges to dodge loan modification requests.

Here, Creditor objects to confirmation based first on Debtor having incorrectly included Creditor's claim in Class 1 and the Additional Provisions. Such an Objection is valid, in that it could be misconstrued that Debtor is somehow already modifying the debt through the plan.

But Creditor's Objection goes further, stating that it does not want a $1,200 a month adequate protection payment, it does not want the enhanced rights to relief from the automatic stay if Debtor does not prosecute a loan modification in good faith based on the objective standards in the Additional Provisions, it does not want the enhanced right to relief from the automatic stay based on Creditor denying a loan modification as provided in the Additional Provisions, and does not want to maintain all of the other possible grounds for relief from the automatic stay.

Rather than denying confirmation and subjecting Creditor to another Plan and having to suffer receipt of the adequate protection payments and enhanced relief from stay rights, the court will continue the hearing on the Objection to Confirmation to 3:00 p.m. on April 2, 2019.

Additionally, while Debtor is required to make the full proposed Plan payment of $2,550.00 a month to the Trustee, the court relieves Creditor of the burden of receiving and accounting for such monies by suspending any payment of adequate protection monies by the Trustee to Creditor.

The Trustee shall not make any disbursement to Creditor - neither the $2,100.00 current monthly post-petition mortgage payment incorrectly listed in Class 1 (this not qualifying for Class 1 treatment due to the $140,000 +/- pre-petition arrearage) nor the $2,100.00 a month adequate protection payment provided in the Additional Provisions.

The Trustee shall retain all amounts that would otherwise have been distributed to Creditor under the Plan, retaining the monies until it is determined whether or not there is a loan modification that is approved, whether there is a claim to be paid for Creditor through the Plan, or that Creditor is granted relief from the automatic stay and the monies can be disbursed to other creditors under a Plan confirmed in this case.

The court notes that in Proof of Claim No. 2 filed by Creditor, it is stated under penalty of perjury that all of Creditor's claim is secured and there is no unsecured claim with respect to this debt. Possibly the amount by which the claim is oversecured explains why Creditor eschews receiving a $2,100 a month adequate protection payment and favors maintaining this case without imposing any diligent loan modification prosecution requirements on Debtor.

The hearing on the Objection to Confirmation is continued to 3:00 p.m. on April 2, 2019, to accommodate Creditor's objection that it receive adequate protection payments, that objective diligent prosecution standards be set for Debtor, and that Creditor be the beneficiary of enhanced relief from stay rights.

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 hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on April 2, 2019.

IT IS FURTHER ORDERED that the Chapter 13 Trustee shall suspend all payments to Creditor as provided under Class 1 and the Additional Provisions of the proposed plan, pending further order of the court. The Trustee shall retain all amount that would otherwise have been distributed to Creditor under the Plan, retaining the monies until it is determined whether or not there is a loan modification that is approved, whether there is a claim to be paid for Creditor through the Plan, or that Creditor is granted relief from the automatic stay and the monies can be disbursed to other creditors under a Plan confirmed in this case.

6. **18-25060-E-13 DPC-1** **CHERYL DOROSH** **Brad Clark** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-19-18 [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 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, on September 19, 2018. 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. Rights and Responsibilities of the Chapter 13 Debtors and their Attorneys have not been filed identifying what attorney's fees have been charged and what fees were paid prior to the case. The Disclosure of Compensation of Attorney for Debtor (Dckt. 1 at p. 56) indicates attorney's fees of $0.00 are owed, and none having been paid. However, the proposed plan (Dckt. 3) demonstrates $1,750 paid pre-petition and an overall fee of $3,500.00. Trustee cannot determine what fees Debtor's counsel is seeking through the plan.

B. Debtor estimates unsecured claims at $1,931.00 while claims on Schedule F total $122,781.00. Because Debtor's proposed plan provides a 98.39 percent dividend, the term will extend past 60 months.

Trustee's objections are well-taken.

Debtor's plan provides for a 98.39 percent dividend for unsecured claim holders. However, the proposed plan relies on that amount being $1,931. By the court's calculation, Debtor's proposed plan actually provides to pay $120,804.22. On the payment terms proposed, this would extend the term far beyond the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Furthermore, failure of Debtor to submit information on attorney's fees paid and owing prevents the court's determination whether Debtor is able to make plan payments or comply with the Plan under 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.

7.	**18-23567-E-13 PSB-1**	**TRAVIS/LUCELYN STEVENSON Paul Bains**	**MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY 9-14-18 [32]**

Final Ruling: No appearance at the August 23, 2018, hearing is required.

The Motion For Sanctions For Violations Of The Automatic Stay is dismissed without prejudice.

Travis Jake Stevenson and Lucelyn Ann Stevenson ("Debtor") having filed a "Withdrawal of Debtor's Motion," which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on October 22, 2018, Dckt. 42; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by National Funding, Inc., ("Creditor"); the Ex Parte Motion is granted, Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion For Sanctions For Violations Of The Automatic Stay filed by Travis Jake Stevenson and Lucelyn Ann Stevenson ("Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 42, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion For Sanctions For Violations Of The Automatic Stay is dismissed without prejudice.

8. **18-24970-E-13 DPC-1** **TRAVIS/LORRIE MCLAIN** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-20-18 [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 and Debtor's Attorney on September 20, 2018. 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 sustained.

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

A. Trustee believes Debtors' expenses could be reasonably reduced, where they have a family of two and are asserting expenses of $1,500.03 for food, $1,400.00 for transportation, $512 for medical/dental expenses, $400 for storage, and $200 as a contribution to co-debtor's elderly parent.

B. Debtors receive $1,481.48 in income from the Department of Veteran Affairs(Dckt. 1 at p. 50), which is not listed on the means test calculation.

C. Debtors' combined monthly tax withholdings is likely $1,750.70 and not $3,449.49 as stated by Debtors.

D. Co-Debtor Travis McLain's net wages are $459.98 higher than reported.

E. Co-Debtor Lorrie McLain had only been employed with Comercia Bank two days prior to filing, indicating uncertainty over her wages. A review of Co-Debtor's paystubs from past employment demonstrates a net of $4,664 in monthly income.

F. Several of Debtors' claimed deductions on the means test may be improper, including $450 for transportation, $3,400 for tax withholdings, and $450 in charitable contributions.

G. Debtors deduct $121.92 for a retirement loan but do not specific when the loan is paid off or attempt to increase the payments after the loan is paid.

H. Debtors are proposing 0 percent plan. On Schedule F, Debtors list Military Star/AAFES as a creditor with a claim for $9,000. Trustee believes Co-Debtor's military retirement statement shows that AAFES is a deduction on his pay advice, and therefore the plan may unfairly discriminate against unsecured claims.

DISCUSSION

Trustee's objections are well-taken.

11 U.S.C. § 1325(b)(1), which provides:

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

Several of Debtors' expenses appear unreasonably high, including $1,500.03 for food, $1,400.00 for transportation. Furthermore, Debtors' estimated monthly net income does not accurately reflect Debtors' financial situation.

The Plan proposes to pay a 0 percent dividend to unsecured claims, despite unreasonable expenses and understated income. Thus, the court may not approve the Plan.

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

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

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

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

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

9. 18-23379-E-13 AP-1 — WILLIAM BATTILANA, II — Gerald White — OBJECTION TO CONFIRMATION OF PLAN BY PHH MORTGAGE CORPORATION — 9-19-18 [79]

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, Office of the United States Trustee on September 19, 2018. 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.

PHH Mortgage Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's plan improperly seeks to modify Creditor's rights by listing its claim as a Class 4 and denying it ongoing post-petition payments, as well as payment of arrears.

B. Debtor's plan does not provide for the full amount of Creditor's claim.

C. Debtor's plan does not promptly cure Creditor's arrears.

D. Debtor's plan is not feasible because it relies on improper modifications.

E. Debtor's plan fails to provide for ongoing post-petition payments.

DEBTOR'S OPPOSITION

Debtor filed a Response to Creditor's Objection on October 9, 2018. Dckt. 91. Debtor argues that Creditor's claim is provided for in full under the plan, that a Motion to Sell has already been filed, and that Creditor will suffer no harm through the delay in payments herein.

DISCUSSION

The Creditor here objects to a plan which proposes to pay Creditor's claim in full within six months through the sale of Debtor's real property. Debtor has already secured a buyer for the sale and filed a Motion to Sell on October 9, 2018. Dckt. 86. Adequate protection for Creditor's claim clearly exists from the significant equity cushion in the property (the property valued at $364,000.00, Creditor's claim totaling $187,063.00, and Debtor having claimed an exemption of $100,000.00). *See* Dckt. 1; Amended Schedule C, Dckt. 46; and Proof of Claim, No. 11.

Creditor correctly asserts that its claim does not fall cleanly into Class 4. No Class specifically applies for the treatment Debtor is seeking here, where payments are postponed for a few months while a sale is wrapped up which will pay off Creditor's claims in full. Thus, Debtor must provide for the treatment of this debt in the Additional Provisions.

Debtor lists Creditor's claim in Class 4 (available only for secured claims for which there are no pre-petition defaults), which requires Debtor to make the currently monthly mortgage and terminates the automatic stay upon confirmation. The reference to Additional Provision 7.01 does not clearly and expressly state how Creditor's claim will be paid. Rather, it merely states that Debtor will list his residence for sale. Dckt. 46 at 7.

Additional Provision 7.01 makes no provision of payment of any adequate protection, payment of any amounts by Debtor to living in the residence (Creditor's collateral), or what happens if Debtor cannot close escrow in six months.

It appears that Debtor seeks to have a plan that provides for the orderly liquidation of an asset with equity in it, using the automatic stay to hold Creditor at bay while Debtor markets the property for sale. Such is in the highest tradition of bankruptcy. On the other hand, Debtor fails to account for his continuing, payment for free use of the property (collateral).

On Schedule I, Debtor lists having monthly net income of $2,451.00. Dckt. 1 at 37-38. However, on Schedule J he lists having monthly expenses of ($4,341.00), leaving him no monthly net income to fund a plan. *Id.* at 39-41. Debtor says he will "relocate" and the expenses will change.

The Chapter 13 Plan has a $325 a month payment, with a term of 36 months. Dckt. 46.

Debtor converted this case from Chapter 7 to Chapter 13 on August 2, 2018. That was right after the Chapter 7 Trustee in the case obtained authorization to hire a real estate broker to market and sell the Glenville Circle property. August 1, 2018 Order, Dckt. 28.

Though a prompt sale is the only possible way to fund a plan, in the eighty-three days since this case was converted, Debtor has not sought to employ a real estate professional to market and sell the property. If he had, he would have been able to seek out buyers before the holiday season (and possible further increases in interest rates). As it now sits, the six month sale and close period would require the property to be marketed and a buyer under contract during the Thanksgiving-Christmas-New Year's-Super Bowl season. Not the best time for the marketing of real property (if one is intending to find a buyer for fair market value).

Here, at best there is an implicit, "you'll be paid when, and if, the Debtor sells the property, if, he hires a broker to market the property." Such is not proper treatment for a secured claim under the Bankruptcy Code.

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 PHH 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 is sustained, and William Rudolph Battilana, II's ("Debtor") Chapter 13 Plan filed on August 17, 2018, is not confirmed.

10. 18-23379-E-13 DPC-1 — WILLIAM BATTILANA, II — Gerald White — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 9-19-18 [75]

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 7 Trustee, and Counsel for the Chapter 7 Trustee on September 19, 2018. 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. Debtor's plan fails to provide adequate protection and payments to PHH Mortgage Services in Class 1. Debtor has not listed mortgage, property tax, or insurance expenses on Schedule J. Debtor's plan proposes to sell the real property at 1 Glenville Circle, Sacramento, California within 6 months of confirmation.

B. The plan provides for payment of compensation to the former Chapter 7 Trustee. The former Chapter 7 Trustee filed Proof of Claim, No. 7.

C. The plan provides for payment of compensation to the former Chapter 7 Trustee's counsel. The former Chapter 7 Trustee's counsel filed Proof of Claim, No. 8.

D. Debtor has not specified the minimum dollar amount creditor with unsecured claims will receive and the proposed sale of real property has not set a minimum sale price. The proposed plan provides for a 10 percent dividend, which Trustee estimates will amount to $25,484.40. Trustee estimates that Debtor's non-exempt equity in this case may be as high as $124,274 (including Debtor's property, money held by Debtor's ex-wife and her attorney's trust account, and various personal property).

E. The proposed plan identifies money held by Debtor's ex-wife and her attorney's trust account as sources of plan funds, but does not explain the means of obtaining those funds (whether by litigation or other method).

DEBTOR'S OPPOSITION

Debtor filed an Opposition to Trustee's Objection on October 9, 2018. Dckt. 93. Debtor explains the claim of PHH Mortgage Services will be provided for in full after the sale of real property, Debtor currently having an offer totaling $360,000.00 (which exceeds the claim of $181,898.92). Debtor states further that the Trustee correctly notes the proposed plan provides for claims of the former Chapter 7 Trustee and her counsel.

Regarding Trustee's concern over the liquidation analysis, Debtor responds that the plan proposes to pay all non-exempt equity from the sale of Debtor's property into the plan (approximately $53,000.00) and the Bankruptcy Code does not require Debtor to list a specific dollar amount for unsecured claim holders. Debtor states finally that he is unsure of how to recover money held by Debtor's ex-wife and her attorney's trust account, as he cannot afford to incur ligation costs.

DISCUSSION

As the court has discussed in sustaining the Objection of PHH Mortgage Services, the implicit, "if and when it is sold" payment "plan" is not sufficient. Further, Debtor, knowing that his only way to fund a plan is through the sale of the Property, has failed to hire a real estate broker. Now, he is "stuck" (if someone actually were intending to sell the property for fair market value), to market the property and try to find a buyer during the Thanksgiving-Christmas-New Year's-Super Bowl holidays.

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 is sustained, and the Plan is not confirmed.

11. 18-24987-E-13 DPC-2 OFELIA MADRIGAL

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-19-18 [19]

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 on September 19, 2018. 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. Debtor may not be able to make plan payments because it depends on contributions. Debtor's Schedule I shows $302 from support and the remaining income from her live in boyfriend ($1,374 for living expenses and $895 for the plan payment). Debtor has not filed Declarations establishing these amounts and Debtor's Statement of Financial Affairs indicates no income for the prior two years.

B. Debtor may not be able to make plan payments because the plan fails to provide for secured claims, including an abstract judgement filed by Jeans-Pierre Rushing (Proof of Claim, No. 1) and a mortgage held by Bluegreen Corporation (Proof of Claim, Nos. 2 & 3). Debtor does not have any

expense for these claims on Schedule J and may not be able to afford payments under the plan.

C. Debtor may not be able to make payments because she does not list dependents or their expenses despite apparently sharing a home with three children (at least one being Debtor's own child).

D. Debtor may not be able to make payments because Debtor does not list any expenses for real estate taxes, property insurance, utilities, telephone, internet, medical/dental expenses, auto insurance, and pas only $250 for food, $35 for clothing, and $10 for personal care. Debtor lists two timeshares and an automobile on her Schedules, indicating insurance and maintenance obligations are likely.

TRUSTEE'S MOTION TO DISMISS

The Trustee filed a Motion to dismiss the case on August 29, 2018. Dckt. 15. At the hearing, the court raised several concerns with Debtor's filing, including following:

> Debtor has explained that her "live-in boyfriend" is actually a long-term partner of 10 years whom she is raising at least one child, aged 2, and likely more. This appears to relieve concerns over whether her income is stable and regular. 11 U.S.C. § 101(30).
>
> However, new concerns are raised by the Opposition. Debtor's Petition and Schedules do not list dependants, and provide very modest expenses. From what has now been represented, it appears Debtor and her significant other, along with their children, are living as a family and for purposes of this bankruptcy are merely choosing which expenses they want to assign to Debtor, with Debtor's significant other providing a *de minimis* contribution (relative to his $13,300.00 gross monthly income) to cover those expenses.
>
> Additionally, the Chapter 13 Plan filed in this case makes little "bankruptcy economic expense" for a debtor who would purport in good faith to have no income. There are no Class 1 (secured), Class 2 (secured), Class 3 (surrender collateral), Class 5 (priority unsecured), Class 6 (special treatment unsecured) claims. There is one Class 4 Claim, a $1,201.00 monthly mortgage payment being made outside the plan.
>
> For Class 7 general unsecured claims, Debtor (who purports to have no income) states that she will pay a 100% dividend to such creditors holding $44,220.26 in unsecured claims. Why Debtor, with no income, will enter into a five year Chapter 13 Plan, funded by another, is a mystery.

Civil Minutes, Dckt. 26.

The court decided to continue the hearing on the Motion to January 9, 2018 to allow Debtor the opportunity to explain the aforementioned issues. *Id*

DISCUSSION

Trustee's objections are well-taken. The court has already addressed the numerous deficiencies with Debtor's plan in hearing the Motion to Dismiss, including Debtor's misrepresentation of her financial circumstances. Debtor has not filed an opposition.

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.

12. **18-24490-E-13 TAG-2** **DONNA BROUSSARD** **Aubrey Jacobsen** **MOTION TO VALUE COLLATERAL OF LINCOLN AUTO FINANCE** **9-20-18 [30]**

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, Creditor, and Office of the United States Trustee on September 20, 2018. 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Ford Motor Credit Company LLC ("Creditor") is denied.

The Motion filed by Donna Marie Broussard ("Debtor") to value the secured claim of Ford Motor Credit Company LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Lincoln MKC, VIN ending in 15772 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $20,693.00 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).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on October 2, 2018. Dckt. 46. Creditor disputes the Debtor's valuation, asserting that Debtor did not actually provide any evidence as to the Vehicle's condition despite representing the valuation is based upon knowledge thereof.

Relying on a NADA Valuation Report, Creditor argues the retail market value of the Vehicle is $29,225.00. Exhibit C, Dckt. 48. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17); *See* Declaration, Dckt. 47.

Creditor also notes that Debtor's Declaration (Dckt. 32) requests the court value the Vehicle at $6,300.00.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion on October 5, 2018. Dckt. 51. Trustee provides an overview of Debtor's Motion and Declaration, treatment of Creditor's claim in the proposed Chapter 13 plan, Debtor's Schedules, and Creditor's Opposition and Schedules.

DISCUSSION

Creditor's arguments are well-taken. Debtor states she uses the Vehicle daily and therefore is familiar with the condition and bases her valuation therefrom. However, Debtor has not described what is lowering the value of the Vehicle where the retail value has been demonstrated to be $29,225.00. Exhibit C, Dckt. 48.

The Motion alleges a value for the 2016 Lincoln MKC, with 28,000, as having a value of $20,693. Motion ¶ 5, Dckt. 30. Debtor's Declaration, providing the court with personal knowledge testimony regarding this vehicle and how Debtor came to her opinion of $20,693, consists of the following:

> 4. I have had this car since 2015 and drive it every day. Because I use the car on a daily basis, I am familiar with its condition and believe in good faith that it had a value of $20,693 at the time of filing this case.

Declaration, Dckt. 32. While giving the court an opinion, the Debtor gives the court no testimony as to any facts, conditions, or other evidence by which the court may determine such value.

Creditor's claim is "only"for $22,864. (The court saying "only," because with her opinion that the value was $20,693, the difference is $2,171.)

Creditor asserts that the NADA Used Car Guide states that the value for the vehicle, with 37,500 miles on it, would be $29,225. See Exhibit C, NADA Used Car Guide, Dckt. 48.

Debtor has not replied to Creditor's Opposition which requested Debtor provide supplemental evidence as to the Vehicle's value. Therefore, the Vehicle has a fair market value of $29,225.00 at the time of filing the petition, which exceeds Creditor's claim of $22,864.28. The collateral exceeding the amount of the claim, the Motion to Value is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Donna Marie Broussard ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Value Collateral is denied, the court having determined that the value of the Collateral is $29,225, but the claim asserted by Wells Fargo Bank, N.A. is only $22,864.28.

13. 18-22497-E-13 RSM-1 — ROBERT MAC BRIDE, Pro Se — MOTION TO CONFIRM PLAN, 9-4-18 [47]

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)(2) Motion—Hearing Required.

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

Robert Stuart Mac Bride ("Debtor") seeks confirmation of the First Amended Plan, which would be the first Confirmed Plan in this case. Dckt. 47. The Amended Plan proposes monthly payments of $50.00 for May through August 2018, $3,100.00 thereafter for the plan term, and $6,000.00 in inventory sale proceeds. Dckt. 51. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on October 5, 2018. Dckt. 76. Trustee opposes the Motion on the following grounds:

1. Debtor has paid $200 to date into the plan, and is delinquent $3,100 under the plan terms.

2. Debtor's plan payment is insufficient to cover the Class 1 claim of Deutsche Bank. Debtor lists th monthly payment at $1,848.65 but proposes only $50 for four months and $3,100 thereafter.

3. Debtor does not describe the inventory being sold to generate the $6,000.00 lump sum payment. Therefore, the Trustee cannot assess the sale's reasonability or whether the court will approve the sale.

4. Debtor's plan relies on the Objections to Claim of Deutsche Bank set for hearing October 16, 2018.

5. Debtor uses two different Motion Control Numbers to identify documents filed with the Motion.

DISCUSSION

Trustee's arguments are well-taken.

The plan relies on an Objection to Claim of Deutsche Bank filed September 17, 2018. Dckt. 61. The court overruled the objection on October 17, 2018. Order, Dckt. 91. Therefore, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor is also delinquent in plan payments, does not provide for Class 1 creditor Deutsche Bank's claim during the months of May through August 2018, and does not adequately describe what inventory Debtor plans to sell for $6,000.00 to put towards the plan. These are all additional grounds showing the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Robert Stuart Mac Bride ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

14. **13-35315-E-13 WSS-7** **STUART/TAMMIE CLARK** **W. Steven Shumway** **MOTION TO MODIFY PLAN** **9-14-18 [104]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 12, 2018. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXXXXXXXXXX.

Stuart and Tammie Clark ("Debtor") seek confirmation of the Modified Plan because they sold their home in May 2018, paid in full all loans secured by the property, and now propose paying their three remaining payments under the Plan from the non-exempt proceeds currently held by the Chapter 13 Trustee, David Cusick (the "Trustee"). Dckt. 106. The Modified Plan proposes to use the remaining proceeds held by the Trustee to make payments of $1,200.00 on October and November 25, 2018, and a payment for "the remaining balance" on December 25, 2018. Dckt. 108. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee filed an Opposition on October 4, 2018. Dckt. 112.

The 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 Trustee asserts it is unclear whether the proposed Plan would pay unsecured creditors what they would receive under Chapter 7, since Debtor is proposing to use nonexempt sale proceeds (the total amount of nonexempt funds not specified but Trustee estimates at $18,343.04) to make payment under the plan. The Order granting the Motion to Sell Property (Dckt. 96) provided that monies not disbursed to creditors holding secured claims would be disbursed by the Chapter 13 Trustee as an additional payment.

The Trustee further opposes the Motion on the basis that the Plan is not Debtor's best efforts. The Trustee asserts the "Schedules" provided as exhibits (not filed as Amended or Supplemental Schedules) attached to this Motion indicate Debtor has a net monthly income of $1,012.51, despite Debtor not making any payments since June 2018. Debtor's attached list of expenses now budgets $800.00 for alimony, maintenance, and support, which does not appear on the attached list of income for Debtor, and Debtor's declaration states Debtor has no domestic support obligation. The list of expenses also includes two vehicle payments totaling $639.00, which do not appear on previous Schedules where there were two other vehicles listed on Schedule B on December 3, 2013, which were paid in full under the Plan, and a third vehicle not provided for in Debtor's Plan. The Trustee argues that it appears Debtor purchased the two vehicles without court authorization.

DISCUSSION

The existing Chapter 13 Plan requires payments of $3,149.00 a month for the first 36 months of the Plan and then payments (commencing with January 2017) of $3,417.00 for the remaining 24 months of the Plan. Plan, Additional Provisions; Dckt. 56 at 6. The Plan provides for curing the default on the debt secured by Debtor's residence (Class 1), payment on Debtor's two vehicles (Class 2), and payment of Debtor's nondischargeable tax obligation (Class 5). Dckt. 56. For general unsecured claims (Class 7), Debtor commits to a dividend of 0.00%. *Id.*

Based upon the information provided by Debtor, the court estimated that there would be $30,000.00 in net proceeds from the sale. Civil Minutes, Dckt. 95 at 3. As stated by Trustee, the court's order approving the sale included the following additional language:

> F. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow. Said monies shall be an additional plan payment, to be disbursed by the Chapter 13 Trustee through the Plan.

Order ¶ F, Dckt. 96. This was pursuant to the relief requested in the Motion which states:

> 7. From the proceeds of the sale, the first lender will be paid in full; the real estate brokers will receive $25,800. The remaining funds will be deposited with and administered by the Chapter 13 trustee.

Motion (second) ¶ 7, Dckt. 84.

As pointed out by the Trustee, Debtor's proposed Modified Plan is not consistent with the prior order and existing confirmed Plan. The confirmed plan continues through January 2019 (the sixtieth month of the Plan). In addition to the net sales proceeds (the estimated $30,000), for the months of October, November, and December 2018 and for January 2019 Debtor owes $3,417.00 a month, for a total of $13,668 – in addition to the sales proceeds.

In the Motion to Confirm the Modified Plan, Debtor makes a reference that since the claims secured by the residence have been paid, they no longer need to be made through the plan. Motion ¶ 4, Dckt. 104. While such may be true, the Motion does not state grounds why $1,200 a month is the new "magic" plan payment number.

Debtor's Modified Plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor has supplied insufficient information regarding the nonexempt proceeds of the sale of Debtor's property. Debtor is proposing a 1 percent dividend to unsecured claims, additional assets exist. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a 1 percent dividend (approximately $1,428.84) when there may be upward of $18,343.04 in non-exempt assets.

Debtor's Modified Plan also is not Debtor's best efforts. As provided by Congress in 11 U.S.C. § 1325(b)(1):

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

Debtor has not made a plan payment since February 2018. However, Trustee estimates Debtor's net income has likely been at least $1,012.51 since June 2018. Declaration, Dckt. 113. Debtor not having filed any Amended or Supplemental Schedules, Debtor's income is $3,150.07 [FN.1]. Schedule J, Dckt. 1. It appears Debtor decided to sell its real property, using the proceeds in the place of Debtor's disposable monthly income.

FN.1. Debtor's Declaration states the attached Schedules are "new Schedules." Dckt. 106. This designation does not help the court determine whether the Schedules are intended to be supplemental or amended. As the Declaration does not authenticate the "new Schedules," the only Schedules available for the court to rely upon are Debtor's original Schedules.

For income, Debtor has filed an income statement (using the Schedule I form), Dckt. 107. Debtor has $6,604 in gross income and Co-Debtor has gross income of $7,564.73. *Id.* at 2. In the Declaration, Debtor states that the two debtors are now separated and have expenses for two separate households. Declaration ¶ 5, Dckt. 106. No Supplemental Schedule I and Schedule J (one for each debtor) have been filed.

Debtor has included with the Exhibit a list of expenses for the two households, using the Schedule J form. *Id.* at 4-7. Debtor lists having two teenage children.

For the first debtor, from his $6,604 gross income, he shows a tax withholding of $2,807.36, and take-home income of $3,796.64. *Id.* at 3. For his expenses, first debtor shows expenses of $3,755.00, which would leave him monthly net income of only $41. As discussed above, first debtor asserts he is paying $639 a month in car payments (which should not exist - see below) and $800 in alimony or support.

Debtor's attached expense statement (using the Schedule J forms) convey uncertainty as to the Debtor's financial circumstances. The attached expenses for the first debtor indicate vehicle payments of $229 and $410. However, Debtor's claims secured by vehicles were paid in full through the Confirmed Plan.

Dckt. 113. Debtor never sought court approval to incur additional debt. It is not clear how long Debtor has been paying $639 outside the Confirmed Plan, nor how Debtor was able to afford this payment given Debtor was purportedly providing all disposable income towards the Confirmed Plan.

In their Declaration, Debtor states that neither of them have a "domestic support obligation." Declaration ¶ 9, Dckt. 106. With the$800 added back in (since there are no "domestic support obligations") first debtor's apparent projected disposable income is $841.00 a month. When the $639.00 in car payments that cannot exist are added back in, first debtor's projected disposable income grows to $1,480.00 a month.

Expenses for the co-debtor are provided as part of the Exhibit. Dckt. 107 at 6-7. For co-debtor's income, from her gross income of $7,564.73, she has deductions of $2,796.88, for which she computes her take-home income to be $4,767.87. *Id.* at 3. Her deductions include an extra $400 for voluntary contributions to her retirement plan (in addition to the $796.75 in mandatory contributions). *Id.*

For her expenses, co-debtor lists $3,755.00. *Id.* at 6-7. When subtracted from her stated $4,767.87 in take-home income, that would leave an apparent $1,012.87 in co-debtor's income to fund the plan. When the $400 voluntary additional contribution to co-debtor's public school district retirement plan, her projected disposable income appears to be at least $1,412 a month.

First debtor's projected disposable income of $1,480.00 and co-debtor's $1,412 disposable income a month total $2,892 a month with which Debtor has, and has had, to fund a plan, even after being separated.

From the Trustee's prior Motion to Dismiss (Dckt. 100), it appears that Debtor is in default in Plan payments since February 2018. Even using the lesser $2,892.00 in projected disposable income (post-separation, two households), then for the period February through September 2018, there is $23,136.00 in monies to make the monthly plan payments, which can then continue through January 2019.

At the hearing, counsel for Debtor stated **xxxxxxxxxxxxxxxxxxxxxxx**

~~Debtor's 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 Stuart and Tammie Clark ("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 **XXXXXXXX**.

15. 17-25221-E-13 PGM-5 TOMMIE RICHARDSON Peter Macaluso MOTION TO CONFIRM PLAN 8-29-18 [151]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 29, 2018. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Tommie Richardson ("Debtor") seeks confirmation of the Fourth Amended Plan, no plan having been confirmed to date in this case filed August 7, 2017. Dckt. 151. The Amended Plan provides for, $167,770.66 paid by August 2018, and $600.00 payments for the remaining 24 months of the Plan beginning in September 2018. Dckt. 155. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on October 5, 2018. Dckt. 159.

Trustee contends that Debtor has failed to either propose the Trustee pay the claims brought by the California State Controller, City of Oakland, and City of Oakland – City Wide Liens, nor has Debtor proposed to litigate the validity of those claims. The Trustee asserts that Debtor's continued failure to act on this issue, raised by Trustee in the previous Opposition filed against Debtor's previous Motion to Confirm, indicates the plan is proposed in bad faith. 11 U.S.C. § 1325(a)(3).

The Chapter 13 Trustee also alleges that the Plan is not Debtor's best efforts, as Trustee asserts **Debtor is above median income with a purported negative excess income of -$1,127.08** and a 36 month plan term proposing to pay unsecured claim holders a 57 percent dividend.

The Trustee alleges finally that Debtor fails the liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's nonexempt equity totals $142,120.66 and Debtor is proposing a 57 percent dividend to unsecured claim holders totaling only $112,766.84. Debtor's nonexempt assets are in large part from the foreclosure of real property which resulted in proceeds of $160,570.66.

DEBTOR'S REPLY

Debtor filed a Reply on October 16, 2018. Dckt. 162. Debtor states he is not opposed to the Trustee holding sufficient funds to pay claims brought by the California State Controller, City of Oakland, and City of Oakland – City Wide Liens while Debtor pursues the validity of the claims. Debtor further agrees with Trustee that the plan term should be 60 months.

Regarding Trustee's final grounds for opposition, Debtor agrees to pay the non-exempt amount of $142,120.66, less the Chapter 7 administrative expenses ($10,374.12) and the priority claims ($15,160.03), for a total of $116,948.28 to unsecured creditors (53.6 percent).

RULING

Debtor's long standing inability to prosecute and confirm a plan, as well as proposing a plan that is facially defective by omitting creditors holding a secured claim raises serious good faith issues.

Though the case is now twenty-five months old, Debtor has not filed Supplemental Schedules I and J or evidence of the actual current income and expense information. The best Debtor is willing to do is the following statement in his Declaration:

> 10. That I am able to make all payments under the plan. The primary source of my income for my household is from pension and I anticipate this income source for the remainder of the plan, my wife's singing tours, and now her social security.

Declaration ¶ 10, Dckt. 153. The court's review of the file could not identify any other statement of income and expenses other than the original Schedules I and J. On Schedule I, Debtor states under penalty of perjury that he has pension income of $3,489.70 and retirement income of $117.98. No Social Security income is listed for Debtor. Dckt 13 at 21. For the non-debtor spouse, Debtor lists $2,500 in net monthly income from her business as a singer. *Id.* No Social Security income is listed for the non-debtor spouse. *Id.* The court could not identify any required statement of gross monthly income and expenses from the non-debtor spouse's business.

For Schedule I, Debtor lists having combined monthly income of $6,107.68 in gross income. *Id.* On Schedule J Debtor lists having $5,507.68 in expenses. *Id.* at 23. Of this, $2,601.41 is for the mortgage. Though having $6,107.68 in gross income and there being no withholding or deductions on Schedule I, Debtor does not include any expense for federal or state income taxes, self-employment taxes, or other employment related taxes. *Id.* at 22-23.

Using the Schedule I and Schedule J information, Debtor would have only $600.00 a month in net monthly income. However, that monthly net income may be substantially more, with the non-debtor spouse being able to pay her share of expenses from the Social Security income.

Debtor's response, argued by counsel, is little more than a "oh, you caught me trying to violate the Bankruptcy Code, don't worry, I'll amend the Plan (but don't look at my actual income) to provide a plan as required by the Bankruptcy Code." This cavalier attitude as to the law is indicative of a bad faith debtor, prosecuting a bad faith plan, in a case filed in bad faith.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Tommie Richardson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied and Debtor's Fourth Amended Chapter 13 Plan filed on August 29, 2018, is not confirmed.

16. 18-26203-E-13 CATHERINE PORTER MOTION TO EXTEND [IMPOSE] AUTOMATIC STAY

PGM-1 Peter Macaluso 10-6-18 [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 the Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 6, 2018. By the court's calculation, 17 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 denied.

Catherine Porter ("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. As discussed, *infra*, no stay is in effect in this case and therefore the court construes the Motion to be a request for imposition of the stay.

Debtor's most recent prior bankruptcy case (No. 17-27030) was dismissed on March 26, 2018, after Debtor became delinquent and failed to make any payments into the Plan. *See* Order, Bankr. E.D. Cal. No. 17-27030, Dckt. 42, 43, March 26, 2018. Debtor's next most recent case was filed September 30, 2013, but was not dismissed until April 13, 2017 (again for failure to make payments). *See* Order, Bankr. E.D. Cal. No. 13-32737, Dckt. 76, April 13, 2017. Therefore, Debtor has had two cases pending within the past to years, and stay has not gone into effect in this case. S*ee* 11 U.S.C. § 362(c)(4).

Debtor also recently filed cases on:

1. July 24, 2012 (12-33581; dismissed January 22, 2013 for failure to make payments and unreasonable delay);

2. October 10, 2011 (dismissed April 11, 2012 for failure to make payments); and

3. February 18, 2009 (dismissed November 5, 2009 for failure to make payments).

See Order, Bankr. E.D. Cal. No. 12-33581, Dckt. 46, January 22, 2013; Order, Bankr. E.D. Cal. No. 11-44231, Dckt. 28, April 12, 2012; Order, Bankr. E.D. Cal. No. 09-22710, Dckt. 35, November 5, 2009.

DEBTOR'S DECLARATION

Debtor states in her Declaration that the previous case was dismissed because she incurred unexpected medical costs that required medication not covered by her Medicare coverage, causing financial instability. Dckt. 13, ¶ 2. Debtor filed the case solely to prevent foreclosure on her home. *Id*., ¶ 3.Debtor asserts her circumstances have changed since her previous filing, including her paying HOA arrears down from $10,000 to $7,000 and Medicare covering "all monthly fees." *Id*., ¶ 4.

Debtor finally states she has hired attorney Peter Macaluso, and is confident in his ability to represent her and propose a solid Chapter 13 Plan. *Id*., ¶ 5.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick (the "Chapter 13 Trustee"), filed an Opposition to this Motion on October 10, 2018. The Trustee indicates concern over whether circumstances have changed given Debtor's filing of a "skeleton petition." Trustee notes Debtor has filed six cases since 2009, reported similar income in the prior two cases, and has had the same attorney in the prior four cases.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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

Debtor's Motion proceeds incorrectly on the premise that 11 U.S.C. § 362(c)(3) applies, and therefore has not provided much relevant argument.

However, based on the facts presented the court finds that Debtor's financial and personal affairs have not changed substantially since her two cases prior to this filing. Therefore, the present case was presumptively filed not in good faith. 11 U.S.C. § 362(c)(4)(D).

Debtor has not provided an explanation for why she needs to be perpetually in bankruptcy for what has been nearly a decade. Unfortunately, as all of Debtor's cases having been dismissed for failure to make payments, it appears Debtor's case is not feasible for a Chapter 13.

While Debtor indicates confidence in "now" having an attorney, the court does not share that confidence in the Debtor turning a new corner. Debtor states in her Declaration "I have hired attorney, Peter Macaluso" as though he were not her attorney in her prior three cases. Even having first-hand personal knowledge of the prior filings, Debtor's counsel sought relief under a wholly inapplicable code section, not seeing fit to alert the court within the Motion that Debtor is actually a serial filer who has been in bankruptcy for nearly a decade. Debtor believes her counsel could "propose a solid plan," but this is unlikely where Debtor has so thoroughly demonstrated financial inability to support a plan.

The Motion is denied and no stay is in effect.

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

IT IS ORDERED that the Motion to Extend the Automatic Stay is denied, and no stay is in effect in this case.

Final Rulings

17.	**13-32494-E-13 GEL-2**	**THEODORE/MOLLY MCQUEEN Gabriel Liberman**	**MOTION FOR COMPENSATION FOR GABRIEL E. LIBERMAN, DEBTORS ATTORNEY(S) 9-25-18 [268]**

Final Ruling: No appearance at the October 23, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 25, 2018. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gabriel Liberman, the court-appointed Attorney ("Applicant") for Debtors Theodore and Molly McQueen,("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 24, 2018, through September 25, 2018. The order of the court approving employment of Applicant was entered on April 24, 2018. Dckt. 251. Applicant requests fees in the amount of $4,290.00 and costs in the amount of $41.00.

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.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include general administration of the Bankruptcy Estate, fee and employment applications, adversary litigation, and the sale of the Estate's assets. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 2.0 hours in this category. Applicant discussed with the Client preparing and submitting the substitution of counsel and order, reviewing the Court files and potential issues with closing the case and other general case status questions the Debtors raised.

Fee and Employment Applications: Applicant spent 2.0 hours in this category. Applicant prepared the fee application for Law Offices of Gabriel Liberman, APC, as counsel for debtor.

Adversary Proceedings: Applicant spent 1.6 hours in this category. Applicant negotiated the settlement of adversary cases (14-02027) and (14-02204) and prepared the stipulation (Dckt. No. 116).

Sale of Assets: Applicant spent 10.0 hours in this category. Applicant discussed, advised the Client on, and ultimately drafted a motion to sell assets of the bankruptcy Estate, Debtor's Third Amended Plan having required the Client to sell its business in order to fund the plan.

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**
Gabriel Liberman	15.6	$275.00	$4,290.00
Total Fees for Period of Application			$4,290.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $41.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage	$0.50	$41.00
Total Costs Requested in Application		$41.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $4,290.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Costs & Expenses

First and Final Costs in the amount of $41.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee 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:

Fees	$4,290.00
Costs and Expenses	$41.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gabriel Liberman ("Applicant"), Attorney for Theodore and Molly McQueen, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gabriel Liberman is allowed the following fees and expenses as a professional of the Estate:

Fees in the amount of $4,290.00
Expenses in the amount of $41.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor as a final allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330].

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

18. 18-22041-E-13 RJ-4 | **KRISTY NEAL** | **Richard Jare** | **MOTION TO INCUR DEBT** | **10-9-18 [69]**

Final Ruling: No appearance at the October 23, 2018 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 9, 2018. Debtor was required to serve notice on all creditors. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is denied.

Kristy Neal ("Debtor") seeks permission to purchase a 2017 Mazda Mazda3 Touring Sedan, with a total purchase price of $23,570.51 and $502.00 payments to Westlake Financial Services over 72 months with a 21.99 percent interest rate. Debtor seeks to purchase a new vehicle because her current 2012 Mazda requires repairs which Debtor estimates will cost over $7,000. Dckt. 72.

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

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

While the court is sympathetic to the Debtor's need for a new vehicle, Debtor has not adequately address the reasonableness of incurring debt to purchase a new 2017 vehicle while also seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor explains in her Declaration that she needs a "very late model car" because she has a long commute to San Francisco. Dckt. 72. The court interprets this to mean Debtor requires a functionally reliable vehicle, likely with low miles. However, Debtor's premise that a long commute (i.e. need for a reliable vehicle) necessitates a "very late model car" is not persuasive.

The loan sought calls for a substantial interest charge—22%. It is unclear to the court how in good faith Debtor could propose to purchase a new car when paying holders of unsecured claims a 6 percent dividend. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a relatively new car and attempt to borrow money at a 22% interest rate.

Here, the transaction is not in the best interest of Debtor. The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Kristy Neal ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied, and Kristy Neal is not authorized to incur debt pursuant to the terms of the agreement, Exhibit 1, Dckt. 71.

19. **18-24482-E-13** **AGNES DINOROG** **MOTION TO CONFIRM PLAN**
MMM-1 **Mohammad Mokarram** **9-17-18 [20]**

Final Ruling: No appearance at the October 23, 2018 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 September 17, 2018. By the court's calculation, 16 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Agnes Beltran Dinorog ("Debtor") has provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on October 4, 2018. Dckt. 25. 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 Agnes Beltran Dinorog ("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 September 17, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. 16-22687-E-13 TAG-1 — DAVID/SHARON NEIHART — Aubrey Jacobsen — AMENDED MOTION TO MODIFY PLAN 9-21-18 [53]

Final Ruling: No appearance at the October 23, 2018 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 September 21, 2018. By the court's calculation, 32 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. David Earl Neihart and Sharon Dale Neihart ("Debtor") have filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition to the Motion on October 4, 2018. Dckt. 56. Trustee notes the plan provides for payment of $4,150 for 33 months, where only 32 months remain. Trustee further notes only two pages of Debtor's Declaration appear on PACER and

therefore Trustee is uncertain all parties in interest received all pages (though a complete Declaration is filed on the docket (Dckt. 54)).

Debtor filed a Reply to Trustee's Opposition on October 11, 2018,concurring with the two errors. Debtor states that all parties in interest did receive paper copies of the full Declaration, and requests that the plan term be amended to provide payments for 32 months in the Order confirming the plan.

Trustee's grounds for opposition have been addressed. 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 David Earl Neihart and Sharon Dale Neihart ("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 September 4, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, with the amended plan term, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. **18-23365-E-13 JB-4** **TENA ROBINSON** **Jason Borg** **CONTINUED MOTION TO CONFIRM PLAN** **7-23-18 [44]**

Final Ruling: No appearance at the October 23, 2018 hearing is required.

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

The hearing on the Motion to Confirm is continued to November 6, 2018, 3:00p.m.

The Motion to Confirm the Amended Plan filed by Tena Robinson ("Debtor") was filed July 23, 2018. Dckt. 44. On August 23, 2018, Debtor filed an Ex Parte Application to continue the hearing on the Motion on the grounds that there is a contested Motion to Value Real Property set to be heard on November 6, 2018, which will directly and necessarily affect the court's decision on the Motion to Confirm First Amended Chapter 13 Plan. Dckt. 70. This court granted the Debtor's Ex Parte Application and by prior order continued the hearing on the Motion to October 23, 2018, which is the date Debtor requested. Dckt. 77.

As the motion to value collateral is still pending, the court continues the hearing on this Motion to November 6, 2018 at 3:00 p.m. to be heard alongside that motion.

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 Tena H. Robinson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Confirm is continued to November 6, 2018, 3:00p.m.

22. **18-25045-E-13 DPC-1** **DARREL BALDERSTON** **Dale Orthner** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-19-18 [16]**

Final Ruling: No appearance at the October 23, 2018 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on September 19, 2018. 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.

The Objection to Confirmation is overruled as moot.

David Cusick ("the Chapter 13 Trustee") objects to confirmation of Darrel Balderston's ("Debtor") Chapter 13 plan. Debtor filed a Notice of Conversion on October 16, 2018–-converting the case to a proceeding under Chapter 7. Dckt. 20. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on October 16, 2018. *McFadden*, 37 B.R. at 521.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot.