

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 27, 2020 at 2:00 p.m.

1.	<u>20-23901</u>-E-13 <u>DPC-1</u>	WENDY MORGAN Michael Hays	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-7-20 [56]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on October 7, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

- A. Debtor is delinquent in plan payments.
- B. Debtor failed to provide tax returns.
- C. Debtor failed to provide pay advices.
- D. Debtor's Plan fails the Chapter 7 liquidation analysis.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$1,320.00 delinquent in plan payments, which represents one month of the \$1,320.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Trustee, Schedules A, B, and C show that the total value of non-exempt property in the estate is \$1,820.00 and the total amount paid to unsecured creditors is \$0.00.

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.

[illegible]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 23, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is overruled in part as to the California exemptions based on the now filed spousal waiver; and sustained in part as to the use of two exemptions under 11 U.S.C. §522(d)(12), which are disallowed in their entirety.

David Cusick (“the Chapter 13 Trustee”) objects to Luigi Leandro Christen’s (“Debtor”) use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140. Trustee also objects to Debtor’s use of two exemptions under 11 U.S.C. §522(d)(12).

DISCUSSION

California Code of Civil Procedure § 703.140(a)(2), provides:

If the petition is filed individually, and not jointly, for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if **both** of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(emphasis added). The court's review of the docket reveals that the spousal waiver was filed on September 24, 2020. Dckt. 24. The Trustee's Objection is overruled.

With respect to the exemptions that Debtor may claim when filing bankruptcy in the Eastern District of California, the California Code of Civil Procedure §703.130 provides:

Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 of the United States Code, **the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.**

(emphasis added).

The court's review of Debtor's Schedule C reveals that Debtor is claiming two exemptions under 11 U.S.C. §522(d)(12) one for \$47,629.69 in "Vanguard-401(k) through employer" and one for \$68,730.02 in "Upoint." Dckt. 1. Pursuant to C.C.P. §703.130 a debtor in California may not claim exemption under 11 U.S.C. §522.

In the Response, Debtor's counsel only argues that the waiver of exemptions has been filed, but does not address the objection as it relates to California having opted-out of the 11 U.S.C. § 522(d) exemptions.

However, though not referenced in the Response, slipped in after the Response is an Amended Schedule C on the Docket. Dckt. 26. On Amended Schedule C the source of the exemption for the Vanguard-401(k) and the Upoint is stated to be California Code of Civil Procedure § 703.140(b)(10)(E). ^{FN.1.}

FN. 1. California Code of Civil Procedure § 703.140(b)(10)(E) states:

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

Debtor has addressed the Trustee's objection in filing the Amended Schedule C. The court sustains the objection to the claim of exemption, without prejudice to Debtor having filed the Amended Schedule C.

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 Claimed Exemptions 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 Objection is overruled in part as to the spousal waiver which was filed September 24, 2020 (Dckt. 24).

IT IS FURTHER ORDERED that the Objection is sustained as to the claimed exemptions for "Vanguard-401(k) through employer" and "Upoint" pursuant to 11 U.S.C. §522(d)(12) are disallowed in their entirety. This is without prejudice to Debtor filing the Amended Schedule C, Dckt. 26, asserting the exemption of these two assets pursuant to California Code of Civil Procedure § 703.140(b)(10)(E).

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 October 7, 2020. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

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

- A. The Plan may not be in the Debtor’s best effort.

DISCUSSION

Trustee’s objections are well-taken.

Not Best Effort

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

If the trustee or the holder of an allowed unsecured claim objects to the

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

Debtor's testimony at the Meeting of Creditors indicated that Debtor may now be employed as a bricklayer. Debtor's schedules reflect income from unemployment and social security. The Plan proposes to pay a 17 percent dividend to unsecured claims, which total \$69,567.00, though Debtor's projected disposable income totals \$260.00. Trustee cannot determine if Debtor can realistically pay more than the \$260.00 per month proposed by the plan without a declaration and supplemental Schedules I and J. Thus, the court may not approve the Plan.

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

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

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

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

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

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

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

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 October 8, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

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

- A. The unsecured debt limit has been exceeded.
- B. Debtor cannot comply with the Plan.
- C. The Plan does not provide for all priority debt.
- D. Debtor failed to provide business documents.
- E. Debtor failed to provide tax returns.

DISCUSSION

Trustee's objections are well-taken.

Section for 109 Amount of Debt Compliance

Debtor does not qualify for Chapter 13 treatment because the unsecured debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$419,275 and noncontingent, liquidated, secured debts of less than \$1,257,850."

According to Trustee, Debtor testified at the Meeting of Creditors that there may be several judgments not identified in Debtor's Schedules, such as a National Elevator Pension Fund judgment in the amount of \$220,000, which would take Debtor's unsecured priority unsecured debts to over \$564,128, which exceeds the debt limit of \$419,275.

Cannot Comply with the Plan

Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtors admitted at the Meeting of Creditors that not all debts are listed in Schedules D through F. Debtors also admitted at the Meeting of Creditors that there is a business income of \$7,040.00 but Debtors have failed to attach a Business Income and Expense Statement. Further, Debtors reported at the Meeting of Creditors that Debtor Lindsey's unemployment benefits had run out and that Debtors currently have no income to fund the Plan. Lastly, Trustee reports that Debtors received funds totaling \$23,517.23 on July 31, 2020 and \$23,000.00 was withdrawn from the account on the same day. The Statement of Financial Affairs does not reflect these funds were received by Debtors nor does form 122C-1#10. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Plan is Overextended

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 75 months due to the Internal Revenue Service having a claim for \$19,580.42 in priority unsecured debt (Proof of Claim 10), filed on September 11, 2020, where Debtor's Schedules list the amount as "unknown." The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to File Documents Related to Business

Debtors have failed to timely provide Trustee with business documents including:

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

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2)

& (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor's submission of all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 18, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is DENIED.</p>
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The debtor, Hortencia M. Nunez ("Debtor") seeks confirmation of the Modified Plan to provide for the delinquency that had occurred because Debtor was laid off from her job due to COVID-19. Declaration, Dckt. 59. The Modified Plan provides monthly plan payments for 67 months, and a 0 percent dividend to unsecured claims totaling \$36,451.77. Modified Plan, Dckt. 60. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 7, 2020. Dckt. 66. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor cannot comply with the Plan.
- B. The Plan is misleading.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee reports that the Modified Plan attempts to cure post-petition arrearage. However, the Debtor does not state the months for which the payments are to be made. Trustee, therefore is unable to fully comply with § 3.07(b) of the Plan. However, Trustee would not oppose clarification of this issue in the Order Confirming the Plan.

Debtor filed a Reply on October 20, 2020. Dckt. 69. Debtor requests that the following language be added to the Order:

The post-petition arrears owed to Shellpoint Mortgage Servicing in the total amount of \$2,995.10 for the months of March 2020 and July 2020 shall be treated as a Class 1 claim with a monthly arrearage dividend of \$45.00.

Therefore, this objection is resolved in favor of the Debtor.

Misleading Plan

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Trustee reports that Debtor proposes in § 3.14 of the Plan a dividend of no less than 0 percent to unsecured claims. However, according to the Trustee's calculations, Class 7 creditors will receive approximately a 22 percent dividend. The Plan does not comply with 11 U.S.C. § 1325(a)(1). Trustee would not oppose clarification of this issue in the Order Confirming the Plan.

In the Reply, Debtor asserts that the dividend of no less than 0 percent to Class 7 creditors is proper. Debtor notes that the previous Chapter 13 plan was confirmed at a 0 percent dividend to unsecured creditors. Furthermore, the deadline for creditors to file claims has passed. Therefore, the dividend to unsecured creditors remaining at 0 percent would not mislead creditors.

Additionally, counsel for Debtor asserts that he will seek additional attorney fees in this case and the Trustee's fees will likely adjust by the end of the plan term.

Debtor's counsel has long practiced in this District and knows that "creative," misleading plan terms are not permitted. Debtor, and Debtor's counsel, must in good faith and consistent with the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011 make true, correct, and accurate statements in pleadings filed with the court.

While it is "true" that 22% is no less than 0%, Debtor and Debtor's counsel must make a good faith estimate of what the unsecured dividend will be and not mislead creditors into thinking that it is nothing.

In the Response, Debtor's counsel makes an argument that the court does not understand:

The deadline for creditors to file claims passed on May 17, 2019 and the

deadline for governmental creditors to file claims passed on September 4, 2019. Therefore, the dividend to unsecured creditors remaining at 0% does not mislead creditors.

Response, p. 2:7-11; Dckt. 1. This makes it sound like no unsecured claims have been filed in this case. Such is clearly not an accurate statement. A slew of unsecured claims have been filed, consisting of:

POC No. 1	LVNV Funding, LLC	\$ 730.60
POC No. 2	Discover Bank	\$4,710.93
POC No. 3.	Capital One Bank	\$ 668.07
POC No. 4-2	Discover Personal Loans	\$14,874.34
POC No. 7	American Express Nat. Bank.	\$ 463.62
POC No. 8	Bank of America	\$ 426.91
POC No. 10	Capital One, N.A.	\$ 60.31
POC No. 11	LVNV Funding, LLC	\$ 1,833.77
POC No. 12	LVNV Funding, LLC	\$ 2,023.15
POC No. 13	LVNV Funding, LLC	\$ 4,488.75
POC NO. 14	LVNV Funding, LLC	\$ 4,259.88
POC No. 14	Synchrony Bank	\$ 1,911.44

All of the above proofs of claim were filed before the May 17, 2019 filing deadline.

Debtor's counsel further argues that he intends to seek additional fees, so telling creditors to expect a 0% dividend is proper. The court is not provided with any calculation, but it does not appear that counsel's allowable fees for a modified plan would be 22% of the above general unsecured claims.

The proposed Modified Plan is misleading and inaccurate with respect to the proposed treatment of general unsecured claims. Counsel's argument, that since he slipped it by the court and Trustee previously, such misleading and inaccurate statement in the current proposed Modified Plan must be confirmed, is without merit.

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

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

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

hearing.

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is XXXXX.</p>
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The debtor, Robert Paul Hunter ("Debtor") seeks confirmation of the Modified Plan to cure the default that occurred after Debtor's income was reduced due to COVID-19. Declaration, Dckt. 98. The Modified Plan provides for monthly plan payments of \$2,015.00 for 12 months, followed by monthly plan payments of \$2,900.00 for 48 months, and a 0 percent dividend to unsecured claims totaling \$10,886.70. Modified Plan, Dckt. 99. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 7, 2020. Dckt. 105. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtors have incorrectly consolidated two periods of post petition arrears into one amount.
- B. Debtor may not be able to afford plan payment.

DISCUSSION

Treatment of Post-Petition Arrears as Separate Claims

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtors previously confirmed plan provided for two Bayview Loan Servicing's post-petition monthly payment of \$3,184.76 with a monthly dividend of \$55.00 of which \$2,515.17 is still owed.

However, because Debtor failed to make plan payments, Debtor failed to pay the post-petition contract installments in the amount of \$4,790.31 with a monthly dividend of \$101.00, of which \$4,790.31 is still owed.

Trustee asserts that Debtor consolidated the two periods of post-petition arrears into one incorrect amount. Therefore, Trustee is unable to comply with § 3.07(b) of the plan unless the periods are treated separately so that the payments owed can be properly accounted for.

Debtor filed a Reply on October 20, 2020. Dckt. 110. Debtor does not oppose the Trustee's request to treat the post-petition arrears as separate claims. Accordingly, Debtor requests that the following language be added to the Order:

The post-petition arrears owed to Bayview Loan Servicing, LLC for the period of October and November 2018 in the total amount of \$3,184.76 shall be provided for as a Class 1 claim and receive a dividend of \$55.00 per month.

The post-petition arrears owed to Bayview Loan Servicing, LLC for the period of May, June, and August 2020 in the total amount of \$4,790.31 shall be provided for as a Class 1 claim and receive a dividend of \$101.00 per month.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Modified Plan provides for monthly plan payments of \$2,015.00 effective October 25, 2020. Debtor filed supplemental Schedules I and J reflecting the ability to pay \$2,000.00.

Additionally, Debtor has failed to provide a statement to line 8a of Schedule I showing gross receipts, business expenses and net income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In the Reply, Debtor asserts that the \$15.00 difference is nominal and a payment of \$2,015.00 was processed by the Chapter 13 Trustee on October 1, 2020. Debtor's counsel makes reference to Supplemental Schedules I and J for this proposition, but does not put it in economic context. Going to Supplemental Schedule I, the Debtor and non-debtor spouse state a combined monthly income of \$4,572.12. Dckt. 101 at 4-5. No provision is made for payment of taxes (other than a nominal \$43.55) on Supplemental Schedule I. Debtor lists \$1,800 a month in rental or business income, \$1,859 in Social Security income, and \$610 in pension income. On Supplemental Schedule J Debtor states under penalty that the debtors pay no income tax or self-employment tax with respect to their \$4,572 monthly income.

At the hearing, ~~XXXXXX~~

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Robert Paul Hunter ("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 21, 2020, as amended:~~

~~The post-petition arrears owed to Bayview Loan Servicing, LLC for the period of October and November 2018 in the total amount of \$3,184.76 shall be provided for as a Class 1 claim and receive a dividend of \$55.00 per month.~~

~~The post-petition arrears owed to Bayview Loan Servicing, LLC for the period of May, June, and August 2020 in the total amount of \$4,790.31 shall be provided for as a Class 1 claim and receive a dividend of \$101.00 per month.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 21, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Aracely Rivas ("Debtor") seeks confirmation of the Modified Plan cure default after she lost her employment due to COVID-19. Declaration, Dckt. 59. The Modified Plan provides for monthly plan payments of \$185.00 for 71 months, and a zero (0) percent dividend to unsecured claims totaling \$58,716.77. Modified Plan, Dckt. 57. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

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

- A. The Plan does not provide for tax refunds over \$2,000.00.
- B. Failure to provide tax returns.
- C. Debtor has not provided a Declaration from her future son-in-law in support of the monthly contribution.

DISCUSSION

Tax Refunds Over \$2,000

Debtor's confirmed Plan provided for "All tax refunds received during the life of the plan, over \$2,000 are to be paid into the plan as additional payments." Debtor's modified Plan does not incorporate this language. Trustee requests that Debtor provide a copy of her 2019 tax returns and pay into the plan any refund over \$2,000.

Debtor filed a Reply on October 20, 2020 proposing the following additional language be added to the Order confirming the plan:

"All tax refunds received during the life of the plan, over \$2,000.00 are to be paid into the plan as additional payments."

Dckt. 68, ¶ 1.

Assistance from Future Son-In-Law

Debtor's Declaration in support of the proposed plan and the Supplemental Schedule I state that Debtor will be receiving financial assistance from her soon to be son-in-law. Declaration, Dckt. 59, at ¶ 3; Supplemental Schedule I, Dckt. 61, at 5. According to Trustee, Debtor has not provided a declaration from the son-in-law in support of the contribution.

In her Reply, Debtor states that a declaration will be filed before the hearing on this matter. *Id.*, ¶ 2.

At the hearing, xxxxxxxxxxxxxxxx

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

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

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

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

~~**IT IS ORDERED** that Motion to Confirm the Modified Plan is granted and the Modified Plan filed on September 21, 2020, as amended to provide:~~

~~All tax refunds received during the life of the plan, over \$2,000.00 are to be paid into the plan as additional payments;~~

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

8. [20-24158-E-13](#) **GEORGE/DOLORES PENCE** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Nicholas Wajda** **PLAN BY DAVID P. CUSICK**
10-8-20 [\[17\]](#)

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

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

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 October 8, 2020. By the court's calculation, 19 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 is delinquent in plan payments.
- B. Debtor's Schedule J expenses may not be accurate.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$497.00 delinquent in plan payments, which represents one month of the \$497.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor indicated at the meeting of creditors that the \$734 expense total listed for, "Telephone, cell phone, Internet, satellite, and cable services" may not be accurate. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on October 7, 2020. By the court's calculation, 20 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

At the hearing, **xxxxxxxxxxxxxxxx**

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

-----.

<p>The Motion to Sell Property is xxxxxxx .</p>

The Bankruptcy Code permits Cynthia Leeann Ross, the Chapter 13 Debtor, ("Movant") to sell property under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 5900 Bell Road, Redding, California ("Property").

A prior order was entered authorizing the sale of the Property to Pat Harrison and Babylyn Harrison. Dckt. 89. The new purchase agreement is with one of the original purchasers, where Babylyn Harrison has been "removed from the purchase contract and the loan documents, due to the 1031 exchange rules of replacement or exchange." See Exhibit 5, Dckt. 98.

The Motion also requests that the court order the first \$175,000 of the net sale proceeds be disbursed to the Debtor for her homestead exemption.

The proposed purchaser of the Property is Pat Harrison, and the terms of the sale are (the

complete terms are set on Exhibits 1 thru 5, Dckt. 98):

- A. Purchase price of \$300,000, with an initial deposit of \$2,000.00.
- B. Close of escrow to occur 60 days after acceptance.
- C. Buyer and Seller will split 50/50 the escrow fees, owner's title insurance policy, county transfer tax, and city transfer tax.

Prior Approval and Order

When the court approved the prior order, there were three very important items addressed. In substance, the present Motion merely seeks to amend the prior order, removing one of the parties from the transaction. However, the substance of what the Debtor seeks to accomplish is substantially different financially.

First, sufficient sales proceeds were to be paid to the Chapter 13 Trustee to complete the funding of the Chapter 13 Plan.

E. After payment of the above authorized expenses and holding the \$18,000.00 in escrow for possible real estate broker commissions, the Escrow, **the next monies shall be disbursed directly from escrow to the Chapter 13 Trustee in the amount of his demand for payment, with such demand to be for the amount the Trustee determines necessary to complete the Chapter 13 Plan in this case.** In the event of a dispute in the amount demanded by the Trustee, the escrow shall disburse the amount to the Chapter 13 Trustee as demanded, and any dispute shall be presented by the party asserting the dispute to this court.

Order, ¶ E; Dckt. 89. The Movant does not include that funding in the present request to effectively amend the prior order. The Debtor does not offer any grounds for “cutting out” the Trustee and plan estate from this funding.

Second, Debtor now requests that \$175,000 be taken off of the top of the net sales proceeds without regard to the funding of her plan. The grounds stated with particularity in the Motion merely say it is because of her “homestead exemption.” The Debtor does not state the legal basis for such exemption or any requirements under applicable state law that for such exemption to be effective, the monies must be reinvested in a homestead property within a limited time period.

Third, Debtor does not seek authorization to pay any real estate professional any commissions, fees, or expenses for providing services in connection with this sale. The court addressed this in the prior motion, stating in the Civil Minutes from the hearing on the prior motion (Dckt. 88, p. 3):

Though not referenced in the Motion, the Purchase Agreement filed as Exhibit A (Dckt. 69) makes reference to real estate agents for both the seller and the buyer. The court has not authorized the employment of a real estate broker by the Debtor and as of this time there is no commission authorized to be paid, and therefore no commission to be divided between the Buyer's broker and the

Seller's broker. It appears that the Debtor will need to hustle and get on file a motion for authorization to employ a professional - the real estate broker.

The court shall order that an amount equal to 6% of the gross sales price shall be held in escrow until the Chapter 13 Trustee confirms that such monies may be disbursed between the real estate brokers as provided in the Purchase Agreement, or that such monies are to be disbursed to the Chapter 13 Trustee, to be held pending further order of the court.

As stated above, the court provided the Debtor a cushion so she could comply with the law and obtain retroactive authorization to employ a real estate broker so that such broker could be compensated. In the prior order (which Debtor seeks to amend by this Motion) the court states:

E. After payment of the above authorized expenses and holding the \$18,000.00 in escrow for possible real estate broker commissions, the Escrow,

Order, ¶ E; Dckt. 89.

A review of the court's file discloses that Debtor has not sought the retroactive authorization for the employment of a real estate broker, and as such no real estate commission, fee, or expenses can be allowed for any real estate broker or agent providing services to the Debtor.

Creditor's Non-Opposition

On October 13, 2020, Creditor Nationstar Mortgage LLC d/b/a Mr. Cooper ("Creditor") does not oppose the sale so long as Creditor's lien is paid off in full satisfaction of the debt. Dckt. 101.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will payoff liens on the property and the Chapter 13 plan, and remaining proceeds will be paid to Debtor.

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

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

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

~~**IT IS ORDERED** that Cynthia Leeann Ross, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Pat Harrison or nominee~~

~~(“Buyer”), the Property commonly known as 5900 Bell Road, Redding, California
(“Property”), on the following terms:~~

- ~~_____ A. The Property shall be sold to Buyer for \$300,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1 thru 5, Dekt. 98, and as further provided in this Order.~~
- ~~_____ B. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~_____ C. No payment of any real estate broker’s or agent’s fees, commissions or expenses is authorized. Debtor has not obtained authorization to employ such real estate professional, either prior to the employment or retroactively. See Civil Minutes, p. 43; Dekt. 88.~~
- ~~_____ D. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~_____ E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow, who shall hold such monies pending further order of the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Okharina O. Holmes ("Debtor") seeks confirmation of the Modified Plan to cure default in her plan payments for March and April 2020 due to loss of income as a result of COVID-19 and unexpected home maintenance. Declaration, Dckt. 58. The Modified Plan provides payments of \$3,409.77 commencing September 2020 for the remainder of the plan months, and a zero (0) percent dividend to unsecured claims totaling \$22,228.94. Modified Plan, Dckt. 60. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 13, 2020. Dckt. 65. Trustee seeks clarification of the following:

- A. Debtor's Motion and Declaration propose inconsistent commitment periods.

DISCUSSION

Trustee seeks clarification as to the proposed commitment period. The Motion proposes 66 months where the Declaration and the proposed plan propose 68 months as the plan term. Trustee does not oppose extending the plan term to 68 months.

At the hearing, counsel for Debtor clarified xxxxxxxxxxxx

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

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on September 22, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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 October 7, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

-----.

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

Caliber Home Loans, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan fails to provide for cure of pre-petition arrearage.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$2,574.30 in pre-petition arrearage. The Plan does not

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

The 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 Caliber Home Loans, Inc. (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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 October 7, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

-----.

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

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

- A. Plan relies on Motion to Value filed but not yet heard or granted.

DISCUSSION

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Loan Mart. Debtor filed a Motion to Value the Secured Claim of LoanMart and was set for hearing on September 15, 2020. Dckt. 8. The hearing was continued to November 10, 2020. Dckt. 20.

On October 8, 2020 the parties filed a Stipulation where the parties agreed to valuing the collateral at \$6,125.00, and thus the secured claim to be paid through the Plan in the sum of \$6,125 at an interest rate of 5.0% with a monthly dividend of \$183.00. Dckt. 26. The court entered an order valuing the claim as provided in the Stipulation on October 19, 2020. Dckt. 28.

Debtor's Plan originally valued the secured claim at \$5,125.00 Dckt. 8. The Stipulation having valued the claim at \$6,125, this is \$1,000 over the original valuation in the proposed Plan.

No supplemental response pleadings have been filed by the Debtor addressing whether, in light of higher amount of the secured claim, the plan can be funded. Looking at the Plan, it is funded by Debtor with a \$270 a month payment for 36 months. Plan ¶¶ 2.01, 2.03; Dckt. 2.

First, from this will be paid the Chapter 13 Trustee fees of \$27 a month (computed at 10% of the plan payment), \$2,000 of fees for Debtor's counsel, which will be \$55.55 a month (\$2,000 / 36 months). Plan ¶ 3.05. These total \$82.55.

Then there will be the following Class 2 secured claim paid:

Solano County Tax Collector.....	\$39.00
Loan Mart (Car Loan).....	\$181.00
(Computed in Stipulation, Dckt. 26)	
Unsecured Dividend.....	\$-0-
Total Creditor Payment.....	\$220.00

Plan ¶¶ 3.08(d), 3.14

The \$220 payment monthly for creditors and the \$82.55 payment for Trustee fees and counsel fees total \$302.55, which is greater than the \$270 monthly plan payment.

No proposed amendments to the current plan have been filed by Debtor. Schedule I computes Debtor's monthly net income to be \$270, which is based on \$1,813.00 in Social Security, \$16 in food stamps, and a \$90 monthly contribution from "Son" for one-half of the property taxes. Dckt. 1 at 28. Debtor states having \$1,649 in monthly expenses. Schedule J, *Id.* at 29-30.

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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2020. 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).

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

The debtor, Troy Armean Hardin ("Debtor") seeks confirmation of the Modified Plan to cure default in plan payments which began when Debtor suffered a work-related injury in 2019 and was later exacerbated with medical and legal issues related to the injury and COVID-19 pandemic affecting workers' compensation processing of his claim. Declaration, Dckt. 206. The Modified Plan provides for monthly plan payments of \$365.00 for 15 months commencing September 25, 2020, and a 100 percent dividend to unsecured claims totaling \$3,065.20. Modified Plan, Dckt. 207. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 13, 2020. Dckt. 213. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Plan exceeds amount of time allowed under the Bankruptcy Code.

C. Debtor may not be able to make plan payments.

DISCUSSION

Delinquency

Debtor is \$250.00 delinquent in plan payments, which represents a portion of one month of the \$365.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

On October 20, 2020, Debtor filed a Reply stating that Debtor is now current after making a \$115.00 payment on October 7, 2020 and a \$250.00 payment in October 13, 2020. Dckt. 216.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, the Plan will complete in 86 months where the proposed plan will pay a total of \$5,110 but a total of \$5,173.99 is required in order to pay the proposed 100% dividend to creditors with unsecured claim, and trustee's fees.

In the Reply, Debtor asserts that the plan is feasible where Debtor will pay in a total of \$5,110 and the total amount due to pay all creditors at a 100% dividend including Trustee's fees is \$5,072. Dckt. 216, ¶ 2.

Trustee also argues the plan may not be feasible where Debtor fails to explain why he did not make payments for months April, May, June, and September, even though Debtor states he has been receiving State Disability of \$2,930.85 per month since April 2020 and began renting a room out in March 2020 for \$650.00. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, ~~xxxxxxxx~~

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 18, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtors, Eduardo M. Ortega and Marie E. Ortega ("Debtors") seek confirmation of the Modified Plan to cure default in plan payments after income was impacted by the COVID-19 pandemic and deferred home maintenance that became needed during the pandemic. Declaration, Dckt. 129. The Modified Plan provides monthly plan payments of \$6,400 for 68 months commencing September 25, 2020, and a 0 percent dividend to unsecured claims totaling \$196,123.11. Modified Plan, Dckt. 128. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 8, 2020. Dckt. 135. Trustee opposes confirmation of the Plan on the basis that:

- A. No explanation provided for the change in deduction reflected on Supplemental Schedule I.

B. Declaration refers to report not filed or provided to Trustee.

DISCUSSION

Unexplained Deductions

Trustee argues that the Supplemental Schedule I states increased deductions for Debtor Marie and decreased deductions for Debtor Eduardo which have not explained.

Missing Report

Trustee notes that Debtor's declaration refers to a time report that has not been filed. If Debtor wants the court to consider the report or provide to Trustee for evaluation, Debtor should submit it.

Debtor's Reply

On October 20, 2020 Debtor filed a Reply requesting the hearing on this motion be continued to allow Debtor to meet with counsel to draft supplemental pleadings regarding Debtor's income and expenses. Dckt. 138.

CONTINUANCE OF HEARING

While Debtor provides detailed testimony in the Declaration in support of the present motion, Dckt. 129, the information does not include the reasonability for the changes in deductions. Continuing the hearing to allow for the supplemental information is appropriate.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is XXXXX.</p>
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The debtors, Brian Edward Winship and Peggy Diane Winship ("Debtors") seek confirmation of the Modified Plan to cure default in plan payments after income was affected by the non-essential orders related to COVID-19. Declaration, Dckt. 65. The Modified Plan provides plan payments of \$930.00 for 50 months commencing September 25, 2020, and a 0 percent dividend to unsecured claims totaling \$22,525.01. Modified Plan, Dckt. 63. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 7, 2020. Dckt. 71. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor failed to attach supporting documentation for business income.
- B. Debtor's total paid through August 2020 as stated in the Plan is incorrect.

DISCUSSION

Failure to File Business Documents Required by Schedule I

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

Debtor filed a Reply on October 20, 2020 and responds that Debtor will file a supplemental income and expense attachment. Dckt. 74, ¶ 1. Further, Debtor explains that Debtor Peggy changed employers and will file further supplemental schedules to address this matter. *Id.*

At the hearing, **xxxxxxxxxxxxxxxx**

Incorrect Total paid through August 2020

The proposed Plan states Debtors have paid a total of \$54,040 paid through August 2020. According to Trustee the correct amount is \$54,060.00, as well as a payment posted on September 10, 2020 of \$1,910.00. Thus, Trustee requests the plan payments be modified in the order.

In the Reply, Debtor agrees with Trustee’s assessment and requests the following language be added to the order confirming the plan:

Debtor has paid a total of \$55,970.00 through September 2020. Plan payments of \$930.00 will begin October 25, 2020 for 49 months.

Dckt. 74, ¶ 2.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Brian Edward Winship and Peggy Diane Winship (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtors, Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtors") seek confirmation of the Modified Plan due to a significant reduction in income that requires them to reduce the dividend to creditors with unsecured claim to 4% and to reduce the plan payment to an amount they can afford. Declaration, Dckt. 205. The Modified Plan provides payments of \$1,000 for 29 months, and a 4 percent dividend to unsecured claims totaling \$462,762. Modified Plan, Dckt. 206. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 8, 2020. Dckt. 209. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. The plan is not feasible.
- C. Plan misstates the collateral value of the Internal Revenue Service.

D. Attorney's fees remain due.

DISCUSSION

Delinquency

Debtor is \$99,902.06 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan will complete in 30 months instead of the 29 months proposed due to the \$423,644.95 IRS claim, \$13,063.24 in priority claims, \$1,917.22 in unsecured claims, and \$2,507.06 in attorney's fees.

Additionally, the confirmed plan called for a lump sum payment estimated at \$359,000 from the sale of Debtor's home. After the sale, Trustee received \$252,672.94, significantly less than the estimated amount. The proposed modified plan misstates the lump payment as \$336,225. Trustee argues that if corrected, Debtor would be delinquent under the proposed plan by \$16,350.00.

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

Internal Revenue Service Claim

According to Trustee, the proposed plan misstates the collateral value of the Internal Revenue Service in Class 2 and proposes \$0.00 monthly dividend. The Trustee's records reflect that this claim is \$423,644.95.

Attorney's Fees

The proposed plan provides for \$0.00 monthly payment for attorney's fees. Per Trustee's records, \$2,507.06 remain due.

Debtor filed a Reply on October 20, 2020 requesting the court continue the hearing to November 24, 2020 to allow for Debtor's counsel to continue discussions with counsel for the trustee and the representative for the Internal Revenue Service to sort out the remaining claims held by the IRS and a consensual plan for payment. Dckt. 212. According to counsel for Debtor, the parties had agreed that Debtor would request the continuance for approximately 28 days so they may continue the discussions. *Id.*

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Daniel Lawrence Brennan and Allison Lyn Brennan (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXX.

The debtors, William John Herkel and Tonya Mae Herkel ("Debtors") seek confirmation of the Modified Plan because their income has been reduced due to the COVID-19 pandemic. Declaration, Dckt. 146. The Modified Plan provides payments of \$625.00 for the remainder of the plan commencing September 25, 2020, and a zero (0) percent dividend to unsecured claims totaling \$44,847.47. Modified Plan, Dckt. 149. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 8, 2020. Dckt. 153. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtors are delinquent in plan payments.
- B. Prior payments to unsecured creditors not authorized.

DISCUSSION

Delinquency

Debtors are \$25.00 delinquent in plan payments, which represents a portion of one month of the \$625.00 plan payment.

Trustee argues that while the current amount of delinquency may be *de minimis*, where the Debtors appears ready to continue underpaying where fifteen months remain in the plan, the current delinquency no longer appears so small.

Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Prior Payments to Creditors with Unsecured Claims

According to Trustee, the proposed plan does not authorize the payments already disbursed to creditors with unsecured claims now that the proposed plan proposes to reduce the percentage to creditors with unsecured claim from no less than 8.23% under the confirmed plan to 0%. Thus, without providing authorization for the payments made, Trustee must oppose the proposed plan.

At the hearing, xxxxxxxxxxxxxxxx

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtors, Justin Lee Robinson and Angela Alyssa Robinson ("Debtors"), seek confirmation of the Amended Plan. The Amended Plan provides for payments of \$5,257.00 for months 8 through 60 commencing September 2020, and a six (6) percent dividend to unsecured claims totaling \$154,000. Amended Plan, Dckt. 85. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed as Response on October 13, 2020. Dckt. 92. Trustee request the court take the following into consideration:

- A. Debtors have elected to cancel the forbearance offered by Mr. Cooper so that they may complete their plan without accruing further arrears.
- B. Debtors filed supplemental Schedules I and J as exhibits and not as supplemental schedules.
- C. Debtors are current in plan payments.

DISCUSSION

At the hearing, counsel for Debtors **XXXXXXX**

~~The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

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

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

~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Justin Lee Robinson and Angela Alyssa 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 Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on September 16, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 8, 2020. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Safe Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$6,824.00.

The Motion filed by Shirlean Sparkle Moore-Jordan (“Debtor”) to value the secured claim of Safe Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 10. Debtor is the owner of a 2015 Toyota Prius C Hatchback (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$6,824.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,972.59. Declaration, Dckt. 10. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$6,824.00, the value

of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Shirlean Sparkle Moore-Jordan (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Safe Credit Union (“Creditor”) secured by an asset described as 2015 Toyota Prius C Hatchback (“Vehicle”) is determined to be a secured claim in the amount of \$6,824.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,824.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Mark A. Vukas ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$2,264.94 for August 25, 2020 and then an increase to \$2,530 commencing September 25, 2020 for the remainder of the plan, and a 100 percent dividend to unsecured claims totaling \$16,704.00. Amended Plan, Dckt. 25. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

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

- A. Section 7 - Non-Standard Provisions are not legible.
- B. Debtor's Plan may not be feasible.
- C. Debtor has failed to file an Amended Disclosure of Compensation of Attorney for Debtor.

DISCUSSION

Section 7 - Non Standard Provisions

Trustee cannot determine whether the plan is feasible because the proposed plan's last page where the Section 7 Additional Provisions are stated is faded and otherwise unreadable.

Debtor files his Declaration replying to the Trustee. In it Debtor disagrees and states that:

If the court reviews the plan on PACER, the last page of the plain is a little faded, but it is not "illegible."

Declaration, ¶3; Dckt. 35. While the Debtor instructs the court to read the document on PACER, the Debtor does not state that he has reviewed the document on PACER.

The court has reviewed the plan and notes that they are faded and the amount of the plan payment to commence September 25, 2020 is not legible. While it is clearly typed to be \$2,530.00 a month starting September 25, 2020 in Debtor's Declaration, it is not in the Addendum to the plan. Looking at the faded type on the PACER file the court cannot make out the numbers as the Debtor states they are.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Plan may not be feasible where Debtor had failed to adequately explain significant increase of monthly income and expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

On October 20, 2020, Debtor filed a Supplemental Declaration. The Declaration is missing page 3. The Declaration jumps from page 2 with paragraphs 2 through 5 to page 4 with paragraphs 9 through 10. On page 2, paragraph 5 Debtor begins asserting that counsel for Debtor sent Trustee an updated pay stub showing his updated income on September 15, 2020. Dckt. 35, ¶ 5. It seems more information was provided in this Declaration but unfortunately the court does not have it.

The Declaration also appears to provide hearsay testimony. The Debtor challenges the Trustee's statement that certain documents were not received, by the Debtor testifying that his attorney sent them on September 15, 2020. Debtor offers no testimony as to how he knows they were sent. It appears that Debtor is merely mouthing what the attorney has written in the Declaration as opposed to providing personal knowledge testimony.

Unauthenticated exhibits are provided with the Declaration. Exhibits, Dckt. 36. Exhibit A is an email thread between Scott Hughes, the Debtor's attorney, and Neil Enmark, the Trustee's attorney. These are not communications by the Debtor.

Presumably the person who sent the email, Debtor's counsel, could testify as to the communication, but has chosen not to so testify.

“No Look” Fee

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

Trustee objects to a “no look” fee in this case where Debtor has failed to file an Amended Disclosure of Compensation of Attorney for Debtor.

On October 17, 2020, Debtor’s Counsel filed an Amended Disclosure of Compensation. Dckt. 34. This states that Counsel has accepted a \$4,000.00 set fee for representation of the Debtor, of which \$1,500 was paid prior to filing of this case and \$2,500.00 is to be paid through the Chapter 13 Plan.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Mark A. Vukas (“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 ~~XXXXXX~~.

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 21, 2020. By the court’s calculation, 29 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of the Plan is sustained.

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

- A. Debtors were unable to be examined at the First Meeting of Creditors.

DISCUSSION

Trustee’s objections are well-taken.

Failed to Be Examined at 341 Meeting

Debtors appeared at the Meeting of Creditors held on September 17, 2020 but were unable to be examined by the hearing officer under oath as required pursuant to 11 U.S.C. § 343. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The continued Meeting of Creditors was continued to October 22, 2020 at 1:00 p.m. Trustee requests that the hearing on this Motion be continued until after the Meeting of Creditor.

The court finds that cause exists to grant Trustee’s request and continues the hearing on this Objection to October 27, 2020 at 2:00 p.m to allow for Debtor to be examined.

October 27, 2020 Hearing

On October 22, 2020, Trustee entered the Trustee report for the 341 meeting reporting that the meeting was adjourned and Debtors did not appear. Trustee's Docket Entry Statement dated October 22, 2020. The Meeting was continued to November 12, 2020 at 1:00 p.m.

This is not Debtors' first recent case. Debtors filed a prior Chapter 13 case, 20-20213, on January 14, 2020. Debtors attended the First Meeting of Creditors and a Plan was confirmed on March 18, 2020.

On June 9, 2020, the Chapter 13 Trustee filed a Motion to Dismiss the prior case, stating that Debtors were \$7,392.33 delinquent as of the filing, having made a total of \$2,549.99 in payments. 20-20213; Motion to Dismiss, p. 1:20-23, Dckt. 15. The monthly plan payment is stated by the Trustee to have been \$2,485.58. *Id.*

No opposition was filed to that Motion to Dismiss.

Debtors filed the current case on August 5, 2020.

After being provided the opportunity to appear at two First Meeting of Creditors and failing to appear, the Objection of the Trustee is sustained and the Plan is not confirmed.

At the hearing, xxxxxxxxxxxxxxxx

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 Chapter 13 Plan is not confirmed.

FINAL RULINGS

22. [15-28301-E-13](#) **RICHARD/PAULA CUMMINGS** **MOTION FOR COMPENSATION FOR**
[MET-5](#) **Mary Ellen Terranella** **MARY ELLEN TERRANELLA, DEBTOR**
ATTORNEY(S)
9-22-20 [142]

Final Ruling: No appearance at the October 27, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, and Office of the United States Trustee on September 22, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Mary Ellen Terranella, the Attorney ("Applicant") for Richard Jay Cummings and Paula Rae Cummings, the Chapter 13 Debtors ("Clients"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period August 7, 2017, through October 20, 2020. Applicant requests fees in the amount of \$8,710.00 and costs in the amount of \$0.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the

circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

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

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s for the Estate include responding to two Motions to Dismiss the case, preparing and filing a modified plan and a Motion to Approve a Modified Plan, and filing a Motion to Obtain Credit. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 108. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motions to Dismiss: Applicant spent 5.5 hours in this category. Applicant reviewed Trustee’s Motions to Dismiss, met with the client regarding the Motions to Dismiss, and prepared oppositions to the Motions to Dismiss.

Motion to Modify: Applicant spent 12.15 hours in this category. Applicant prepared a modified Plan, filed a Motion to Modify the Plan, reviewed Trustee’s Response to the Motion to Modify the Plan, filed a Reply to Trustee’s Response, reviewed the final ruling on the Motion to Modify the Plan, and had communications with the client regarding the Motion to Modify.

Motion to Obtain Credit: Applicant spent 9.15 hours in this category. Applicant prepared Motion to Obtain credit, reviewed the tentative ruling, prepared an authorization letter for the Trustee to provide a payoff to the underwriter, and had communications with the underwriter.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Mary Ellen Terranella, Attorney	26.80	\$325.00	\$8,710.00
Total Fees for Period of Application			\$8,710.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including the response to two Motions to Dismiss the case, preparing and filing a Modified Plan and a Motion to Approve the Modified Plan, and filing the Motion to Obtain Credit, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$8,710.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$8,710.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

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

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

Mary Ellen Terranella, Professional Employed by Richard Jay Cummings and Paula Rae Cumming (“Debtor”)

Fees in the amount of \$8,710.00,

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

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

23. [18-22318-E-13](#) **MANUEL/YESENIA GUZMAN** **MOTION TO MODIFY PLAN**
[MJH-2](#) **Mark Hannon** **9-22-20 [37]**

Final Ruling: No appearance at the October 27, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2020. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Manuel Guzman and Yesenia Guzman (“Debtors”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on October 7, 2020. Dckt. 46. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtors’ Modified Chapter 13 Plan filed on September 22, 2020, is confirmed. Debtors’ Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 27, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Lourdes Isaula Alvarado ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on October 7, 2020. Dckt. 52. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Lourdes Isaula Alvarado ("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 22, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 27, 2020 hearing is required.

<p>The Objection to Confirmation is dismissed without prejudice.</p>

The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on August 24, 2020, is confirmed.**

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

CASE DISMISSED: 10/06/2020

Final Ruling: No appearance at the October 27, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 12, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The court has determined that no oral argument is required for this matter.

The Motion to Vacate is granted, and the order dismissing the case for failure to make plan payments (Dckt. 86) is vacated.

Kristen Johnson ("Debtor") filed the instant case on March 8, 2016. Dckt. 1. A plan was confirmed on July 17, 2018, and an order confirming the plan was entered on July 31, 2018. Dckt. 63 & 65.

On August 21, 2020, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to delinquency in plan payments. Dckt. 78. On September 23, 2020, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 85.

On October 12, 2020, Debtor filed this instant Motion to Vacate, claiming Debtor made a payment the day before the hearing on the Motion to Dismiss which cured the default, but the court was unaware that the Debtor had made the payment. Debtor explains that the May through August payment default was due to helping her brother after he was deemed non-essential and she supported him until he got on his feet. Declaration, Dckt. 91.

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

Trustee's Response

Trustee filed a Response on October 20, 2020 stating that there may be cause to vacate the order of dismissal but notes that Debtor's delinquency was of her own choosing as her brother is not listed as a dependent and Debtor chose not to modify her plan.

However, Trustee does not oppose the motion given that Debtor is close to paying the one pending secured claim off and unsecured claims should receive a dividend; and provided the court considers the two additional payments that will have come due by the hearing.

Trustee takes issue with three statement made by counsel to Debtor which Trustee considers misleading. First, counsel stated that the September 22, 2020 payment cured the default but that payment did not clear until September 29, 2020 which was after the payment was due. Moreover, an order dismissing the case was entered on October 6, 2020, well before the October 12, 2020 filing of the instant motion. Lastly, the motion states that "Throughout this case, Debtor had made regular monthly payments in a timely manner," when a prior motion to dismiss for delinquent payments was filed (Dckt. 78).

APPLICABLE LAW

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

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

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

& n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

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

DISCUSSION

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

A review of this case shows that in the four years this case has been open, Trustee has filed a total of three Motions to Dismiss with all three of them based on Debtor's delinquency:

Motion to Dismiss DPC-2 (Dckt. 45)

Filed: April 27, 2018

Reason: Delinquency - **Three Monthly Payments**

Conditionally granted while ordering Debtor to file a Modified Plan and Motion to Confirm on or before June 8, 2018 (which was filed by Debtor).

Motion to Dismiss DPC-3 (Dckt. 66)

Filed: April 8, 2020

Reason: Delinquency - **Two Monthly Payments Delinquent**

Motion withdrawn by Trustee after Debtor cured the default prior to the hearing.

Motion to Dismiss DPC-4 (Dckt. 78)

Filed: August 21, 2020

Reason: Delinquency - **Five Monthly Payments Delinquent**

Granted on September 23, 2020.

It seems that Debtor has had problems making plan payments. Further, it seems that Debtor's Counsel's statement of “fact” in the Motion that “Throughout this case, Debtor has made regular monthly payments in a timely manner” is clearly not accurate. Motion, p. 2:17-18; Dckt. 89. If counsel can make such an inaccurate statement of such an easily documentable matter, it raises the issue of what other statements may be inaccurate.

Debtor's latest delinquency was due to assisting her brother during the current COVID-19

pandemic. The current situation is not a standard situation. As such it may be considered excusable neglect or justifiable this time.

Moreover, Trustee notes that Debtor is within a few plan payments from completing her Chapter 13 case and creditors with unsecured claims receiving a dividend. Allowing Debtor to complete her plan is in the best interest of her creditors.

Therefore, in light of the foregoing, the Motion is granted, and the order dismissing the case for failure to make plan payments (Dckt. 86) is vacated.

Further, the default grounds for requesting the dismissal of the case having been addressed, by separate order the Court denies the Motion to Dismiss without prejudice.

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

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

The Motion to Vacate filed by Kristen Johnson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the order dismissing the case for failure to make plan payments (Dckt. 86) is vacated.

SEPARATE ORDER DISMISSING MOTION TO DISMISS

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

DCN: DPC-4

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick having been presented to the court and having been granted (Order, Dckt. 86), the court having vacated the Order dismissing this case based on the Debtor having cured the default in plan payments, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is Dismiss is denied without prejudice.

Final Ruling: No appearance at the October 27, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 22, 2020. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Paul Anthony Stanley, Jr. and Michelle Debbie Stanley (“Debtors”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on October 7, 2020. Dckt. 114. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Paul Anthony Stanley, Jr. and Michelle Debbie Stanley (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtors' Modified Chapter 13 Plan filed on September 22, 2020, is confirmed. Debtors' Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

28. [20-21949-E-13](#) **MARIA MORALES** **MOTION TO CONFIRM PLAN**
[EJS-1](#) **Eric Schwab** **9-11-20 [28]**

Final Ruling: No appearance at the October 27, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Maria Luisa Morales ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 9, 2020. Dckt. 38. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Maria Luisa Morales (“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 11, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 27, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 18, 2020. By the court's calculation, 39 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.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Claudia Jenkins and Edward Riley Jenkins ("Debtors"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on October 7, 2020. Dckt. 103. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Claudia Jenkins and Edward Riley Jenkins ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtors' Modified Chapter 13 Plan filed on September 18, 2020, is confirmed. Debtors' Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

30. [19-26291-E-13](#) **LINDA CONKLING** **MOTION TO MODIFY PLAN**
[MJD-4](#) **Matthew DeCaminada** **9-21-20 [82]**

Final Ruling: No appearance at the October 27, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Linda Christina Conkling ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 13, 2020. Dckt. 92. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Linda Christina Conkling (“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 21, 2020, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.