

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

November 6, 2018 at 2:00 p.m.

1.	17-24400 -C-13	ANDREA PAYTON-HAMILTON	MOTION TO INCUR DEBT
	RJ-1	Richard Jare	10-23-18 [27]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2018. 14 days' notice is required. That requirement was met.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion to Incur Debt is denied.
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Andrea Francine Payton-Hamilton ("Debtor") seeks permission to purchase a vehicle described as a 2016 Chevrolet Trax SUV, with a total purchase price of \$18,415.00 and monthly payments of \$434.00 to Exeter Financing over 72 months with a 20.07% interest rate.

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

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

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge of 20.07 %. Moreover, it is unclear to the court how in good faith Debtor could propose to purchase a relatively new car, specifically a model year 2016, when paying holders of unsecured claims nothing. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a model year 2016 car and attempt to borrow money at a 20.07% interest rate.

While Debtor's declaration claims that she had difficulty finding better financing terms, Debtor did not describe in sufficient detail her efforts. There is no indication that Debtor made other inquiries to purchase a car from a different dealership other than Carmax or whether the Debtor made any inquiries with other financial institutions to determine if they would offer her a better a interest rate.

Further, it is not clear to the court if the screen shot described as "Loan approval terms" (Dckt. 29) sufficiently describes all required information of the proposed credit agreement as required under Rule 4001(c).

At the hearing -----.

The Motion is denied.

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

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

The Motion to Incur Debt filed by Andrea Francine Payton-Hamilton ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and Andrea Francine Payton-Hamilton is not authorized to incur debt pursuant to the terms of the agreement, Exhibit, Dckt. 29.

2. [17-20505](#)-C-13 CARLOS MORA AND TONI
[SLE](#)-3 DUPONT-MORA
Steele Lanphier

MOTION TO MODIFY PLAN
9-25-18 [[84](#)]

No Tentative Ruling: The Motion to Modify 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 25, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Modified 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). 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 court's decision is to confirm the Motion to Modify the Plan.~~

The Chapter 13 Trustee opposes the Modified Plan because Debtors are delinquent \$231.00 under the proposed plan.

At the hearing-----.

~~The 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 Modify the Chapter 13 Plan filed by the 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, Debtors' Chapter 13 Plan filed on September 4, 2018, as incorporating

the agreed upon correction, is confirmed, and counsel for the Debtor shall prepare an appropriate order modifying the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

3. [18-22208](#)-C-13 TERRY PARKER AND TONYA OBJECTION TO CLAIM OF FIRST
[PGM](#)-2 TYUS-PARKER FRANKLIN MORTGAGE LOAN TRUST,
Peter Macaluso CLAIM NUMBER 6
9-14-18 [[82](#)]

Final Ruling: No appearance at the November 6, 2018 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2018. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b) (1) (requiring fourteen days' notice for written opposition). That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 6-1 of First Franklin Mortgage Loan Trust is sustained, and the claim is disallowed in its entirety.

Terry Earl Parker and Tonya Lorene Tyus-Parker, the Debtors, ("Objectors") request that the court disallow the claim of First Franklin Mortgage Loan Trust ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$157,010.23. Objectors assert that the claim ("the subject debt") filed by the Creditor represents an invalid claim. Objectors argue that in 2013 the subject debt was extinguished when Objectors obtained a loan modification that combined their mortgage, the first deed of trust, and the subject debt, the second deed of trust, into a singular loan. Dckt. 84, Exhibit A. Objectors also claim that the combined debt was modified a second time in 2015, again arguing that the modification references the combined loans. Dckt. 84, Exhibit B.

While not stated in Objectors motion, the court also notes that Claim No. 5-1, appears to reflect the modified loan and the documents attached to the Claim 5-1 appear consistent with Objectors statements.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The court reviewed the loan modification documents (Dckt. 84, Exhibits A, B) in conjunction with the information reflected in Claims No. 5-1 and 6-1 and determined that Claim No. 6-1 appears to assert a claim for debts identified in Claim No. 5-1.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of First Franklin Mortgage Loan Trust ("Creditor"), filed in this case by Terry Earl Parker and Tonya Lorene Tyus-Parker, the Debtors, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 6-1 of First Franklin Mortgage Loan Trust is sustained, and the claim is disallowed in its entirety.

4. [18-24712](#)-C-13 TERRY RATTERREE
Thomas Amberg

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY FEDERAL
NATIONAL MORTGAGE ASSOCIATION
AND SETERUS, INC.
9-20-18 [[16](#)]

No Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 20, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to xxxx the Objection.
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Counsel for the Creditor Federal National Mortgage Association and Seterus, Inc. Objects to confirmation of the Plan. Creditor's Motion was initially filed without any evidence or declaration in support of their arguments. (Dckt. 16). Their Objection is based on the following:

A. Creditor's secured claim of approximately \$31,439.64 as a result of judgement lien is not provided for in the Plan. Additionally, Creditor's claim for attorneys' fees and costs as a result of judgment on those fees in the amount of \$41,949.50 is not provided for in the Plan.

B. Creditor asserts that Debtor has real property that has not been scheduled and subject to Creditor's recorded judgments. Creditor identifies the properties as 3513 Clayburn Road, Antioch, California and 1308 Putnam

Street, Antioch, California.

DEBTOR'S RESPONSE:

Debtor responds that Creditor's Objection did not follow certain procedural filing requirements:

A. Neither the Objection nor the Notice were served on Debtor's counsel.

B. Creditor did not comply with Local Rule 9014-1(d)(3)(B)(iii) by failing to include predisposition notice language and the pleadings were not separated as required by the Local Rules of this court.

Debtor also responded to the merits:

A. Debtor states that Creditor's claim and the claim for attorneys' fees were listed on Debtor's Schedule F.

B. Creditor is not secured because Debtor does not own any property in Glenn County, the county the Creditor's abstract of judgements were filed.

C. Debtor did not fail to schedule property he owns in Glenn County because he does not own any. Debtor claims that his non-filing spouse has property in Contra Costa County, but this property is her separate property. Debtor further asserts that this was disclosed to the Trustee at the Meeting of Creditors.

The court continued the October 23, 2018 hearing to permit the parties to correct any procedural deficiencies and to provide supplemental filings. (Dckt. 25).

CREDITOR'S REPLY:

Creditor filed a reply, with supporting evidence, that claims that Creditor has two judgments for attorneys fees related to pre and post-appeal judgments entered in the Superior Court of California in Glenn County. (Dckts. 31, Exhibits 1, 2). Creditor also submitted an abstract of judgment filed in Contra Costa County for the first judgment, the county in which the two properties at issue are located. (Dckt. 31, Exhibit 3).

The Creditor claims that in 2016 the Debtor's non-filing spouse transferred title of the two subject properties into The Ratteree Family Living Trust, U/A. The Creditor claims that Debtor is a beneficiary of that trust and that the trust is revocable. As such, the Creditor asserts that Debtor has an interest in the property held in The Ratteree Family Living Trust, U/A and that the recorded judgment is secured by that property.

DEBTOR'S SUPPLEMENTAL RESPONSE:

Debtor asserts that the two properties at issue were properties owned by the non-filing spouse prior to their marriage. The Debtor and the non-filing spouse claim that the Debtor's non-filing spouse never intended to place title of the properties into the Debtor's name. The non-filing spouse submitted declaration stating that the properties were mistakenly placed in The Ratteree Family Living Trust U/A in 2016 by an attorney she

hired and when she learned about the mistake contacted the attorney to correct the transfer in 2018. (Dckt. 34, Laurie Ratteree Declaration).

DISCUSSION:

Procedural Deficiencies:

Creditor's Objection was not filed in compliance with this court's local rules including, but not limited to, the requirement to:

- (1) file separate documents (Local Rule 9004-2 (c), (d), and (e));
- (2) use a Docket Control Number (Local Rule 9014-1 (c));
- (3) include required contents in the Notice (Local Rule 9014-1(d));
- (4) adhere to the service requirements (Local Rule 9014-1(e)); and
- (5) include evidence in support of the filed opposition (Local Rule 9014-1(f) (1) (B)).

Counsel for the Creditor should review this court's Local Rules prior to filing additional motions. Further, Counsel for the Creditor should review any other pending proceedings filed with this court (including Dckts. 23; 24) to ensure they conform with the Local Rules and be prepared to address this at the continued hearing on November 6, 2018, in person.

Merits of the Argument:

As to the merits, the dispute appears to be over whether certain property located in Contra Costa County is property in Debtor's bankruptcy estate. Debtor claims that he does not own any real property in Contra Costa County and that the property is the sole property of the non-filing spouse. (Dckt. 21). The court notes Creditor's submitted quit claim deeds that appear to suggest that the property at issue was transferee into a trust that Debtor may be a beneficiary. (Dckt. 31, Exhibits 1,2). Debtor asserts that this transfer was done by mistake and that the property was removed from the trust in 2018.

At the hearing ----.

Additional Issues Raised by the Court:

The Debtor's initial Statement of Financial Affairs (SOFA) indicates that Debtor transferred property to a self-settled trust in 2016. (Dckt. 1, Question 19). Debtor did not provide a description of the property transferred. On November 2, 2018, Debtor filed an Amended SOFA (Dckt. 38) stating that the transfer occurred in 2018, not 2016, and was for properties that were erroneously placed into a family trust.

Additionally, Debtor lists on Schedule H "Damascus Road Ministries" as a co-debtor. This entity is shown to have the same address as Debtor and his non-filing spouse. On his Schedules A/B, Debtor lists owning "Damascus Road Ministries" and, in response to Question 14, lists a \$200.00 a month contribution to this entity. (Dckt. 1).

At the hearing ----.

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 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 to confirmation the Plan is
XXXX.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on October 1, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to overrule the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor's Plan attempts to incorporate a loan modification process but is missing portions of the required language.

B. Debtor did not provide his Social Security Number to the Trustee at the Meeting of the Creditors. The court notes that a continued Meeting of Creditors was held on October 25, 2018 and was concluded as to the Debtor.

DEBTOR'S RESPONSE:

Debtor's counsel responds and concedes that the complete text of the loan modification was omitted. The Debtor proposes additional language to be included in the an order confirming the Plan. The Debtor provided the proposed language in his Response. Dckt. 55.

At the hearing -----.

The Plan, as modified by including the complete loan modification language, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Debtor's Modified Chapter 13 Plan filed on September 4, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the November 6, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 25, 2018. 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). That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Evangela Lavette Owens-Eisley ("Debtor") has filed evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. David Cusick ("the Chapter 13 Trustee") filed a Response indicating that the proposed Plan will complete in 60 months and that Debtor is current under the proposed Plan. Dckt. 58. 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 Evangela Lavette Owens-Eisley ("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 25, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

No Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 26, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to ~~xxxxx~~ the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor's Plan may fail liquidation under 11 U.S.C. § 1325(a)(4). The Trustee questions whether the Debtor has approximately \$104,614.00 in non-exempt equity in property located at 163 Wellfleet Drive, Folsom, CA. The Debtor's Schedule D lists the property as sold to Debtor's ex-fiancé however, the Trustee review of property records did not identify a deed transferring title to the ex-fiancé.

B. Debtor may have not listed all sources of income.

C. Debtor did not disclose lease signed for the current residence.

D. Debtor did not list current employer's address on Schedule I upon request of the Trustee.

DEBTOR'S RESPONSE:

Debtor responds to the Trustee's Oppositions as follows:

A. Debtor states that she testified at the Meeting of Creditors

that she purchased the 163 Wellfleet Drive property with her now ex-fiancé, Tim Eshelman. Eshelman provided the down payment for the home's purchase. When the relationship ended, Debtor and Eshelman negotiated a sales price, as disclosed on Schedule A/B (Dckt. 1, pg. 11), Debtor exchanged her interest in the property for \$22,000.00 in cash along with his assumption of approximately \$13,000.00 in shared credit card debt. Dckt. 25, Decl Debtor. Debtor no longer claims to have control or access to the property and signed a Quitclaim deed recorded with Sacramento County Recorder on July 17, 2018. Exh. 1, Decl. Debtor.

B. Debtor disputes the Trustee's claim that Debtor did not list all sources of income. Debtor claims that the transfer of the real property identified above for cash and assumption of debt is merely a change of character of assets rather than income.

C. Debtor concedes that she did not disclose her lease on Schedule G. On October 5, 2018, Debtor filed an amended Schedule G to reflect the lease. Dckt. 21, Exhibit 4.

D. Debtor concedes that she did not provide her employer's address on Schedule I. On October 5, 2018, Debtor filed an amended Schedule I to reflect the address. Dckt. 21, Exhibit 5.

DISCUSSION:

Debtor appears to have satisfied several of the Trustee's concerns regarding the omission of information in Debtor's schedules with her amended Schedules G and I filed on October 5, 2018. Debtor also submitted a quit claim deed in support of her contention that title of the property was transferred prior to the filing of the petition.

However, Debtor claims, without any legal support, that cash and debt assumption received in consideration for the transfer of her title interest in the subject property is not income but merely a change of character in property. The court notes that Debtor's Schedules list \$0.00 of value in the subject property and does not appear to list the \$22,000.00 of cash Debtor claims she received for in consideration for the transfer of the title. Additionally, the court requests that Debtor clarify whether the \$13,000.00 of debt assumed by the purchaser was paid prior to the filing of the bankruptcy petition.

The court requests that Debtor's counsel be prepared to present additional support for the argument that the receipt of cash and other things of value, such as debt assumption, for property is not income.

At the hearing ----.

~~_____ The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not listed all required assets. 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 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 to confirmation the Plan
is sustained and the proposed Chapter 13 Plan is not
confirmed.~~

Final Ruling: No appearance at the November 6, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 4, 2018. The 28 days' notice is required. That requirement was met.

The Motion to Value Collateral and Secured Claim of Onemain Financial Group, LLC("Creditor") is granted, and the Creditor's secured claim is determined to have a value of \$16,000.00.

The Motion filed by Haeja Koh ("Debtor") to value the secured claim of Onemain Financial Group, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Toyota Avalon XLE Sedan. Debtor seeks to value the Vehicle at a replacement value of \$16,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor states that the lien on the Vehicle's title does not secure a purchase-money loan. Dckt. 29, Declaration. The debt secured by the vehicle owed to Creditor with a balance of approximately \$22,583.71. 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 \$16,000.00, 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 \$16,000.

The Trustee filed a non-opposition on October 18, 2018. Dckt. 31. The Trustee also notes that the Creditor filed Claim No. 4-1 asserting that the value of the property is \$16,000.00.

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 Haeja Koh ("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 Onemain Financial Group, LLC ("Creditor") secured by an asset described as 2014 Toyota Avalon XLE("Vehicle") is determined to be a secured claim in the amount of \$16,000.00, 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 \$16,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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, Chapter13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 22, 2018. 14 days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is xxxx.
--

Roque Delarosa ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 14-29137) was dismissed on September 6, 2018. See Order, Bankr. E.D. Cal. No. 14-29137, Dckt. 39. Therefore, pursuant to 11 U.S.C. § 362(c) (3) (A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith. Debtor states that since his previous case was dismissed that his "circumstances have changed [...] I want to pay all my bill and have caught up and the timing is good." Dckt. 17, Delarosa Declaration.

TRUSTEE'S RESPONSE:

The Trustee argues that Debtor does not explain why his circumstances have changed or provide information regarding why his prior case was dismissed. The Trustee notes that Debtor was delinquent \$1,879.00 in the his previous case. The Trustee also notes that in the prior case creditor Wells Fargo was included in Class 4 of the Plan and the creditor's claim reflected \$0.00 in arrears. The Debtor includes Wells Fargo in Class 1 of the proposed Plan (Dckt. 5) with \$20,000.00 of arrears. The Debtor's motion does not address the changed circumstances regarding this creditor.

At the hearing -----.

RULING:

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

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

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

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

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

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

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

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

~~The Motion to Extend the Automatic Stay filed by Roque Delarosa ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

Final Ruling: No appearance at the November 6, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2018. 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). That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Josephine Andrea Parra ("Debtor") has filed evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. David Cusick ("the Chapter 13 Trustee") filed a Response indicating that the proposed Plan will complete in 60 months and that Debtor is current under the proposed Plan. Dckt. 57. The Trustee also noted in his response that Debtors did not provide a legal authority in their Motion and identified the incorrect Chapter 13 Trustee in the Notice. Dckt. 57. The Debtors filed a Reply citing to 11 U.S.C. § 1329 as the legal authority and apologized for listing the incorrect Trustee but noted that no prejudice resulted as no oppositions were filed. Dckt. 60. 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 Josephine Andrea Parra "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 19, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. [18-25065](#)-C-13 MICHAEL LUCERO AND MARIA OBJECTION TO CONFIRMATION OF
[DPC](#)-1 MARTINEZ PLAN BY DAVID P. CUSICK
Chad Johnson 9-26-18 [[18](#)]

Final Ruling: No appearance at the November 6, 2018 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 26, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to continue the hearing to November 20, 2018 at 2 p.m.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtors Plan relies on a Motion to Value and is otherwise not feasible. The court notes that the Motion to Value is set for hearing on November 18, 2018. (Dckt. 24).

B. The Debtors did not provide sufficient information to determine his business income and it is not clear whether the business income is joint income or attributable to one of the Debtors.

C. Debtor's petition did not list their prior bankruptcy case. Case No. 11-45180.

DEBTORS' RESPONSE:

The Debtors respond that on October 18, 2018 they: (1) filed a Motion to Value that is set for hearing on November 20, 2018; (2) amended their schedules to add business information and income statements; and (3) amended their petition to reflect they filed a prior bankruptcy case.

The Debtors request a continuance until November 20, 2018 to permit the court to resolve their Motion to Value and the Trustee's Objection to Confirmation at the same time.

Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). As such, it is appropriate to continue this hearing to allow for the resolution of the Motion to Value.

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 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 to confirmation the Plan is continued to November 20, 2018 at 2:00 p.m.

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

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 26, 2018. 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). That requirement was met

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 XXXXXX.
--

Lisa Ann Ortiz ("Debtor") seeks confirmation of the Modified Plan because the IRS' claim exceeded Debtor's original expectation. Dckt. 67 (Declaration). 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on October 17, 2018. Dckt. 74. The Trustee states that the Non-Standard Provisions for Section 2.01 are confusing and reference the incorrect plan months for specified payments. The Trustee does not have any opposition to confirming the Modified Plan if the order confirming the plan corrects the sections to state "\$52,458.99 total paid through September 2018, commencing October 25, 2018 plan payments shall be \$2,950.00 per month for the remaining 40 months of the plan."

At the hearing -----.

~~The Modified Plan, as modified by the Trustee's recommendation, 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 Lisa Ann Ortiz ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on September 26, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 26, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor admitted that at the September 20, 2018 First Meeting of Creditors that she did not list all of her assets including electronics, cash, bank accounts, and retirement accounts. Debtor is required to, but has not, filed amended Schedules to list the missing assets.

C. Debtor admitted at the Meeting of Creditors held on September 20, 2018 that she had not filed her 2016 tax returns. The court notes that on October 25, 2018, the Trustee, in his Motion to Withdraw his Motion to Dismiss (Dckt. 28), states that Debtor has filed and provided the Trustee with copies of missing tax returns.

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not listed all required assets. 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 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 to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the November 6, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2018. 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). That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Michael Tharp and Carrie Tharp ("Debtors") have filed evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. David Cusick ("the Chapter 13 Trustee") filed a Response indicating that the proposed Plan will complete in 60 months and that Debtor is current under the proposed Plan. Dckt. 57. The Trustee also noted in his response that Debtors did not provide a legal authority in their Motion. The Debtors filed a Reply citing to 11 U.S.C. § 1329. Dckt. 60. 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 Michael Tharp and Carrie Tharp("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 Debtor's Modified Chapter 13 Plan filed on September 30, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Thru #16

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on October 1, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor does not provide for the IRS' secured Claim No. 4-1 in the amount of \$36,551.00. Debtor did not list the debt on Schedule D and Debtor's Schedule J does not provide for any payment of this claim.

B. Debtor's Plan is not feasible because it relies on a Motion to Value Collateral of Ocwen Loan Servicing and the Chochran Firm Criminal Defense. The court notes that the Motion to Value Ocwen Loan Servicing is set for hearing on November 6, 2018. (Dckt. 22).

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not proposed a feasible Plan. 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 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 to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

16. [18-25370](#)-C-13 JESSE ORTIZ
[PGM](#)-2 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING, LLC
10-4-18 [[30](#)]

No Tentative Ruling Insufficient Service: 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-No Opposition Filed.

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 4, 2018. **However, the proof of service does not list the correct address for Ocwen Loan Servicing, LLC's registered agent. As reflected on the California Secretary of Service's website, the registered agent for service for the Creditor is Corporation Service Company doing business in California as CSC - Lawyers Incorporating Service who's most recent 1505 Certificate reflects a California address. Further, the attempt to serve the entity by mail by addressing the mail to "Officer, managing or general agent, or person authorized to receive service of process" does not satisfy the mailing requirement. See *In re Loloe*, 241 B.R. 655, 660 (B.A.P. 9th Cir. 1999).** The 28 days' notice is required. That requirement was met.

<p>The Motion to Value Collateral and Secured Claim of Ocwen Loan Servicing("Creditor") is xxxx.</p>
--

The Motion to Value filed by Jesse Ortiz("Debtor") to value the secured claim of Ocwen Loan Servicing, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7706 El Douro Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$782,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is

subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an Opposition and the Trustee filed a response stating it did not oppose the motion. Dckt. 32.

DISCUSSION

~~Creditor's first and second deeds of trust secures a claim with a balance of approximately \$849,559.41 and \$91,000.00, respectively. Therefore, Creditor's claim secured by the second deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220 (9th Cir. 2002); Lam v. Investors Thrift (In re Lam), 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

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

~~The Motion to Value Collateral and Secured Claim filed by Jesse Ortiz ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ocwen Loan Servicing, LLC ("Creditor") secured by a second deed of~~

~~trust recorded against the real property commonly known as 7706 El Douro Drive, Sacramento, California, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$782,000.00 and is encumbered by a senior lien securing a claim in the amount of \$849,559.41, which exceeds the value of the Property that is subject to Creditor's lien.~~

17. [18-25374](#)-C-13 JAMES WALKER
[DPC](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-1-18 [[18](#)]

Thru #18

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on October 1, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor is delinquent \$606.00, with another payment of \$606.00 due prior to the hearing. Debtor has paid a \$0.00 into the plan.

B. Debtor's Plan is not feasible because it relies on a Motion to Value Collateral of Exeter Finance. The court notes that the Motion to Value is set for hearing on November 6, 2018. (Dckt. 22).

C. Debtor has not demonstrated to the Trustee that Debtor's 2017 Tax Return was either filed or filing was not required.

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not made all required Plan payments, proposed a feasible Plan, or provided the Trustee with all required information. 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 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 to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

18. [18-25374](#)-C-13 JAMES WALKER
[PGM](#)-1 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
EXETER FINANCE, LLC
10-3-18 [[22](#)]

No Tentative Ruling Insufficient Service: 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-No Opposition Filed.

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2018. **However, the proof of service does not list the correct address for Exeter Finance, LLC's registered agent. As reflected on the California Secretary of Service's website, the registered agent for service for the Creditor is Corporation Service Company doing business in California as CSC - Lawyers Incorporating Service who's most recent 1505 Certificate reflects a California address. Further, the attempt to serve the entity by mail by addressing the mail to "Officer, managing or general agent, or person authorized to receive service of process" does not satisfy the mailing requirement. See *In re Loloe*, 241 B.R. 655, 660 (B.A.P. 9th Cir. 1999).** The 28 days' notice is required. That requirement was met.

The Motion to Value Collateral and Secured Claim of Exeter Finance, LLC ("Creditor") is ~~xxxx~~.

The Motion filed by James Walker ("Debtor") to value the secured claim of Exeter Finance, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Nisan Versa ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$7,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

~~The lien on the Vehicle's title secures a purchase-money loan incurred in October 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$12,774.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$7,500.00, the value of the collateral. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is~~

~~XXXX.~~

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 James Walker ("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 Exeter Finance, LLC ("Creditor") secured by an asset described as 2014 Nissan Versa ("Vehicle") is determined to be a secured claim in the amount of \$7,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$7,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

19. [18-25677](#)-C-13 ADRIANA FONTES
[DPC](#)-1 Mikalah Liviakis

OBJECTION TO DISCHARGE BY DAVID
CUSICK
9-26-18 [[13](#)]

Final Ruling: No appearance at the November 6, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2018. Twenty-eight days' notice is required. That requirement was met.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

The Chapter 13 Trustee ("Objector") objects to Ariana Fontes's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on October 13, 2017, Case No. 17-26802 and Debtor received a discharge on January 26, 2018. Case No. 17-26802, Dckt. 15.

The instant case was filed under Chapter 13 on September 7, 2018.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f) (1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on January 26, 2018, which is less than four years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f) (1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of

the instant case (Case No. 18-25677), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-25677, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the November 6, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2018. 35 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1). That requirement is met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Frank A. Davis ("Debtor") filed an Amended Plan and corresponding Motion to Confirm on October 23, 2018. Dckts. 49, 54. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Frank A. Davis ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that the Motion is denied as moot,
and the proposed Chapter 13 Plan is not confirmed.

21. [18-25079](#)-C-13 SHONTELL BEASLEY
[DPC](#)-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
9-19-18 [[23](#)]

No Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 19, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to xxxx the Trustee's Objection and the Plan is xxxx.
--

The Trustee filed an Objection to the Confirmation of Plan, it appears that the Motion filed by the Trustee corresponds to another bankruptcy proceeding but the Declaration in support of the Motion appear to correctly identify the Debtor. Dckt. 25. It appears from the Declaration that the Trustee opposes confirmation based on the fact that:

A. Debtor did not attend the September 27, 2018 Meeting of Creditors.

B. Debtor has not filed all required tax returns.

C. Debtor does not provide sufficient support for the claimed business income reported on Schedule I.

D. Debtor's Plan relies on a Motion to Value Collateral.

DEBTOR'S RESPONSE:

Debtor's counsel responds, without a declaration, that the Meeting of Creditors was continued to October 25, 2018, the required tax returns have been filed, the business attachment was filed on October 1, 2018 (Dckt. 3), and the

Motion to Value is set for October 23, 2018. (Dckt. 42). Debtor requested a continuance to permit the Meeting of Creditors set for October 25, 2018 to conclude.

At the hearing held on October 16, 2018 the court continued the hearing to November 6, 2018, to allow for additional time for the Debtor to cure the issues raised by the Trustee.

At the hearing -----.

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 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 to confirmation the Plan xxxx and the Plan is xxxx.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 26, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor did not attend the September 20, 2018 First Meeting of Creditors. The court notes that the October 26, 2018 Trustee Reports reflects that Debtor did not attend the continued First Meeting of Creditors held on October 25, 2018.

B. Debtor's Plan is not feasible because it relied on a Motion to Avoid Lien that was denied on September 18, 2018. (Dckt. 28).

C. Debtor's proposed dividend to the Class 2 IRS claim is insufficient to pay the claim over the 36 month Plan.

D. Debtor did not provide the Trustee with 60 days of employer

payment advices as required under 11 U.S.C. § 521(a)(1)(B)(iv) and the Order Re: Chapter 13 Plan Payments, Adequate Protection Payments, and Employer Payment Advices. (Dckt. 5).

E. Debtor has not demonstrated to the Trustee that Debtors 2017 Tax Return was either filed or filing was not required.

F. Debtor's Plan does not indicate whether attorney fees are proposed to be paid in accordance with Local Bankruptcy Rule 2016-1(c) or whether fees will be requested in a separate motion in accordance with 11 U.S.C. §§ 329 and 330.

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not proposed a feasible Plan, the Debtor has not attended the First Meeting of Creditors, or provided the Trustee with all required information. 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 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 to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

23. [16-20383](#)-C-13 GIANNE/RUBY -ROSE APURADO
[SLE](#)-1 Steele Lanphier

MOTION FOR RELIEF FROM MISTAKE,
INADVERTENCE OR EXCUSABLE
NEGLECT
10-23-18 [[121](#)]

DEBTOR DISMISSED:
09/21/2018
JOINT DEBTOR DISMISSED:
09/21/2018

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

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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2018. 14 days' notice is required. That requirement was met.

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

The Motion to Vacate is xxxx, and the order to dismiss(Dckt. 114) is xxxx.

Gianne Carlo Dizon Apurado and Ruby Rose Apurado ("Debtors") filed the instant case on January 1, 2016. Dckt. 1. A plan was confirmed on March 7, 2016, and an order confirming the plan was entered on July 18, 2016. Dckt. 81 & 82.

On June 7, 2018, David Cusick ("the Chapter 13 Trustee") filed a Motion to Dismiss the Case due to failure to make all required Plan payments. Dckt. 105. On July 11, 2018, a hearing on the Motion to Dismiss was held and continued to allow Debtor more time to make the required payments. Dckt. 111. On September 5, 2018, the continued hearing on the Motion to Dismiss was held and the Motion was granted because Debtors became current on payments. Dckt. 114.

On October 23, 2018, Debtor filed this instant Motion to Vacate,

claiming that in February of 2018 Debtor Gianne Apurado's income was significantly reduced because his firm lost a contract. Debtors claim that it took time to replace the business' income and this caused Debtors to fall behind on Plan payments. Debtors' are approximately two years into their Plan and have paid \$91,480.00 into the Plan. Debtors have filed a proposed Modified Plan in the hopes that the court vacates its dismissal. The Debtors initially believed they would be able to make the required payments but now require a modified Plan.

TRUSTEE'S OPPOSITION:

The Trustee Opposes the Debtors' requested relief. The Trustee notes that prior to its Motion to Dismiss filed in June (Dckt. 105), the Trustee filed a Motion to Dismiss on February 20, 2018 (Dckt. 102). The court granted the motion on February 13, 2018 (Dckt. 101), and the Debtors obtained relief from the prior dismissal. The Trustee notes that the change in income argued in this Motion for Relief occurred on or around the time of the first Motion to Dismiss. The Trustee was never notified of the change in income. Moreover, the Trustee argues that the Debtors response to the Motions to Dismiss was not that they needed to file a modified plan, but that they will become current. The Trustee claims that Debtor has not sufficiently explained the delay in requesting a modified plan.

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

APPLICABLE LAW

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

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

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

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

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

DISCUSSION

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

The sole ground for this Motion to Dismiss was delinquency in plan payments. Debtors responded that they believed they could cure the delinquency. However, Debtors were not able to do so. This is Debtors second request to vacate a dismissal due to delinquent payments. The Trustee Opposes their requested relief and is concerned that Debtors had an unreasonable delay in requesting a Modified Plan. The Debtors do not provide a clear explanation when they understood they needed to file a Modified Plan rather than merely propose to cure delinquent Plan payments.

At the hearing -----.

Therefore, in light of the foregoing, the Motion is **xxxx**, and the order to Dismiss(Dckt. 114) is **xxxx**.

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 Gianne Carlo Dizon Apurado and Ruby Rose Apurado("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 **xxxx**, and the order to Dismiss (Dckt. 114) is **xxxx**.

Thru #25

Final Ruling: No appearance at the November 6, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2018. 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). That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Harry Thomas Kuper and Kayla Breanne Kuper ("Debtors") have filed evidence in support of confirmation. No opposition to the Motion has been filed by David Cusick (the Chapter 13 Trustee) or by creditors. David Cusick ("the Chapter 13 Trustee") filed a Response indicating that he does not oppose the proposed modified plan and that Debtors are current under the proposed Plan. Dckt. 64. 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 Harry Thomas Kuper and Kayla Breanne Kuper("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 17, 2018, is confirmed. Debtors' Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Local Rule 3007-1 Objection to Claim-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 24, 2018. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b) (1) (requiring fourteen days' notice for written opposition). That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 20-1 of Lobel Financial Corp. is **xxxx, and the claim is **xxxx**.**

Harry and Kayla Kuper, the Debtors, ("Objectors") request that the court disallow the claim of Lobel Financial Corp. ("Creditor"), Proof of Claim No. 20-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$4,693.52. Objector asserts that the Claim has not been timely filed. See FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is July 12, 2017. Notice of Bankruptcy Filing and Deadlines, Dckt. 11.

Here Objectors assert that the Creditor ordinarily filed Claim 4-1. Objectors paid \$1,478.98 to Creditor through Debtors' Plan until, on July 19, 2018, the Creditor filed a Notice of withdrawal of Claim 4-1 asserting the debt had been paid.

On September 17, 2018, after the deadline for filing proofs of claim and without leave from the court, the Creditor filed Claim 20-1 purportedly reasserting its claim. Objectors note that the prior Plan payments totaling \$1,478.98 are not reflected in Claim 20-1.

CREDITOR RESPONSE:

Creditor's counsel responds, without a declaration, that the withdrawal of Claim 4-1 on July 19, 2018 was done in error. Creditor states that it was confused by the fact that there were two accounts associated with one or both of the Debtors. One of those accounts had been paid off and the other still had a balance due and owing. Creditor mistakenly thought that Claim 4-1 was associated with the account with no balance and withdrew the claim. Around September 4, 2018, Creditor received a call from Debtor's counsel requesting an update on the status of title to the vehicle and discovered their error. Creditor claim Debtor's counsel told Creditor to file another proof of claim. Creditor did so on September 17, 2018. Creditor also asserts that the claim is for \$4,693.28 and is fully secured because the vehicle value is \$5,193.00.

DEBTOR'S REPLY:

Debtor's counsel discusses why Creditor's confusion and late filing of Claim 20-1 should not be viewed as a diligent inquiry or investigation. Additionally, Debtor's counsel disputes that he instructed Creditor to file another proof of claim. Debtor questions why the claim amounts for Claim 4-1 and Claim 20-1 are the same and why Debtor is not given credit for the payments made through the Plan.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter was July 12, 2017. Creditor's Proof of Claim 20-1 was filed on September 18, 2018. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

Objectors do not claim they actually paid the obligation reflected in Claim 20-1, nor, do they appear to dispute Creditor's assertion that the withdrawal was done in error. Objectors argue that some payments have been made on the claim that are not accounted for, specifically the \$1,478.98 paid through the Plan. Objectors also question why Claim 20-1 is approximately \$100.00 more than Claim 4-1.

Objectors do not claim that the Creditor released the lien associated with this secured debt. The court is not persuaded that the even a failure to file a claim for a secured debt would result in the Objectors obtaining clear title to the vehicle.

At the hearing -----.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is **xxxx**.

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

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

The Objection to Claim of Lobel Financial Corp. ("Creditor") filed in this case by Harry and Kayla Kuper, the Debtors , ("Objectors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 20-1 of Lobel Financial Corp. is **xxxx**.

26. [18-24686](#)-C-13 KEVIN MEDLEY
[DPC](#)-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
9-11-18 [[24](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 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.

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)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 11, 2018. Fourteen days' notice is required. That requirement was met.

The Objection to the 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to sustain the Objection.

The Trustee opposes confirmation of the Plan based on the following:

A. Debtor is delinquent \$345.00, with another payment of \$345.00 due prior to the hearing. Debtor has paid a \$0.00 into the plan.

B. Debtor does not appear to have not filed all required tax returns for the four year period preceding the filing of the Petition. Claims filed by the IRS and the Franchise Tax Board reflect that returns for the tax years 2015 and 2017 have not been filed.

C. Debtors Plan relies on a Motion to Value and is otherwise not feasible. The court notes that the Motion to Value was granted at the October 16, 2018 hearing. (Dckt. 32)

The October 16, 2018 was continued to November 6, 2018 to permit Debtor additional time to cure the delinquencies.

On October 23, 2018, the Trustee filed a Supplemental Response stating that the Debtor is not current on Plan Payments and has not submitted evidence to demonstrate all required tax returns have been filed.

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because Debtor has not made all required payments or filed all required tax returns. 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 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 to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Debtors' First 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 20, 2018. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the First 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). 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 court's decision is to deny the Motion to Confirm the Plan.</p>

THE TRUSTEE'S OBJECTION

The Chapter 13 Trustee objects to the confirmation of the Debtor's Plan based on the following:

A. Debtor is delinquent in plan payments in the amount of \$1,317.80, Debtor also has a scheduled payments of \$2,350.76 due on October 25, 2018. The Debtor has paid \$5,773.75 into the Plan.

B. Debtor's Plan may not provide for all disposable income. Debtor's Schedule J lists a deduction for a car payment of \$701.92. (Dckt. 24). Debtor's First Amended Plan provides for a payment to Chrysler Capital in Class 2. Debtor does not list a second vehicle or second vehicle loan on his Schedules or in the Plan. The Trustee notes that the proposed plan payments do propose to pay 100% to the general unsecured.

RULING

At the hearing -----.

The Plan does not comply with 11 U.S.C. §§ 1322 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 Chapter 13 Plan filed by the 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 Plan is denied and the proposed Chapter 13 Plan 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) (3) 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 October 26, 2018. By the court's calculation, 10 days' notice was provided. The court set the hearing for November 6, 2018.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----
-----.

The Motion to Extend the Automatic Stay is granted.

Claudia Navarro ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 15-27157) was dismissed on March 28, 2018. See Order, Bankr. E.D. Cal. No. 15-27157, Dckt. 37. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith. Debtor states that since her previous case was dismissed for failure to make all required plan payments Debtor obtained a higher paying job and surrendered a vehicle. Dckt. 12, Debtor Declaration. Debtor states that at the time the first case was dismissed, Debtor needed to spend funds to move rather than toward plan payments. *Id.* at ¶ 6.

RULING:

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

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

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Claudia Navarro("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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