

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 18, 2018 at 3:00 p.m.

1.	<u>18-27309-E-13</u> <u>WW-1</u>	DELOIS JOHNSON Mark Wolff	MOTION TO EXTEND AUTOMATIC STAY 11-29-18 [11]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 30, 2018. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion to Extend the Automatic Stay is granted.
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Delois Juanita Johnson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-25964) was dismissed on October 9, 2018, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 18-25964, Dckt. 12, October

9, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was proceeding in *Pro Se*. Declaration, Dckt. 13. Debtor was advised by “MLG,” a group of attorneys, to file bankruptcy. *Id.* at ¶ 2. Those attorneys aided the preparation of documents necessary for initial filing of Debtor’s prior case, but did not prepare the necessary remaining documents. *Id.* Debtor in this case has retained a well known consumer bankruptcy attorney (having felt “abandoned by MLG”) and filed all necessary documents for filing. *Id.* at ¶ 3.

Testimony of Prior Representation and Review of Prior Bankruptcy Case

In her Declaration in support of the current Motion, Debtor provides the court with some very specific, and some general testimony about the representation provided to her by counsel in the prior case. This testimony includes (identified by the paragraph numbers used in the Declaration):

2. I filed a Chapter 13 bankruptcy case on September 21, 2018. I filed that case for the purpose of stopping the foreclosure sale and restructuring my debts.

I filed the September 21, 2018 case without the assistance of an attorney.

I previously retained MLG attorneys to assist me with a possible modification of my home.

I filed the Chapter 13 case at the suggestion of MLG and received the assistance of MLG and their paralegals in preparing my prior bankruptcy case. MLG did not assist me with the preparation of all the necessary documents, only the initial documents which were necessary to stop the foreclosure sale.

I was unable to complete the documents on my own.

3. I felt abandoned by MLG and sought the assistance of another attorney to protect my rights.

Declaration, Dckt. 13.

In the Statement of Financial Affairs, Question 17, Debtor states that she paid “MLG” approximately \$2,400.00 in 2018 “for loan modification.” Dckt. 1 at 39.

The Bankruptcy Petition filed in the prior case, 18-25964, states that Debtor was not represented by counsel and affirmatively states that no document petitioner preparer was paid “to help you fill out your bankruptcy forms.” 18-25964; Petition, p. 8, Dckt. 1. The court notes that on the attorney signature page for the Petition in the prior case, it expressly states “If you are not represented by an attorney, you do not

need to fill out this page.” *Id.*, p. 7. Though instructed not to complete that page, somebody typed in “NOT APPLICABLE” (emphasis in original), as if to reinforce the misrepresentation “no attorneys here.”

Debtor’s testimony about the alleged prior, alleged undisclosed prior representation of Debtor by an attorney in the prior case, the court instructs the Clerk of the Court to serve an informational copy of these Civil Minutes and the Order on Gregory Powell, Asst. U.S. Trustee in the Eastern District of California, and Tracy Hope Davis, U.S. Trustee for Region 17 (in light of this involving multiple Federal Districts in Region 17).

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

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

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

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

Debtor has sufficiently demonstrated the case was filed in good faith 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 Delois Juanita Johnson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

The Clerk of the Court shall serve Informational Copies of this Order and the Civil Minutes for the December 18, 2018 hearing on Gregory Powell, Asst. U.S. Trustee in the Eastern District of California, and Tracy Hope Davis, U.S. Trustee for Region 17 (in light of this involving multiple Federal Districts in Region 17) in light of Debtor’s testimony of prior undisclosed legal representation and believed “abandonment.”

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee, on November 26, 2018. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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

Harley-Davidson Credit Corp. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the proposed plan treats Creditor's secured claim as unsecured.

Creditor asserts a secured claim of \$14,451.63 in this case. Proof of Claim, No. 5. However, Jennel Harris ("Debtor") lists Creditor's claim as unsecured on Schedule E/F in the amount of \$14,452.00. On Debtor's Schedules A/B, Debtor does not list the 2014 Harley-Davidson FLHR Road King (the "Vehicle") Creditor asserts secures its claim.

Proof of Claim No. 5

Proof of Claim No. 5 filed by Creditor does assert a secured claim, for which the collateral is a 2014 Harley Davidson FLHR Road King. Additionally, Creditor states that the interest rate for this consumer purchase is 22%. It also discloses that this debt was "charged off" on February 28, 2017 (now almost two years ago). While "charged off" does not limit the Debtor's obligation, it does demonstrate that

this debt has been in default for a long time and what Creditor has done in moving to sell its collateral in a commercially reasonable manner (especially in light of Creditor acknowledging in Proof of Claim No. 5 that the collateral fully secures the claim).

Attached to Proof of Claim No. 5 is a copy of the Note and Security Agreement. Jannel Fejeran is the borrower. There is no co-borrower for this Note and Security Agreement. However, on the DMV title information attached to Proof of Claim No. 5 that there is a co-owner – Marty Harris.

On her Bankruptcy Petition Debtor lists the name Jannel Fejeran as a name she has previously used. Dckt. 1 at 1. On the Statement of Financial Affairs Debtor states that she is not married. SOFA Question 1, Dckt. 17 at 31.

DISCUSSION

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

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

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

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

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

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

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

Here, the documents filed in this case indicate Debtor is no longer in possession of the collateral securing Creditor's claim. Accordingly, the proposed plan provides for Creditor's claim as one being unsecured.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 Harley-Davidson Credit Corp. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is **XXXXXXXXXXXXXXXXXX**.

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 Not Notice Provided. **The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on November 19, 2018. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).**

The Pleadings were not served on the Debtor, nor any other party in interest in this case.

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

**The hearing on the Motion for Allowance of Professional Fees is continued to
XXXXX.**

Bonnie Baker, the Attorney ("Applicant") for Mark Jon Hansen and Sarah Ann Monica Hansen, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Applicant requests fees in the amount of \$40,564.00 and costs in the amount of \$125.00.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion on November 28, 2018. Dckt. 234. Trustee notes the following:

1. Movant only served the Chapter 13 and U.S. Trustee and no other party in interest.
2. Movant has not provided a task billing analysis. Rather, Movant has dumped 92 pages of raw billing statements onto the court.

3. Plan funds are available if the fees are approved.
4. Two billing statements provided by Movant are for work performed pre-filing (January and February 2014).
5. Whether Debtor has any objection to fees sought for work performed pre-confirmation (February 2016) is unclear. Trustee does not oppose those fees based on the complexity of the case.
6. Trustee notes that roughly 16 categories can be used to support a billing analysis. Trustee declines to further analyze the billings.

DISCUSSION

Trustee's arguments are well-taken. The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant's raw time and billing records, which have not been organized into categories. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than twenty years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number, the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report that separates the activities into the different tasks.

Payment of Fees and Expenses Through Chapter 13 Plan

The Motion requests that the fees be paid through the Chapter 13 Plan as an administrative expense. The confirmed Sixth Amended Plan in this Case requires monthly plan payments of \$4,815.00 through December 2015 and then \$7,046 through February 2018, and finally \$9,113.00 a month for the final twenty-four months of the Plan. Dckt. 203. In addition, the non-exempt portion of proceeds from personal injury litigation will be used to fund the Plan.

In these final twenty-four months Debtor will be paying the following to creditors:

Chapter 13 Trustee Fees (Est. at 8%).....	\$ 792.00
Class 1 Mortgage, Current Monthly Installment.....	\$3,412.38
Class 1 Mortgage, Arrearage.....	\$2,691.38
Cornerstone Bank.....	\$ 350.71
IRS Priority Claim.....	\$1,000.00
EDD Priority Claim.....	\$ 617.39
Post-Petition EDD Admin Expense (\$10,606.67/24 months)..	\$ 441.95
(Admin. Expense Amendment, Dckt. 225)	
General Unsecured Claims (0% Dividend).....	\$ 0.00

The above requires \$9,305.81 a month in payments, which is more than the monthly plan payment. There is no money to fund the payment of additional fees, if the court orders them to be paid through the Plan, thus dooming the plan to default and dismissal.

Thus, such payment can be made through the Plan only if there is a substantial recovery from the personal injury action. The court has not approved any settlement of such action. Neither the Trustee nor Applicant provide the court with evidence of there being such proceeds to pay the requested fees through the Chapter 13 Plan as requested.

Continuance of Hearing

The court continues the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis.

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

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

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

IT IS ORDERED that the hearing on the Motion for Allowance of Professional Fees is continued to **xx:xx x.m.** on **xxxx, 201x**. Applicant shall file a supplemental declaration and supporting documents as necessary, to provide the court, U.S. Trustee, and other parties in interest requesting copies of such supplemental pleadings, with an explanation of the fees requested and a task billing analysis that specifically groups the time and charges by the various task areas for such services.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, the Internal Revenue Service, the Franchise Tax Board, and Office of the United States Trustee on October 31, 2018. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Lisa Denise Tolbert ("Debtor") seeks confirmation of the Modified Plan to bring Debtor current, reduce the monthly dividend, adjust the amount going to secured claims, and reduce the amount going to unsecured claims. Dckt. 150. 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 November 28, 2018. Dckt. 160. The Trustee opposes the Motion on the basis that:

1. Debtor filed plan form EDC 3-080 (effective 5/1/12).
2. Modified Plan section 6.01 incorrectly states \$7,005 has been paid through October 2018. The correct amount is \$7,340.

3. Section 6.02 states \$2,253 has been paid to Debtor's attorney through October 2018. The correct amount is \$3,700.
4. Section 6.03 states \$2,689.76 has been paid to Santander Consumer USA through October 2018. The correct amount is \$2,867.23.

DISCUSSION

The Trustee's Opposition is well-taken. Debtor filed the Modified Plan using Form EDC 3-080(effective 5/1/12). Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03 require the use of Form EDC 3-080 (effective 12/1/17).

Furthermore, the proposed Modified Plan incorrectly states several amounts paid through the plan. This affects the feasibility of the plan. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

5. [18-23227-E-13](#) **KIMBERLI HECK AND DAVID** **MOTION TO MODIFY PLAN**
[PSB-1](#) **HECK, JR.** **11-8-18 [26]**
Paul Bains

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2018. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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Kimberli Beth Heck and David Keith Heck, Jr. ("Debtor") seek confirmation of the Modified Plan because debtor Kimberli Heck is teaching less classes and has decreased income. Dckt. 28. The Modified Plan provides for \$17,400 to have been paid in months 1-5, and for payments of \$5,870 for months 6-60. Dckt. 30. 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 December 3, 2018. Dckt. 34. Trustee opposes the Motion on the basis that Debtor is delinquent \$3,870 under the proposed plan terms. Debtor has paid \$19,400 into the plan where \$23,270 has become due.

Trustee further opposes the Motion on the basis that it is unclear whether Debtor intends not to assume the leases of Ford Motor Credit Company, LLC and River Edge Student Living. Those executory agreements were previously listed in section 4.02. Plan, Dckt. 5. Despite the executory agreements being absent (and therefore rejected by the terms of the proposed Modified Plan), Debtor's Supplemental Schedule J still adds an aggregate expense towards these leases in the amount of \$1,300.00. Exhibit A, Dckt. 29.

DISCUSSION

Debtor is delinquent \$3,870 under the proposed Modified Plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Additionally, the proposed plan terms reject two leases that were previously being assumed. Despite the rejection, Debtor is still treating these agreements as an expense (\$600 for car payments, \$700 for “childcare and children’s education costs”). Exhibit A, Dckt. 29. Where the plan is providing for rejected lease agreements, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Kimberli Beth Heck and David Keith Heck, Jr. (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 3, 2018. By the court’s calculation, 76 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

Stanley Covell and Patricia Covell (“Debtor”) seek confirmation of the Modified Plan because the debtors became delinquent with their chapter 13 plan payment due to increased cost of living and medical expenses, as well as decreased income received from social security. Dckt. 77. The Third Modified Plan provides for the payment of \$6,767 total from months 1-40, and payments of \$100 from months 41-60. Dckt. 78. 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 December 3, 2018. Dckt. 81. Trustee opposes the Motion on the basis Debtor has paid more into the plan in months 1-40 than stated in the proposed Modified Plan. Trustee requests the order confirming amended the Modified Plan to provide for payment of \$6,867

The Modified Plan (amended to allow the amounts actually paid for months 1 through 40) 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 Stanley Covell and Patricia Covell (“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 October 3, 2018, is confirmed. Debtor’s Counsel shall prepare an appropriate order amending the plan to provide payment of \$6,867 for months 1 through 40 and 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: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 20, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the plan does not compute mathematically. The plan calls for payments of \$1,550 for 60 months with a 100 percent dividend to unsecured claims. The plan provides for the Trustee to disburse a mortgage payment of \$1,266.07 and arrearage payment of \$200 to Class 1 claims (the plan proposing to pay \$11,800 in arrears); Unsecured Class 5 debt of \$121; and unsecured Class 7 debt of \$8,600.00. Trustee calculates the plan will complete within 138 months as opposed to the 60 month term currently proposed.

Trustee's objections are well-taken. Even accounting only for the Class 1, 5, and 7 claims and no other Chapter 13 expenses, Debtor would have to pay \$96,685.20 (as opposed to the \$93,000 paid based on the \$1,550 x 60 months). Based on the aforementioned discussion, the court finds the plan as proposed is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on October 30, 2018. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

David Cusick ("the Chapter 13 Trustee") objects to Robert Hunter's ("Debtor") claimed exemptions for "property" in the amount of \$455,000; "automobile" in the amount of \$10,000; and "automobile" in the amount of \$10,000 because they make no reference to legal authority.

Debtor failed to provide legal authority for claimed exemptions. Without any authority provided, the court cannot assess the validity of the claimed exemption. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed exemptions for “property” in the amount of \$455,000; “automobile” in the amount of \$10,000; and “automobile” in the amount of \$10,000 are disallowed in their entirety.

9. [18-26552-E-13](#) **TRACY ARCHIE** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Gerald Glazer** **PLAN BY DAVID P. CUSICK**
11-16-18 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on November 16, 2018. By the court’s calculation, 32 days’ notice was provided. 14 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that Debtor failed to attend the Meeting of Creditors on November 15, 2018. Trustee also notes the Debtor’s first payment of \$950 will become due on November 25, 2018.

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on November 20, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor failed to appear at the November 15, 2018, Meeting of Creditors.
- B. Debtor failed to provide the Trustee tax returns for the most recent prepetition tax year or written statement that no such documentation exists.
- C. Debtor failed to provide employer pay advices covering the 60 day period prior to filing.
- D. Debtor has not paid the filing fee. Dckt. 20.

- E. Debtor is proposing payments of \$8.00 monthly, but his Schedules show negative disposable income of \$1,788.00 monthly.
- F. This is Debtor's fourth bankruptcy case. Debtor filed cases 18-21338 (dismissed March 8, 2018); 18-24778 (dismissed August 13, 2018); and 18-25416 (dismissed on August 13, 2018).

DISCUSSION

Trustee's objections are well-taken.

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

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

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

Debtor's plan proposes payments of only \$8.00—while this is a modest sum, Debtor's Schedules show a disposable income of negative \$1,788. Based on the evidence provided, Debtor cannot make the proposed payments. 11 U.S.C. § 1325(a)(6).

Finally, the court notes Debtor has yet to pay his filing fee installments due (Dckts. 20, 35), and this is Debtor's fourth attempt at a Chapter 13 in less than a year. The court is not confident this Debtor is capable of prosecuting a Chapter 13. The proposed plan is not feasible here. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

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

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

The Motion to Confirm the Modified Plan is granted.

Caleb Christian Humphrey and Emily Suzanne Humphrey ("Debtor") seek confirmation of the Modified Plan, adjusting payments to account for unexpected expenses, including a complete breakdown of one of Debtor's vehicles. Dckt. 26. The Modified Plan provides for payments of \$1,350 for 2 months, \$0 for 3 months, and 1,450 for the remaining 55 months of the plan term. Dckt. 30. 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 December 3, 2018. Dckt. 33. Trustee opposes the Motion on the basis that the plan would take 96 months to complete because the additional provisions of the plan provide for \$13,600 (Dckt. 30 at p. 7) for pre-petition arrears to Ocwen Loan Servicing, where the scheduled claim actually only asserts arrears of \$10,380.00. Dckt. 30 at p. 3.

At the hearing, Debtor explained XXXXXXXXXX.

~~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 Caleb Christian Humphrey and Emily Suzanne Humphrey (“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 November 13, 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: 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 Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 19, 2018. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

At the hearing, Debtor's Counsel xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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

The Motion to Sell Property is granted.
--

The Bankruptcy Code permits Gary Franklin Brown, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 10576 Newtown Road, Nevada City, California ("Property").

The proposed purchaser of the Property is Michael and Julie Beday, and the terms of the sale states with particularity in the Motion are:

- A. The property to be sold is Debtor's residence;
- B. The sales price is \$285,000;
- C. The buyers are Michael and Judy Beday;
- D. Adequate funds to provide for payment of all creditors' claims with 100% dividend will be disbursed from the sales proceeds to the Chapter 13 Trustee; and

- E. The sale will allow Debtor to preserve approximately \$115,000+ equity in the property which he inherited from his mother.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion on December 3, 2018. Dckt. 54. Trustee notes that the plan provides for payment to secured creditors; Trustee does not oppose the Motion where it is clear Trustee is the party disbursing the Class 1 arrearages of \$39,000.00.

Trustee further states Debtor has not sought approval of a real estate agent, and that Debtor is delinquent \$927.28 under the plan.

TRUSTEE'S AMENDED RESPONSE

Trustee filed an Amended Response on December 5, 2018. Dckt. 57. Trustee amended the prior Response to state that Debtor has already obtained approval of a real estate agent. *See* Order, Dckt. 34.

DISCUSSION

Request For Judicial Notice

In support of the Motion, Debtor has requested that the court take "judicial notice" of: (1) the Purchase and Sale Agreement, (2) Claims Register, and (3) Seller's Estimated Net Proceeds Statement. Dckt. 48.

The Federal Rules of Evidence explicitly govern what facts may be judicially noticed. Federal Rule of Evidence 201 provides:

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court's territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

FED. R. EVID. 201(b). Facts of common knowledge and notorious facts have long been recognized by the common law as suitable for judicial notice. 1 FEDERAL EVIDENCE PRACTICE GUIDE § 4.04 [b] (2018). The federal and uniform rules varied the common-law formulation in providing for notice of facts that are "generally known within the trial court's territorial jurisdiction." *Id.*

Counsel may find the general knowledge criterion difficult to demonstrate unless the fact sought to be noticed is clearly recognized as true. *Id.* Matters of general knowledge most likely will receive judicial notice for evaluative and legislative purposes. *Id.* Nonetheless, a court might assume a request for judicial notice is predicated on common knowledge and deny notice of a fact that clearly is capable of ready determination from an accurate source, the other criterion under the rules. *Id.*

Here, Movant requests the court take judicial notice of a California Residential Purchase Agreement and Seller's Counter-Offer; the Claims Register; and Seller's Estimated Net Proceeds Statement. Nothing about these documents is generally known. Neither can it be said the facts within can be readily determined from sources whose accuracy cannot be reasonably questioned.

The concept of judicial notice is very basic in the legal world. That doctrine is for noticing facts that are essentially indisputable, not for authenticating evidence when counsel so elects.

Ruling

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

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale would result in a 100 plan.~~

~~At the hearing, XXXXXXXXXXXXX.~~

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

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

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

~~**IT IS ORDERED** that Gary Franklin Brown, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Michael and Julie Beday or nominee ("Buyer"), the Property commonly known as 10576 Newtown Road, Nevada City, California("Property"), on the following terms:~~

- ~~A. The Property shall be sold to Buyer for \$\$285,000, on the terms and conditions set forth in the Purchase and Sale Agreement, Exhibit 1, Dekt. 48, and as further provided in this Order.~~
- ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter~~

~~13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

13. [15-23769-E-13](#) **COREY LEE COLEMAN** **MOTION TO APPROVE LOAN**
[PLC-7](#) **Peter Cianchetta** **MODIFICATION**
11-28-18 [[106](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 28, 2018. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification 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 Approve Loan Modification is granted.
--

The Motion to Approve Loan Modification filed by Corey Lee Christopher Coleman ("Debtor") seeks court approval for Debtor to incur post-petition credit. JP Morgan Chase Bank N.A. ("Creditor"), whose claim the Plan provides for in Class 1. The new terms of the Modification are stated in the Motion as follows:

a. Principle amount \$190,759.14.

- b. Interest rate of 3.50 percent.
- c. Payments (PITI) \$890.97 per month. ^{FN.1.}
- d. Term: 19 years 8 months.

FN.1. The motion states the payment amount is \$237. Dckt. 106. Reviewing the Modification Agreement and Debtor's Declaration, the correct payment amount is \$890.97. *See* Exhibit A, Dckt. 108; Declaration, Dckt. 109. The "237" number is merely the total number of monthly payments in the term.

Motion, Dckt. 106.

The Motion is supported by the Declaration of Debtor. Dckt. 109. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms. Debtor testifies the loan modification is beneficial here because the interest is reduced from 5 to 3.5 percent, and the arrears are cured. *Id.*

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition to the Motion on December 3, 2018. Dckt. 114. Trustee notes the terms of the modification, Creditor's Amended Proof of Claim, No. 7-2 which incorporates the modification terms.

DISCUSSION

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B) (the motion not stating all the material terms, including the final balloon payment of 128,515.00 due on maturity), the court will waive the defect because the Declaration filed in this matter provides much of the information. The moving party is well-served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve Loan Modification filed by Corey Lee Christopher Coleman ("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 court authorizes Corey Lee Christopher Coleman to amend the terms of the loan with JP Morgan Chase Bank N.A.

(“Creditor”), which is secured by the real property commonly known as s 4928 Sky Parkway, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 108).

14. [15-23769-E-13](#) **COREY LEE COLEMAN** **CONTINUED MOTION TO MODIFY**
[PLC-5](#) **Peter Cianchetta** **PLAN**
10-24-18 [93]

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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2018. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is ~~XXXXXXXXXX~~.

Corey Lee Christopher Coleman (“Debtor”) filed this Motion To Confirm Modified Plan on October 24, 2018. Dckt. 93. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition to the Motion on November 20, 2018. Dckt. 103. The Trustee opposes confirmation on the following grounds:

1. Debtor’s Supplemental Schedules I and J filed October 24, 2018 (Dckt. 98) indicate they are for the same period as prior Schedule I filed January 6, 2018. Dckt. 63. Debtor does not explain changes in income, which include

significant overtime, and mandatory and voluntary retirement contributions of \$689.86.

Debtor's Schedule J also reflects unexplained changes, including increases in telephone/cell/internet/cable from \$348.00 to \$491.00; increases in food expenses from \$1,150 to 1,300; and hospital expenses increased from \$0 to \$287; and washer/dryer expenses increased from \$0 to \$50.

2. Debtor's current proposed plan removes language indicating Debtor is in a trial loan modification and would file a motion to approve loan modification once the trial period was complete. Debtor has not filed a motion for approval of loan modification despite removal of this language.
3. Trustee is uncertain why a loan modification is necessary given Citibank's Amended Claim 7-2 reducing arrears owed to \$0.00.

STIPULATION

On November 29, 2018, the parties filed a joint stipulation to continue th hearing to December 18, 2018 to be heard alongside a motion to approve loan modification (Dckt. 106) set to be heard that day Dckt. 112. The court shall issue an Order continuing the hearing to December 18, 2018 at 3:00p.m.

DISCUSSION

The court has granted Debtor's Motion For Approval of Loan Modification (Dckt. 106) set to be heard the same day as the hearing on this Motion.

However, Debtor has not filed any supplemental pleadings or response addressing Trustee's concern about the failure to explain increases to income and expenses.

At the hearing **XXXXXXXXXXXXXXXXXX**.

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 Corey Lee Christopher Coleman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm is **XXXXXXXXXX**.

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 12, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is XXXXXXXXXX.
--

Corey Lee Christopher Coleman ("Debtor") filed the instant case on May 8, 2015. Dckt. 1. A plan was confirmed on February 23, 2016, and an order confirming the plan was entered on March 8, 2016. Dckt. 77 & 80.

On September 12, 2018, David Cusick ("the Chapter 13 Trustee") filed this Motion to Dismiss the Case due to failure to make Plan payments. Dckt. 81. On October 10, 2018, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 86. The ruling was final because Debtor did not file any opposition.

On October 22, 2018, Debtor filed a Motion to Vacate, and Debtor's counsel submitted his Declaration stating that a new plan had been prepared along with a motion to confirm. However, Debtor's counsel was hospitalized for several days and was unable to execute the required documents.

After the initial November 6, 2018, hearing on the Motion, the court granted the Motion to Vacate dismissal, vacated the Order granting Trustee's Motion to Dismiss (Dckt. 81), and continued the hearing on the Motion to Dismiss to December 4, 2018. December 3, 2018 Amended Order.

STIPULATION TO CONTINUE HEARING

On November 29, 2018, the parties filed a joint stipulation to continue the hearing to be heard alongside a motion to approve loan modification (Dckt. 106) set to be heard that day Dckt. 112. The court issued an order continuing the hearing to December 18, 2018. Order, Dckt. 121.

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

The court has granted Debtor's Motion For Approval of Loan Modification (Dckt. 106) set to be heard the same day as the hearing on this Motion.

However, Debtor has not filed any supplemental pleadings or response addressing Trustee's Opposition to Debtor's Motion To Confirm. Dckt. 93.

At the hearing **XXXXXXXXXXXXXXXXXX**.

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 Dismiss filed by Corey Lee Christopher Coleman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXXXXX**.

Final Ruling: No appearance at the December 18, 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 and Debtor’s Attorney on November 7, 2018. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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.

<p>The Objection to Discharge is sustained.</p>
--

David Cusick, the Chapter 13 Trustee (“Objector”), objects to Jeanne C Rennert’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 September 12, 2016. Case No. 16-26091. Debtor received a discharge on December 27, 2018. Case No. 16-26091, Dckt. 17.

The instant case was filed under Chapter 13 on October 14, 2108.

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 December 27, 2016, which is less than four years preceding the date of the filing of the instant case. Case No. 16-26091, Dckt. 17. 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. 18-26477), 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 David Cusick, the Chapter 13 Trustee (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-26477, the case shall be closed without the entry of a discharge.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 20, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to appear at the Meeting of Creditors on November 15, 2018.

Trustee also filed a Status Report on December 4, 2018. Dckt. 51. The Report states Debtor is \$68.34 delinquent under the proposed plan, having made a partial contribution to the first payment due. The Report states further that Debtor admitted at the Meeting of Creditors she cannot afford the plan payments in her current living situation. Declaration, Dckt. 52.

DISCUSSION

Trustee's objections are well-taken.

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. However, the Continued Meeting of Creditors was held on November

30, 2018, and Trustee's Report indicates Debtor appeared. Therefore, Trustee's grounds for objection here have been resolved.

Still remaining is Debtor's delinquency and Debtor's admission that she cannot make plan payments. Both of these factors suggest the plan is not feasible and are grounds to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 4, 2018. By the court's calculation, 14 days' notice was provided. The court set the hearing for December 18, 2018. Dckt. 18.

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 denied.

David Foyil ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-26678) was dismissed on November 16, 2018, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 18-26678, Dckt. 19, November 16, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor filed a skeletal petition and sought additional time to compile financial records for the filing of other necessary documents. Dckt. 11. Debtor sought an extension on the time for filing necessary documents, which (having been submitted the day before the deadline) was denied. *Id.* Debtor estimates reconciliation for his business should be finished by the end of "this week," allowing Debtor to timely file the documents in this case. *Id.*

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

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

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

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

Debtor states under penalty of perjury in his Declaration that circumstances surrounding the compilation of financial documents should be resolved “this week,” allowing Debtor to timely file documents necessary in this case. Dckt. 11. Despite this, a review of the docket shows the following documents remain to be filed:

Statement of Financial Affairs;

Attorney Disclosure Statement; Summary of Assets and Liabilities;

Chapter 13 Plan; Schedule A/B - Real and Personal Property;
Schedule C - Exempt Property;

Schedule D - Secured Creditors; Schedule E/F - Unsecured Claims;

Schedule G - Exec. Contracts & Unexpired Leases;

Schedule H - Codebtors; Schedule I - Current Income of Individual;

Schedule J - Current Expenditures; and

Form 122C-1 - Chapter 13 Statement of Your Current Monthly
Income and Calculation of Commitment Period.

Dckt. 6.

Here, Debtor is proceeding in *Pro Se*. However, Debtor is actually an experienced bankruptcy practitioner. Dckt. 11 at ¶ 5. Debtor's argument as to why his prior case was dismissed is essentially that the court is at fault for not granting an extension, as in Debtor's experience "the court has routinely granted such requests for my clients based upon the need for time to compile additional financial information." *Id.*

Further, this is not merely Debtor's second recent filing following a stumble in the prior case. The court's files disclose the following cases filed by Debtor and their resolutions:

Ch 13 Case 18-26678	Filed: October 24, 2018	Dismissed: November 16, 2018
Chapter 11 Case 16-22194	Filed April 6, 2016	Dismissed: June 29, 2016

The Chapter 11 case was issued for cause, Debtor failing to comply with the orders of the court. The court's Civil Minutes stating the grounds for dismissing the case include the following:

The debtor was required by the Order to (1) File Status Report; and (2) Attend Status Conference (the "Order") to serve the Order and his Status Report on, among others, (1) the holders of the 20 largest unsecured claims, excluding insiders; and (2) all parties to executory contracts and unexpired leases. The debtor failed to serve Albert and Eva Fisher, listed on his Schedule E/F as holding one of the three largest unsecured claims (except those listed in amounts unknown), and failed to serve David and Hannah Hooker, listed on the debtor's Schedule G. In addition, regardless of the Order, the debtor was required to list on his master address list all parties included or to be included on his Schedules D, E/F, and G (Fed. R. Bankr. P. 1007(a)(1)), yet neither Albert and Eva Fisher nor David and Hannah Hooker are listed on the master address list. **The court pointed out these omissions in a tentative ruling issued prior to the initial status conference, adding that the court had pointed out these same issues to the debtor in rulings on status conferences in two prior cases, yet the same issues had been ignored here.**

...

As of this date, the debtor has failed to add Albert and Eva Fisher and David and Hannah Hooker to his master address list. Thus, there is no evidence of record that they have received notice of the case in the several weeks it has been pending. (The court recognizes that Hannah Hooker has signed proofs of service in this case, but that does not demonstrate that David Hooker has been made aware of the case. **The debtor offered at the initial status conference to file a declaration to that effect; to date, he has not done so.) The debtor has filed nothing further concerning Mr. Weiner. Thus, the holder of this claim, whether it be Albert and Eva Fisher or Mark Weiner, has never been notified of the case.** The debtor scheduled this claim at \$35,000, not contingent, unliquidated, or disputed. **Neither** Albert and Eva Fisher, Mark Weiner, nor David and Hannah Hooker **have ever been served** with the Order and status report, **as required by the Order.**

The initial status conference was held May 18, 2016 and continued to June 15, 2016. . . The order granting the *ex parte* application required the debtor to serve the order on the United States Trustee, all creditors, and any other party-in-interest by May 26, 2016, and to file a proof of service by May 27, 2016.

The debtor did not file a proof of service. Instead, he apparently relied on his service of the *ex parte* application, declaration, and what the court believes to have been a proposed order, evidenced by a proof of service filed May 24, 2016 at 10:15 a.m. The court's order granting the application was not filed until May 24, 2016 at 11:52 a.m. Thus, it appears the copy served by the debtor was an unsigned copy. Even if it was a signed copy, however, **the debtor did not comply with the order because he did not serve all creditors.**

...

Finally, the court notes that the debtor has filed monthly operating reports for the corporation through which he conducts his business, for April and May of this year, as well as a statement pursuant to Fed. R. Bankr. P. 2015.3. **The court indicated at the initial status conference those reports should state the amount of the unpaid tax liability of the corporation; they do not.** The report for April shows post-petition liabilities, which are not identified, of \$2,500, and the report for May shows post-petition liabilities, also unidentified, of \$4,500. It appears likely those unpaid post-petition liabilities are payroll taxes, as there is no entry for payroll taxes on the profit and loss statements attached to the monthly reports. The reports show payroll of \$10,095 in April and \$8,491 in May; the reports do not suggest those figures include net pay and payroll taxes.

As the court noted in its tentative ruling for the initial status conference, the debtor is a bankruptcy attorney; thus, the court should be able to expect full compliance with applicable rules. **Thus far, the debtor has failed to notify several creditors of the pending bankruptcy case, despite the rules and the court's clear cautions in its earlier tentative ruling and at the initial hearing that he had failed to do that.** The court has significant concern that this case will not be prosecuted diligently and in compliance with

Chapter 11 Case 14-30670	Filed: October 29, 2014	Dismissed: February 19, 2015
	<p>In dismissing the 2014 Chapter 11 case, the court again expressed concerns about Debtor's good faith in filing and prosecuting the bankruptcy case. The court's concerns at the Status Conference at which it determined to dismiss the 2014 Chapter 11 case include:</p> <p>First, the debtor's schedules disclose two creditors who were not included on the master address list, were not served with the scheduling order and debtor's status report, and have never been given formal notice of the case, if any. . . They have not been served with the scheduling order or status report, as required by the scheduling order.</p> <p>[T]hat was the first time Ms. Didriksen was formally made aware of this case although it has been pending for over three months. The debtor also served the amended Statement of Financial Affairs and amended Schedules A, B, D, and E, but not the amended Schedule F, on Steve Brewer, another creditor the debtor added to his Schedule F in the amendment filed February 3, 2015. Ms. Didriksen and Mr. Brewer have not been served with the scheduling order or status report, as required by the scheduling order. (They are among the 20 largest unsecured creditors.)</p> <p>...</p> <p><i>Continued in Next Table Box</i></p>	

<p>The court has additional concerns about Case No. 11-31046, primarily that the case is still open. There have been no motions to abandon filed in that case, either by the trustee or the debtor; thus, all property of the estate in that case remains property of the estate in that case, including the debtor's two rental properties listed by the debtor as assets in this new case. So far as the court can tell, those properties are not property of the estate in this new case, and the debtor has no right to exercise any control over them.</p> <p>...</p> <p>[A]s the debtor is required to list all of his businesses operated within the past six years, the deletion of the insurance business appears inaccurate.</p> <p>These changes would be significant but less consequential in the ordinary case than they are here. The debtor in this case is an experienced bankruptcy attorney, who files many cases every year. It seems reasonable to expect such an individual to be acutely alert to his duty of careful, complete, and accurate reporting in his schedules filed in the case; the court finds, however, that he did not comply with that duty when he filed his original schedules and statement of affairs despite having taken an additional two weeks beyond the petition date to complete them.</p> <p>14-30670, Dckt. 72.</p>		
Chapter 13 Case 12-35273	Filed: August 21, 2012	Dismissed: July 16, 2013
	<p>The grounds stated in the Civil Minutes on the Motion to Dismiss include: (1) Debtor exceeding the debt limits for Chapter 13; and (2) unreasonable delay in Debtor failing to confirm a plan in twelve months. 12035273, Dckt. 152.</p>	
Chapter 7 Case 11-31046	Filed: May 3, 2011	Discharge Entered: August 8, 2012.

Debtor, being an experienced attorney, has petitioned this court to extend the automatic stay where the grounds for dismissing the prior case (failure to timely file documents) have not been resolved.

At the hearing **XXXXXXXXXX**.

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 David Foyil (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

19. [18-27634](#)-E-13
[RWH-2](#)

LESLIE CREED
Ronald Holland

MOTION TO EXTEND AUTOMATIC
STAY
O.S.T.
12-10-18 [\[9\]](#)

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 10, 2018. By the court's calculation, 8 days' notice was provided. The court set the hearing for December 18, 2018. Dckt. 14.

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.

Leslie Ann Creed ("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. 17-24472) was dismissed on September 20, 2018, after Debtor fell delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 17-24472, Dckt. 78, September 20, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she fell behind in payments after incurring unexpected medical expenses. Dckt. 12. While Debtor believes she had the option of trying to modify my prior plan, she believed the modified plan payments would be too high to afford. *Id.* Debtor has now started budgeting for contingencies. *Id.*

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

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

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor incurred sudden unexpected expenses, and has now started planning for contingencies.

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 Leslie Ann Creed (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 16, 2018. Dckt. 32. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor failed to attend the Meeting of Creditors on November 15, 2018.
- B. Debtor is above median income; based on the applicable commitment period of 60 months, unsecured claims should receive \$10,966.20. Debtor

proposes only a 20 percent dividend to unsecured claims for 36 months. Trustee objects to a term less than 60 months unless 100 percent dividend is provide to unsecured claims.

- C. Debtor's payment is insufficient to cover the Class 1 claim of LoanCare LLC. The payment is \$1,589.00, and the payment for LoanCare LLC's claim is \$2,785. The Trustee notes that if the Debtor is current under that claim, the plan should provide for the claim as a Class 4 (it appearing Debtor's mortgage expense on Schedule J is the amount of the mortgage payment).
- D. Debtor's proposed plan relies on motions to value the collateral of creditors Elite Acceptance and First Investors Financial Services. No motions to value have been filed. Furthermore, Trustee is concerned the claim of First Investors Servicing Corporation cannot be valued, being secured by a vehicle purchased in less than 910 days prior to filing. *See* Proof of Claim, No. 1. Furthermore, that creditor filed a Motion For Relief (Dckt. 7) indicating creditor has possession of the collateral.
- E. Debtor proposes to pay 10 percent interest on the Class2(B) claim securing their 2007 Acura TL. This rate is higher than required and reduces unnecessarily the dividend going to unsecured claims.
- F. The documents suggest conflicting amounts as to the attorney's fees. Section 3.05 of the proposed plan provides \$5,425 in fees; and Rights and Responsibilities indicate \$1,425 paid and \$4,000 owing; Debtor's 2016(b) indicates \$1,425 paid and \$2,575 owing; Section 3.06 of the proposed plan provides a dividend of \$0.00 though Debtor purports to owe \$4,000 in fees.

DISCUSSION

Trustee's objections are well-taken.

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

The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months without providing full payment of all allowed unsecured claims. Debtor has proposed a plan term of 36 months, but Debtor has proposed to pay less than the full amount of allowed unsecured claims.

Debtor's proposed plan provides for the claim of LoanCare, LLC as a Class 1 with a \$2,785 monthly payment. Dckt. 18. However, Debtor's Schedules indicate an expense of \$2,785 for Home ownership expenses. Schedule J, Dckt. 17. The plan indicating there are no arrearages, Debtor should be providing for payment directly if the debt is to be listed as an expense on Schedule J. Currently, the proposed plan payment is only \$1,589. This is less than the amount needed to make the Class 1 payment and indicates the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor's proposed plan relies on motions to value the collateral of creditors Elite Acceptance and First Investors Financial Services. No motions to value have been filed. Furthermore, First Investors Financial Services filed a Motion For Relief, which was granted on November 26, 2018. Order, Dckt. 37. Debtors plan is clearly not feasible where it proposes to treat as a Class 2 the unsecured deficiency claim of First Investors Financial Services filed. This is additional grounds suggesting the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Finally, Debtor's documents are muddled as to what has already been paid to Debtor's counsel and what remains to be paid through the plan. Currently, Section 3.06 of the proposed plan provides a dividend of \$0.00 to counsel. Therefore, any amount owing would render the plan not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2018. By the court's calculation, 76 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is denied.</p>

Matthew Hannah and Tara Hannah ("Debtor") seek confirmation of the Amended Plan, which would constitute the first confirmed plan in this case. The Amended Plan provides for payments of \$435 for months 1 through 15, \$1,450 for months 16 through 60, and a 0 percent dividend to unsecured claims. Dckt. 43. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 3, 2018. Dckt. 46. Trustee opposes the Motion on the basis that the plan is not feasible. Form 122C-2 shows on line 45 that Debtor's disposable income is negative \$70.50. Trustee asserts further that Debtor is not entitled to the \$1,991.01 deduction claimed on line 16 for taxes (Dckt. 14 at p. 46) where Schedule I shows \$1,549.98 total for taxes; Line 45 on Form 122C-2 should be positive \$370.53.

Trustee argues further that, based on Trustee's review of employer pay advices provided, Debtor is paying less than the \$1,082.34 for taxes listed on Schedule I. Trustee's prior Objection to Confirmation (Dckt. 29) was sustained on the same objection. *See* Civil Minutes, Dckt. 28.

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

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

Debtor has not provided accurate information on Schedules as to taxes and withholding expenses. Therefore, the proposed plan the plan does not meet the requirements of 11 U.S.C. §§ 1325(b)(1) or 1325(a)(6).

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Matthew Hannah and Tara Hannah ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

22. [18-25569](#)-E-13
[DPC](#)-1

GRACE WOODRING
Kyle Schumacher

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
10-9-18 [\[20\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 9, 2018. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
--

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

- A. Debtor is \$759.00 delinquent in plan payments to the Chapter 13 Trustee.
Debtor has paid \$0.00 into the plan to date.

- B. The Chapter 13 Trustee is unable to determine whether the plan is in Debtor's best effort. First, Debtor may potentially earn more income that is reported on Schedule I. The average of three pay stubs provided by Debtor is \$3,800.37 or approximately \$8,381.89 gross and \$6,867.00 net per month. This leaves the net figure \$1,895.00 greater than reported on Schedule I. The Chapter 13 Trustee has requested Debtor to provide a full 6 month history of Debtor's income prior to filing.

Second, Debtor advised the Chapter 13 Trustee that Debtor's partner/significant other has obtained employment at a warehouse earning \$13.50 per hour and working 40 hours per week. This partner is listed as a dependent on Schedule J. The Chapter 13 Trustee requests Debtor amend Schedule I to include her partner's income and Schedule J to add any new expenses related to this employment.

- C. Debtor has not provided the Chapter 13 Trustee with a full and complete copy of Debtor's Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, the 2017 Tax Return, or a written statement of no such documents exists. Debtor has provided the Chapter 13 Trustee with Debtor's 2017 Returns but the document is missing the attachments and schedules.

NOVEMBER 20, 2018 HEARING

At the November 20, 2018, hearing the Trustee notified the court he was working with counsel and requested the court continue the matter. The court continued the hearing on the Motion to December 18, 2018. Dckt. 29.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on December 3, 2018. Dckt. 33. Trustee states Debtor is \$717 delinquent, but has paid \$1,560 into the plan to date. Furthermore, Trustee argues Debtor is not paying enough to unsecured claims (\$9,359 total as opposed to the Trustee's calculation of \$37,070.04 necessary); based on pay advices, Debtor's wages are likely \$1,223.00 higher than stated on Schedule I; and Debtor added income from her boyfriend totaling \$1,663, but increased expenses to reduce the disposable income increase to only \$13.00, all without providing further explanation.

Trustee also notes Trustee has received Debtor's tax return and this portion of the Objection is resolved.

DISCUSSION

The Chapter 13 Trustee's objections are well-taken.

Debtor is \$759.00 delinquent in plan payments, which represents one month of the \$759.00 plan payment. While Debtor has now made two payments, Debtor is still delinquent under the plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee continues to allege that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

Based on pay advices, Trustee determined Debtor's wages are likely \$1,223.00 higher than stated on Schedule I. Furthermore, while Debtor amended Schedules to reflect income from a significant other (to address Trustee and this court's concerns), Debtor also increased expenses to offset the income. Debtor's real financial situation is shrouded and prevents the court from assessing the feasibility of the plan, whether Debtor is proving unsecured claims what is required, and whether the plan is Debtor's best efforts. This is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6) and (b)(1).

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

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

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

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

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

23. [18-20885](#)-E-13

[PGM-2](#)

ANTHONY/WENDY GIANOLA

Peter Macaluso

CONTINUED MOTION TO CONFIRM
PLAN

10-30-18 [\[57\]](#)

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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 30, 2018. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is XXXXXXXXXXXXXXXXXX.

Anthony Paul Gianola and Wendy Elaine Gianola ("Debtor") seek confirmation of the Amended Plan, which would be the first confirmed plan in this case. Dckt. 59. The Amended Plan provides for payments of \$600 for 8 months, and \$3,650.00 for 52 months. Dckt. 60. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

December 18, 2018 at 3:00 p.m.

- Page 59 of 88 -

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on November 13, 2018. Dckt. 62. Trustee objects on the basis that the plan term may exceed 60 months because Debtor does not fully account for the Internal Revenue Service’s claim amounting to \$32,785.29, because Debtor is only paying \$1,669.00 towards the Class 1 claim of Nationstar Mortgage (an amount not providing adequate protection), and because Debtor increased the unsecured dividend to 70 percent amounting to \$45,275 to be paid out through the plan. Trustee further opposes confirmation of the proposed plan on the grounds that Debtor’s Schedule J reflects only \$600 in disposable income (far below the proposed monthly payment), and that Debtor has failed to file taxes for the 2014, 2015, and 2017 years.

DEBTOR’S REPLY

Debtor filed a Reply to Trustee’s Opposition on November 27, 2018. Dckt. 68. Debtor states that tax returns have been filed for 2014 and 2015, that Amended Schedules I and J were filed on November 15, 2018, and that Debtor requests that the Chapter 13 payment be increased to \$4,075.0 in the order confirming plan to ensure payment to creditors under the terms of the proposed plan.

DECEMBER 4, 2018 HEARING

At the December 4, 2018, hearing, the court continued the hearing on the Motion to December 18, 2018 to allow the Debtor and Trustee to work out final plan amendments. Dckt. 70.

DISCUSSION

Despite Debtor’s Reply, no evidence was filed supporting that claim that Debtor filed tax returns for 2014 and 2015. Filing of the returns is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor filed Amended/Supplemental Schedules I and J on November 15, 2018. Dckt. 65. The Amendment removes the mortgage payment, modestly increases income, and increases other expenses to arrive at a disposable income of \$4,527.12. Debtor’s Declaration in support of the Amended Schedules explains some of the increased expenses as “new living situation,” further explaining Co-Debtor Anthony Gianola moved to Seattle for a new job.

Debtor’s explanation causes concern where there has been no or virtually no increase to expenses for electricity/heating/gas and water/sewer/garbage. Food and housekeeping costs have been reduced from \$800 to \$600. Transportation costs have been reduced from \$600 to \$375.

Furthermore, the Declaration characterizes several expenses as being increased that have actually been reduced or remained constant, including clothing (\$200 to \$150), personal care (\$200 to \$150), and heat/electric (\$455.33, unchanged). Failure to provide accurate expenses suggests the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor also states it is waiting for the Internal Revenue Service to amend its claim, but has not provided evidence suggesting that any claim should be amended. Because the proposed plan does not account for the IRS' higher claim amount, the proposed plan would exceed the maximum sixty months allowed under 11 U.S.C. § 1322(d).

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 Anthony Paul Gianola and Wendy Elaine Gianola ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is **XXXXXXXXXXXXXXXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 2, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is denied.</p>

Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtor") seek confirmation of the Amended Plan, which would be the first confirmed plan in this case. The Amended Plan provides for payments of \$0.00 for 1 month; \$5,000 for 13 months; \$5,450 for 24 months; \$6,000 for 12 months; \$6,550 for 10 months; and a lump sum payment of \$359,000 in month 15. Dckt. 93. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed an Opposition on December 3, 2018. Dckt. 107. Trustee opposes the Motion on the following grounds:

1. The secured claim of JP Morgan Chase Bank, N.A. should be treated as a Class 1 and not a Class 4. The claim totals \$725,003.24 and includes \$25,019.46 in arrears and a monthly payment of \$5,985.57. The Trustee further asserts the plan provides for sale of Debtor’s residence (and lump sum payment) by no later than the 15th month (June 2019) or December 25, 2018 (the 21st month); Trustee requests clarification as to the lump sum deadlines.
2. Debtor proposes to pay the IRS as though it has a secured claim of \$298,423.20. The court granted a Motion To Value Collateral securing IRS’ claim at a value of only \$54,996.76. Dckt. 79. Debtor proposes to pay the FTB as though it has a secured claim of \$5,465.35. The court granted a Motion To Value Collateral securing FTB’s claim at a value of only \$0.00.
3. Trustee is concerned Debtor’s Motion indicates an intent to end the plan after the lump sum in month 15, where Debtor may be required to complete the full 60 month term if this is not a 100 percent plan.
4. Debtor’s Motion conflicts with the plan terms. The Motion indicates a 100 percent dividend to unsecured claims, whereas the plan proposes a 0 percent dividend.

CREDITOR’S OPPOSITION

JPMorgan Chase Bank, National Association (“Creditor”) filed an Opposition to the Motion on December 4, 2018. Dckt. 115. Creditor opposes confirmation on the following grounds:

1. Debtor’s plan was not proposed in good faith. Creditor has previously objected to similarly proposed treatment in the Debtors First Amended Plan. The Debtors have proposed this Plan that seeks to possibly extend the time period that the Debtors have to sell the Property to Month 21 with no explanation as to why such a long period is needed if the original intent was to sell by Month 15. The Debtors have filed no motions to employ a real estate broker to list the Property and there is no evidence that the Debtors have made any good faith efforts to market and sell the Property since the filing of their petition on March 14, 2018. The Plan also seeks to allow the Debtors to have an unspecified period to obtain confirmation of yet another plan if they fail to sell the Property by as late as Month 21. Lastly, Creditor’s claim is again incorrectly classified as a Class 4 secured claim.

2. Debtor's proposed Amended Plan does not provide for the full value of Creditor's claim. Creditor's claim for pre-petition arrears is in the total amount of \$25,019.46. However, the Debtors' Chapter 13 Plan fails to provide for payment of the pre-petition arrears on Creditor's secured claim through arrearage dividends and instead proposes three difference scenarios to allegedly provide for the Creditor's pre-petition arrears that may never cure the arrears within the 60 month term of the Plan.
3. Debtor's plan does not promptly cure Creditor's pre-petition arrears. Debtors' Plan provides for the cure arrears only if the Property can be sold by December 31, 2019 or that the Debtors can feasibly propose a modified plan that provides for ongoing, post-petition arrearage dividends after December 31, 2019 if the Property does not sell.

DISCUSSION

The opposing grounds asserted by Trustee and Creditor are well-taken.

Trustee raises several grounds suggesting the plan is not feasible, including Debtor not correctly providing for Creditor as a Class 1, Debtor providing the secured claims of the IRS and FTB more than they are entitled, Debtor evincing an intent to end the plan early, and conflicting terms in the Motion and plan language. These are grounds to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$25,019.46 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Both Trustee and Creditor argue th plan was not proposed in good faith because Debtor has not addressed objections brought up as to the prior plan. That is additional grounds to deny confirmation. See 11 U.S.C. § 1325(a)(3).

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

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

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

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

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

25. [17-24543](#)-E-13
WW-[2](#)

MATTHEW BORRE
Mark Wolff

**OBJECTION TO CLAIM OF BANK OF
AMERICA, N.A., CLAIM NUMBER 6-1
AND/OR OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
10-29-18 [\[25\]](#)**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 29, 2018. By the court's calculation, 50 days' notice was provided. 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).

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 6 of Bank of America, N.A held by Carrington Mortgage Services, LLC, its assignees and/or successors in interest, is sustained in part, and the claim for pre-petition arrears is \$0.00.

Matthew Borre, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Bank of America, N.A., which is now held by Carrington Mortgage Services, LLC, its assignees and/or successors in interest ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$179,866.29, and states prepetition arrears are \$1,440.33. Proof of Claim, No. 6. Objector asserts that Creditor's Proof of Claim incorrectly states a pre-petition arrearage and charges unreasonable high fees for bankruptcy related services.

Debtor filed this case on July 11, 2018. Debtor argues he made the payment due July 15, 2018 to Creditor by telephone transaction, the payment clearing July 18, 2018. Declaration, Dckt. 27 at ¶ 4.

Along with its Proof of Claim, Creditor filed a Form 410S2 Notice of Postpetition Mortgage Fees, Expenses, and Charges. The Notice provides charges of \$550 for “Bankruptcy/Proof of claim fees” and \$350 for “review of plan.” Debtor argues “proof of claim” fees are unnecessary in this case because the Debtor was current on the loan. Motion, Dckt. 25. Debtor also argues the “review of plan” fees are unreasonably high. *Id.*

Debtor requests the amount of pre-petition arrearages be determined to be \$0.00, that the fees stated in Creditor’s Form 410S2 be disallowed as unreasonably high, and that attorney’s fees incurred bringing this Objection be awarded to Debtor.

CREDITOR’S OPPOSITION

Creditor filed an Opposition on December 4, 2018. Dckt. 30. Creditor argues Debtor has presented no admissible evidence to show that the prepetition payments owed to Secured Creditor were current at the time of filing on July 11, 2017; that the payment which cleared July 18, 2017 was made and posted prior to the Filing Date on July 11, 2017; and that such payment (\$1,070.64) was of a sufficient amount to bring the account current through July 2017. Therefore Creditor argues Debtor has not carried his burden of proof to negate the *prima facie* validity of Secured Creditor’s prepetition arrears claim.

Creditor argues further there is no dispute as to the allowance of attorney’s fees for its actions to enforce its loan and protect its rights thereto, or that a Form 410S2 was required to be filed. Creditor believes fees charged were reasonable, and explains the charges here were a flat rate fees (\$300 for filing a proof of claim, \$250 for filing the 410A, and \$350 for plan review). Creditor argues that notwithstanding whether Debtor is current, Creditor must review any Chapter 13 debtor’s plan to ensure proper treatment of its claim.

Finally, Creditor argues Debtor has not cited any legal authority entitling Debtor to attorney’s fees.

DISCUSSION

Amount of Pre-Petition Arrears

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).

From the evidence provided, the payment due July 16, 2018 was \$1,421.00. Proof of Claim, No. 6. Debtor made the payment on July 18, 2017. Declaration, Dckt. 27 at ¶ 4. While Creditor argues Debtor only made a partial payment, no evidence is provided to support this assertion. Therefore, Debtor's Objection is sustained as to this relief, and the pre-petition arrears in Creditor's Proof of Claim, No. 6 are \$0.00.

The evidence shows that when the case was filed, the July 2017 payment had not been made. Further, that Debtor made the July 2017 payment in July 2017, as the current monthly payment post-petition as is necessary for a Class 4 Claim.

Proof of Claim No. 6 filed by Bank of America, N.A. states, under penalty of perjury, that there was \$1,440.33 that was the "Amount necessary to cure any default as of the date of the petition." Bank of America, N.A. stated under penalty of such \$1,440.33 was "necessary" to "cure" the default as of the September 13, 2017 execution of the Proof of Claim by the authorized representative of Bank of America, N.A.

However, evidence has been presented that the July 2017 payment was paid to Bank of America, N.A. on July 18, 2017. This was as is provided for in the Debtor's then proposed Chapter 13 Plan filed on July 11, 2017. Plan ¶ 2.11, Class 4 Debtor direct payments; Dckt. 5. Thus, the evidence shows that there was, and is, no payment "necessary" as of the September 13, 2017 Proof of Claim filing to "cure" a pre-petition arrearage. As filed, it appears that Bank of America, N.A. was attempting to obtain a double payment of this amount.

At the hearing, **XXXXXXXXXX**.

Fees Incident to Filing

Debtor asserts that Creditor's fees of \$550 for "Bankruptcy/Proof of claim fees" and \$350 for "review of plan" are unreasonably high. Debtor's argument largely centers on the premise that Creditor unnecessarily filed a Proof of Claim, given Debtor is current under the loan.

The court disagrees with this premise. The rationale for requiring the filing of a formal proof of claim or interest in accordance with section 501 is based upon ensuring that "all those involved in the proceeding will be made aware of the claims against the debtor's estate." 4 COLLIER ON BANKRUPTCY P 501.01[1] (16th 2018).

A Creditor is entitled to enforce its loan and protect its rights. Creditor's do not merely file proofs of claim where arrearages are owing.

The remainder of Debtor's argument is merely a conclusion without explanation that the fees here were too high. This argument is also not persuasive. Debtor not having shown why the fees here are unreasonable, this requested relief in the Objection is overruled.

Request for Attorney's Fees

Creditor's arguments here are well-taken. Debtor has not cited to any legal authority entitling Debtor to an award of attorney's fees. Under the American Rule parties pay their own attorney's fees, win or lose, unless a statute or contract provides otherwise. *Baker Botts L.L.P. v. ASARCO LLC*, 135 S. Ct. 2158, 2164 (2015). Debtor not demonstrating a source for attorney's fee award, this requested relief in the Objection is overruled.

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

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

The Objection to Claim of Bank of America, N.A. held by Carrington Mortgage Services, LLC, its assignees and/or successors in interest ("Creditor"), filed in this case by Matthew Borre, Chapter 13 Debtor, ("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 of Bank of America, N.A. held by Carrington Mortgage Services, LLC, its assignees and/or successors in interest is sustained, and the pre-petition arrears in Proof of Claim, No. 6 are \$0.00.

IT IS ORDERED that the Objection is overruled as to the relief requesting disallowance of fees stated by Creditor in its Form 410S2 Notice of Postpetition Mortgage Fees, Expenses, and Charges.

IT IS ORDERED that Objection is overruled as to the relief requesting attorney's fees, and attorney's fees are not awarded as requested in the Motion.

FINAL RULINGS

26. [16-24802](#)-E-13 KEVIN/BRANDEE MCCANN MOTION TO MODIFY PLAN
[DEF-3](#) David Foyil 10-2-18 [[95](#)]
DEBTOR DISMISSED:
11/05/2018
JOINT DEBTOR DISMISSED:
11/05/2018

Final Ruling: No appearance at the December 18, 2018, hearing is required.

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

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

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

The Motion To Confirm Modified Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

27. [17-24407](#)-E-13
[DPC](#)-5

PATRICK/MARGUERITE
SEEHUETTER
Robert Huckaby

CONTINUED MOTION TO DISMISS
CASE
10-24-18 [\[106\]](#)

Final Ruling: No appearance at the December 18, 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, and Office of the United States Trustee on October 24, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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 Dismiss is denied without prejudice.

David Cusick (the "Chapter 13 Trustee") asserts Patrick and Marguerite Seehuetter ("Debtor") are causing unreasonable delay that is prejudicial to creditors because they have failed to file a Plan or Motion to Confirm a Plan subsequent to the court's Order denying Debtor's Motion to Confirm Amended Plan filed on August 7, 2018. Dckt. 105. The Trustee notes that Debtor has filed four plans since the filing on July 1, 2017, and, all those plans having been denied, that Debtor is incapable of filing a confirmable plan.

NOVEMBER 14, 2018 HEARING

At the November 14, 2018, hearing on the Motion, the Debtor informed the court a new Motion To Confirm Third Amended Plan had been filed. Civil Minutes, Dckt. 117. The court continued the hearing on the Motion to December 18, 2018, to be heard alongside Debtor's Motion to Confirm.

DISCUSSION

The court has granted Debtor's Motion to Confirm (Dckt. 113) set to be heard the same day as this Motion. Therefore, the Motion to Dismiss is denied without prejudice.

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

28. [17-24407](#)-E-13
[RPH-6](#)

PATRICK/MARGUERITE
SEEHUETTER
Robert Huckaby

MOTION TO CONFIRM PLAN
11-14-18 [\[113\]](#)

Final Ruling: No appearance at the December 18, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2018. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Patrick and Marguerite Seehuetter ("Debtor") have provided evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on December 3, 2018. Dckt. 120. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on May 16, 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.

29. [18-25899](#)-E-13

[DPC-1](#)

MICHAEL SARGENTI

Nicholas Wajda

OBJECTION TO DISCHARGE BY

DAVID P. CUSICK

11-1-18 [\[15\]](#)

Final Ruling: No appearance at the December 18, 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 and Debtor’s Attorney on November 1, 2018. By the court’s calculation, 47 days’ notice was provided. 28 days’ notice is required.

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.

<p>The Objection to Discharge is sustained.</p>
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David Cusick, the Chapter 13 Trustee, (“Objector”) objects to Michael David Sargenti’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 September 12, 2017. Case No. 17-26068. Debtor received a discharge on December 26, 2017. Case No. 17-26068, Dckt. 13.

The instant case was filed under Chapter 13 on September 18, 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 December 26, 2017, which is less than four years preceding the date of the filing of the instant case. Case No. 17-26068, Dckt. 13. 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. 18-25899), 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 David Cusick, the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-25899, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the December 18, 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, Chapter 13 Trustee, Government Entities, parties requesting special notice, and Office of the United States Trustee on November 2, 2018. By the court's calculation, 46 days' notice was provided. 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).

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 14-2 of Exeter Finance LLC is sustained, and the claim is disallowed in its entirety.

Patricia Ann Chadwick, Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of Exeter Finance LLC ("Creditor"), Proof of Claim No. 14-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured (being the deficiency amount remaining after selling Debtor's surrendered vehicle) in the amount of \$11,197.71. 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 March 9, 2016. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

APPLICABLE LAW

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 rationale for requiring the filing of a formal proof of claim or interest in accordance with section 501 is based upon ensuring that "all those involved in the proceeding will be made aware of the claims against the debtor's estate." 4 COLLIER ON BANKRUPTCY P 501.01[1] (16th 2018). It should be noted that the filing of a proof of claim or interest is permissive, and no creditor or interest holder is ever required to file one. *Id.* A proof of claim or interest should be filed only when "some purpose would be served." The primary purpose is, of course, to share in any distribution. *Id.* Other purposes may be to make others aware of any claim and to allow for the opportunity to contest a claim. *Id.*

In the absence of prejudice to an opposing party, the bankruptcy courts, as courts of equity, should freely allow amendments to proofs of claim that relate back to the filing date of the informal claim when the purpose is to cure a defect in the claim as filed or to describe the claim with greater particularity. *In re Sambo's Restaurants, Inc.*, 754 F.2d 811, 816-817, (9th Cir. 1985). Courts generally follow the rule that amending a timely filed claim is permitted only where the original claim states "an explicit demand showing the nature and amount of the claim against the estate, and evidence[s] an intent to hold the debtor liable." 4 COLLIER ON BANKRUPTCY P 501.02 [4] (16th 2018). One should note, however, that the allowance of a late-filed claim is an equitable determination left to the discretion of the bankruptcy court. *Id.*

DISCUSSION

Here, the deadline for filing claims was March 9, 2018. Notice of Bankruptcy Filing and Deadlines, Dckt. 9. Creditor filed its Original Proof of Claim on March 8, 2018. Proof of Claim, No. 14-1.

Debtor filed this case on November 5, 2018, and filed a proposed plan the same day. Plan, Dckt. 5. The plan provided for a 100 percent dividend to unsecured claims, totaling \$25,032.00. *Id.* The Plan also provided for Creditor as a Class 3, satisfying Creditor's secured claim through the surrender of the collateral. *Id.* The Plan stated the estimated deficiency amount to be \$0.00. *Id.*

The court issued an Order Confirming Debtor's proposed plan on January 13, 2106. Dckt. 18. Creditor did not oppose or object to the confirmation of the Plan.

Approximately 971 days after confirmation of the Plan, on September 10, 2018, Creditor filed an Amended Proof of Claim asserting a deficiency in the amount of \$11,197.71. Proof of Claim, No. 14-2.

Creditor has not filed an opposition or response to Debtor's Objection explaining the significant amount of delay between confirmation of the plan and the filing of the Amended Claim. Debtor was almost three years into the Confirmed Plan before Creditor decided to seek deficiency judgement. The Confirmed Plan provides for a 100 percent dividend to unsecured claims—including Creditor's claim into the Plan would

increase the total amount paid by over 40 percent. This could threaten feasibility of the Plan and require other creditors with unsecured claim to take a lower dividend than had been expected for nearly three years.

While the court generally allows amendments to proofs of claim, Creditor's untimely Amended Claim here would significantly prejudice the Debtor and other unsecured claim holders. *In re Sambo's Restaurants, Inc.*, 754 F.2d 811, 816-817, (9th Cir. 1985). 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 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 Exeter Finance LLC ("Creditor") filed in this case by Patricia Ann Chadwick, Chapter 13 Debtor ("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 14-2 of Exeter Finance LLC is sustained, and the claim is disallowed in its entirety.

Final Ruling: No appearance at the December 18, 2108, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2018. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is granted.</p>
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Susan Madson and Keith Madson (“Debtor”) seek confirmation of the Amended Plan, which would be the first confirmed plan in this case. The Amended Plan provides for a total of \$2,859 paid through October 25, 2018, \$1,003 through November 25, 2018, and payments of \$1,003 thereafter for the 60 month term. Dckt. 67. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on December 3, 2018. Dckt. 74. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on November 6, 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 December 18, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 12, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is denied.</p>

Patricia Frances Di Grazia ("Debtor") seeks confirmation of the Amended Plan, which would constitute the first confirmed plan in this case. The Amended Plan provides for \$4,879.56 paid through September 2018, \$1,800 to be paid October 2018, and payments of \$3,355.00 for 51 months starting November 2018. Dckt. 91. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 3, 2018. Dckt. 116. Trustee opposes the Motion on the basis Debtor is delinquent \$1,324.59 under the proposed Amended Plan terms. Trustee also notes the next payment of \$3,355.00 is due December 25, 2018.

Trustee further opposes the Motion on the basis that Debtor is married, but has not filed a spousal waiver for use of the California State Exemptions under California Code of Civil Procedure § 703.140. Debtor's proposed plan will fail the Liquidation Test if the exemptions are disallowed.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on December 11, 2018. Dckt. 127. Debtor notes that the court recently granted a Motion For Relief as to Debtor's residence. *See* Order, Dckt. 111. Therefore, Debtor states a new amended plan will be filed which accounts for that ruling.

DISCUSSION

Trustee's Opposition is well-taken. Debtor is delinquent in plan payments, indicating the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor failed to provide a Spousal Waiver as required for the claimed exemptions. Without the exemptions, Debtor's proposed plan would fail the liquidation analysis. 11 U.S.C. § 1325(a)(4).

Finally, as stated by Debtor, the court granted a Motion For Relief as to Debtor's residence. This suggests the plan currently, not accounting for the sale of Debtor's residence, is not feasible. 11 U.S.C. § 1325(a)(6).

The court construes the Debtor's Reply, indicating a new plan will be filed, to be a statement of non-opposition. Debtor's The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Patricia Frances Di Grazia ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the December 18, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 12, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The hearing on the Motion to Confirm the Amended Plan is continued to January 15, 2018, at 3:00p.m.

Ferric Jason Collons and Stacy Christine Collons ("Debtor") seek confirmation of the Amended Plan, which would be the first confirmed plan in this case. The Amended Plan provides for \$1,650 to be paid through November 2018, 21 payments of \$930 starting December 2018, and 35 payments of \$2,200 for the remainder of the Plan. Dckt. 111. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 3, 2018. Dckt. 118. Trustee opposes the Motion on the basis that the proposed plan relies on a Motion to Value Collateral of Wells Fargo (Dckt. 69) set to be heard December 11, 2018. Trustee further opposes the Motion because Debtor deducts \$620 in expenses for storage units, which Trustee is not certain are necessary expenses.

CREDITOR'S OPPOSITION

Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") filed an Opposition on December 4, 2018. Dckt. 122. Creditor opposes the Motion on the grounds that the valuation of its collateral is too low, the proposed plan does not provide an adequate protection payment, and the proposed plan provides only a 4 percent interest rate.

Creditor requests the Motion be denied, or the Contested Matter be set for evidentiary hearing as Creditor does not consent to Federal Rule of Civil Procedure 43(c).

DEBTOR'S REPLY

Debtor filed a Reply on December 11, 2018. Dckt. 131. Debtor notes the hearing on the Motion to Value (Dckt. 69) was continued to January 15, 2018, at 3:00p.m. *See* Order, Dckt. 130.

DISCUSSION

The proposed Amended Plan relies on the outcome of a Motion To Value collateral of Creditor. The court shall continue the hearing on this Motion to January 15, 2018, at 3:00p.m. to be heard alongside 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 Motion to Confirm the Amended Chapter 13 Plan filed by Ferric Jason Collons and Stacy Christine Collons ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm the Amended Plan is continued to January 15, 2018, at 3:00p.m.

Final Ruling: No appearance at the December 18, 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, and Office of the United States Trustee on October 24, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 hearing on the Motion to Dismiss is continued to January 15, 2018, at 3:00p.m.

The court continues the hearing on the Motion to January 15, 2018, at 3:00p.m. to be heard alongside the Motion to Confirm Amended Plan.

David Cusick (the "Chapter 13 Trustee") seeks dismissal of the case on the basis that Ferric and Stacy Collons ("Debtor") are \$1,620.00 delinquent in plan payments, and have failed to file an amended plan and set the plan for confirmation.

DEBTOR'S DECLARATION

Debtor filed the Declaration of Ferric and Stacy Collons on November 7, 2018. Dckt. 105. The Declaration identifies itself as being "In Opposition to Motion to Dismiss." The court notes that there is not an opposition filed by Debtor for which the Declaration provides evidentiary support. Fortunately for Debtor,

the Motion was not one requiring written opposition and presumably counsel for Debtor will state an opposition at the hearing. *See* Local Bankruptcy Rule 9014-1(f)(2).

The Declaration states Debtor fell delinquent due to the cost of rent, including having to pay \$4,200.00 for the first and last month of rent, and \$500 for a deposit. Debtor also states that Debtor has been forced to live with a family member on a temporary basis, and that the issues with the storage units in this case have been addressed to an extent (Debtor downsizing to a single unit).

NOVEMBER 14, 2018 HEARING

At the November 14, 2018, hearing the court continued the hearing on the Motion to December 18, 2018, to be heard alongside the Motion to Confirm the Amended Plan. Dckt. 117.

DISCUSSION

On Debtor's Schedule J, Debtor lists having 3 dependent children, aged 8, 10, and 13. Schedule J, Dckt. 12 at p. 1. Therefore, Debtor is seeking housing for a household of 5.

The rent expense described in Debtor's Declaration may be reasonable. However, Debtor has not provided the court with Amended or Supplemental Schedules which could be used to make such a determination. Debtor's current Schedules provide for a rental/housing expense of \$0.00. Schedule J, Dckt. 12. Even without any rent/housing expense, Debtor estimates a monthly disposable income of \$812.83 (the gross income estimated at \$5,046.38 and expenses estimated at \$4,233.55). *Id.* It is unclear how Debtor is going to propose a confirmable plan where Debtor's expenses seem prohibitively high.

Furthermore, Debtor has not explained what the temporary living situation was and what circumstances changed. Debtor states in Debtor's Declaration they "were able to locate a house to rent at the last minute before our family had enough of us." Dckt. 105 at ¶4. Debtor has not provided evidence demonstrating this added expense was necessary or reasonable.

It is unclear why Debtor chose to represent they had no expenses for rent/housing on the filed Schedules which formed the basis of the proposed plan. Debtor knew a rental expense was necessary in this chapter 13 plan; Debtor could have saved money not expended on rent/housing while Debtor searched for a rental (to prepare for the upcoming, very clearly anticipated expenses), but chose not to.

Debtor has not commenced making plan payments and is \$1,620.00 delinquent in plan payments, which represents multiple months of the \$810.00 plan payment. Another payment became due on October 25, 2018. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Debtor has not filed an Amended Plan or a Motion to Confirm a Plan following the court's sustaining multiple objections to confirmation of the proposed plan on October 16, 2018. *See* Dckts. 85-87. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor has offered no explanation for the delay in setting a plan for confirmation. That is also unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

The court previously continued the hearing on this Motion to be heard alongside a Motion To Confirm Amended Plan recently filed. The court shall continue the hearing on this Motion to January 15, 2018, at 3:00p.m. again to be heard alongside the Motion to Confirm Amended Plan.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to January 15, 2018, at 3:00p.m.

All outstanding issues in this Contested Matter having been resolved, the Objection has been removed from the Calendar by prior order of the court.

Robert James Rodni Chapter 13 Debtor ("Objector"), filed this Objection requesting the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Proof of Claim No. 6-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$298,174.11.

Debtor's Modified Plan provides for Creditor's claim as a Class 1, with the exception that post-petition arrearages are to be treated as a Class 2. As the plan relies on Debtor paying all pre- and post-petition arrears, the Modified Plan specifically provides that Creditor is permitted to file a claim for the amount of post-petition arrearages to give notice to the Debtor and Trustee of disagreements as to the amount necessary to cure.

At the December 11, 2018 hearing, the court continued the hearing on the Motion to December 20, 2018 to allow the parties to circulate an order for approval stating the pre and post-petition arrearages to be cured through the Plan in this case. Civil Minutes, Dckt. 51.

On December 12, 2018, the court issued an Order pursuant to the Stipulation Ex Parte Motion of the Parties stating Claim #6 is allowed only for \$5,661.12 for post-petition arrears, \$1,838.20 for pre-petition arrears, and \$298,174.11 for the total claim. Order, Dckt. 53. The Order further removed the matter from the December 20, 2018 calendar, all outstanding issues in the Contested Matter having been resolved. *Id.*