

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**October 12, 2021 at 2:00 p.m.**

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1. [21-22307-E-13](#)      **LEE NEWTON**      **MOTION TO CONFIRM PLAN**  
[NSV-2](#)                      **Nima Vokshori**                      **8-24-21 [43]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2021. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Lee Ann Newton ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Class 1 Creditor to receive \$1,302.19 in post petition monthly payments, Class 2(B) creditor to receive \$5.95 for month 7 then \$241.05 for months 8-11 (with no other payments), and a 0% dividend to unsecured creditors. The plan fluctuates between \$100.00 payments for 3 month intervals (with \$100.00 for the first two months of the plan), representing the summer where debtor receives only rental income, and \$2,700.00 payments for the remaining 9 months of the year. Amended

Plan, Dckt. 42. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on September 27, 2021. Dckt. 52. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent on \$2,700.00 in plan payments
- B. Class B Creditor will not be sufficiently paid
- C. Debtor cannot complete plan within 60 months

## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$2,700.00 delinquent in plan payments, which represents one month of the \$2,700.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Insufficient Plan Payments**

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Exeter Finance Corp.’s proposed payments of \$5.95 for month 7 then 241.05 for months 8-11 (with no other payments) are insufficient to pay either the collateral value of \$11,275.00 or the amount of claim of \$12,857.90 on the Class 2(B) claim over the course of the plan. Thus, the Plan may not be confirmed.

### **Failure to Complete Plan Within Allotted Time**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 71 months due to the fact that the total payments need to aggregate \$134,504.40, when, over the 60 months proposed, they only total \$112,200.00—leaving a deficit of \$22,304.40 to be accounted for. The original fluctuating payment plan is as follows: \$100 per month for 2 months; \$2,700 per month for 9 months; \$100 for 3 months; \$2,700 per month for 9 months; \$100 per month for 3 months; \$2,700 per month for 9 months; \$100 per month for 3 months; \$2,700 per month for 9 months; \$100 per month for 3 months; \$2,700 per month for 9 months; and \$100 per month for 1 month; (15 payments x \$100 = \$15,000 and 45 payment x \$2,700 = \$97,200 (total = \$112,200/60) with an average of \$1,870/per month for 60 months) and 0% to unsecured creditors. According to the trustee, for the plan to be valid within 60 months, debtor’s average payment per month must increase to \$2,241.74/month. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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 to Confirm the Amended Chapter 13 Plan filed by the debtor, Lee Ann Newton (“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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 18, 2021. By the court's calculation, 55 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 9-1 of Internal Revenue Service is**

**XXXXXXX**

Larry John Jackson and Debra Ann Jackson, Chapter 13 Debtors ("Objectors") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority unsecured in the amount of \$54,439.42 and \$29.00 in arrears. Objector asserts that the amount claimed is in error because it duplicates the Civil Penalty against each of the debtors, therefore the actual amount owed by the joint debtors herein is one-half of the total amount claimed. Furthermore, Debtor claims that the payment should be made secured, and have filed for them accordingly.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence 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). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Debtors seeks to put forth an objection on the ground that the unsecured priority claim—for Civil Penalties for failure to remit payroll taxes— from the IRS asserts a claim against each debtor individually, erroneously doubling the value of the IRS’ claim against Debtors. Dckt. 90. Debtors argue that the claim should only be asserted once, as a singular joint claim against both debtors, halving the value asserted. Finally, Creditor already has a Class 2A claim with a lien against their real property at 1847 Hekpa Drive, South Lake Tahoe, El Dorado County (“Real Property”). Debtor has filed a secured claim on September 17, 2021 for the Creditor of the \$54,439.42 and \$29.00 in arrears, with the language that the secured claim is only to be collected once. Claim #9-2. For these reasons, Debtor’s object to the claim.

Creditor agrees with Debtor’s argument that the debt should be made secured, and that the previously unsecured claim should be made secured as per the September 17, 2021 claim. Dckt. 97. Creditor agrees with Debtors reasoning, but Creditor seeks to deny Debtors’ objection because it is moot due to the filing of Claim 9-2 correcting the issues presented in Debtors’ motion to object.

Trustee has filed a non-opposition to Debtor’s objection, and agrees with their reasoning. Dckt. 99.

### **Amended Proof of Claim 9-2**

On September 17, 2021, Creditor filed Amended Proof of Claim 9-2. The claim asserted in Amended Proof of Claim 9-2 is:

- A. The amount of the claim is stated to be \$54,468.42. This is comprised of the following civil penalties:
  - 1. \$29.00 for the tax period September 30, 2018;
  - 2. \$4,501.47 for the tax period December 31, 2018;
  - 3. \$4,501.47 for the tax period December 31, 2018;
  - 4. \$6,508.20 for the tax period March 31, 2019;
  - 5. \$6,508.20 for the tax period March 31, 2019;
  - 6. \$7,626.65 for the tax period June 30, 2019;
  - 7. \$7,626.65 for the tax period June 30, 2019;

8. \$7,937.39 for the tax period September 30, 2019;
9. \$7,937.39 for the tax period September 30, 2019;
10. \$1,292.00 for Interest on the Tax Penalties.

B. Copies of Lien Notices filed with the El Dorado County Recorder are attached, one for each of the two debtors.

Debtor asserts that the Proof of Claim amount is overstated, as one tax penalty is owed by both of the debtors. The \$54,439.42 doubles the obligation.

Creditor responds, asserting that contention is incorrect. However, the explanation by Creditor confuses the court:

The correct amount of the secured claim is \$54,468.42. The claim is for Trust Fund Recovery Penalties against both Debtors, but should only be collected once. IRS will amend the proof of claim to include the correct amount with the following language: "TFRP assessed against both debtors, but should only be collected once."

Opposition, p. 2:15-19; Dckt. 97. No Declaration is provided explaining the correct computation of this amount. While stating that the \$54,468.42 is the "correct amount," the Opposition then states that the penalties are imposed against both debtors, but is to be collected only once.

Looking at the penalties assessed in the Attachment to Amended Proof of Claim 9-2, it appears that duplicate penalties were assessed, but "only to be collected once," it appears that the \$54,468.42 states duplicate amounts.

At the hearing, **XXXXXXX**

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 Objection to Claim of Internal Revenue Service ("Creditor"), filed in this case by Larry John Jackson and Debra Ann Jackson, Chapter 13 Debtor ("Objectors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 9-1 of Creditor is **XXXXXXX**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 2020. By the court’s calculation, 47 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 Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Timothy Tobias Trocke (“Debtor”) has provided evidence in support of confirmation. The Amended Plan provides for payments of \$100.00 commencing December 25, 2020 and all net proceeds from the sale of the real property commonly known as 1671 Rosalind Street, Sacramento, California to be turned over directly to the Chapter 13 Trustee after fees and costs, sufficient to pay all creditors proposed to be paid through the plan and will complete the plan. Amended Plan, Dckt. 151. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

On January 19, 2021, the Chapter 13 Trustee, David p. Cusick (“Trustee”) filed a Non-opposition noting that the court granted Debtor’s Motion to Sell Free and Clear of Liens on December 22, 2020 and that the Escrow Closing Statement submitted by the title company showed the Trustee was to receive his demand of all net proceeds, approximately \$72,000. Dckt. 199.

No opposition to this Motion has been filed.

### **Trustee’s September 28, 2021 Status Report**

The Trustee filed a Status Report on September 28, 2021, brining the court up to day of the ongoing events as they relate to the present Motion. Status Report; Dckt. 302. The information

provided by the Trustee relating to the Motion to Confirm the Chapter 13 Plan is:

- A. The Debtor is current in Plan payments, having paid \$80,512.02 into the Plan. Status Report, p. 1:25-26.
- B. Creditor Roger Anderson (“Creditor”) filed Amended Proof of Claim 2-4 on September 14, 2021, which states Creditor’s remaining secured claim (there having been a partial distribution in January 2021) to be \$25,693.71. *Id.*, 1:27-28.

Amended Proof of Claim 2-4 provides the computation of this to be after payment of \$116,337.80 in January 2021 and providing for the 18% interest, compounded, the court determined Creditor’s secured claim to be \$48,076.27 as of July 1, 2021. Computing additional interest to September 14, 2021, the obligation is computed to be \$49,879.56. The per diem interest accrual was computed by the court in ruling on the Objection to Claim being \$24.07. Creditor uses that per diem amount for the additional 75 days interest to September 14, 2021.

Creditor also cites to the court’s rulings (which are being reduced to writings) in which the court stated Debtor would be awarded \$24,185.58 in prevailing party attorney’s fees for the Objection to Claim litigation. Creditor then offsets the \$24,185.58 from the claim of \$49,879.29, to reach the amount of \$25,693.71 set forth in Amended Proof of Claim 2-4.

- C. The Trustee has sufficient funds on hand to pay Creditor’s claim immediately upon confirmation. *Id.*, 2:6-7.
- D. Trustee requests that the court order confirming the Plan expressly state the amended amount of the Claim to be \$25,693.71. *Id.*, 2:8-9.

It appearing that the Parties now having the claim in amount consistent with that stated by the court, and Creditor avoiding further potential cost and expense relating to the Objection to Claim litigation by effectuating a setoff in computing the claim amount, the ruling on the present Motion is timely. Further, Creditor can be immediately paid the amount of the amended claim and should not be made to wait further for payment of such amount that takes into account an offset for the attorney’s fees awarded Debtor.

The claim of \$25,693.71 is computed by Creditor as of September 14, 2021. The claim is secured and continues to have surplus value for which accruing interest post-petition interest can be allowed as part of the claim. On a principal balance of \$25,693.71, the court computes the per diem interest accrual to be \$12.85. The court includes in the order confirming an additional 38 days of interest, which totals \$488.30, as of October 22, 2021. This is for a total secured claim of \$26,182.01, which is sufficient to take into account the time for the Trustee to make the disbursement after the court entering the order confirming the Plan.

## **REVIEW OF MOTION AND CHAPTER 13 PLAN**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Timothy Trocke (“Debtor”) has filed his First Amended Plan (Dckt. 151) and Motion to Confirm, with supporting pleadings and evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick (“Trustee”), or by creditors.

The Chapter 13 Plan is to be funded from payments made of \$8,215.00 as of December 31, 2021, and the proceeds from the sale of Debtor's residence. Plan. § 7.0 Nonstandard Provisions; Dckt. 151 at 6. The sale was completed and monies received in January 2021, with substantial payment on the secured claim of Roger Andersen, Trustee, in January 2021. Other than the secured claim of Roger Anderson, Trustee, which is stated to be \$25,693.71 as of September 14, 2021, (see discussion above for additional interest on secured claim), there is \$624.12 in general unsecured claims filed and a \$26,553.29 secured claim of Toyota Motor Creditor, for which treatment is as Class 4 (direct payment by Debtor) secured claim. There are no other claims asserted in this case or provided for by the Plan.

The Trustee reports that he has sufficient Plan monies on hand to pay the Roger Andersen secured claim. Status Report, p. 2:6-1: Dckt. 302. In his Statement of Non-Opposition filed earlier in this Contested Matters (Dckt. 199), the Trustee projected receiving \$72,000.00+ from the proceeds from the sale of the Property. This indicates that the Trustee has sufficient funds for the administrative expenses and the general unsecured claims in this case.

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

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 to Confirm the Amended Chapter 13 Plan filed by the debtor, Timothy Trocke ("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 January 19, 2021, is confirmed. In confirming the Plan, the court determines the amount to be paid Roger Andersen, Trustee, on his secured claim, Amended Proof of Claim 2-4, plus additional post-petition interest, is \$26,182.01, if paid before November 1, 2021. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, including the statement of the amount of Creditor Roger Andersen's secured claim, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**IT IS FURTHER ORDERED** that David Cusick, the Chapter 13 Trustee is authorized to pay the secured claim of Roger Andersen, Trustee, in the amount of \$26,182.01 immediately, and that the Trustee is not required to wait until the entry of the Order confirming the Plan. The amount of Creditor's claim in Amended Proof of Claim 2-4 is consistent with the Order of this Court on the Objection to Claim and effectuates an offset for the award of attorney's fees for Debtor and against Creditor Roger Andersen for the Objection to Claim litigation.

**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.

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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 creditors and parties requesting special notice on August 13, 2021. By the court’s calculation, 60 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

**The Motion to Confirm the Modified Plan is ~~XXXXX~~.**

The debtor, Pamela R. James (“Debtor”) seeks confirmation of the Modified Plan because of a reduced disposable income due to COVID-19 and increased household expenses due to her daughter moving back home from college. Declaration, Dckt. 55. The Modified Plan provides payments of \$1,763.00 for 84 months, and a 0.00 percent dividend to unsecured claims totaling \$9,953.25. Modified Plan, Dckt. 54. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CREDITOR’S OPPOSITION**

Community Loan Servicing, LLC (“Creditor”) holding a secured claim filed an Opposition on August 26, 2021. Dckt. 59. Creditor opposes confirmation of the Plan on the basis that:

- A. The Plan does not provide for the full value of the Creditor’s Claim.

#### **DISCUSSION**

##### **Failure to Cure Arrearage of Creditor**

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$13,897.42 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 arrearage.

The Class 1 Secured Creditor's arrears claim and Class 2(A) Secured creditor's paragraph state incorrect claim amounts. Additionally, no monthly dividend is stated for the creditors in the Non-Standard Provisions.

While stating that the Modified Plan "misstates" the amount of the arrearage and will result in underpayment, Creditor appears to waive the provisions of Paragraph 3.02 of the Plan which provides that it is Creditor's proof of claim, not the Schedules or the Plan, determines the amount of the claim, including the arrearage, unless the amount is otherwise amount ordered by the court pursuant to a claim objection, valuation, or lien avoidance. Creditor does not provide an analysis of whether the proposed Plan payments are sufficient to pay the amount of the arrearage stated in Creditor's Proof of Claim.

The Modified Plan provides for additional payments of \$1,763 a month for the period August 2021 through September 2026, which the court computes to be 62 months. This \$1,763 monthly payment is to be disbursed as follows:

Monthly Payment	\$1,763.00
Chapter 13 Trustee Fee (10%)	(\$176.30)
Creditor Post-Petition Monthly Payment	(\$1,481.87)
Creditor (\$10,899.60) Arrearage Balance	(\$173.01)
Class 2(A) Secured Claim (\$3,038.38)	(\$48.10)
	=====
Over/(Under) Funding of Plan	(\$116.28)

The above amounts do not include provision for the additional legal fees and expenses in having to seek modification of the confirmed plan in this case.

At the hearing, **XXXXXXX**

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

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



plan payment of \$93.43 (on February 2024), and a two (2) percent dividend to unsecured claims totaling \$31,085.89. Modified Plan, Dckt. 62. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 25, 2021. Dckt. 96. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor reused the DCN for a previous Motion to Confirm the Plan.

## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$227.35 delinquent in plan payments, which represents one month of the \$227.87 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Docket Control Number**

LBR 9014-1(c) provides that each motion must have its own docket control number (“DCN”). According to Trustee, debtor assigned DCN CDL-22 to the instant motion, where Debtor had previously used this DCN for a motion filed on May 8, 2021, Dckt. 63. Thus, Debtor failed to comply with local rules.

At the hearing the Trustee reported that the Debtor is still delinquent.

### **Trustee’s Status Report**

On October 5, 2021, the Chapter 13 Trustee, David P. Cusick, filed a Status Report. Trustee claims the Debtor is delinquent \$683.09, with the last payment posted 7/15/2021.

### **October 12, 2021 Hearing**

The Trustee filed a Status Report on October 5, 2021, reporting that Debtor’s default has increased to \$638.09. Dckt. 105.

At the hearing, **XXXXXXX**

~~—————The proposed Second Amended Chapter 13 Plan does not comply with 11 U.S.C. § 1322 and § 1325, and, the Motion is denied and the Plan is not confirmed.~~



at 2:23.

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,150.00 delinquent in plan payments, which represents multiple months of the \$450.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for Debtor reported that the Plan and Motion were filed late on March 2, 2021. The Trustee did not oppose the request for a continuance while the Debtor prosecuted the Motion to Confirm.

On May 13, 2021, the court ordered the hearing on this Motion to Dismiss continued to 2:00 p.m. on September 14, 2021. Dckt. 90.

### **September 14, 2021 Hearing**

After addressing arguments of counsel, the court determined:

If the Debtor is not current in all payments under the proposed plan by October 5, 2021, or

If not current with all payment required under the proposed Second Amended Plan, and Debtor has not filed a new amended Plan, motion to confirm, and supporting pleadings on or before noon on October 11, 2021, the Motion will be denied.

### **Trustee's Status Report**

On October 5, 2021, the Chapter 13 Trustee, David P. Cusick, filed a Status Report. Trustee claims the Debtor is delinquent \$683.09, with the last payment posted 7/15/2021.

### **October 12, 2021 Hearing**

At the hearing, **XXXXXXXXXXXX**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2021. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Approve Loan Modification 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 Approve Loan Modification is ~~XXXXXXX~~ .**

The Motion to Approve Loan Modification filed by Kelly Anne McKellar (“Debtor”) seeks court approval for Debtor to incur post-petition credit. Specialized Loan Servicing (“Creditor”), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$646.02 per month to \$513.86 per month. The modification will capitalize the pre-petition arrears and provide for stepped decrease in the interest rate from 11.75% to 4.875%, but the outstanding unpaid amounts will be added to the principle balance.

The Motion is supported by the Declaration of Kelly Anne McKellar. Dckt. 83. 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.

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), 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.

**Trustee Response**

The trustee notes that, with the current Chapter 13 plan on file and under this motion for a

loan modification, Debtor is promising to pay a down payment of \$23,868.14. Dckt. 91. The post-petition ability to provide the down payment in the loan modification is unknown, and the Debtor has not provided evidence of the source of these funds or how this payment is feasible. *Id.* Furthermore, Debtor has not filed an amended Schedules I and J. *Id.*

At the hearing, **XXXXXXX**

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 to Approve Loan Modification filed by Kelly Anne McKellar (“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 court authorizes Kelly Anne McKellar to amend the terms of the loan with Specialized Loan Servicing (“Creditor”), which is secured by the real property commonly known as 2205 Jonquil Way Redding, California, 96002 on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 84). See Dckt. 48~~

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and creditors notice on September 22, 2021. By the court’s calculation, 20 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.**

Antionette Michelle Woods (“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. 20-20813) was dismissed on September 10, 2021, after Debtor was delinquent on plan payments. *See* Order, Bankr. E.D. Cal. No. 19-25587-E-13C, Dckt. 124, September 10, 2021. 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 of delinquent plan payments. Debtor explains in her Declaration (Dckt. 13)

4. During my last case, my plan payment was high and I relied on family members to assist with the payment. The plan included my mortgage payment and the past due amount owed on my mortgage, which is why it was so high.

5. I have since been able to modify my mortgage. I will no longer need to rely on

family members to make my Chapter 13 payment.

### **Trustee's Nonopposition**

Trustee filed a nonopposition on October 5, 2021. Dckt. 21. Trustee does not oppose the motion, but notes that Debtor states their current plan provides for payments to creditor Mechanics Bank where the proposed plan does not show Mechanics Bank as a creditor. The proposed plan does show PostCity Financial Credit Union as a secured creditor.

The court notes that Trustee contradicts themselves. In paragraph four, Trustee states because of the time lapse between bankruptcy filings, the court should still grant the motion. *Id.* at ¶ 4. However, in paragraph five, Trustee requests the court deny the motion. *Id.* at ¶ 5. The court presumes the request to deny was in error.

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.



provides plan payments of \$439.00 beginning June 2021 through the balance of this 60-month plan, and a 100 percent dividend to unsecured claims totaling \$11,852.00. Modified Plan, Dckt. 70. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 26, 2021. Dckt. 80. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan will not complete timely.
- B. Debtor may not be able to afford the Plan.

## DISCUSSION

### Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 85 months due to remaining amounts to be paid including Trustee fees which total \$28,034.58 and thus at the plan payment amount it would take Debtor another 21 months to account for the remaining amounts. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee is uncertain of Debtor's ability to pay where Debtor has not filed supplemental Schedules I and J and the most recent Schedule I and J were last filed on September 11, 2020. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### October 12, 2021 Hearing

The court's review of the Docket on October 7, 2021, revealed that nothing further has been filed in connection with this Motion since the continuance of the August 10, 2021 hearing.

At the hearing, ~~XXXXXXXXXX~~

~~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 to Confirm Second Amended Plan filed by Josephine  
Wright, the Debtor, having been presented to the court, and upon review of the  
pleadings, evidence, arguments of counsel, and good cause appearing;  
\_\_\_\_\_~~

~~\_\_\_\_\_ **IT IS ORDERED** that the Motion is denied.  
\_\_\_\_\_~~

**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.

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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 May 19, 2021. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is ~~XXXX~~.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Josephine Wright (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 24, 2021. Dckt. 65. Debtor’s counsel requests an evidentiary hearing and states that to the best of Debtor’s knowledge, Debtor is current on her plan payments. No testimony or other evidenced is provided in opposition to the Motion.

#### **DISCUSSION**

##### **Delinquent**

Trustee presents evidence that Debtor is \$886.00 delinquent in plan payments, which represents multiple months of the \$415.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing Debtor’s counsel acknowledged the defaults and reported that Debtor will prosecute a modified plan. The Trustee agreed to a continuance to allow Debtor to so prosecute the case.

## Trustee's Status Report

On July 13, 2021 Trustee filed a Status Report informing the court that Debtor has filed a Motion to Modify the plan which has been set for August 10, 2021. Dckt. 76. Trustee notes that \$7,848.00 in plan payments are due. Moreover, Trustee will oppose the modified plan on the basis that Debtor has failed to file current Schedule I and J and that the Plan will exceed the number of months as allowed by the bankruptcy code (84 months) where no evidence has been presented that the delinquency is related to the COVID-19 pandemic.

## Debtor's Modified Plan

Debtor filed a Motion to Confirm Modified Plan and a proposed Modified Plan on June 23, 2021. Dckts. 69, 70. The motion has been set for hearing on August 10, 2021 at 2:00 p.m.

Trustee requests the instant motion be continued to August 10, 2021 and be heard in conjunction with the Motion to Confirm the modified plan. *Id.*

## August 10, 2021 Hearing

At the hearing the Parties agreed to continue the hearing on the Motion to Dismiss be continued to allow Debtor to prosecute amendments to the proposed plan.

## October 12, 2021 Hearing

The court's review of the Docket on October 7, 2021, revealed that nothing further has been filed in connection with this Motion since the continuance of the August 10, 2021 hearing.

At the hearing, ~~XXXXXXXXXX~~

~~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 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 is granted and the bankruptcy case is  
dismissed.~~

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2021. By the court’s calculation, 25 days’ notice was provided. 14 days’ notice is required.

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

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**The Motion to Incur Debt is granted.**

Richard Astran and Lisa Yvette Zapien-Astran (“Debtor”) seeks permission to purchase real property commonly known as 11006 International Drive, Rancho Cordova, California, 95670, with a total purchase price of \$505,000.00 and monthly payments of \$2,747.00 to Cal Vet Home Loans over thirty (30) years with a 2.75% fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

A copy of the Loan Term Sheet is provided as Exhibit B in support of the Motion. Dckt.

Dckt. 30.

The court finds that the proposed credit, based on the facts and circumstances of this case, is reasonable. However, the motion does not summarize material provisions like “events of default.” Even so, the Motion and supporting exhibits provide for most material provisions. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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 to Incur Debt filed by Richard Astran and Lisa Yvette Zapien-Astran (“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 Richard Astran and Lisa Yvette Zapien-Astran is authorized to incur debt pursuant to the terms of the Loan Term Sheet, Exhibit B, Dckt. 30.

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

**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)©.**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on September 22, 2021. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

-----.

**The Objection to Confirmation of Plan is sustained.**

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

- A. Failed to Appear at the first Meeting of Creditors.

## **DISCUSSION**

Trustee’s objections are well-taken.

### **Failure to Appear at 341 Meeting**

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 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 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.

13.	<a href="#">21-22819-E-13</a> <a href="#">KL-1</a>	<b>NELSON MADSEN / SHARON BURNS</b> Peter Nisson	<b>OBJECTION TO CONFIRMATION OF PLAN BY TRI COUNTIES BANK</b> 9-23-21 <a href="#">[28]</a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 23, 2021. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

**The Objection to Confirmation of Plan is sustained.**

Tri Counties Bank (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

A. Failure to cure arrearage.

## **DISCUSSION**

Creditor’s objections are well-taken.

### **Failure to Cure Arrearage of Creditor**

The objecting creditor holds a deed of trust secured by Debtor’s residence. Creditor has filed a timely proof of claim in which it asserts \$41,004.11 in pre-petition arrearages. The Plan does not propose to cure those arrearages. Creditor computes that the monthly plan payment is sufficient to repaid the arrearage. As provided in Paragraph 3.02 of the Plan, the amount of the claim (including arrearage) stated in a proof of claim controls the amount thereof, not an amount stated in the Plan or Schedules, unless the court issues an order pursuant to an objection to claim, valuing the secured claim, or avoiding the lien.

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

The 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 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 Objection to the Chapter 13 Plan filed by Tri Counties Bank (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on September 8, 2021. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

-----.

**The Objection to Confirmation of Plan is Overruled and the Plan is confirmed.**

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

- A. The plan is overextended.

**DISCUSSION**

**Plan Term is Greater Than 60 months**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 234 months due to claims being filed for amounts higher than the Debtors scheduled.

However, in the Objection, the grounds stated by the Trustee are merely the Trustee’s conclusion, without reference to the claims and dollar amounts.

OVEREXTENSION: Due to claims being filed for amounts higher than the Debtors scheduled, the plan is overextended. The trustee calculates that the plan will take approximately 234 months to complete which exceeds the maximum length of 60 months pursuant to 11 U.S.C. §1322 (d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. Section 1325(b)(4).

Objection, p. 1:27-28, 2:1-3; Dckt. 17. Nothing further is provided.

The evidence provided to the court for the court to make the required findings of fact and conclusions of law consists of the following testimony:

3. I have reviewed the Trustee's records and show that due to claims being filed for amounts higher than the Debtors scheduled, the plan is overextended. The trustee calculates that the plan will take approximately 234 months to complete which exceeds the maximum length of 60 months.

Declaration, Dckt. 19. No other evidence is provided, just counsel's for the trustee personal findings and conclusions.

Whether the "particularity" standard of Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 9013, or even the lesser standard under *Twombly* or *Iqbal*, what has been presented does not provide the court with grounds/claims in the Objection or evidence to sustain the Objection.

The Objection is Overruled and the Plan is confirmed. <sup>Fn.1.</sup>

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FN. 1 Debtor and Debtor's counsel should not view this as a victory and ignore this matter, as it is clearly anticipated that the Plan will need to be modified and for which Debtor's counsel would not be awarded additional fees for that work.  
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The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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 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 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

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

15. [19-26029-E-13](#)      **DEBRA THOMPSON**      **CONTINUED MOTION TO MODIFY**  
[PGM-3](#)                      **Peter Macaluso**                      **PLAN**  
7-23-21 [124]

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2021. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is ~~XXXXX~~.**

The debtor, Debra LaChele Thompson ("Debtor") seek confirmation of the Modified Plan after suffering hardship due to the COVID-19 pandemic where the State of California adjusted her pay and cut it approximately by \$700.00, while her brother had a heart attack and passed away. Declaration, Dckt. 126. The Modified Plan provides Plan payments of \$770.00 per month will commence August 25, 2021 for 62 months, and a zero (0.00) percent dividend to unsecured claims totaling \$53,461.29. Modified Plan, Dckt. 128. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

**CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 10, 2021. Dckt. 134. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s Plan payment is understated.
- B. Debtor failed to serve the Internal Revenue Service as required by the Local Rules.

## **DISCUSSION**

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, the proposed plan payment appears understated.

Debtor filed a supplemental Schedule I reflecting gross wages of \$6,426.52 as of July 19, 2021, stating in item 13 a \$700.00 COVID pay deduction that will be reinstated and start paying in August. The debtor’s plan payment of \$770.00 is based on gross wages of \$6,426.52 not the reinstated amount. Thus, Trustee argues that with this increased income, it appears that the Debtor can afford a higher plan payment. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed a Reply on August 23, 2021, noting that Debtor has filed Amended Schedule I which now reflects that there has been an increase and thus will be increasing the plan payments to \$853.00. Dckt. 138. Debtor requests that the Order confirming the modified plan state:

“Plan payments of \$853.00 will commence August 25, 2021.”

Reply, at 2.

A review of the docket shows that Debtor filed Amended Schedule I on August 23, 2021. Dckt. 137.

### **Insufficient Service**

Local Bankruptcy Rule 2002-1© requires:

(c) *Notice to the Internal Revenue Service.* In addition to addresses specified on the *Roster of Governmental Agencies* maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

1) United States Department of Justice  
Tax Division  
Civil Trial Section, Western Region  
Box 683, Ben Franklin Station  
Washington, D.C. 20044;

2) United States Attorney as specified in LBR 2002-1(a) above; and

3) Internal Revenue Service at the addresses specified on the *Roster of Governmental Agencies* maintained by the Clerk.

LOCAL BANKR. R. 2002-1(c).

According to Trustee, the Internal Review Service was not served per the Roster of Governmental Agencies. The United States Attorney for Internal Revenue Service and The United States Department of Justice were not served as is required. That failure to provide notice violates Local Bankruptcy Rule 2002-1(c).

In the Reply, Debtor requests that the hearing on this motion be continued to October 12, 2021 so as to provide for notice and service for the Internal Revenue Services as prescribed by the local rules.

### October 12, 2021 Hearing

A Notice of Continued Hearing was served on the Internal Revenue Service on September 7, 2021. Cert. of Serv.; Dckt. 143. No opposition has been filed by the Internal Revenue Service .

At the hearing, **XXXXXXX**

~~The proposed Modified Chapter 13 Plan complies with 11 U.S.C. § 1322, § 1325, and § 1329; the Motion is granted and the Plan is confirmed.~~

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

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

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

~~**IT IS ORDERED** that the Motion is **XXXXXXX**, and Debtor’s Modified Chapter 13 Plan filed on July 23, 2021, as amended to provide **XXXXXXX**, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the above amendment, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 23, 2021. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

**The Motion to Confirm the Modified Plan is ~~XXXXX~~.**

The debtor, Matthew Kent Rubb (“Debtor”) seeks confirmation of the Modified Plan to account for Debtor’s fiancé losing employment and now having a child. Declaration, Dckt. 64. The Modified Plan provides:

1. Debtor will skip up to six (6) plan payments (July 2021 through December 2021)
2. And unless Debtor resumes sooner, plan payments of \$300.00 commencing January 2022 through completion of the plan, and
3. a zero (0) percent dividend to unsecured claims totaling \$12,350.00.

Modified Plan, Dckt. 66. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 26, 2021. Dckt. 68. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan fails to state the amount paid and proposes to skip plan payments.
- B. The Plan exceeds the amount of time allowed by the Bankruptcy Code.

### **DISCUSSION**

#### **Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, he is unable to administer the plan where the debtor does not state an amount paid. The debtor proposes to skip up to an additional 6 plan payments (July 2021 through December 2021) unless debtor resumes making payments earlier. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

#### **Failure to Complete Plan Within Allotted Time**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 70 months due to where priority claims including trustee fees owed total approximately \$11,410.00 and at Debtor's proposed payment plan of \$300.00 would take an additional 39 months. The debtor will have completed 31 months as of December 2021. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

At the hearing, Debtor requested to extend the plan based on the COVID-19 pandemic. The court continues the hearing to allow the Debtor and Trustee to "work on the numbers."

#### **September 14, 2021 Hearing**

No further pleadings have been filed for this motion.

At the hearing counsel for the Trustee and counsel for the Debtor agreed to one final continuance to allow Debtor and counsel to address these issues identified by the Chapter 13 Trustee.

#### **October 12, 2021 Hearing**

At the hearing, **XXXXXXXXXXXX**

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Creditor on August 26, 2021. By the court’s calculation, 47 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Avoid Judicial Lien is dismissed without prejudice.**

This Motion requests an order avoiding the judicial lien of Unifund CCR Partners (“Creditor”) against property of the debtor, Violet Ione Hayes (“Debtor”) commonly known as 26753 Capay Street, Esparto, California 95627 (“Property”).

On October 7, 2021, Debtor filed a Reply, stating that the Motion may be dismissed, the court having granted the relief by prior order in 2020. Reply, Dckt. 97. The filing of the present Motion was due to human error.

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Violet Ione Hayes (“Debtor”) having been presented to the court, Debtor requesting that the Motion be dismissed without prejudice (Dckt. 97) because the relief has previously been granted by order of this court in 2020, and good cause appearing,



The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Violet Ione Hayes (“Debtor”), Dckt. 90, being an erroneous filing of the Motion to Avoid Judicial Lien filed at Dckt. 85, having been presented to the court, and upon review of the pleadings, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Avoid Judicial Lien filed at Docket 90 in this case is dismissed without prejudice as being a duplicate of the Motion to Avoid Judicial Lien filed at Docket 85.

19. [20-25442-E-13](#)      **MARLON/MICHELLE**      **MOTION TO CONFIRM PLAN**  
[SLE-5](#)                      **VALENZUELA**                      **8-11-21 [61]**  
   **Steele Lanphier**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2021. By the court’s calculation, 62 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The debtor, Marlon San Antonio Valenzuela and Michelle Gumobao Valenzuela (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides that the Debtors are able to afford their ongoing expenses in addition to their Plan payment. Plan, Dckt. 65. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on September 15, 2021. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

- A. Failure to provide 521 documents.

## **DISCUSSION**

### **Failure to Provide Pay Stubs & Tax Returns**

Debtor has not provided the Chapter 13 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). Also, the Chapter 13 Trustee argues that 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 all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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 to Confirm the Chapter 13 Plan filed by the debtor, Marlon San Antonio Valenzuela and Michelle Gumobao Valenzuela (“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 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.

**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)©.**

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on September 13, 2021. By the court’s calculation, 29 days’ notice was provided. 14 days’ notice is required.

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

-----.

**The Objection to Confirmation of Plan is sustained.**

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

- A. Delinquency
- B. Failure to provide 521 documents
- C. Ability to pay
- D. Attorney fees

**DISCUSSION**

Trustee’s objections are well-taken.

**Delinquency**

Debtor is \$1,641.00 delinquent in plan payments, which represents one month of the \$1,641.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Combined Pay Stubs & Tax Returns**

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). Also, 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 all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtors appear to have additional disposable income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

The court shall issue 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 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, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2021. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

**The Motion to Confirm the Modified Plan is denied.**

The Debtor, Roque Delarosa (“Debtor”) seeks confirmation of the Modified Plan because of a financial hardship due to COVID-19 and does not qualify for unemployment. Declaration, Dckt. 86. The Modified Plan provides payments of \$1,625.00 for 84 months, and a 100 percent dividend to unsecured claims totaling \$10,310.47. Modified Plan, Dckt. 85. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on September 28, 2021. Dckt. 91. Trustee opposes confirmation of the Plan on the basis that:

- A. No reason to modify the current plan.
- B. Declarations are inconsistent with Supplemental Schedule I & J.
- C. Debtor seeks to extend the plan length when the Plan as proposed will be completed sooner.

## Debtor's Response (Dckt. 94)

Debtor filed a Response on October 5, 2021. First, Debtor argues that even with the \$320.00 reduction to create a COVID savings fund, the Plan will still provide a 100% dividend to creditors. Response, p. 1:22-24; Dckt. 94.

Debtor also asserts that modification cures a post-petition mortgage arrearage and completes the Plan in 48 months. *Id.*; p. 2:1-2.

## DISCUSSION

### Failure to Provide Disposable Income / Not Best Effort

Trustee alleges 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.

The Debtor's declarations support an actual need to modify the plan, but, they are not consistent with the Supplemental Schedule I & J filed by the Debtor. The Debtor is also attempting to extend their Plan in order to reduce their plan payments even though this is unnecessary because the Plan as is will complete in 48 months with 100% to unsecured creditors.

However, in looking at Amended Schedule I, all of Debtor's income is "secure" from loss due to COVID. Debtor's income consists of Social Security, State Grant, pension, and Department of Defense Pension. Dckt. 89. Debtor states having monthly income of \$3,370. *Id.* On Amended Schedule J, Debtor states having \$1,700 in monthly net income after payment of reasonable and necessary expenses. However, this includes a \$320.00 saving for "emergency."

Debtor's declaration raises some serious questions, including who prepared it and whether Debtor actually ever read it. Dckt. 86. It begin with stating that due to COVID-19 Debtor has suffered a financial hardship. Declaration, ¶ 1; Dckt. 86. The cause of financial hardship is stated to be:

2. cost of lyft increases because we do no drive

*Id.*, p. 1:23. Though Debtor states he "no drive," he doesn't explain how this results in a financial hardship whereby Debtor wants to set aside in a fund (possibly blocked) \$320 a month for some future financial emergency.

In his Declaration, Debtor provides his legal opinion that Debtor believes that the Plan "complies with the applicable provisions of the bankruptcy code. . . ." *Id.*, p.. 2:14-15. There is nothing to indicate how, under penalty of perjury Debtor could provide such testimony.

Debtor appears to admit the above testimony under penalty of perjury is false, stating later in the Declaration, “Although I am not attorneys and lack legal competence; . . . .” *Id.*, p. 2:25-26.

It is unclear how and of what relevance is Debtor’s testimony of, “cost of lyft increases because we do no drive.” On Schedule I, there is no income from driving for Lyft. Dckt. 1. On the latest Amended Schedule J (Debtor having the need to amend Schedule J many times with the assistance of counsel) shows no Lyft expense or increase in transportation expenses. Dckt. 89.

Debtor has stable income. Debtor has stable expenses. It appears that Debtor may well have never read the Declaration that he purports to have signed. If signed and truthful, Debtor has admitted that he lacks legal competence, resulting in the “testimony” he purports to give being not only unreliable, but apparently false testimony drafted by counsel.

It appears that Debtor is “legally incapable” of prosecuting a bankruptcy case, is “legally incompetent,” and has had false testimony prepared and filed in this case. Debtor is not prosecuting this case in good faith.

### **Plan Term is Greater than 60 months**

Debtor is not in material default under the Plan but wants to extend their Plan from 60 to 84 months. According to Trustee, the Plan will complete in 48 months if the Debtor follows the Plan as is. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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 to Confirm the Modified Chapter 13 Plan filed by the debtor, Roque Delarosa (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

22. [21-23154-E-13](#)  
[ETW-2](#)

**RAKESHNI SHARMA**  
**Richard Jare**

**OBJECTION TO CONFIRMATION OF  
PLAN BY CHARMAINE MARK AND  
MATTHEW MARK AS TRUSTEES OF  
USRE TRUST**  
9-14-21 [\[17\]](#)

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

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

-----

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 September 14, 2021. 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.**

Charmaine Mark and Matthew Mark as Trustees of USRE Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor failed to provide for Creditor's full claim.
- B. The plan is no feasible.
- C. The Debtor filed a previous Chapter 13 and the case was dismissed.

### **Debtor's Opposition**

The Debtor opposes the Creditor's Objection to Confirmation of Plan. The Debtor filed their Opposition on September 29, 2021. Dckt. 30. The Debtor argues that the Creditor provided insufficient

notice. The Debtor states that the rules have required twenty-five (25) to twenty-eight (28) days for filing of a written response, where as the movant has only provided fourteen (14). Debtor's authority for this argument is stated as:

The notice given is insufficient. Over the recent decades, the rules have required 25 to 28 days for the filing of written response. The movant has only provided 14 days.

Opposition, p. 1:25-27; Dckt. 30.

Local Bankruptcy Rule 3015(c)(4) provides that an Objection to Confirmation of a debtor's original plan shall comply with various other provisions of the Local Bankruptcy Rules, including Rule 9014-1(f)(2). That Local Rule provides that at least 14 days notice be given and that opposition may be presented orally at the hearing. It further provides that:

The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary.

## **DISCUSSION**

Creditor's objections are well-taken.

### **Failure to Provide for a Secured Claim**

Creditor asserts a claim of \$433,936.52 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as \$436,664.00 and indicates that it is secured by a first deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a \$0.00 monthly dividend on account of the claim.

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

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

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). That is reason to sustain the Objection.

### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor mentions contributions by other people but does not provide evidence. Debtor plans on paying less than the amount owed monthly and refinancing the loan in a years time. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Previous Chapter 13**

Debtor filed a previous Chapter 13 petition on May 15, 2020, and was dismissed on August 6, 2021. Debtor's recent bankruptcy case has implications for the duration of the automatic stay, *see* 11 U.S.C. § 362(c)(3), as they apply to the Debtor, but is not by itself reason to deny confirmation.

### **Debtor's Opposition**

At the hearing, Debtor stated opposition based on **XXXXXXX**

~~\_\_\_\_\_ 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 an order substantially in the following form holding that:~~

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



## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 31, 2021. Dckt. 46. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has assets that were not listed or exempted on her schedules.
- B. The plan may not be feasible.
- C. Debtor's plan may not be their best efforts under 11 U.S.C. § 1325(b).

### **Opposition of Creditor Denise R. Winn Wright**

Denise R. Winn Wright ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor is a secured creditor but labeled as an unsecured creditor.
- B. Debtor's Chapter 13 petition and original schedules are fraudulent.
- C. Creditor objects to Debtor's Amended Schedule I filed on March 31, 2021.

This Opposition has been resolved, Creditor having withdrawn her Proof of Claim in this case. Withdrawal, Filed September 21, 2021.

## **DISCUSSION**

### **Debtor Fails Liquidation Analysis**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor has supplied insufficient information relating to certain assets including: Debtor's shop on her mother's property that has cattle and calves. According to Trustee, Trustee requested that amended Schedules be filed and to date, Debtor has failed to do so.

At the Meeting of Creditors, Debtor testified to having sold a Cougar Trailer for its fair value to a friend. The Trustee is not certain unsecured creditors will receive at least what they would in a hypothetical Chapter 7 liquidation as required under 11 U.S.C. § 1325(a)(4). This is the second time Trustee has raised this issue and it has not yet been addressed.

### **Failure to File Amended Schedules I and J**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). As stated above, Trustee has requested amended Schedules to address the cattle Debtor owns but also to list any income from said cattle and to list any related expenses. No amended Schedules have been filed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

## **Failure to Provide Disposable Income / Not Best Effort**

The Chapter 13 Trustee alleges 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.

While Trustee references a citation to a prior Objection to Confirmation (Dckt. 19) as grounds to support this claim, Trustee fails to state any grounds to substantiate their claim both in the previous objection (Civil Minutes Dckt. 24, page 2) as with this current objection.

## **Supplemental Documents Filed by Debtor**

On September 22, Cindy Suzanne Ronquist ("Debtor") filed a Declaration (Dckt. 61), an Amended Chapter 13 Plan (Dckt. 63), and an Amended Summary of Schedules including a Statement(s) of Financial Affairs and Disclosures (Dckt. 64). In the Declaration, Debtor elaborates on the Amended Plan that was filed concurrently, and attempts to address the aforementioned concerns of the Trustee (and Creditor(s)) above. Dckt. 62.

For this plan, Debtor addresses the failure to provide adequately for secured claims, primarily that of Denise R. Winn Wright ("Creditor"), whose claim was not properly paid for as Debtor filed for bankruptcy during the Creditor's filing of a dissolution of marriage. Dckt. 14: 18-20. Debtor's mother has paid the balance of that claim, and the claim has been withdrawn. Dckt. 62. Furthermore, other debts such as that associated with Debtor's daughters car have been paid for by said daughter. *Id.* As a result, both claims have been withdrawn, and those claims were one of the major concerns of the trustee in their objection.

Debtor, also, provides for an 100% dividend for unsecured creditors. Dckt. 63. Finally, Debtor addresses the shop on her property, claiming that is a valueless fixture attached to land that she does not own on her Schedule A/B, and Debtor claims that the cattle and calves on her property do not generate either income or expenses on her Schedule I/J. Dckt. 62.

Debtor claims that these modifications and supplemental pleadings will satisfy the trustee's concerns

## **October 12, 2021 Hearing**

At the hearing, **XXXXXXXXXXXX**

**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)©.**

-----

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 August 2, 2021. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation, which is treated as an opposition to the Debtor's Motion to Confirm the Amended Plan is dismissed.**

### **Improperly Designated as an Objection to Confirmation**

Creditor characterized this as a "Objection to Confirmation," when actually it is filed as an opposition to Debtor's Motion to Confirm. L.B.R. 9015-1 (d). Rather than dismissing this "Objection," the court considers it as an "opposition" to Debtor's Motion.

### **Supplemental Documents Filed by Debtor**

On September 22, Cindy Suzanne Ronquist ("Debtor") filed a Declaration (Dckt. 61), an Amended Chapter 13 Plan (Dckt. 63), and an Amended Summary of Schedules including a Statement(s) of Financial Affairs and Disclosures (Dckt. 64). In the Declaration, Debtor elaborates on the Amended Plan that was filed concurrently, and attempts to address the aforementioned concerns of the Trustee

(and Creditor(s)) above. Dckt. 62.

For this plan, Debtor addresses the failure to provide adequately for secured claims, primarily that of Denise R. Winn Wright (“Creditor”), whose claim was not properly paid for as Debtor filed for bankruptcy during the Creditor’s filing of a dissolution of marriage. Dckt. 14: 18-20. Debtor’s mother has paid the balance of that claim, and the claim has been withdrawn. Dckt. 62.

Creditor no longer asserting a claim in this case, the Objection is dismissed without prejudice.

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 pleading titled Objection to Confirmation, having been treated as an opposition to the Debtor’s Motion to Confirm the Chapter 13 Plan, Denise Winn Wright, the objecting creditor having withdrawn her Proof of Claim in this case, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation is dismissed without prejudice.

**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 September 8, 2021. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

**The Objection to Confirmation of Plan is sustained.**

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

- A. Debtor is delinquent on plan payments.
- B. Debtor fails liquidation analysis.
- C. The plan is not feasible.

The Debtor filed a written opposition on October 6, 2021. Dckt. 39. Debtor claims he has had financial setbacks, but will be able to bring his plan current by November 1, 2021.

**Delinquency**

Debtor is \$3,174.05 delinquent in plan payments, which represents approximately one month of the \$3,174.50 plan payment. Before the hearing, another plan payment will be due. According to

Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

**Debtor Fails Liquidation Analysis**

Debtor’s plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor fails the liquidation analysis due to improper exemptions on Schedule C. Trustee contends that Debtor’s Schedules A, B, and C reflect the total value of non-exempt property in the estate to be \$1,117,766.17. Based on the improper exemptions, the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. Furthermore, Debtor improperly claimed as exempt the 1984 Landcruiser in the amount of \$575,000.00 based upon California Code of Civil Procedure Sections 703.140(b)(2) and 703.140(b)(5). Accordingly, Debtor over exempted the Motor Vehicle and Wild Card exemptions.

**Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). It is unclear whether Debtor is receiving sufficient income to fund the plan because Debtor has failed to file Form 122C-2. Form 122C-1 indicates that Debtor is over the median family income for a household of one (1) and Form 122C-2 needs to be completed. Furthermore, Debtor failed to provide a Declaration from his unmarried partner to show the financial support listed in Schedule I, line 11. Dckt. 16. Lastly, Trustee states that there are numerous errors in Debtor’s petition that need to be corrected before Trustee can assess the feasibility of the plan. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

In looking at Debtor’s proposed Plan, it does not appear to provide for claims of creditors. The Plan provides for monthly plan payments of \$3,228.62 for a period of 55 months. Plan ¶¶ 2.01, 2.02; Dckt. 21. There is one Class 1 Creditor identified, Deutsche Bank, with a claim secured by Debtor’s residence. *Id.*, ¶ 3.07. The arrearage to be cured though the Plan are stated to be \$60,634.00, for which the Plan provides for \$1,334.84 in monthly payments. *Id.* The Plan also requires this Creditor to be paid \$1,740.04 for its post-petition monthly payments that come due on this claim. *Id.*

Debtor lists \$12,782 in Class 5 priority unsecured claims. *Id.*, ¶ 3.12. The Plan states there are no unsecured claims.

A computation of the required monthly payments demonstrates that the monthly Plan payment is insufficient to fund the Plan.

Monthly Plan Payment	\$3,228.62
Chapter 13 Trustee Fees (10% of Plan Payment)	(\$322.83)
Class 1 Arrearage Payment (\$60,634 arrearage/55 Months of Plan)	(\$1,102.44)
Class 1 Post-Petition Monthly Payment	(\$1,740.04)

Class 5 Priority Unsecured Claim (\$12,782/55 Months of Plan)	(\$232.40)
	=====
Monthly Surplus/(Under Funding) of Plan	(\$169.09)

Over the 55 months of the Plan, this Under Funding totals (\$9,299.95)

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 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 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).**

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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 July 28, 2021. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is XXXXX.**

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

- A. The Chapter 13 debtor, Brenda Lee Short ("Debtor"), failed to appear at the first Meeting of Creditors.
- B. Debtor failed to submit tax returns to Trustee.
- C. Plan is overextended.
- D. Debtor may not be able to comply or make Plan payments as proposed.
- E. Debtor is delinquent in Plan payments.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Failure to Appear at 341 Meeting**

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

The Continued Meeting of Creditors was held on August 5, 2021, and the Chapter 13 Trustee's Report indicates Debtor appeared. The Chapter 13 Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this ground for opposing confirmation.

### **Failure to Provide Tax Returns**

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Failure to Complete Plan Within Allotted Time**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 64 months due to claims being filed for amounts higher than the Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Schedule I, line 8h, identifies \$1,800.00 "Son's and Daughters Contributions." Debtor has failed to provide any Declarations from son and daughters as part of her income over the duration of Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$3,605.28 delinquent in plan payments, which represents one month of the \$3,605.28 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Trustee reported that the Meeting of Creditors has been concluded, but the other issues have not been addressed.

The Parties agreed to a continuance to allow Debtor the opportunity to address the remaining

issues.

**October 12, 2021 Hearing**

At the hearing, ~~XXXXXXXXXXXX~~

27. [21-21871-E-13](#)      **KENNETH/MELISSA WILLIAMS**      **MOTION TO CONFIRM PLAN**  
[MRL-1](#)                      **Mikalah Liviakis**                      **9-1-21 [28]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2021. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Confirm the Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Kenneth Robert Williams and Melissa Kay Williams (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating nonopposition on September 27, 2021. Dckt. 34. Trustee, however, requested to add a clause in the amended plan. Debtor filed a response on October 4, 2021, stipulating to Trustee’s suggestion of including the following language into the order confirming the plan:

“Beginning January 1st 2022 and continuing during the pendency of this case, Debtors shall pay to the Trustee annually any income tax refunds that exceed \$2,000 annually.”

Dckt. 36. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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 to Confirm the Chapter 13 Plan filed by the debtor, Kenneth Robert Williams and Melissa Kay Williams (“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 Chapter 13 Plan filed on September 1, 2021, as amended to provide:

Beginning January 1st 2022 and continuing during the pendency of this case, Debtors shall pay to the Trustee annually any income tax refunds that exceed \$2,000 annually;

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2021. By the court’s calculation, 60 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

**The Motion to Confirm the Modified Plan is ~~XXXXX~~.**

The Debtor, William Rudolph Battilana (“Debtor”) seeks confirmation of the Modified Plan because the debtor would like to reflect the actual unsecured dividend paid. Declaration, Dckt. 204. The Modified Plan provides payments of \$325.00 for 36 months, and a 6.9 percent dividend to unsecured claims totaling \$254,844.00. Modified Plan, Dckt. August 13, 2021. The dividend to be paid was reduced to 6.9% as opposed to the confirmed plan’s 10% because several claims were allowed in amounts much greater than scheduled by the Debtor. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on September 28, 2021. Dckt. 214. Trustee opposes confirmation of the Plan on the basis that:

- A. Percentage to unsecured creditors - Trustee’s records reflect the actual percentages disbursed to unsecured creditors are split between 7.01% and 6.86%. The Debtor would need to pay an additional \$16.58, including Trustees fees, in order to reach no less than 6.9% for the unsecured creditors that have received 6.86% to date.

- B. Plan payments - The modified plan needs to clarify that payments made to date total \$59,948.50. Trustee would have no opposition if the order confirming clarifies payments made into the Plan to date total \$59,948.50

The court appreciates Trustee's concerns. Debtor should address these two matters in their modified plan.

### October 12, 2021 Hearing

At the hearing, ~~XXXXXXXXXX~~

~~The proposed Modified Chapter 13 Plan, as amended, complies with 11 U.S.C. § 1322, § 1325, and § 1329; the Motion is granted and the Plan is confirmed.~~

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, William Rudolph Battilana, II ("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 ~~xxxxxxx~~, and Debtor's Modified Chapter 13 Plan filed on August 13, 2021, as amended to provide ~~xxxxxxx~~, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the above amendment, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

~~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 to Confirm the Modified Chapter 13 Plan filed by the Debtor, William Rudolph Battilana ("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.

**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)©.**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 7, 2021. By the court’s calculation, 35 days’ notice was provided. 14 days’ notice is required.

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

-----.

**The Objection to Confirmation of Plan is sustained.**

Midfirst Bank (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Plan improperly bifurcates of Creditor’s secured claim.

**DISCUSSION**

Creditor’s objections are well-taken.

**Bifurcation of Claim**

Creditor filed a Proof of Claim on September 13, 2021 indicating a \$198,181.79 secured claim. Proof of Claim, No. 14-1. Creditor’s claim is secured by the first deed of trust against Christian Bernard Gomez Cruz and Aezel Lynn Henson Cruz’s (“Debtor”) principal residence commonly known as 8587 Elk Way, Elk Grove, California 95624 (“Property”).

Creditor contends that the Plan provides for inconsistent treatment of Creditor's secured claim by listing the claim in Class 2 for an "escrow shortage" and Class 4 "as not in default." Dckt. 17. Creditor asserts that the bifurcation of the secured claim into Class 2 and Class 4 provides inconsistent treatment to Creditor to the extent the Plan is intended to retain the automatic stay through the length of the Plan through treatment of Creditor's secured claim in Class 1 and Class 4. Furthermore, Creditor contends that Class 2 is not a proper classification of its secured claim because Class 1 includes secured claims secured by Debtor's principal residence.

Creditor states that its secured claim should be provided for in either Class 1, as a delinquent secured claim secured by Debtor's principal residence, or in Class 4, as a secured claim paid directly by Debtor or third party. Further, Creditor would not object to inclusion in Class 4 only, however, Creditor's Proof of Claim identifies \$104.15 in arrears. Proof of Claim, No. 14-1. Under the Plan, Class 4 includes all secured claims that mature after the completion of the plan, are not in default, and are not modified by this plan. Accordingly, Debtor's needs to cure the \$104.15 in arrears to list Creditor's claim in Class 4.

Debtor filed an opposition asserting that bifurcation of Creditor's claim is permitted under 11 U.S.C. Section 1322(b)(5) which permits Chapter 13 debtors to "provide for the curing of any defaults... and maintenance of payments." Dckt. 28. Debtor contends that this statute allows for the Plan to cure any pre-petition defaults with the goal of being completely current when the plan payments are complete.

However, 11 U.S.C. Section 1322(b)(2) limits the application of Section 1322(b)(5) by not allowing a Chapter 13 Plan to modify the rights of holders of secured claims that are only secured "by a security interest in real property that is the debtor's principal residence." Accordingly, Debtor's treatment of Creditor's secured claim in Class 2 is improper, and the claim must be treated under Class 1 or Class 4, if arrears have been cured.

Additionally, the mandatory Chapter 13 Plan form requires that for secured claims that only secured claims which are not in default and mature after the term of the proposed plan may be provided for in Class 4. If the claim is provided for in Class 1 of the plan, as soon as the default is cure Debtor may seek to have the plan treatment for the secured claim not in default be provided in Class 4. Such modification can be provided for in the additional provisions of the plan or by a simple joint ex parte motion with the Trustee.

Though Debtor argues that the pre-petition arrearage is only \$104, Debtor has not shown a basis for Debtor unilaterally changing (or ignoring) the express provisions of the mandatory Chapter 13 Plan. Further, Debtor provides no explanation as to why Debtor cannot simply and easily cure this arrearage, even if Debtor's counsel had to have that \$104 arrearage immediately cured before being paid on her fees of \$2,500 provided for in the Plan. Clearly, Debtor's counsel has spent (wasted) more than \$250 in counsel's time and cost (if allowed by the court) in fees.

The court notes that in the Plan Debtor lists a second deed of trust encumbering the residence, but that it is a "silent second" and nothing is owed on it. On Schedule D, Debtor states under penalty of perjury that the City of Elk Grove has a secured claim in the amount of \$54,000.00. Dckt. 1 at 25. It is unclear if this creditor has a secured claim that it is legally "silent" and can be ignored in the Chapter 13 Plan.



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

- A. Debtor failed to submit sixty-day pay advices.
- B. Debtor has failed to file business documents.
- C. Debtor has failed to cooperate with Trustee.
- D. The Plan is not Debtor’s best effort.

## **DISCUSSION**

Trustee’s objections are well-taken.

### **Failure to Provide Pay Advices**

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

Debtor filed a response to Trustee’s Objection to Confirmation on September 29, 2021. Dckt. 22. Debtor contends that the required pay advices were submitted on August 18, 2021 and provided the pay advices in Exhibit A. Dckt. 24.

### **Failure to File Documents Related to Business**

Debtor has failed to timely provide Trustee with business documents including:

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

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

### **Debtor’s Response**

In Debtor’s response, he states that the required Business Questionnaire was submitted on August 18, 2021. Further, Debtor’s Federal Income Tax Returns for 2019 (Exhibit B) and 2018 (Exhibit C) were provided as the most current two-year filed tax returns prior to filing. Dckt. 24. Debtors states that he is currently working completing his tax return for 2020 and will submit it to the Trustee once completed. Debtor provides the required bank statements in Exhibits D, E, F, G, and H and states that

they were also submitted on August 18, 2021. The Certificate of Liability Insurance is submitted as Exhibit I and the Policy Declarations as Exhibit J.

Debtor states Mystic Administration LLC does not carry a business license as Debtor is not physically active with this business and Debtor lost the business license for Wink and A Smile, but has applied for a renewal. The receipt from the renewal is submitted as Exhibit K. The six months of profit and loss statements for both businesses are submitted as Exhibits L and M.

Debtor also has amended Form 122-C to remove the business expenses listed on line 5 and is submitted as Exhibit N. Furthermore, Debtor corrected Form 122-C to reflect the number of people in Debtor's household as 3 instead of 5.

### **Failure to Cooperate with Trustee**

Trustee contends that the Debtor has failed to comply with Trustee's request for Debtor to amend his schedules to include a SBA loan creditor and any other creditors that were not listed. Further, Debtor failed to identify his wife as a co-debtor for a parcel of real property and requests Schedule H to be amended to include his wife as a co-debtor.

In Debtor's response, he states that he does not have a good paper trail for the SBA loan that was received in 2020. Debtor states the loan was approximately \$75,000.00 and was used for the businesses ran by Debtor and his spouse. Further, Debtor amended Schedule H to identify his wife as a co-debtor of two debts listed in Schedule D. Dckt. 24, Exhibit O.

### **Not Best Effort**

Trustee alleges 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.

The Debtor admitted at the Meeting of Creditors that the businesses he and his wife run have had negative income. Trustee asserts that Schedule I states a combined average negative income of -\$610.00 a month. Further, the Debtor stated at the Meeting of Creditors that they will continue to run the businesses but are unsure if they will earn income. Accordingly, there is at least \$610.00 that is being used every month to keep both businesses running that could be paid into the Plan to be disbursed to unsecured creditors.

In Debtor's response, he states that he pulled funds from other expenses to cover the loss of the businesses. Due to the objections, Debtor has reallocated his monthly expenses and has amended Schedules I and J to treat the business as if it did not exist. Dckt. 24, Exhibit P.

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 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 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.

31. [21-22085-E-13](#)      **SHARRON WINGHAM**      **MOTION TO CONFIRM PLAN**  
[BMV-1](#)                      Bert Vega                      8-30-21 [24]

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2021. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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 Plan is denied.**

The Debtor, Sharon Renee Wingham (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides the Debtor shall pay directly the regular monthly mortgage outside of the plan, her fiancé (Mr. Mancy Gant) agrees to pay outside the plan FTB lien and arrears to New Rez LLC. Plan,

Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 27, 2021. Dckt. 36. Trustee opposes confirmation of the Plan on the basis that Creditor "NewRez LLC" is improperly listed as Class 4 when they should be Class 1. Additionally, the Nonstandard Provisions state in part that Mr. Mancy Gant agrees to pay outside of the plan in the arrears of \$4,700.20 to New Rez LLC.

## **DISCUSSION**

### **Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Here, a claim was improperly listed on the Plan as a Class 4. Therefore, the Plan is not confirmable.

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

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 to Confirm the Chapter 13 Plan filed by the debtor, Sharon Renee Wingham ("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 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 8, 2021. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Disgorge 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 Motion to Disgorge Fees is denied.**

The Chapter 13 Trustee, David P. Cusick, files this Motion to Disgorge Fees pursuant to 11 U.S.C. § 329. Dckt. 39. The Chapter 13 Trustee moves the court for the following reasons:

1. Attorney Fee Disclosure - Debtor's attorney of record at the time of filing her Voluntary Petition was Ms. Shapero. However, the Disclosure of Compensation of Attorney was left blank. There has not been disclosure of any monies paid by Debtor to Ms. Shapero.
2. Failure to Appear - Debtor's Attorney failed to appear at the First Meeting of Creditors and Continued Meeting of Creditors.
3. Failure to Act - The attorney is not acting to represent the Debtor in the bankruptcy proceeding nor has she requested to withdrawal as the Attorney of Record, in violation of Local Bankruptcy Rule 2017-1(a)(1).

#### ATTORNEY'S OPPOSITION

On September 28, 2021, Ms. Shapero filed an opposition to Movant's Motion. Ms. Shapero's opposition is based on the following grounds:

1. Ms. Shapero represents Debtor in a separate matter filed in state court.

2. Ms. Shapero has not accepted payment for legal services of any kind from Debtor in connection with this bankruptcy matter.
3. Fees incurred in connection or contemplation of bankruptcy in the amount of \$0.00 were properly disclosed.

## DISCUSSION

Under 11 U.S.C. § 329, any attorney providing services to a debtor in contemplation or connection with a bankruptcy proceeding, whether or not the attorney applies for compensation, shall file with the court a statement of the compensation paid or to be paid. If the compensation exceeds a reasonable value, the court may cancel any such agreement or return any such payment to the extent excessive.

Here, Ms. Shapero is listed as Debtor's attorney of record on the voluntary petition. Dckt. 1. Yet, Ms. Shapero insists although she is Debtor's attorney, the services provided were for a separate state court proceeding. Although Debtor proceeded to file her voluntary petition under Chapter 13 shortly after filing her state claim, Ms. Shapero did not provide services for Debtor in contemplation or in connection with this bankruptcy case.

Debtor filed "Disclosure of Compensation of Attorney for Debtor," Dckt. 21, in which Debtor left the form blank. Debtor filed a second "Disclosure of Compensation of Attorney for Debtor" in which Debtor listed the amount of compensation for Ms. Shapero as \$0. Dckt. 43.

The court has been presented with a situation where statements made subject to Federal Rule of Bankruptcy Procedure 9011 and under penalty of perjury are in conflict. On the Plan, prepared by Debtor's counsel, it is stated that Debtor's counsel has been paid \$4,000 to represent the Debtor in this case. Plan, ¶ 3.05; Dckt. 21.

But then Debtor's counsel states that she has not "collected any attorney's fees from Debtor" in connection with this bankruptcy case. Dckt. 45. The Declaration does not address the affirmative statement in the Plan that Debtor's counsel has been paid \$4,000 or that such was in error. It may be that Debtor's counsel does not consider "fees paid" prior to the bankruptcy as "fees collected" by counsel.

Though Debtor's counsel states she was hired to represent Debtor in state court asserting claims against other, Debtor states under penalty of perjury on Schedule B that she has no claims against anyone. Schedule A/B ¶¶ 30, 33; Dckt. 21. On the Statement of Financial Affairs Debtor states under penalty of perjury that she is not involved in any legal actions. Statement of Financial Affairs Question 9; *Id.*

However, in her Opposition (subject to Fed. R. Bankr. P. 9011 certifications), it is argued that Debtor filed "Beasley v. Gregory Funding in the Superior Court for the State of California, County of Solano on June 23, 2021." Opposition, p. 3:12-13; Dckt. 44. As Debtor also states in her opposition, this was before the July 6, 2021 commencement of this case with the assistance of Debtor's counsel. *Id.*, p. 3:14-16.

At the hearing, **XXXXXXX**

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 31, 2021. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of U.S. National Bank Association (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$4,150.00.**

The Motion filed by Rhoda Lyn Mason (“Debtor”) to value the secured claim of U.S. National Bank Association (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 37. Debtor is the owner of a gym equipment, office equipment and furnishings (“Property”). Debtor seeks to value the Property at a replacement value of \$4,150.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Property secures a non-purchase-money loan incurred on July 17, 2018, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$41,483.23. Proof of Claim, No. 3-1. Therefore, Creditor’s claim secured by a lien against the Property is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$4,150.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The Chapter 13 Trustee, David Cusick, (“Trustee”) filed a non-opposition on September 27, 2021. Dckt. 46. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 to Value Collateral and Secured Claim filed by Rhoda Lyn Mason (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of U.S. National Bank Association (“Creditor”) secured by an asset described as gym equipment, office equipment and furnishings (“Property”) is determined to be a secured claim in the amount of \$4,150.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$41,483.23 and is encumbered by a lien securing a claim that exceeds the value of the asset.

34. [21-21690-E-13](#)      **RHODA MASON**      **MOTION TO CONFIRM PLAN**  
[MAS-2](#)                      **Yasha Rahimzadeh**                      **8-31-21 [39]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2021. 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).

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

The Debtor, Rhoda Lyn Mason (“Debtor”) seeks confirmation of the Amended Plan. The

Amended Plan provides plan payments of \$785.52 for sixty months, with no less than forty-six percent to general unsecured creditors. Plan, Dckt. 30. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on September 15, 2021. Dckt. 43. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is relying on a pending Motion to Value Collateral.
- B. The plan may not be feasible.

**DISCUSSION**

**Debtor’s Reliance on Motion to Value Secured Claim**

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of U.S. National Bank Association. Debtor has filed a Motion to Value the Secured Claim of U.S. National Bank Association, however, the hearing for the Motion to Value is set for hearing the same day as the present motion. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor’s Plan relies on the Motion to Value Collateral of U.S. National Bank Association at \$4,150.00. Trustee contends the Plan does not have sufficient monies to pay the claim in full where it asserts a value of \$41,483.23. The court has granted the motion, valuing the Creditor’s secured claim to be \$4,150.00, and the balance of the claim to be an unsecured claim.

Additionally, Trustee contends the Plan may not be feasible due to confusion on how Debtor’s Attorney is to be paid. The Plan states that the attorney received \$2,000.00 prior to filing the case and \$2,000.00 will be paid through the Plan. However, Section 3.06 of the Plan specifies that the monthly administrative expense amount will be \$0.00.

The monthly plan payment is \$785.52 for sixty months. Plan, ¶¶ 2.01, 2.03; Dckt. 30. The following chart projects the payment application against the claims and expenses to be paid.

Monthly Plan Payment	\$785.52
Chapter 13 Trustee Fees (10%)	(\$78.55)
Debtor’s Attorney’s Fees (\$2,000/60 months =	(\$33.40)
Class 2 Secured Claim	(\$605.58)
Class 5 Priority Unsecured Claims (\$3,210.45/60 Months)	(\$53.51)
Over/(Under) Funding of Plan	\$14.48

It appears that Debtor could amend the proposed Plan to provide for the \$2,000.00 in post-petition payments.

At the hearing, ~~XXXXXXX~~

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

~~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 to Confirm the Amended Chapter 13 Plan filed by the debtor, Rhoda Lyn Mason (“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 Plan is ~~XXXXXXX~~, and the proposed Chapter 13 Plan, as amended to provide for payment of \$2,000.00 in Debtor’s counsel’s attorney’s fees as an expense through the Plan is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, stating the above amendment, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on September 8, 2021. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

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**The Objection to Confirmation of Plan is sustained.**

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

- A. The debtor is delinquent on plan payments.
- B. The debtor failed to appear at the First Meeting of Creditors.
- C. Debtor will not be able to complete the plan within sixty months as proposed.
- D. Debtor has failed to file Income Tax Returns for 2019 and 2020.
- E. Debtor fails to provide Trustee with adequate documentation of retirement loan.

**DISCUSSION**

Trustee’s objections are well-taken.

## **Delinquency**

Debtor is \$4,177.00 delinquent in plan payments, which represents less than one month of the \$8,105.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

## **Failure to Appear at 341 Meeting**

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 Continued Meeting of Creditors was held on September 16, 2021, and Trustee's Report indicates Debtor appeared. Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this Objection.

## **Plan Term is More Than 60 Months**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 74 months due to the \$82,091.30 priority claim of the Internal Revenue Service. Proof of Claim, No. 11-1. Debtor scheduled the claim for \$18,206.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

## **Failure to File Tax Returns**

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2019 and 2020 tax years have not been filed still. Filing of the return 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).

## **Insufficient Information**

Debtor has supplied insufficient information relating to Debtor's non-filing spouse's retirement loan payment listed in Schedule J, line 17d., to assist the Chapter 13 Trustee in determining the debtor's true financial reality. Debtor fails to provide Trustee with further clarification regarding when the loan was taken out, for what amount and how long it will last for. This is of concern to Trustee since this expense was not listed in Debtor's previous bankruptcy case that was dismissed on June 20, 2021.

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 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.

36. [21-22690-E-13](#)      **MARIA SALAICES**      **MOTION TO CONFIRM PLAN**  
[SLE-2](#)                      **Steele Lanphier**                      **8-23-21 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2021. By the court’s calculation, 50 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Debtor, Maria de Jesus Salaices (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly plan payments of \$150.00 for thirty-six (36) months, and a 0% dividend to general unsecured claims. Plan, Dckt. 23. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**CREDITOR’S OPPOSITION**

Real Time Resolutions, Inc. (“Creditor”) holding a secured claim filed an Opposition on September 16, 2021. Dckt. 26. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor fails to provide for Creditor’s secured claim.

- B. Debtor is required to pay Creditor's lien during the pendency of the plan term.
- C. The Plan is not feasible.

## **DISCUSSION**

### **Failure to Provide for a Secured Claim**

Creditor asserts a claim of \$48,620.83 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as \$45,000.00 and indicates that it is secured by a Second deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a \$0.00 monthly dividend on account of the claim.

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

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 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). That is reason to deny confirmation.

### **Failure to Cure Arrearage of Creditor**

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$48,620.83 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.

### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor contends that the Debtor does not demonstrate an ability to make all payments under the Plan. The Debtor proposes monthly plan payments of \$150.00, however, Debtor's Schedule J reflects a disposable income of \$143.00. Plan, Dckt. 23. Dckt. 19, Sched. J.

Creditor states that for Debtor to be capable of paying Creditor's matured promissory note over a thirty-six month plan, Debtor would be required to tender an additional \$1,350.58 per month toward plan payments. However, if Debtor extended the Plan term to sixty months, Debtor would only be required to tender an additional \$810.35 per month toward plan payments. Debtor does not appear capable of making plan payments for either of these amounts. Lastly, Creditor asserts that Debtor is incapable of reorganization based on Debtor's Schedule J. In Debtor's Motion and Declaration in Support, it states a correct copy of her budget is accompanying both, however, the court has yet to receive such documentation. Dckt. 20, ¶ 6; Dckt. 22, ¶ 5. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on September 21, 2021. Dckt. 29. Trustee opposes confirmation of the Plan on the basis that:

- A. The debtor relies on a Motion to Value Secured Claim.
- B. Debtor has failed to provide Trustee with pay stubs and tax returns.
- C. The plan is not feasible.

## **DISCUSSION**

### **Debtor's Reliance on Motion to Value Secured Claim**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Real Time Resolutions, Inc. Debtor has failed to file a Motion to Value the Secured Claim of Real Time Resolutions, Inc, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

### **Failure to Provide Pay Stubs & Tax Returns**

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). Also, 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 all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee contends that the Plan is not feasible because Debtor cannot make payments under the Plan or comply with the Plan. Debtor has provided conflicting Chapter 13 documents as the Statement of Financial Affairs does not reflect any income for 2021, whereas Schedule I reflects a monthly income of \$3,000.00 for the last two and a half years. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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 to Confirm the Chapter 13 Plan filed by the debtor, Maria de Jesus Salaires ("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 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.

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 13, 2021. By the court’s calculation, 29 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

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**The Motion to Sell Property is granted.**

The Bankruptcy Code permits Virginia A. Montoya, the Chapter 13 Debtor, (“Movant”) to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 2952 Sweetwater Falls, Chico, California 95973 (“Property”).

The proposed purchaser of the Property is Recore Growth Investment, Inc., and the terms of the sale are:

- A. Purchase price is \$380,000. Payment to be made in cash.
- B. The sale is an arm’s length transaction.
- C. Debtor will not relinquish title or possession of the Property prior to payment in full of the purchase price.

- D. The Property is encumbered by a lien from NewRez LLC in the amount of \$236,694.23 and Debtor to pay sale costs of \$836.05, leaving net proceeds from the sale of \$142,469.72.
- E. Buyer is purchasing the Property “as is.”
- F. Buyer to pay for all escrow and/or closing company costs.

## **DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor will pay the Plan in full with the proceeds.

Trustee filed a Non-Opposition on September 28, 2021.

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 to Sell Property filed by Virginia A. Montoya, 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 Virginia A. Montoya, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Recore Growth Investments, Inc. or nominee (“Buyer”), the Property commonly known as 2952 Sweetwater Falls, Chico, California 95973 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$380,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit C, Dckt. 44, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. 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



The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 3, 2021. Dckt. 39. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is paid ahead under the proposed modified Plan.
- B. Debtor provides for two separate supplemental claims in Class 2(A) by combining them and proposing one monthly dividend.
- C. Plan relies on separate motions not yet filed.
- D. Total attorney’s fees indicated are incorrect.
- E. Debtor includes an expense for a projected vehicle loan where no motion to incur new debt has been filed.

## **DISCUSSION**

### **Amounts Actually Paid**

Debtor is paid ahead under the proposed modified Plan by \$1,800.00. Section 7 of the modified Plan proposes plan payments of \$34,200.00 total paid in through July 2021, where Debtor has actually paid to date a total of \$36,000.00, a difference of \$1,800.00.

Trustee would have no opposition if the Order Confirming provided language indicating the total amount paid in through month 20 (July 2021) is \$36,000.00, with payments beginning in August 2021 of \$2,049.00 for the remaining months of the 60 month plan.

### **Debtor’s Reliance on Motion to Avoid Lien and Objection to Claim**

A review of Debtor’s Plan shows that it relies on the court avoiding the judicial lien of Employment Development Department. Debtor’s Motion to Avoid Judicial Lien has been granted with the order thereon filed on August 23, 2021. Dckt. 49.

This part of Trustee’s objection is thus resolved in Debtor’s favor.

Debtor has failed to file the Objection to Claim of County of Sacramento, Claim #25, however. Nor has creditor filed an amended claim. Thus, without the court valuing the claim, the Plan may be not feasible. 11 U.S.C. § 1325(a)(6). An amended claim, Proof of Claim 25-2, has been filed, which resolves this issue.

### **Attorney’s Fees**

According to Trustee, \$2,575.00 in attorney’s fees have been disbursed. However, Section 3.05 of the proposed modified Plan indicates Debtor paid \$1,425.00 to their attorney prior to filing the case, with \$1,575.00 to be paid through the Plan. Trustee does not object to a correction in the order confirming.

## **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Schedule J budgets \$289.00 per month for a car payment, which is an increase over Debtor's prior Schedule J filed November 4, 2019, where this amount was reflected as \$0.00. Trustee then points the court to Debtor's Declaration, which states that "Additionally, I have included a projected amount for a vehicle loan that I will be filing as I need a different vehicle for work. Currently, my vehicle needs repairs that exceed the value." Yet, Debtor provides no other information related to needed repairs and has failed to file a motion to incur new debt. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing counsel for the Trustee reports that the Trustee has been communicating with Debtor's counsel, which may be addressed in the order confirming.

The Parties agreed to continue the hearing in light of the probate issues (Debtor's son) that need to be addressed.

### **October 12, 2021 Hearing**

At the hearing, **XXXXXXXXXXXX**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2021. By the court's calculation, 19 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).

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 Lydia Alvarado Ramirez, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 2 Dakota Court, Sacramento, California 95833("Property").

The proposed purchaser of the Property is Cedroc Salcedo, and the terms of the sale are:

- A. Sales Price: \$463,000.00
- B. Payoff first mortgage including interest: \$349,466.86
- C. Payoff to Champion Mortgage for Lien for Property Tax and Insurance advances of: \$2,704.88
- D. Real estate commissions, other debts/credits, title and recording charges and escrow charges: \$28,615.05
- E. Due to seller: \$82,213.21

On October 5, 2021, the Chapter 13 Trustee, David P. Cusick, filed a nonopposition to Debtor's Motion. Dckt. 99.

## **DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the money from the sale will be used to payoff the mortgage and other debts.

Movant has estimated that a 2.5 percent broker's commission from the sale of the Property will equal approximately \$11,575.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 2.5 percent commission.

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 to Sell Property filed by Lydia Alvarado Ramirez, 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 Lydia Alvarado Ramirez, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Cedroc Salcedo or nominee ("Buyer"), the Property commonly known as 2 Dakota Court, Sacramento, California 95833 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$463,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 92, and as further provided in this Order.

**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).**

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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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 24, 2021. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of Harley-Davidson Credit Corp. (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$26,765.00.**

The Motion filed by Kenneth John Faljean (“Debtor”) to value the secured claim of Harley-Davidson Credit Corp. (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 55. Debtor is the owner of a 2018 Harley-Davidson FLHTK Ultra Limited (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$26,765.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

On October 5, 2021, the Chapter 13 Trustee, David P. Cusick, filed a nonopposition to Debtor’s Motion. Dckt. 58.

## DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on September 30,

2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$29,336.96. Declaration, Dckt. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$26,765.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue 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 to Value Collateral and Secured Claim filed by Kenneth John Faljean ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Harley-Davidson Credit Corp. ("Creditor") secured by an asset described as 2018 Harley-Davidson FLHTK Ultra Limited ("Vehicle") is determined to be a secured claim in the amount of \$26,765.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$26,765.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 27, 2021. By the court's calculation, 15 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.**

Flora Elaine Broughton ("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. 20-20194) was dismissed on October 8, 2020, after Debtor failed to make plan payments and plan had not been confirmed. *See* Order, Bankr. E.D. Cal. No. 20-20194, Dckt. 84, October 8, 2020. 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 the Debtor was delinquent on plan payments and no plan had been confirmed.

On October 5, 2021, the Chapter 13 Trustee, David P. Cusick, filed a nonopposition to Debtor's Motion. Dckt. 22. The Trustee does not oppose the Motion, but notes the Motion does not

state:

1. Why the prior case got dismissed.
2. Why the case will succeed if the prior case did not.

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 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 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 to Extend the Automatic Stay filed by Flora Elaine Broughton (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

# FINAL RULINGS

42. [20-23209-E-13](#)      ANDREW/DIANE GARCIA      MOTION TO MODIFY PLAN  
[HDR-5](#)                      Harry Roth                      9-2-21 [92]

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2021. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Andrew Garcia and Diane Garcia (“Debtors”) have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a response indicating non-opposition on September 27, 2021. Dckt. 102. While Trustee acknowledges that the debtors are current under the proposed plan and the plan will comply with 11 U.S.C. § 1322(d), trustee requests that the order be corrected with the following language: “The debtors have paid a total of \$27,966.32 to the Trustee through month 14 of the plan. Payments shall be \$2,123.00 a month for the remaining months of the plan.” Trustee requests this correction be made in the order confirming.

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

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 to Confirm the Amended Chapter 13 Plan filed by The debtors, Andrew Garcia and Diane Garcia (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtors’ Second Amended Chapter 13 Plan filed on September 2, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

43. [21-23014-E-13](#) **KYLE FARRIS/ GRACIELA** **MOTION TO VALUE COLLATERAL OF**  
[MRL-1](#) **JARAMILLO-FARRIS** **REGIONAL ACCEPTANCE**  
**Mikalah Liviakis** **CORPORATION**  
**8-28-21 [10]**

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 30, 2021. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of Regional Acceptance Corporation (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$29,500.00.**

The Motion filed by Kyle Andrew Farris and Graciela Jaramillo-Farris (“Debtors”) to value the secured claim of Regional Acceptance Corporation (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 10. Debtor is the owner of a 2017 Ford F-250 with approximately 98,000 miles (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$29,500.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## **DISCUSSION**

The lien on the Vehicle’s title secures a purchase-money loan incurred on approximately April, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$37,742.00, for which no claim to date has been filed. Declaration, Dckt. 12. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$29,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue 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 to Value Collateral and Secured Claim filed by Kyle Andrew Farris and Graciela Jaramillo-Farris (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Regional Acceptance Corporation (“Creditor”) secured by an asset described as 2017 Ford F-250 with approximately 98,000 miles (“Vehicle”) is determined to be a secured claim in the amount of \$29,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$29,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 2, 2021. By the court’s calculation, 43 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.**

The debtor, Amber Marie Horton (“Debtor”) seeks confirmation of the Modified Plan to cure default in plan payments after encountering decreases in net income along with changes to living expenses. Declaration, Dckt. 63. The Modified Plan provides for plan payments of \$433.00 per month for months 41 through 60 (August 2021 - March 2023), and a 13 percent dividend to unsecured claims totaling \$32,634.12. Modified Plan, Dckt. 65. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 24, 2021. Dckt. 69. Trustee opposes confirmation of the Plan on the basis that Debtor may not be able to pay.

#### DISCUSSION

##### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C.

§ 1325(a)(6). According to Trustee, Schedule I, Dckt. 60, indicates that Debtor has a monthly gross income of \$6,325.22 and monthly net income of \$5,205.88, where as the paycheck stubs filed in support of the motion reflect average gross monthly income of \$6,325.22 and average net monthly income of \$4,750.16. Trustee also notes that the pay stubs states an annual pay of \$99,340.80 or \$8,278.40 monthly, which is \$1,953.18 more monthly than reflected on Schedule I.

Moreover, Trustee notes that the pay stubs reflect 37.75 hours of unpaid leave for the 160-hour period which Debtor has failed to address in her declaration.

Lastly, Trustee notes that in her Declaration, Debtor testifies that she is current in domestic support obligations; yet, Debtor's Schedule I does not reflect a domestic support obligation on line 5f.

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

### **Supplemental Pleadings by Debtor**

Debtor filed a Supplemental Declaration on August 31, 2021 clarifying the following:

1. The 37.75 hours of unpaid leave in a 160-hour pay period is due to suffering from health issues that sometimes keep her working and occasionally require surgery and although it is not certain that this will be "normal" in Debtor's life or predictable, Debtor testifies that the numbers submitted on Supplemental Schedules I and J were what Debtor felt to be historically correct and accurate for when she is intermittently unable to work.
2. When her health issues require surgery, Debtor receives disability pay of \$1,160 per week, which when calculated monthly comes to \$5,026.00 monthly. Adding that this estimate is not much different from the \$5,208.88 submitted in my supplemental I and J, and the differences can be covered by reducing transportation and meals when Debtor is not going to work.
3. As to the domestic support obligation, Debtor explains that she thought listing the obligation as an expense rather than as a deduction was appropriate.

Dckt. 72.

At the hearing counsel for the Trustee reported that Debtor's pay advices do not support Debtor's assertion that her income has decreased.

The Parties agreed to a continuance of the hearing to afford Debtor a further opportunity to address the issues identified by the Trustee.

**Debtor's Declaration in Support of Motion to Modify Plan  
Filed 9/22/2021**

On September 22, 2021, Amber Marie Horton (“Debtor”) filed a declaration in support of her motion to Modify the Chapter 13 plan. Dckt. 76. In said Declaration, Debtor addressed the Trustee’s objection that the previous declarations filed by the Debtor did not support the assertion that Debtor’s income materially decreased. The Debtor, in her filing, explained that her material health issues; these health issues were so severe that the Debtor had to use all of her sick leave through February of 2021 and take an unpaid leave of absence after the leave was used. Debtor further explained that she is not able to work full time, and her ongoing health condition leaves it unclear as to how long her health issues will persist.

### **Trustee’s Withdrawal of Objection - 9/27/2021**

On September 27, 2021, Chapter 13 Trustee David Cusick filed a response to the declaration filed by Debtor on 9/22/2021 (Dckt. 76), and in that response, indicated that the declaration addressed the trustee’s concerns about the debtor’s chapter 13 plan in a satisfactory manner. Dckt. 78. The Trustee withdraws their objection to the confirmation of the plan.

The proposed Amended Chapter 13 Plan complies with 11 U.S.C. § 1322, § 1325; and the Motion is granted and the Plan is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Josephine Wright (“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 June 23, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2021. 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Kenneth John Faljean ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on September 15, 2021. Dckt. 49. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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 to Confirm the Chapter 13 Plan filed by the debtor, Kenneth John Faljean ("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 Chapter 13 Plan filed on August 31, 2021 is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if

so approved, the Chapter 13 Trustee will submit the proposed order to the court.

46. [20-22443-E-13](#) **MATTHEW/DIANNA PARKER** **MOTION TO MODIFY PLAN**  
[GC-1](#) **Julius Cherry** **7-28-21 [34]**

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2021. By the court’s calculation, 76 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Matthew Earl Parker and Dianna Marie Parker (“Debtor”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on September 27, 2021. Dckt. 45. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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 to Confirm the Modified Chapter 13 Plan filed by the debtor, Matthew Earl Parker and Dianna Marie Parker (“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



will list the property known as 317 Riverwood Lane, Rio Vista, CA 94574. Has met with the Debtor to discuss marketing and selling her property. Ralene Nelson testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Ralene Nelson as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 41. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 to Employ filed by Toni Hendricks Painter ("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 Employ is granted, and Debtor is authorized to employ Ralene Nelson as Broker for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 41, with the commission not to exceed 5%, and subject to the provisions of 11 U.S.C. § 328.

48. [16-24146-E-13](#) STANLEY/KATHLEEN HART  
[MJD-3](#) Matthew DeCaminada

MOTION TO CONTINUE CASE  
ADMINISTRATION, SUBSTITUTE  
PARTY, AS TO DEBTOR  
9-14-21 [97]

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Substitute 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 Substitute is granted.**

Joint Debtor, Kathleen Margaret Hart, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Stanley Wilford Hart, Jr. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 13 on June 27, 2016. On June 27, 2016, Debtor’s Chapter 13 Plan was confirmed. Dckt. 5. On July 5, 2021, Debtor Stanley Wilford Hart, Jr. passed away. Joint Debtor asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on September 14, 2021. Dckt. 97. Joint Debtor is the spouse of the deceased party and is the successor’s heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

## DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case “pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further

administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

**The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads, supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor’s 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Kathleen Margaret Hart has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 97. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Kathleen Margaret Hart, as the spouse of the deceased party and as the successor’s heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Stanley Wilford Hart, Jr. The court grants the Motion to Substitute Party.

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 Substitute After Death filed by 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 Kathleen Margaret Hart is substituted as the successor representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025, 9014-in-interest to Stanley Wilford Hart, Jr. and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 7, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor, William Matthew Freeman and Carla Elise Tavormina Freeman (“Debtor”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on September 28, 2021 Dckt. 137. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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 to Confirm the Modified Chapter 13 Plan filed by the debtor, William Matthew Freeman and Carla Elise Tavormina Freeman (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on September 7, 2021, is confirmed. Debtor’s Counsel shall



on Schedule C. Dckt. 13.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Reginald Keith Nichols and Nichelle Leigh Nichols ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Sacramento County Case No. 34-2020-00288089, recorded on June 4, 2021, Document No. 202106160885, with the Sacramento County Recorder, against the real property commonly known as 9963 Autumn Sage Way, Elk Grove, California, 95757, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.



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 to Value Collateral and Secured Claim filed by Michael James Brooks and Stephanie Marie Brooks (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Sierra Central Credit Union (“Creditor”) secured by an asset described as 2015 Dodge Ram 1500 (“Vehicle”) is determined to be a secured claim in the amount of \$24,298.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$22,411.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 9, 2021. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of Sierra Central Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$8,301.00.**

The Motion filed by Michael James Brooks and Stephanie Marie Brooks (“Debtor”) to value the secured claim of Sierra Central Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 22. Debtor is the owner of a 2016 Dodge Dart (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$8,301.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on October, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$10,366.48. Proof of Claim, No. 6. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$10,366.48, the value of the collateral. *See* 11 U.S.C. § 506(a). The Chapter 13 Trustee, David Cusick, (“Trustee”) filed a non-opposition on September 27, 2021. Dckt. 28. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 to Value Collateral and Secured Claim filed by Michael James Brooks and Stephanie Marie Brooks (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Sierra Central Credit Union (“Creditor”) secured by an asset described as 2016 Dodge Dart (“Vehicle”) is determined to be a secured claim in the amount of \$10,366.48, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$8,301.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

53.	<a href="#"><u>19-20975-E-13</u></a> <a href="#"><u>GEL-3</u></a>	<b>INOCENTE SALINAS</b> <b>Gabriel Liberman</b>	<b>CONTINUED MOTION TO MODIFY PLAN 8-2-21 [51]</b>
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**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 2, 2021. By the court’s calculation, 43 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).

<b>The Motion to Confirm the Modified Plan is granted.</b>
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The Debtor, Inocente Salinas (“Debtor”) seeks confirmation of the Modified Plan to account for Debtor’s mistaken belief the Debtor had regarding his family support payment of \$1,400.00 per month terminating completely in April 2022, which will allow for a plan payment increase beginning May 2022. Declaration, Dckt. 53. The Modified Plan provides:

1. payments of \$581.00 per month for months 1 - 38 [March 2019 - April 2022];
2. payments of \$1981.00 per month for months 39 - 46 [May 2022 - December 2022]; and
3. a one-hundred (100) percent dividend to unsecured claims totaling \$25,957.64.

Modified Plan, Dckt. 55. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 30, 2021. Dckt. 59. Trustee opposes confirmation of the Plan on the basis that Debtor has not filed supplementals Schedules I and J.

### **DISCUSSION**

#### **Failure to File Supplemental Schedule I and J**

The Chapter 13 Trustee argues that Debtor has failed to file a recent Schedule I and J. Debtor’s last Schedules were filed in 2019. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

The Parties agreed to a continuance to allow the Debtor to file Supplemental Schedules I and J.

#### **Debtor’s Declaration in Support of Motion to Modify Plan - 9/22/2021**

On September 22, 2021, Inocente Salinas Jr. (“Debtor”) filed a declaration in support of her motion to Modify the Chapter 13 plan. Dckt. 65-66. In said Declaration, Debtor provides the requisite documents, the Schedules I and J, that were not filed as per the Trustees Objection. Dckt. 59.

#### **Trustee’s Withdrawal of Objection - 9/27/2021**

On September 27, 2021, Chapter 13 Trustee David Cusick filed a response to the declaration filed by Debtor on 9/22/2021 (Dckt. 65-66), and in that response, indicated that the declaration addressed the trustee’s concerns about the debtor’s chapter 13 plan in a satisfactory manner. Dckt. 68. The Trustee withdraws their objection to the confirmation of the plan.

The proposed Modified Chapter 13 Plan complies with 11 U.S.C. § 1322, § 1325, and § 1329; the Motion is granted and the Plan is confirmed.

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

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

The Motion to Confirm the Second Modified Chapter 13 Plan filed by the debtor, Inocente Salinas, 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 the Motion is granted, and Debtor's Second Modified Chapter 13 Plan filed on August 2, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2021. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted.**

Pauldeep Baines, the Attorney (“Applicant”) for Dawn Erin Neal and Douglas Ryan Neal, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period August 2, 2021, through September 2, 2021. Applicant requests fees in the amount of \$1,872.50 and costs in the amount of \$0.00.

**APPLICABLE LAW**

**Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an

examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

### **Reasonable Fees**

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

A. Were the services authorized?

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

- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

### **Reasonable Billing Judgment**

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

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

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

A review of the application shows that Applicant’s for the Estate include communicating, filing and serving documents, and attending hearings on the motions. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **“No-Look” Fees**

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

- (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart © of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart ©. The failure of an attorney to file an executed copy of Form EDC

3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart ©. When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 14. Applicant prepared the order confirming the Plan.

### **Lodestar Analysis**

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

F.2d 687, 691 (9th Cir. 1988).

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

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

Motion to Employ: Applicant spent 1.4 hours in this category. Applicant filed, served and attended hearing on motion.

Motion to Sell: Applicant spent 4.8 hours in this category. Applicant emailing, filing and serving supplemental documents, and attended hearing.

Motion for Compensation: Applicant spent 2.00 hours in this category. Applicant repaired motion.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Tina Perez, Paralegal	2.5	\$185.00	\$462.50
Pauldeep Baines, Attorney	4.7	\$300.00	\$1,410.00
<b>Total Fees for Period of Application</b>			\$1,872.50

### **Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of

\$0.00 pursuant to this application.

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

The unique facts surrounding the case, including preparing, filing and serving motions, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,872.50 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

### **Costs & Expenses**

Costs in the amount of \$0.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$1,872.50
Costs and Expenses	\$0.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Pauldeep Baines (“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 Pauldeep Baines is allowed the following fees and expenses as a professional of the Estate:

Pauldeep Baines, Professional Employed by Dawn Erin Neal and Douglas Ryan Neal (“Debtor”)

Fees in the amount of \$1,872.50  
Expenses in the amount of \$0.00,

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



56. [18-25699-E-13](#) SUSAN LOWERY  
[MOH-2](#) Michael Hays  
52 thru 53

MOTION TO AVOID LIEN OF  
CITIBANK (SOUTH DAKOTA) N.A.  
8-23-21 [\[57\]](#)

**Final Ruling: No appearance at the October 12, 2021 hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 23, 2021. By the court’s calculation, 50 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. (“Creditor”) against property of the debtor, Susan B. Lowery (“Debtor”) commonly known as 879 Harlan Avenue, Oroville, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,974.49. Exhibit 1-1, Dckt. 60. An abstract of judgment was recorded with Butte County on March 10, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor’s Amended Schedule A, the subject real property has an approximate value of \$150,000.00 as of the petition date. Exhibit 3-2, Dckt. 60. The unavoidable consensual liens that total \$139,350.61 as of the amendment that was filed on August of 2021 of this case are stated on Debtor’s Amended Schedule D. Exhibit 4-1, Dckt. 60. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$26,800.00 on Amended Schedule C. Exhibit 3-8, Dckt. 60.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption

of the real property, and its fixing is avoided in its entirety subject to 11 U.S.C. § 349(b)(1)(B). *See* Dckt. 60, Exhibit 1-1

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Susan B. Lowery (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Citibank (South Dakota) N.A., California Superior Court for Butte County Case No. 147062, recorded on March 10, 2010, Document No. 2010-0009320 / Book 5177 and Page 4-5, with the Butte County Recorder, against the real property commonly known as 879 Harlan Avenue, Oroville, California, is avoided in its entirety for all amounts in excess of \$3,974.49 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling: No appearance at the October 12, 2021 hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on August 23, 2021. By the court’s calculation, 50 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Wireless Receivables Acquisition Group, LLC (“Creditor”) against property of the debtor, Susan B. Lowery (“Debtor”) commonly known as 879 Harlan Avenue, Oroville, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$11,107.50. Exhibit 1-1, Dckt. 65. An abstract of judgment was recorded with Butte County on May 7, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor’s Amended Schedule A, the subject real property has an approximate value of \$150,000.00 as of the petition date. Exhibit 3-2, Dckt. 65. The unavoidable consensual liens that total \$139,350.61 as of the amendment that was filed on August of 2021 of this case are stated on Debtor’s Amended Schedule D. Exhibit 4-1, Dckt. 65. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$26,800.00 on Amended Schedule C. Exhibit 3-8, Dckt. 65

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no

equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Susan B. Lowery ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Wireless Receivables Acquisition, California Superior Court for Butte County Case No. 155134, recorded on May 7, 2012, Document No. 2012-0019887 / Book 5177 and Page 2-3, with the Butte County Recorder, against the real property commonly known as 879 Harlan Avenue, Oroville, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.  
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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, Debtor, Debtor’s Attorney, and the Chapter 13 Trustee on August 23, 2021. 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). 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 8 filed by the Debtor for creditor Internal Revenue Service is sustained, and the claim filed by Debtor is disallowed. This is without prejudice to any proof of claim filed by this creditor.**

David P. Cusick, the Chapter 13 Trustee, (“Objector”) requests that the court disallow the claim of Internal Revenue Service as filed by Debtor on their behalf (“Creditor”), Proof of Claim No. 8 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured priority in the amount of \$1,375.96. Objector asserts that the subsequent filing by the Creditor, IRS, on their own behalf, includes the Debtors’ filing on behalf of the creditor, making it redundant.

## DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence 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). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

The Debtors' filing on behalf of the IRS for Claim #8 is for \$1,375.86 for the tax year of 2019. Dckt. 48. Claim #9 filed by the IRS on April 16, 2021—which was amended once on July 21, 2021—is for \$5,871.24. *Id.* This amount includes \$4,256.01 in priority for the tax years of 2017, 2018, and 2019.

In contrast to Claim #8, Claim #9 filed by the Internal Revenue Service only claims \$887.00 as the balance in priority for 2019. *Id.* Since Claim #9 was amended in July of 2021, it can be presumed the most recent and accurate documents supporting the IRS' claims for 2019. Therefore, the total amount of unsecured priority claims for the 2019 year are \$887.00, not \$1,375.86. Because these claims are accounted for in Claim #9 filed by the Internal Revenue Service, Debtor's attempted Proof of Claim is shown to be incorrect and now an unnecessary duplicate.

Based on the evidence before the court, Creditor's Claim #8 is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Objection to Claim of Internal Revenue Service ("Creditor"), filed in this case by David P. 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 the Objection to Proof of Claim Number 8 of Creditor is sustained, and the claim is disallowed in its entirety. This is without prejudice to Second Amended Proof of Claim 9-3 filed by the Internal Revenue Service.

**Final Ruling:** No appearance at the October 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 28, 2021. By the court’s calculation, 14 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.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

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

The Motion to Approve Loan Modification filed by Jennifer Rene Pruett (“Debtor”) seeks court approval for Debtor to incur post-petition credit. American Pacific Mortgage Corp. (“Creditor”), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will increase Debtor’s mortgage payment from the current \$1,340.00 per month to \$1,617.00 per month. The modification will allow the Debtor pay off the remaining of her creditors at one hundred (100) percent and end her bankruptcy early.

The Motion is supported by the Declaration of Jennifer Pruett. Dckt. 23. 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.

### **Creditor’s Reply**

Creditor filed a response on October 1, 2021. Dckt. 26. Creditor does not oppose the Debtor’s motion to refinance and requests the following provisions are included in the order:

1. Creditor’s Loan shall be paid off in full through escrow.
2. Creditor shall be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the refinance so Creditor’s Loan is paid in full at the time the refinance is finalized.

3. The deadline for the refinance closing and receipt of funds should be within 90 days from the date of the order granting the Motion to Refinance.

*Id.*

### **Trustee's Nonopposition**

Trustee filed a nonopposition on October 5, 2021. Dckt. 28. Trustee does not oppose to the terms of the refinancing of Debtor's loan so long as the Order states the proceeds are to be disbursed directly to the Trustee in an amount to pay all creditors in full pursuant to the Trustee's demand based on Debtor's confirmed plan. *Id.*

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), 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 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 to Approve Loan Modification filed by Jennifer Rene Pruett ("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 Jennifer Rene Pruett to amend the terms of the loan with American Pacific Mortgage Corp. ("Creditor"), which is secured by the real property commonly known as 8232 Madison Ave, Fair Oaks, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 24).