

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

April 23, 2024 at 2:00 p.m.

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1. [24-21070](#)-E-13

THOMAS MEADOWS  
Pro Se

OBJECTION TO CERTIFICATION BY A  
DEBTOR WHO RESIDES AS A TENANT  
OF RESIDENTIAL PROPERTY  
4-9-24 [[26](#)]

**By Order of the Court, this Matter has been set to be heard on  
the 1:30 p.m. Calendar in conjunction with the Motion for Relief  
From Stay, Docket Control Number JCT-4.**

**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—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 that have filed claims, parties requesting special notice, and Office of the United States Trustee on March 6, 2024. 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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion to Confirm the Modified Plan is granted, as amended at the hearing to state that the dividend to creditors holding general unsecured claims shall not be less than 83%.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Emilia Labaoig Caoagas and Rodrigo Rivera Dones (“Debtor”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on April 9, 2024.

Trustee requests that the percent to unsecured creditors be stated as 86.328% in the order confirming. Docket 68. While this percentage is accurately and computed to the thousand digit, the court concludes that setting the minimum distribution to not less than 83% provides for a small adjustment factor if there are some additional administrative expenses.

The Modified Plan, as amended to state the 83% minimum dividend on general unsecured claims, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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 Confirm the Modified Chapter 13 Plan filed by the debtor, Emilia Laboig Caoagas and Rodrigo Rivera Dones (“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 March 6, 2024 at Docket 60, as amended to state the 83% minimum dividend on general unsecured claims, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the forgoing 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.

3. [23-24568-E-13](#)      **SUNDREA GORDON-HACKLEY**      **MOTION TO SELL O.S.T.**  
[CRG-4](#)                      **Carl Gustafson**                      **4-10-24 [61]**

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

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(3).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 12, 2024. By the court’s calculation, 11 days’ notice was provided. The court granted an Order Shortening Time on April 11, 2024. Docket 70.

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

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

The Bankruptcy Code permits Sundrea Danyelle Gordon-Hackley, 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 948 Lake Canyon Ave, Galt, California 95632 (“Property”).

Movant’s original motion listed the wrong name of the Buyer as well as the wrong year the bankruptcy case was filed, so Movant refiled the Motion with redlined corrections at Docket 76.

The proposed purchaser of the Property is Opendoor Property Trust I, a Delaware Statutory Trust (“Buyer), and the purchase price is \$628,600. \$42,000 will be paid into the Plan at the close of escrow to pay claimants in full, with any excess funds to be returned to the Debtor.

## 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 proceeds for the sale will generate enough money to pay off all creditors in this case in full and allow Debtor to retain some leftover equity. Decl., Docket 62 ¶ 5.

Movant has not estimated that any broker's commission from the sale of the Property.

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 Sundrea Danyelle Gordon-Hackley, 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 Sundrea Danyelle Gordon-Hackley, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Opendoor Property Trust I, a Delaware Statutory Trust or nominee ("Buyer"), the Property commonly known as 948 Lake Canyon Ave, Galt, California 95632 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$628,600, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 63, 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, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The 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 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the

Chapter 13 Trustee’s demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.

- E. After payment of the amounts provided above, including the disbursement to the Chapter 13 Trustee directly from escrow, any remaining net sale proceeds may be disbursed directly from escrow to the Chapter 13 Debtor.
- F. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement.

4. [23-24568-E-13](#)  
[CRG-2](#)

**SUNDREA GORDON-HACKLEY**  
Carl Gustafson

**OBJECTION TO CLAIM OF JEFFERSON  
CAPITAL SYSTEMS LLC, CLAIM  
NUMBER 3  
3-5-24 [35]**

**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 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 Chapter 13 Trustee, creditors that have filed claims, and Office of the United States Trustee on March 5, 2024. By the court’s calculation, 49 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 Objection to Proof of Claim Number 3-1 of Jefferson Capital Systems LLC is sustained, and the claim is disallowed in its entirety.**

Sundrea Gordon-Hackley, the Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of Jefferson Capital Systems LLC (“Creditor”), Proof of Claim No. 3-1 (“Claim”), Official

Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$565.69. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract, or four years from the date the last payment was made under the contract. The date of last payment on the Account Statement Summary attached to the Proof of Claim states October 23, 2012, and the charge off date as March 28, 2013.

The Chapter 13 Trustee, David Cusick, filed a response indicating non-opposition on April 8, 2024. Docket 54. Trustee indicates that there is error with the Motion because there is no Declaration in support. However, as this is entirely a legal issue involving facts already on the record, resolution of this matter does not require testimony of the Debtor.

## **DISCUSSION**

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

California Code of Civil Procedure § 337 states in relevant part:

(b) An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that if an account stated is based upon an account of one item, the time shall begin to run from the date of the item, and if an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The California Legislature made a substantive amendment to California Code of Civil Procedure § 337 in 2018, which became effective January 1, 2019, that moves the expiration of the statute of limitations on a contract action from an affirmative defense to affirmative bar on a creditor seeking to enforce the obligation.

(d) When the period in which an action must be commenced under this section [contract, instrument, book account, account stated, open account, rescission of a written contract] has run, a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt. The period in which an action may be commenced under this section shall only be extended pursuant to Section 360.

Cal. Code Civ. P. § 337(d).

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

**(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 3-1 lists the charge off date as March 28, 2013. The court takes judicial notice that a creditor does not “charge off” an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after October 23, 2012. Thus, the four-year statute of limitations expired on October 23, 2016.

This bankruptcy case was filed on December 20, 2023, seven years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor’s claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. 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 Jefferson Capital Systems LLC (“Creditor”), filed in this case by Sundrea Gordon-Hackley, the Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 3-1 of Jefferson Capital Systems LLC (“Creditor”) is sustained, and the claim is disallowed in its entirety.

Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.



**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 February 15, 2024. 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 Second 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 Second Amended Plan is XXXXXXX.**

### April 23, 2024 Hearing

The Court continued this Motion from the March 26, 2024 hearing to allow Debtor time to put a Declaration on record showing that a nephew will provide supplemental plan funding. A Review of the record on April 17, 2024 reveals that no new documents have been filed with the court.

In light of such a Declaration not having been filed a week before the continued hearing following the March 26, 2024 hearing, Debtor demonstrates that confirmation of this Plan is not possible.

At the hearing, XXXXXXX

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 Amended Chapter 13 Plan filed by the debtor, Amanda Wilson (“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 without prejudice, and Debtor’s Second Amended Chapter 13 Plan filed on February 8, 2024, is not confirmed.

### **REVIEW OF THE MOTION**

The debtor, Amanda Wilson (“Debtor”), seeks confirmation of the Second Amended Plan. The Second Amended Plan provides for plan payments in the amount of \$665.00 per month for 12 months, then the plan payment will increase to \$1,151.00 per month for the remaining 48 months. Second Amended Plan, Docket 47, § 7.

In order to afford the increase in plan payments, Debtor will either find a renter for one of her rooms located at 693 Stringtown Ave., Weed, California, 96094 (“Property”), or will put the Property on the market for sale. *Id.*

If Debtor is unable to sell the Property within 4 months of putting the Property on the market, then Debtor understands that she will need to surrender the Property. *Id.* The Second Amended Plan also correctly states the Class 1 creditor with ongoing payments in the amount of \$451.33 and arrears in the total amount of \$21,696.39. *Id.* at § 3.07(c). 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 March 11, 2024. Opposition, Docket 56. Trustee opposes confirmation of the Second Amended Plan on the basis that:

- A. Debtor is unable to afford to make either the \$665.00 or the \$1,151.00 monthly plan payments because Debtor has a monthly net income of \$626.00. Objection, Docket 56, p. 2:19-25.
- B. Debtor’s Second Amended Plan proposes that she will either rent out a room or sell the Property in order to afford the \$1,151.00 plan payment. *Id.* at 2:1-18. However, the Second Amended Plan does not provide any details on how Debtor is seeking a roommate, the date when the Property would be put on the market, or a deadline of when the sale of the Property would occur. *Id.*

### **DISCUSSION**

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

Debtor may not be able to make plan payments or comply with the Second Amended Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule J shows that her monthly net income is \$626.00. Schedule J, Docket 1, p. 30 § 23. Debtor's Second Amended Plan proposes a plan payment of \$665.00 for 12 months, and then an increase in the plan payment to \$1,151.00 for the remaining 48 months. Second Amended Plan, Docket 47 § 7. Therefore, it is unclear how the Debtor will afford to make either of the plan payments with her current income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Insufficient Information**

Debtor has supplied insufficient information relating to the Property to assist the Chapter 13 Trustee in determining the feasibility of the Second Amended Plan. Debtor proposes that she will find a roommate to rent one of the rooms of the Property. Second Amended Plan, Docket 47, § 7. However, neither the Second Amended Plan, nor the Debtor's Declaration state what steps the Debtor will take to find a renter. Furthermore, the Second Amended Plan states that if the Debtor is unable to find a renter, she will then list the Property for sale. *Id.* Again, Debtor does not provide any details regarding when the Property will be listed for sale, or a deadline for when the Property will be sold. Without more information, the court cannot determine whether the Second Amended Plan is confirmable.

At the hearing, counsel for the Debtor reported that a nephew will provided supplemental plan funding and that a Declaration attesting to such is in process.

The Chapter 13 Trustee agreed to a continuance to allow the Debtor to get all of these "ducks in a row" so the Plan may be confirmed.

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

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

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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, and parties requesting special notice on April 2, 2024. By the court’s calculation, 21 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, **XXXXXXX**

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

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

1. The Debtor cannot make the plan payments and does not appear to have the ability to make the plan payments. Objection, Docket 21, p. 1:25-27.
2. The Debtor’s Plan does not comply with 11 U.S.C. § 1325(a)(1) and (6). *Id.* at p. 2:1-2.
3. The Debtor has failed to accurately disclose information in the Plan and Schedules, as well as provide documents to the Trustee. *Id.* at p. 2:3-4.
4. The Debtor listed United Shore Financial Services, LLC d/b/a United Wholesale Mortgage as a class 4 claim, but the Trustee believes this

creditor should be listed as a class 1 claim and paid through the Plan. *Id.* at p. 2:5-13.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 23.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Improper Classification of a Claim**

Trustee objects to confirmation of the Plan on the basis that the Debtor lists United Shore Financial Services, LLC d/b/a United Wholesale Mortgage ("Creditor") as a class 4 creditor in the Plan. Plan, Docket 3, § 3.10. However, the Trustee believes that this Creditor should be listed in class 1 of the Plan. Objection, Docket 21, p. 2:5-13. The Creditor's Proof of Claim states that they are owed \$7,747.11 at the time the Debtor filed their Petition. Claim No. 13. For this reason, the Trustee believes that this claim should be listed in class 1 of the Plan. Objection, Docket 21, p. 2:5-13.

### **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's Plan needs to account for the \$7,747.11 arrearage owed to Creditor. In order to account for this arrearage, Debtors monthly plan payment will need to increase by a minimum of \$129.12. However, based on Debtor's Schedule J, it does not appear that they can afford an increase in plan payments. The Debtor's proposed Plan calls for a \$990.00 monthly plan payment for 60 months. Plan, Docket 3, § 2. According to Debtor's Schedule J, their net monthly income is \$990.50. Petition, Docket 1, p. 34. Thus, the Debtor is already putting all of their net monthly income into the proposed plan payment and would not be able to afford an increase. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

### **Inaccurate or Missing Information**

Trustee claims that the Debtor has failed to accurately disclose information in the Plan and Schedules, as well as provide documents to the Trustee. Objection, Docket 21, p. 2:3-4. However, the Trustee has not indicated specifically what information or documents has not been provided. Based on the court's review of all the documents, it appears that Debtor has not accurately disclosed the Creditor's claim in the proposed Plan, but the court is unsure as to what additional information and documents the Trustee is referring.

At the hearing, **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 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, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 26, 2024. 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, **XXXXXXX**

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

United Shore Financial Services, LLC d/b/a United Wholesale Mortgage (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor is in default in the amount of \$7,747.11 as of the date of the Petition. Objection, Docket 17, ¶ 1.
2. Debtor’s Plan does not include arrearage owed to the Creditor. *Id.* at ¶ 2. In order for the Debtor to cure the arrearage within 60 months, Creditor would need to receive \$129.12 increase in plan payments. *Id.*
3. Debtor’s plan payment is in the amount of \$990.00, and Debtor’s net monthly income is \$990.50, therefore, the Debtor will not be able to afford

the increased plan payment when it accurately accounts for the arrearage owed to the Creditor. *Id.*

United Shore Financial Services, LLC d/b/a United Wholesale Mortgage (“Creditor”) did not submit a Declaration to authenticate the facts alleged in the Objection.

## **DISCUSSION**

Creditor’s objections are well-taken.

### **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 appears that the Creditor is owed \$7,747.11 in arrearage. Claim No. 13. However, the Debtor’s Plan lists the Creditor as a class 4 creditor and the Plan does not propose to pay any amount of arrearage to the Creditor. Plan, Docket 3, § 3.10. The Plan proposes to make a monthly plan payment in the amount of \$990.00 for 60 months. *Id.* at § 2. In order for the Debtor to cure the arrearage owed to the Creditor, the plan payment would need to increase in the amount of \$129.12. Based on Debtor’s Petition, it does not appear that the Debtor has sufficient funds to account for this increase in plan payment. Debtors Schedule J shows that they have a net income of \$990.50. Petition, Docket 1, p. 34. Therefore, it is not clear how the Debtor will be able to afford an increase in plan payment to account for the arrearage owed to the Creditor. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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

The court shall issue 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 United Shore Financial Services, LLC d/b/a United Wholesale Mortgage (“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.



8. [23-23301-E-13](#) **DARRELL/ELIZABETH KEITH** **MOTION TO AVOID LIEN OF US BANK**  
[DWL-2](#) **Bruce Dwiggin** **NATIONAL ASSOCIATION**

8 thru 9

3-19-24 [36]

**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 not Provided. There has been no Certificate of Service filed in this matter, so the court is unable to determine if proper notice requirements have been met. 28 days’ notice is required, and parties in interest must have been properly served.

At the hearing, **XXXXXXX**

The Motion to Avoid Judicial Lien has been set for hearing. 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 Avoid Judicial Lien is ~~denied without prejudice due to inadequate service of the Motion~~/granted and the judgment lien is avoided for all amount in excess of \$5,670.54.**

This Motion requests an order avoiding the judicial lien of U.S. Bank N.A. (“Creditor”) against property of the debtor, Darrell Lamonte Keith and Elizabeth Tapia Keith (“Debtor”) commonly known as 1281 Pinon Avenue, Anderson, California 96007 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,670.54. Exhibit3, Docket 39. An abstract of judgment was recorded with Shasta County on September 26, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$223,590 as of the petition date. Docket 10, p. 3 line 1.1. The unavoidable consensual liens that total \$173,444.98 as of the commencement of this case are stated on Debtor’s Schedule D. Docket 1 ps. 10-11. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$44,474.48 on Schedule C. Docket 10 p. 9 line 2.

An item to note. Reviewing Schedule C shows that Debtor has elected to claim only an exemption of \$44,474.48 pursuant to California Code of Civil Procedure § 704.730. However, that Code Section provides Debtor with a homestead exemption of not less than \$300,000.

In Debtor's original Plan (Dckt. 11) and Amended Plan (Dckt. 32), Creditor's secured claim is provided for in Class 2(C), the amount being reduced to \$0.00.

### Opposition of Chapter 13 Trustee

On April 9, 2024, the Chapter 13 Trustee filed an Opposition to the Motion. Dckt. 46. The Trustee states that no Certificate of Service has been filed and proper service has not been documented by Debtor.

Second, as the court discusses below, based on the Debtor's valuation of the Property, amount of the exemption, and liens on the Property, there is \$5,670.54 in value for the lien that does not impair the claimed homestead exemption of \$44,474.48.

Based on that, the Trustee requests the Motion be denied.

### **Ruling**

With respect to the first point identified by the court and the Trustee, the Debtor not have documented proper service of the Motion and supporting pleadings on Creditor, the Motion is denied without prejudice.

At the hearing, **XXXXXXX**

~~Though not included in the Debtor's Motion, the court recognizes that a judgment issued by the California Court will accrue interest at 10% per annum post-judgment. Thus, the actual amount of the judgment lien (presuming it has not been paid down) will be in excess of the (\$5,670.54) stated by Debtor.~~

~~After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there appears to be equity to support the judicial lien (Property value of \$223,590 less the unavoidable consensual liens (\$173,444.98) and claimed exemption (\$44,474.48) leaves exactly \$5,670.54 in equity to support Creditor's lien). Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of \$5,670.54 subject to 11 U.S.C. § 349(b)(1)(B).~~

Therefore, the fixing of the judicial lien does not impair Debtor's exemption of the real property, and the Motion is denied without prejudice.

### **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 Darrell Lamonte Keith and Elizabeth Tapia Keith (“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 without prejudice** / granted and judgment lien of U.S. Bank National Association, California Superior Court for Shasta County Case No. 19CV0192, recorded on September 28, 2019, [Document No. 2019-0028414], with the Shasta County Recorder, against the real property commonly known as 1281 Pinon Avenue, Anderson, California, is avoided for all amounts in excess of \$5,670.54 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.

9. [23-23301-E-13](#)      **DARRELL/ELIZABETH KEITH**      **MOTION TO CONFIRM PLAN**  
[DWL-1](#)                      **Bruce Dwiggin**                      **3-13-24 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 13, 2024. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Darrell Lamonte Keith and Elizabeth Tapia Keith (“Debtor”), seek confirmation of the Amended Plan. The Amended Plan provides for 60 monthly payments of \$1,600 with an estimated

100% going to general unsecured claims. Amended Plan, Docket 32. 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 April 9, 2024. Docket 43. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent in plan payments under the current proposed Amended Plan. *Id.* at p. 1:25-26.
2. There are issues still outstanding that Trustee previously raised. Trustee objected to the prior Plan, which this court sustained on November 16, 2023. Debtor has not made an effort to fix the following issues that remain outstanding from that objection:
  - a. The Plan’s feasibility depends on a Motion to Avoid a lien held by U.S. Bank. A Motion to Avoid has been filed and is to be heard in conjunction with this Motion to Confirm. If the Motion to Avoid is denied, the Plan is not feasible. *Id.* at p. 2:7-15.
  - b. Debtor has failed to file the Right and Responsibilities form, which is necessary to opt into the no-look fees. Debtor’s attorney has opted for no-look fees but has not filed the requisite form.
  - c. Debtor has still not provided Trustee with copies of pay advices or other evidence of income received within the 60 day period of filing the petition. *Id.* at ps. 2:26-3:2.
  - d. There are feasibility issues. Supplemental Schedules I and J have been filed, but improperly as an exhibit and not a separate Docket item. Further, there remains a problem with Schedule J because there may be an inaccurate escrow payment being reported. *Id.* at p. 3 15-28.
  - e. The Statement of Financial Affairs omits wages Debtor has received in 2023. Similarly, Form 122C-1 and Form 122-C2 report no income in the six months preceding filing, but Debtor testified they had income during this period. *Id.* at p. 4: 1-18.

## **DISCUSSION**

### **Delinquency**

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

### **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. Bank N.A. Debtor has filed a Motion to Value the Secured Claim of U.S. Bank, but this court intends to deny that Motion as there is equity to support U.S. Bank’s lien.

At the hearing, **XXXXXXX**

### **Failure to Provide Pay Stubs / 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).

### **Rights and Responsibilities Form**

If opting into the no-look fees provided under Local Bankruptcy Rule 2016-1(c), then a debtor's attorney must fill out Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. The court cannot approve no-look fees unless this requirement is met.

### **Inaccurate or Missing Information**

Debtor's Schedules J, Statement of financial Affairs, and Forms 122C-1 and 122C-2 contain outdated or inaccurate information. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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

The court shall issue 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 Darrell Lamonte Keith and Elizabeth Tapia Keith ("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 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors and parties in interest, and Office of the United States Trustee on March 12, 2024. By the court’s calculation, 42 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 ~~XXXXXX~~.**

The debtor, James Robert Weldon and Irma Maria Weldon (“Debtor”) seek confirmation of the Modified Plan because they fell behind on payments under the previous plan. Declaration, Docket 41 ¶ 6. Debtor explains they were given an order to move by their landlord and had to incur an expense of \$9,000 to afford a down payment on a new home. *Id.* Furthermore, Debtor explains Ms. Weldon is no longer employed, also giving need for a modified plan. *Id.* The Modified Plan provides Debtor has paid \$7,380 into their Plan as of February 2024, and monthly payments of \$3,011 shall be paid until the Plan completes with an estimated 47% going to unsecured claims. Modified Plan, Docket 39. Under the previously confirmed Plan, unsecured creditors were to receive an estimated 100% on their claims. *See* Plan, Docket 10. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on April 9, 2024. Docket 50. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent one payment of \$3,100 under the terms of the Modified Plan. *Id.* at ps. 1:25-2:5.
- B. Debtor does not provide a reason for the modification. Debtor does not explain why their landlord told them to leave. Debtor does not explain why Ms. Weldon has chosen to stop working, or how her decision to stop working justifies the reduction to the class of unsecured claims. *Id.* at p. 2:6-19.
- C. Debtor's Schedule I and J at Docket 43 have not been marked as supplemental or amended. Meanwhile, that Schedule I indicates Ms. Weldon is working, while she has testified in her Declaration that she is no longer working. *Id.* at p. 2:20-25.

## DISCUSSION

### Delinquency

Debtor is \$3,100 delinquent in plan payments, which represents approximately one month of the \$3,011 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### Failure to Comply with Fed R. Bankr. P. 9013

Fed R. Bankr. P. 9013 states that each motion "shall state with particularity the grounds therefor." While Debtor has filed evidence in support of their Modified Plan, Debtor has not given the court sufficient reasons to find granting a modification of a plan is warranted. Debtor admits to falling behind on plan payments but does not explain what caused them to do so. Moreover, Debtor does not explain why she has chosen to stop working, or why their landlord has removed them from their home. Unsecured creditors are now taking a dive, their dividend being reduced by over 50%. The court is unable to confirm the Modified Plan with the Motion complying with Fed R. Bankr. P. 9013.

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:

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, James Robert Weldon and Irma Maria Weldon ("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.

11. [23-23513-E-13](#)  
[DBJ-1](#)

**ANGELA MOENCH**  
**Douglas Jacobs**

**MOTION TO DISMISS CASE**  
**4-1-24 [41]**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and parties in interest, attorneys of record who have appeared in the case, and Office of the United States Trustee on April 3, 2024. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss 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 Dismiss is granted and the case is dismissed.**

Angela Moench (“Debtor”) seeks to dismiss her own Chapter 13 case. A debtor may typically dismiss his or her own case at any time, so long as the case has not yet been converted to one under Chapter 7, Chapter 11, or Chapter 12. 11 U.S.C. § 1307(b).

Debtor has set this Motion for a Noticed hearing. This may be because Debtor had successfully defeated a motion to dismiss filed by the Chapter 13 Trustee, having cured the default upon which the Trustee’s motion was based. Civ. Minutes; Dckt. 29.

It appears that events have changed in this short time period and Debtor concludes that relief pursuant to Chapter 13 is necessary. Debtor may have set this for noticed hearing to insure transparency in the process and provide the Trustee and other parties in interest with a set forum to raise any concerns.

The Motion is granted and the 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 Dismiss the Chapter 13 case filed by Angela Moench (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted and the Bankruptcy case is dismissed.

12. [22-21314-E-13](#)  
[PGM-3](#)  
12 thru 15

**NADIA ZHIRY**  
**Peter Macaluso**

**CONTINUED OBJECTION TO CLAIM OF  
GERARD F. KEENA, II, RECEIVER,  
CLAIM NUMBER 1  
4-23-23 [193]**

**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.

-----  
Debtor’s Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

**The Objection to Claim of Gerard Keena, II, POC 1-1 is ~~XXXXXX~~.**

### **April 23, 2024 Hearing**

The court continued this motion multiple times to allow the hearings in the State Court receivership action to conclude. On April 16, 2024, the Debtor filed an undated Status Report regarding this Objection to Claim. Dckt. 382.

The Debtor reports that the Superior Court has issued its Ruling on the fees and costs to be allowed Gerard Keena II as the Receiver in the State Court Action. A copy of the Ruling and Order is provided as Exhibit 1 by Debtor. Dckt. 383.

As discussed in this Ruling, given that the Debtor discharged in a prior Chapter 7 Case personal liability for much of the fees and costs owed the Receiver incurred prior to this case, much of the Objection has focused on what portion, if any, of the Receiver’s Claim is secured.

Debtor's conclusion from the Ruling is that no lien against any property of the Debtor, which is now property of the Bankruptcy Estate was granted by the Superior Court prior to the State Court's April 5, 2024 Ruling that is provided as Exhibit 1. The Submitted Matter Ruling portions, pages 8-10 of the State Court Ruling concludes with:

Thus, as stated in the original tentative, the Court must conclude that no lien was previously filed by the Receiver in this action for unpaid fees and costs, although the Court does grant such a lien by this motion.

Exhibit 1; State Court Ruling, p. 10; Exhibit 1; Dckt. 383.

With respect to the State Court proceedings, the court *Modified* the automatic stay pursuant to the Stipulation of Debtor and the Receiver to allow the State Court Judge to determine the amount of allowed receivership fees and costs for the Receiver. The court's Order (which was drafted by the Parties and lodged with the court) provides:

1. That to the extent, if any, that the automatic stay under 11 U.S.C. §362 applies to the case pending before the Superior Court of the State of California, in and for the County of Sacramento (the "Superior Court") as Case Number 34-2017-0028154, styled as City of Sacramento v. Nadia Zhiry (the "Superior Court Action"), such automatic stay is hereby modified to allow Gerard F. Keena II, in his capacity as the receiver (the "Receiver") to proceed in the Superior Court Action to seek, defend, and obtain order(s) from the Superior Court in the Superior Court Action concerning the following:

- i. Authorization of the Receiver's employment of counsel to represent him in the Superior Court Action;
- ii. Determination of whether the Receiver's duties are complete as set forth by the Superior Court pursuant to its Order Appointing a Receiver Pursuant to Stipulated Judgment (the "Appointment Order") entered in the Superior Court Action on May 3, 2021;
- iii. Upon the Superior Court's determination that the Receiver's duties under the Appointment Order are complete, whenever such determination is made, seeking authorization and approval the Receiver's final report and accounting and the Receiver's discharge over the real properties at issue in the Superior Court Action;
- iv. **Authorization and approval of the Receiver's fees and costs** and that of all his counsel, including responding to: that certain Opposition to Receiver's Monthly Report and Accounting and Notice of Intent to Pay Receiver's Fees and Expenses-April 2023, and to Relieve and Remove (sic) The Receiver, filed by the Debtor herein, Nadia Zhiry, in the Superior Court Action on June 13, 2023; the Motion to Discharge Receiver filed by Debtor herein, Nadia Zhiry, in the Superior Court Action on June 22, 2023; and any issues raised therein; and
- v. **Determination of the extent, validity, and priority of the Receiver's lien over the real properties at issue in the Superior Court Action.**

Order; Dckt. 280 (emphasis added).

Reviewing the Ruling and Order of the Superior Court (Exhibit 1; Dckt. 383), the State Court Judge expressly states that as of the filing of this Bankruptcy Case, “the Court must conclude that no lien was previously filed by the Receiver in this action for unpaid fees and costs. . . .” In the Ruling, the State Court Judge states that “although the Court does grant such a lien by this motion.” *Id.*

From the Order modifying the automatic stay, on its face it does not include the automatic stay to encumber property of the Bankruptcy Estate post-petition.

At the hearing, **XXXXXXX**

## **REVIEW OF OBJECTION**

Nadia Zhiry, Chapter 13 Debtor, (“Debtor”) requests that the court disallow the claim of Gerard F. Keena, II, (“Receiver”), Proof of Claim No. 1-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$183,585.18. Debtor asserts, without stating the legal basis supporting such argument, that:

1. **Receiver has no claim:**

- a. Receiver has no claim against Debtor “having been discharged in the ‘Chapter 7’, as the ‘Receiver’ . . . .” The Receiver has not been reappointed. Objection, Dckt. 193 at 3:4-7.

The court notes, Debtor has not provided any legal grounds that Receiver was discharged upon Debtor receiving their Chapter 7 discharge. Upon review of 11 U.S.C. § 727, a Chapter 7 discharge does not discharge the duties of an appointed custodian, but rather discharges debts and liabilities that arose before the date requesting relief. Debtor does not point to any authority in the Bankruptcy Code or the Superior Court’s Receivership Order (*see* Order Appointing a Receiver Pursuant to Stipulated Judgment, Cal. Super. Ct. Sacramento Cnty. No. 34-2017-00208154, May 3, 2021 (filed in this case as Dckt. 195) (hereinafter the “Receivership Order”)) that requires “reappointment” of the Receiver. The discharge did not abate the Receiver and Debtor provides no grounds that Receiver would need to be reappointed after receiving Chapter 7 relief.

2. **Receiver has no standing:**

- a. Receiver has no “standing” to assert any claim in this Chapter 13 case. Objection, Dckt. 193 at 3:14-15.

Upon review of the Proof of Claim, Receiver states they are owed money for the services provided. Receiver is not asserting a claim for a third party. Receiver, thus, has standing. Debtor conceded this at the hearing on the Status Conference on the Motion to Excuse Turnover and/or Motion to Confirm Termination or Absence of Stay.

3. **Receiver is owed no funds:**

- a. Receiver’s Proof of Claim reflects no costs, no fees, and no charges between the filing of the previous Chapter 7 case and the filing of the current Chapter 13 case. Objection, Dckt. 193 at 2:8-12.

The Chapter 7 case was filed on July 29, 2021. E.D. Cal. No. 21-22759. The current case was filed on May 25, 2022. E.D. Cal. No. 22-21314.

Upon review of Receiver’s Proof of Claim (E.D. Cal. No. 22-21314, Proof of Claim 1-1), Receiver does not provide a breakdown of the fees incurred before and after the Chapter 7 case. However, Receiver’s Proof of Claim in the Chapter 7 case (E.D. Cal. No. 21-22759, Proof of Claim 1-1) was for \$82,217.54. Receiver’s Proof of Claim in the current case is for \$183,585.18. Receiver clarifies their pre-Chapter 7 filing fees and post-Chapter 7 filing fees in their Response, which is summarized under “Receiver’s Response.”

- b. Having been discharged, and no claim transferring into the pending Chapter 13 case, Receiver is owed no funds.

The court notes, the claim is asserted to be fully secured. It is well known that liens survive a debtor’s discharge, so the fact that Debtor received a discharge is not relevant to the claims survival. The debt still exists, and to the extent it is secured it is still enforceable.

**RECEIVER’S RESPONSE**

Receiver filed a response on May 30, 2023. Dckt. 234. Receiver indicates they amended their Proof of Claim to clarify distinctions between the *in personam* and *in rem* claim. The court notes, 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 court acknowledges that Receiver attempts to address Debtor’s contentions that Receiver would be violating the discharge injunction.

The amended Proof of Claim, Proof of Claim 1-2, indicates the following:

Claim amount.....Unknown

It is not clear to the court why the amended claim amount is unknown, when Receiver later asserts the claim is fully secured in the amount of \$185,585.18.

Amount of claim that is secured.....\$185,585.18

Amount owed from expenses incurred  
**pre-Chapter 7 filing** (July 29, 2021).....\$84,461.04

Amount owed from expenses incurred  
**post-Chapter 7 filing** to date of  
Chapter 13 filing (July 29, 2021 - May 25, 2022).....\$99,124.14

Receiver first addresses the *in personam* claim and states that Debtor’s Objection to Receiver’s Proof of Claim has been rendered moot because the \$99,124.14 *in personam* claim in the Amended Receiver Proof of Claim does not reflect any personal liability of Debtor that was previously discharged in Debtor’s Chapter 7 case. *Id.* at 7; *see also* Attachment A to Amended Proof of Claim of Gerard F. Keena II, filed May 26, 2023.

Receiver also states that it still has a secured claim that was not previously discharged and that remains as an encumbrance against the Claire Avenue Properties. Dckt. 234, at 7. Finally, Receiver states that it appears that Debtor is arguing that the Chapter 7 case abated the Receivership Order. Dckt. 234, at 7. Receiver asserts that this argument is incorrect and lacks citation to any legal authority in support. *Id.* Receiver points to 11 U.S.C. § 543(d) and argues that the order appointing Receiver has not been abated and it was not necessary to reappoint the Receiver as Debtor suggests. *Id.* at 8.

## **DEBTOR’S REPLY**

Debtor filed a reply on June 3, 2023. Dckt. 240. Debtor’s reply concedes that the Amended Proof of Claim “technically moot[s]” Debtor’s Objection, but asserts that:

(1) Receiver did not follow the state court order;

(2) Receiver has not had any fees approved;

and (3) Receiver has not recorded its lien as required by the state court, rendering any claim as unsecured rather than secured.

Dckt. 240, at 1-2.

Debtor identifies a number of disputed material facts, *id.* at 7-8, and requests that this court either sustain its objection or, in the alternative, allow for an evidentiary hearing to determine the value of the claim, if any, *id.* at 9-10.

## **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.

It appears what remains unresolved is the amount of fees and expenses that are to be recoverable by Receiver. Debtor argues that Receiver has no fees allowed by the state court under the Receivership Order.

California Rule of Court 3.1179 states that the Receiver is “the agent of the court,” to act in the benefit of all people. The Receiver is an agent of the Superior Court of California. The court has not been provided with any legal authority indicating that a federal bankruptcy judge takes over the state court’s jurisdiction to determine the rights of the Receiver.

California Health and Safety Code gives explicit authority to a receiver to record a lien for fees and expenses, allowing a receiver:

To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, **with court approval, secure that debt** and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. **The lien shall be recorded in the county recorder's office** in the county within which the building is located.

Cal. Health & Safety Code § 17980.7 (emphasis added).

Pursuant to the court order that was provided to the court, and recorded on May 13, 2021, “[t]he Receiver may record a lien (‘Receiver’s Lien’) against the Subject Properties to secure the repayment of the Receiver’s compensation, costs, and expenses, in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver’s Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.” Proof of Claim 1-2, Recorded Order Appointing a Receiver Pursuant to Stipulated Judgment, Attachment 1 at ¶ 7.

### **Continuance of Hearing**

As the court addressed at the hearing, in light of the Receiver seeking to pursue the allowance of fees and expenses in the State Court Action, the court continues the hearing on this Objection for purposes of conducting a status conference thereon to determine what, if any amended pleadings are required and if any dispute remains to be resolved.

### **NOVEMBER 7, 2023 STATUS CONFERENCE**

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

### **NOVEMBER 21, 2023 HEARING**

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Objection may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court’s calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

### **January 30, 2024 Hearing**

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court’s own

motion. Docket 350. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

The court continues this matter to 2:00 p.m. on March 12, 2024.

### **March 12, 2024 Hearing**

On March 7, 2024, Gerard F. Keena II filed a Status Report (Dckt. 367) advising the court and parties in interest concerning the four pending Contested Matters Status Conferences identified as:

1. Motion To Excuse Turnover and Confirmation of Exemption from The Automatic Stay (DCN: KSR-1);
2. Debtor's Objection to Proof of Claim #1-1 Gerard F. Keena II Receiver (DCN:PGM-3);
3. Debtor's Motion to Confirm Second Amended Plan Filed on July 12, 2023 (DCN:PGM-5); and
4. Trustee's Motion to Dismiss Case (DCN: DPC-5).

The Receiver Reports as follows:

On February 26, 2024, the Superior Court issued a Tentative Ruling, in advance of the scheduled hearing, granting the Receiver's Motion. The Tentative Ruling notified the parties of the procedure to request oral argument and oral argument was requested.

On February 27, 2024, the hearing was held, and the parties presented their oral arguments. At the conclusion of the hearing, the Receiver's Motion was taken under submission by the Superior Court.

As of the date and time this document is signed, no ruling has yet been issued by the Superior Court. It is, therefore, respectfully requested that the Status Conferences currently scheduled for March 12, 2024, at 2:00 P.M. be further continued to a future date, to allow the Superior Court time to issue its final ruling in connection with the Receiver's Motion.

Dckts. 365, 367, 369, 371.

At the Status Conference, the Parties agreed to a further continuance.

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 Gerard F. Keena, II, (“Receiver”), filed in this case by Nadia Zhiry, Chapter 13 Debtor, (“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 Objection to Claim of Gerard Keena, II, POC 1-1 is **XXXXXXX**.

13. [22-21314-E-13](#)  
[DPC-5](#)

**NADIA ZHIRY**  
**Peter Macaluso**

**CONTINUED MOTION TO DISMISS**  
**CASE**  
**6-21-23 [260]**

**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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Debtor’s Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

**The Motion to Dismiss is XXXXXXX.**

### **April 23, 2024 Hearing**

The court continued this motion multiple times to allow the hearings in the State Court receivership action to conclude. The Debtor filed a Status Reports that states the Superior Court has issued its Ruling on the fees and costs to be allowed Gerard Keena II as the Receiver in the State Court Action. A copy of the Ruling and Order is provided as Exhibit 1 by Debtor. Dckt. 383.

At the hearing, **XXXXXXX**

### **REVIEW OF MOTION**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Nadia Zhiry (“Debtor”) has failed to file a new plan.



## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on July 3, 2023. Dckt. 272. Debtor states an amended plan will be filed. Debtor awaits the discharge of the Receiver in a civil action in Superior Court. *Id.* Debtor then plans to file a motion for final payment to Debtor's contractor, which will allow for the increase in payments to satisfy the claims in the Chapter 13 case, specifically the non-dischargeable claim of the City of Sacramento, California. *Id.*

### **Failure to Provide Evidence**

Debtor's counsel filed an Opposition making several factual assertions. However, no declaration of the Debtor was filed to support those assertions or authenticate the exhibits provided. The court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

## **FILING OF SECOND AMENDED PLAN**

Debtor filed a Second Amended Plan and Motion to Confirm on July 12, 2023. Dckts. 285, 289. The court has reviewed the Motion to Confirm the Second Amended Plan and the Declaration in support filed by Debtor. Dckts. 287, 289. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

The Court continues the hearing on the Motion to Dismiss for consideration in conjunction with Debtor's Motion to Confirm the proposed Second Amended Plan in this Bankruptcy Case.

### **August 22, 2023 Hearing**

At the hearing, the Parties agreed to continue the hearing to allow the Debtor and Receiver to prosecute the Motion for discharge of the Receiver and determination of the Receiver's fees and expenses, the hearing for which is set for October 31, 2023, in the State Court.

## **NOVEMBER 7, 2023 STATUS CONFERENCE**

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

## **NOVEMBER 21, 2023 HEARING**

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 332. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before

this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court's calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

### **January 30, 2024 Hearing**

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court's own motion. Docket 352. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

The State Court hearings have now been continued to February 22, 2024.

The court continues this matter to 2:00 p.m. on March 12, 2024.

### **March 12, 2024 Hearing**

On March 7, 2024, Gerard F. Keena II filed a Status Report (Dckt. 367) advising the court and parties in interest concerning the four pending Contested Matters Status Conferences identified as:

1. Motion To Excuse Turnover and Confirmation of Exemption from The Automatic Stay (DCN: KSR-1);
2. Debtor's Objection to Proof of Claim #1-1 Gerard F. Keena II Receiver (DCN:PGM-3);
3. Debtor's Motion to Confirm Second Amended Plan Filed on July 12, 2023 (DCN:PGM-5); and
4. Trustee's Motion to Dismiss Case (DCN: DPC-5).

The Receiver Reports as follows:

On February 26, 2024, the Superior Court issued a Tentative Ruling, in advance of the scheduled hearing, granting the Receiver's Motion. The Tentative Ruling notified the parties of the procedure to request oral argument and oral argument was requested.

On February 27, 2024, the hearing was held, and the parties presented their oral arguments. At the conclusion of the hearing, the Receiver's Motion was taken under submission by the Superior Court.

As of the date and time this document is signed, no ruling has yet been issued by the Superior Court. It is, therefore, respectfully requested that the Status

Conferences currently scheduled for March 12, 2024, at 2:00 P.M. be further continued to a future date, to allow the Superior Court time to issue its final ruling in connection with the Receiver's Motion.

Dckts. 365, 367, 369, 371.

At the Status Conference, the Parties agreed to a further continuance.

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 hearing on the Motion to Dismiss this Chapter 13 Case filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, the court being notified that the hearings in the State Court Receivership Action having been continued to January 17, 2024, and now having been concluded, upon review of the pleadings, and good cause appearing,

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

14. 22-21314-E-13  
KSR-1

**NADIA ZHIRY**  
**Peter Macaluso**

**CONTINUED MOTION TO EXCUSE  
TURNOVER AND/OR MOTION TO  
CONFIRM TERMINATION OR ABSENCE  
OF STAY  
5-31-22 [12]**

**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.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

**The Motion to Excuse Turnover is XXXXXXX.**

## **April 23, 2024 Hearing**

The court continued this motion multiple times to allow the hearings in the State Court receivership action to conclude. The Debtor filed a Status Reports that states the Superior Court has issued its Ruling on the fees and costs to be allowed Gerard Keena II as the Receiver in the State Court Action. A copy of the Ruling and Order is provided as Exhibit 1 by Debtor. Dckt. 383.

At the hearing, **XXXXXXX**

## **REVIEW OF MOTION**

### **JULY 11, 2023 CONTINUED STATUS CONFERENCE**

On June 27, 2023, Nadia Zhiry, the Debtor, filed an updated Status Report (Dckt. 267). The court summarizes the updated Status Report as follows:

- A. Debtor has completed all of the repairs and abatements on the Property and has received final approval for all such repairs and abatements from the City.
- B. Debtor has moved to discharge the Receiver and conclude those state court proceedings.
- C. Upon the determination of the Receiver's claim (fees and expenses), the Debtor will provide for payment of those through the Chapter 13 Plan.

The court has modified the automatic stay to allow the Receiver to prosecute the necessary motions for the determination of his fees, costs, and expenses in the Receivership State Court Action. Order; Dckt. 280.

The Status Conference is continued, it appearing that the remedial work for which the Receiver was seeking relief from the stay has been resolved by the General Contractor hired by the Debtor.

### **NOVEMBER 7, 2023 STATUS CONFERENCE**

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

### **NOVEMBER 21, 2023 HEARING**

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court's calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

### **January 30, 2024 Hearing**

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court's own motion. Docket 349. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

The court continues this matter to 2:00 p.m. on March 12, 2024.

### **March 12, 2024 Hearing**

On March 7, 2024, Gerard F. Keena II filed a Status Report (Dckt. 367) advising the court and parties in interest concerning the four pending Contested Matters Status Conferences identified as:

1. Motion To Excuse Turnover and Confirmation of Exemption from The Automatic Stay (DCN: KSR-1);
2. Debtor's Objection to Proof of Claim #1-1 Gerard F. Keena II Receiver (DCN:PGM-3);
3. Debtor's Motion to Confirm Second Amended Plan Filed on July 12, 2023 (DCN:PGM-5); and
4. Trustee's Motion to Dismiss Case (DCN: DPC-5).

The Receiver Reports as follows:

On February 26, 2024, the Superior Court issued a Tentative Ruling, in advance of the scheduled hearing, granting the Receiver's Motion. The Tentative Ruling notified the parties of the procedure to request oral argument and oral argument was requested.

On February 27, 2024, the hearing was held, and the parties presented their oral arguments. At the conclusion of the hearing, the Receiver's Motion was taken under submission by the Superior Court.

As of the date and time this document is signed, no ruling has yet been issued by the Superior Court. It is, therefore, respectfully requested that the Status Conferences currently scheduled for March 12, 2024, at 2:00 P.M. be further continued to a future date, to allow the Superior Court time to issue its final ruling in connection with the Receiver's Motion.

Dckts. 365, 367, 369, 371.

At the Status Conference, the Parties agreed to a further continuance.

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 hearing on the Motion to Excuse Turnover filed by Gerard F. Keena II, the State Court Receiver, having been presented to the court, the court being notified that the hearings in the State Court Receivership Action having been continued to November 8, 2023, and now having been concluded, upon review of the pleadings, and good cause appearing,

**IT IS ORDERED** that the Motion to Excuse Turnover **XXXXXXX**.

**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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Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

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

### **April 23, 2024 Hearing**

The court continued this motion multiple times to allow the hearings in the State Court receivership action to conclude. The Debtor filed a Status Reports that states the Superior Court has issued its Ruling on the fees and costs to be allowed Gerard Keena II as the Receiver in the State Court Action. A copy of the Ruling and Order is provided as Exhibit 1 by Debtor. Dckt. 383.

At the hearing, ~~XXXXXXX~~

### **REVIEW OF MOTION**

The debtor, Nadia Zhiry ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of \$500 per month for the first 13 months, followed by \$2,000 per month for the remainder of the Plan. Amended Plan, Dckt. 289. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Over the 60 months of the Plan, this would total \$100,500 in plan payments by Debtor.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 1, 2023. Dckt. 300. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.

- B. The Plan may extend sixty (60) months, depending on when the Civil Action concludes.
- C. Debtor relies on payments from daughter, however, Daughter has not provided a declaration indicating they will be able to make Plan payments for sixty (60) months.
- D. Debtor's expenses appear low.
- E. The Plan appears underfunded if the receiver's claim remains allowed in the full amount.

## **RECEIVER'S JOINDER**

The Receiver, Gerard F. Keena II ("Receiver"), filed a "Joinder" to Trustee's opposition on August 8, 2023. Dckt. 303. The court treats the "Joinder" as the Receiver's Opposition. The Receiver shares Trustee's concerns in that:

- 1. No information is provided to determine how long the Debtor's daughter intends to relocate at the property.
- 2. The rent is taxable income and there has been no discussion as to the anticipated amount of taxes paid on the rent.
- 3. There is no evidence as to the daughter's intention and ability to make the payments on a consistent basis.

## **DEBTOR'S RESPONSE**

Debtor filed a response, Dckt. 305, on August 8, 2023, indicating:

- 1. Debtor intends to be current by the hearing date.
- 2. Debtor believes the Receiver fees will be determined on August 31, 2023, thus concluding the civil action and not making the case overextended.
- 3. Debtor submitted the declaration of Debtor's daughter as evidence to support the daughter's commitment to helping fund the Plan.

From the court's review of the docket, Debtor's daughter, Vera, submitted a declaration on April 24, 2023, in support of Debtor's First Amended Plan, indicating that they are willing and able to contribute \$1,500 per month. Dckt. 198. Vera does not indicate how long they intend to live at the property.

Debtor's daughter has not submitted a declaration in support of the current Motion indicating their ability to help fund the Second Amended Plan.

- 4. Debtor has filed current amended schedules and assert that their expenses are lower than the average family of two.



The court notes, Debtor has only filed Amended Schedules I, no Amended Schedule J. Dckt. 292.

5. Debtor asserts that the Receiver's fees will be significantly less than the Proof of Claim.

## DISCUSSION

### Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,500 delinquent in Plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### Failure to Complete Plan Within Allotted Time

Trustee indicates Debtor may not be able to complete the Plan in sixty months, as the Civil Action is still pending and Debtor does not intend to pay the Receiver until after the conclusion of the "Civil Action." Debtor indicates the Civil Action will be concluded at the end of the month.

### 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).

Debtor's daughter has not submitted a declaration in support of the current Motion and ability to fund the Second Amended Plan. Debtor's daughter only submitted a declaration for the First Amended Plan, which was denied confirmation.

Debtor has only filed an Amended Schedule I, and not an Amended Schedule J. Dckt. 292. Therefore, the court does not have an accurate picture of Debtor's expenses and financial reality.

Debtor leaves the court to consider her family expenses (for two adults, Debtor and her husband) as set forth in Supplemental Schedule J filed on April 10, 2023. Dckt. 192. The expenses which Debtor states under penalty of perjury are reasonable and necessary for her family unit of two adults consist of:

Mortgage	\$0.00	In the proposed Chapter 13 Plan Debtor's Daughter is to make monthly payments totaling \$1,750.00 to JPMorgan Chase Bank as Class 4 direct payments under the Plan.
Property Insurance	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Real Estate Taxes	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Home Maintenance and Repairs	\$0.00	

Electricity, Heat, Natural Gas	\$200.00	This is for two residential properties on the Debtor's real property
Water, Sewer, Garbage	\$140.00	
Telephone, Internet, Cell Phone	\$50.00	
Food and Housekeeping Supplies	\$400.00	Assuming \$50 a month for housekeeping supplies, that leaves \$350 a month for food for the two adults. In a thirty day month, that allows for \$1.94 per meal per person for food (assuming three meals a day per person).
Clothing and Dry Cleaning	\$10.00	This allows each adult \$5 a month for clothing over the 60 months of the Plan. This is only \$60 per adult per year for clothing for five years.
Personal Care and Products	\$20.00	This allows each adult \$10 a month for personal care (such as haircuts and hair dressers) and products (such as lotions, creams, and the like).
Medical and Dental Expenses	\$25.00	This allows each adult \$12.50 a month for medical and dental co-pays, band-aids, creams, mouthwash, toothpaste and the like.
Transportation (gas, maintenance, and repairs)	\$100.00	<p>On Amended Schedule C, Debtor claims an exemption in a 2007 Kia Rondo with 165,000 miles on it. Dckt. 227. Debtor lists this as the only vehicle Debtor has an interest in on Amended Schedule A/B, stating it has a value of \$2,500.00. Dckt. 207.</p> <p>If one allows only \$35.00 a month for repairs for the next five years (which is only \$420 a year), there is \$65 for gas a month. Paying \$5.00 a gallon for gas, Debtor and her non-debtor Spouse can purchase only 13 gallons of gas a month. Assuming the 2007 vehicle gets 20 miles to the gallon, that would allow Debtor to drive only 65 miles a week, which is only 9 miles a day.</p>
Entertainment	\$10.00	This allows the Debtor and her non-debtor Spouse only \$5 a month for entertainment. Thus, for the five years of the Plan, Debtor and her non-debtor Spouse will have next to no entertainment in their lives.
Vehicle Insurance	\$50.00	For the 2007 vehicle that Debtor and her non-debtor Spouse can only drive for 9 miles a day, Debtor will pay \$600 a year in insurance.

Debtor's statement under penalty of perjury that Debtor and her non-debtor Spouse only have \$1,005 a month in necessary and reasonable expenses for the five years of the bankruptcy plan.

On the latest Supplemental I filed, Dckt. 292, Debtor states having the following Income:

Debtor's Social Security Income.....	\$505.00
Non-Debtor Spouse's SSI.....	\$1,000.00

Dckt. 292. Debtor also lists an additional \$1,500.00 in monthly rent paid by her daughter Vera and Debtor includes that in computing her monthly income. However, the Second Amended Plan requires an unidentified daughter of Debtor to make monthly payments of \$1,500.00 and \$250.00 to Class 4 Creditor JPMorgan Chase Bank, N.A. Second Amd Plan, ¶ 3.10; Dckt. 289. In her Declaration in support of the Motion to Confirm the Second Amended Plan, Debtor testifies that it is her daughter Luyba who is making the monthly mortgage payments, which include insurance and taxes. Dec., ¶ 8; Dckt. 287.

There appear to be some significantly understated expenses by Debtor. These include gas, maintenance, and repairs for Debtor 16 year old vehicle, maintenance and repair of Debtor's two residences, cell, internet, and video service for two adults, food, personal care, medical expenses, and entertainment. Rather than stating actual reasonable and necessary expenses, it appears that Supplemental Schedule J is a MAI (made as instructed) Schedule J to show a preconceived monthly net income.

The Receiver's Proof of Claim indicates a secured claim in the amount of \$183,585.18. Debtor insists the Civil Action will determine that the claim is for significantly less, and is hopefully that the Receiver's fees and costs will be only \$3,625.10. This is significantly less than Receiver's claim.

Looking at Amended Proof of Claim 1-2, the Receiver has filed it as a secured claim, with the lien being asserted on the Real Property in this case. Exhibit 1 to Amended Proof of Claim 1-2 is a copy of the order appointing the receiver that was recorded with the Sacramento County Recorder, which states a recording date of May 13, 2021. With respect to compensation, expenses, and a lien securing the amounts owing to the Receiver, the State Court Order Appointing Receiver includes:

3. The Receiver will be compensated for his services in the amount of \$250 per hour. The Receiver may use the Receiver's attorneys, paralegals, and other staff to assist him as necessary. Receiver's personnel will be compensated in the amounts outline in the billing rate schedule attached here to as Exhibit A. The Receiver will be reimbursed for the Receiver's reasonable costs and expenses incurred in connection with receivership activities, including expenses for those labor and service described in this Order, travel, copying, long distance telephone calls, and legal process. . . .

7. The Receiver may record a lien ("Receiver's Lien") against the Subject Properties to secure the repayment of the Receiver's Compensation, costs, and expenses in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver's Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.

In the General Statement of Claim that is attached to Amended Proof of Claim 1-2, the Receiver states that there were \$84,461.04 in fees and expenses incurred from his May 3, 2021 appointment (Date on the State Court Order of Appointment) through July 29, 2021, and additional fees and expenses in the amount of \$88,124.14 incurred for the period July 30, 2021 through May 25, 2022 (the Chapter 13 filing

date). Amended Proof of Claim No. 1-2 does not include amounts for fees and expenses incurred during this Chapter 13 Case.

The Order appointing the Receiver allows him to bill his time at \$250 an hour. There are similar hourly rates allowed for in-house counsel of the Receiver. There is not an hourly rate stated for any “out-house counsel” employed by the Receiver. If during the fourteen months of this Chapter 13 Case the Receiver and his counsel billed only ten hours a month, then each would be seeking compensation for 140 hours each, with an hourly rate of at least \$250.00 (this court does not know what hourly rate the State Court will allow for the “out-house counsel”). One hundred and forty hours times \$250 an hour equals \$19,600.00, each for the Receiver and the “out-house counsel,” which then totals \$39,200.00 in fees since the commencement of this Chapter 13 case.

It is not readily apparent how Debtor computes Receiver to have a claim of only \$3,625.10 at the outset. It is also unclear how the Receiver has incurred fees and expenses totaling \$183,585.18, plus additional fees and expenses during this case, in light the status of the property at issue when this case was filed.

Debtor has not provided a provision in the Plan as to what will occur if Receiver’s claim is determined to be for the full amount of \$183,585.18, plus post-Chapter 13 filing fees and costs, or any lesser reasonable amount allowed by the State Court judge in the Receivership Action. Without the court knowing the extent of Receiver’s claim, the Plan does not appear confirmable.

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

In light of the prosecution of the discharge of the Receiver and determination of his fees and expenses, which hearing is set for October 31, 2023, the Parties agreed to the continuance of the hearing on this Motion.

#### **NOVEMBER 7, 2023 STATUS CONFERENCE**

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

#### **NOVEMBER 21, 2023 HEARING**

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court’s calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

#### **January 30, 2024 Hearing**

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court's own motion. Docket 351. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

The court continues this matter to 2:00 p.m. on March 12, 2024.

### **March 12, 2024 Hearing**

On March 7, 2024, Gerard F. Keena II filed a Status Report (Dckt. 367) advising the court and parties in interest concerning the four pending Contested Matters Status Conferences identified as:

1. Motion To Excuse Turnover and Confirmation of Exemption from The Automatic Stay (DCN: KSR-1);
2. Debtor's Objection to Proof of Claim #1-1 Gerard F. Keena II Receiver (DCN:PGM-3);
3. Debtor's Motion to Confirm Second Amended Plan Filed on July 12, 2023 (DCN:PGM-5); and
4. Trustee's Motion to Dismiss Case (DCN: DPC-5).

The Receiver Reports as follows:

On February 26, 2024, the Superior Court issued a Tentative Ruling, in advance of the scheduled hearing, granting the Receiver's Motion. The Tentative Ruling notified the parties of the procedure to request oral argument and oral argument was requested.

On February 27, 2024, the hearing was held, and the parties presented their oral arguments. At the conclusion of the hearing, the Receiver's Motion was taken under submission by the Superior Court.

As of the date and time this document is signed, no ruling has yet been issued by the Superior Court. It is, therefore, respectfully requested that the Status Conferences currently scheduled for March 12, 2024, at 2:00 P.M. be further continued to a future date, to allow the Superior Court time to issue its final ruling in connection with the Receiver's Motion.

Dckts. 365, 367, 369, 371.

At the Status Conference, the Parties agreed to a further continuance.

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, Nadia Zhiry (“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 **XXXXXXX**.

16. [21-21036-E-13](#)      **JEFFREY/YELENA MAYHEW**      **MOTION TO MODIFY PLAN**  
[PGM-7](#)                      **Peter Macaluso**                      **3-14-24 [135]**

**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 and parties in interest, parties requesting special notice, and Office of the United States Trustee on March 14, 2024. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

The debtor, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew (“Debtor”) seek confirmation of the Modified Plan because they became delinquent under the perilously confirmed Plan. Specifically, Debtor has had unexpected expenses over the last four months, including a transmission replacement, new front breaks, and Debtor’s father becoming ill and costs associated with care. Declaration,

Docket 138 ps. 1:24-2:9. The Modified Plan provides for a total of \$131,077.34 having been paid through February 2024, \$4,985 having been paid in March of 2024, and then \$5,425 per month to be paid for April, 2024 and continuing for the remaining 24 months. Modified Plan, Docket 139. 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 April 9, 2024. Docket 147. Trustee opposes confirmation of the Plan on the basis that:

- A. Trustee lacked funds to pay Penny Mac Loan Services Class 1 Claim in the amount of \$2,846.20. The Modified Plan fails to specify a cure of the postpetition arrearage including a specific post-petition arrearage amount (including which months were missed), interest rate and monthly dividend. *Id.* at ¶ 1.
- B. Trustee calculates unsecured creditors will receive an estimated 2.56%, but the Amended Plan proposes unsecured creditors will receive a 0% dividend. *Id.* at ¶ 2.
- C. The Certificate of Service does not list Supplemental Schedules I and J having been served. *Id.* at ¶ 3.
- D. The Modified Plan requires an Application for Additional Attorney's Fees, which has not been filed. Debtor's Attorney appears to be requesting an additional \$1,500 in the case. *Id.* at ¶ 4.

## DISCUSSION

Trustee objects on the grounds that the Modified Plan must specify the cure for the postpetition arrearage of the Class 1 creditor, Penny Mac Loan Services. Debtor should also correct the Modified Plan to properly account for unsecured creditors receiving no less than 2.56%. Moreover, Debtor has not listed the whether Supplemental Schedules I and J have been served, and there is no Motion for Additional Attorney's Fees. The court is unable to determine if the Modified Plan complies with 11 U.S.C. § 1325(a).

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 Confirm the Modified Chapter 13 Plan filed by the debtor, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("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.

17. [24-20346-E-13](#)  
[DPC-1](#)

RENEE ROSALES  
Peter Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
DAVID P. CUSICK  
3-13-24 [[17](#)]

17 thru 18

**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)(2) Objection

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on March 13, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The Objection to Confirmation of Plan is ~~XXXXXXX~~.**

### April 23, 2024 Hearing

The court continued this hearing to be heard in conjunction with the Motion to Value, on which feasibility of this Plan depends. By Final Ruling on April 23, 2024, the court granted Debtor's Motion to Value the Secured Claim of Onemain Financial Group, LLC ("Creditor"), determining the Secured Claim to have a value of \$4,500.

At the hearing, ~~XXXXXXX~~

### THE OBJECTION

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



1. Debtor's schedules contain inaccurate or missing information. Debtor admitted at the 341 Meeting that her son helps out in rent, contributing \$500 per month, but this income is not scheduled. Debtor reports \$0 for phone and internet, but she admitted at the 341 Meeting that she pays \$19.95 per month for internet and \$100 per month for her cell phone. Finally, it is unclear whether Debtor will receive a tax refund or end up owing taxes. Docket 17, p. 2:1-19.
2. The Plan relies on valuing collateral. If the Motion to Value is not granted, Debtor's Plan is underfunded. *Id.* at p. 2:20-26.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 19.

## **DEBTOR'S REPLY**

Debtor filed a Reply on April 1, 2024. Docket 29. Debtor states she has filed Amended Schedules, and she requests a continuance of this Objection to April 23, 2024 to be heard in conjunction with the Motion to Value on which this Plan depends.

## **DISCUSSION**

Debtor has filed Amended Schedules I and J at Docket 26, adding rent income and phone / internet expenses.

The court continues this Motion to April 23, 2024 at 2:00 p.m. to be heard in conjunction with the Motion to Value on which this Plan depends.

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 is **XXXXXXX**.

## Final Ruling

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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, other parties in interest, Office of the United States Trustee on March 13, 2024. By the court’s calculation, 41 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 Onemain Financial Group, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$4,500.**

The Motion filed by Renee Rosales (“Debtor”) to value the secured claim of Onemain Financial Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Docket 23. Debtor is the owner of a 2014 Honda Accord (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$4,500 as of the petition filing date. Debtor informs the court there is 185,000 miles on the Vehicle, and there are transmission issues, tire issues, and issues with the upholstery. *Id.* at ¶¶ 4-6. 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 Chapter 13 Trustee, David Cusick (“Trustee”), filed a non-opposition on April 2, 2024. Docket 31. Trustee states some of the testimony in Debtor’s Declaration is likely unfounded, but even without the unfounded parts, the Declaration is likely still sufficient.

## DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on March 4, 2022, to secure a debt owed to Creditor with a balance of approximately \$16,602.04. Proof of Claim, No. 2-1.

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 \$4,500, 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 Renee Rosales ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Onemain Financial Group, LLC ("Creditor") secured by an asset described as 2014 Honda Accord ("Vehicle") is determined to be a secured claim in the amount of \$4,500, 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 \$4,500 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.

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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, and Office of the United States Trustee on March 13, 2024. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

The debtor, David Matthew Windmiller and Donna Laura Windmiller (“Debtor”) seek confirmation of the Modified Plan because Debtor experienced an unexpected reduction in income, causing them to become delinquent under the terms of the previously confirmed Plan. Declaration, Docket 78 ¶ 3. The Modified Plan provides for having paid \$73,330.34 into the Plan through March 12, 2024. Modified Plan, Docket 79 § 7. It then provides for payments of \$1,430.26 per month commencing March 25, 2024, with a 0% dividend to unsecured creditors. *Id.* The previous Plan provided for a 100% dividend to unsecured creditors. Plan, Docket 31 § 3.14. 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 April 9, 2024. Docket 81. Trustee opposes confirmation of the Plan on the basis that:

- A. Payment terms surrounding percentage to the unsecured creditors is unclear. Trustee has distributed 25.28% to unsecured creditors and estimates the Modified Plan will pay approximately 51.61% to unsecured creditors. *Id.* at ¶ 1.
- B. Voluntary retirement contributions should cease as Debtor is reducing plan payments from \$2,829.34 to \$1,430.26, and the percentage to unsecured creditors from 100% to 0%. *Id.* at ¶ 2.
- C. Provisions surrounding attorney's fees are unclear. The proposed Modified Plan states fees will be \$5,020 and paid through the Plan. The previously confirmed Plan stated fees were \$4,000. *Id.* at ¶ 3.
- D. The delinquency under the previous Plan resulted in Trustee being unable to pay Class 1 Creditor Cenlar FSB in the amount of \$1,188.24. The proposed Modified Plan does not attempt to specify a cure of this postpetition arrearage, so Trustee is unable to determine if the Modified Plan complies with 11 U.S.C. §§ 1325(a)(1) and (6). *Id.* at ¶ 4.

## **DISCUSSION**

### **Plan Payments and Retirement Contributions**

Trustee raises the concern that Debtor will continue to make approximately \$493.60 in monthly voluntary retirement contributions while also proposing to slash monthly Chapter 13 plan payments. The court shares this concern. The percentage to unsecured creditors is getting slashed while Debtor is not having to make personal sacrifices regarding the retirement contributions.

On Schedule A/B, Debtor listing having interest in the following retirement accounts: (1) Wells Fargo Advantage Funds, \$8,079, (2) Ufcw - Norther [sic] California Food Employers Joint Individual Account Pension Plan, \$24,309.48, and (3) Wells Fargo Funds: Roth IRA. Dckt. 1 at 15.

Debtor David Windmiller states that he has been employed for 30 years at Bel Air, the employment to which the Northern California Food Employers Pension Plan relates. The amount of those pension benefits has not yet been identified (as opposed to a cash out value).

On Original Schedule I (which is marked to be a Supplemental Schedule I with information effective July 23, 2020, which is a date one year prior to the filing of the current Bankruptcy Case) filed by Debtor (Dckt. 1 at 26-27) they report joint gross monthly income of \$8,377. . Debtor then computes their monthly income (after withholding and deductions) to be \$6,691. *Id.* at 4.

On Original Schedule J (again marked as a Supplemental Schedule with information pre-dating this Bankruptcy Case by a year), Debtor computes (for the two adults, one then 16 year old child, one adult 22 year old child) monthly net income of \$1,635. *Id.*, at 28-29.

On a Supplemental I, filed on February 7, 2024, which updates the income information as of November 17, 2023, Debtor reports that their gross income has increased to \$8,585. Dckt. 68 at 3-4. Debtor

then computes their monthly income (after withholding and deductions) to be \$6,014, a decrease of .(\$677).  
*Id.* at 4.

On Supplemental Schedule J filed on February 7, 2024 (Dekt. 68 at 5-6) Debtor states that their family expenses (two adults, an 18 year old child, and a 24 year child) total (\$4,582), a reduction of 10%.

At the hearing, **XXXXXXX**

Trustee further requires the percent to unsecured creditors be determined. By the Trustee's calculations, Debtor will be paying approximately 51.61% to the unsecured claims, whereas the Modified Plan proposes a 0% dividend.

Finally, Debtor has not clearly specified how the postpetition arrearage will be cured. The court cannot determine if the Modified Plan complies with 11 U.S.C. § 1325(a)(1).

At the hearing, **XXXXXXX**

### **Attorney's Fees**

The Modified Plan proposes fees of \$5,020 under the no-look rules, but the prior confirmed Plan proposed fees of \$3,828 to be paid through the Plan. Debtor's attorney appears to be increasing their fees without court approval. Debtor's attorney opted into the no look fees prior to the 2023 revisions, which put a limit on the no-look fees of \$4,000. However, those rules also allowed attorneys to seek additional fees for unanticipated and substantial work. It appears that if Debtor's attorney seeks additional fees, he should properly file a Motion for Additional Fees under the previous Local Bankruptcy Rules, and he should not seek higher fees by increasing the no-look amount.

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 David Matthew Windmiller and Donna Laura Windmiller ("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.

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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, and Office of the United States Trustee on March 6, 2024. 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 granted.**

The debtor, Ronald Ratliff (“Debtor”) seeks confirmation of the Modified Plan because, due to delayed payment for services Debtor had performed, he fell behind under the terms of the previously confirmed Plan. Declaration, Docket 87 ¶ 4. The Modified Plan provides for a lump sum payment of \$13,234 for March 2024, then monthly payments of \$5,754 beginning in April 2024 and continued for the remainder of the Plan. Modified Plan, Docket 88 § 7. 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 April 9, 2024. Docket 93. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor provided conflicting monthly arrearage dividends. The Motion states monthly arrears dividend to NewRez LLC DBA Shellpoint Mortgage to be \$158.07 starting March 2024 to end of Plan. The Modified Plan

proposes monthly arrears dividend to NewRez LLC DBA Shellpoint to be \$134.36. Docket 93 ¶ 1.

- B. Trustee requests that the amount paid through the Plan to date be added to the order confirming in the amount of \$35,555.99. *Id.* at ¶ 2.
- C. Although the Motion to Confirm states Debtor will tender a payment of \$7,480 to cure delinquent mortgage payments for January and February, the Modified Plan fails to specify a cure of the post-petition arrearage including a specific post-petition arrearage amount (including which months were missed), interest rate and monthly dividend. *Id.* at ¶ 3.
- D. Debtor has marked Schedules I and J as amended, although they should be marked supplemental. *Id.* at ¶ 4.

## DEBTOR'S REPLY

Debtor filed a Reply on April 15, 2024. Docket 96. Debtor states:

- 1. Debtor agrees to clarify the monthly dividend to arrears in the amount of \$158.07 in the order confirming.
- 2. Debtor agrees to clarify that \$35,555.99 has been paid through February 2024 in the order confirming.
- 3. Debtor suggest that he did properly specify a postpetition mortgage arrearage amount, stating he tendered \$7,480 to cover the missed January and February payments, and the arrearage payments will be \$158.07 at 0% interest.
- 4. Debtor is willing to filed Schedules I and J as supplemental and not amended.

## DISCUSSION

Debtor and Trustee appear to have resolved their issues. Although, as of the court's review of the Docket on April 16, 2024, the schedules have not been refiled and properly labeled "supplemental."

In specifying corrections in the order confirming, at the hearing, **XXXXXXX**

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, Ronald Ratliff (“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 March 6, 2024 at Docket 88, is confirmed, with the following amendments: **XXXXXXX**. 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.

21. [24-20654-E-13](#)      **MICHAEL BETTENCOURT**      **MOTION TO CONFIRM PLAN**  
[PLC-1](#)                      **Peter L. Cianchetta**                      **3-8-24 [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.

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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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 8, 2024. 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, Michael Joseph Bettencourt (“Debtor”) seeks confirmation of the Modified Plan to deal with unexpected changes in his finances and overwhelming unsecured debts. Declaration, Docket. 20,

¶ 3. The Modified Plan provides for \$1,348.69 monthly plan payments for 60 months, and no less than a 7.89% dividend to unsecured claims totaling \$221,218.00. Modified Plan, Docket 19. 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 April 9, 2024. Opposition, Docket 22. Trustee opposes confirmation of the Plan on the basis that:

- A. The Modified Plan may not be feasible and the Debtor does not appear to be able to comply with the provisions in the Modified Plan. *Id.* at ¶ 1.
- B. The Debtor incorrectly lists Schools First Financial Credit Union as a class 4 claim. *Id.* According to the Proof of Claim, Debtor will pay this debt prior to the completion of the Modified Plan, thus, the Trustee believes this creditor should be listed as a class 2(A) creditor. *Id.*

As drafted, Debtor incorrectly states (subject to the certifications arising pursuant to Fed. R. Bank. P. 9011) that this payment continues past the term of the Plan and these monies are not available to fund the Plan as part of Debtor's projected disposable income.

- C. This Modified Plan fails best efforts and Debtor has more money available for plan payments. *Id.*
- D. Debtor's Attorney did not check either box in § 3.05 of the original Plan. Plan, Docket 3, § 3.05. In the Modified Plan, Debtor's Attorney chose to comply with Local Bankruptcy Rule 2016-1(c). Modified Plan, Docket 19, § 3.05. Pursuant to Local Bankruptcy Rule 2016-1(d), the Debtor's Attorney cannot change the attorney fee election absent a motion. Objection, Docket 22, ¶ 2.
- E. Debtor cannot make the proposed plan payments. *Id.* at ¶ 3.
- F. Debtor's Schedules may be inaccurate. *Id.*

## DISCUSSION

### 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.

The Trustee believes that the Debtor has more money available for plan payments and that the Modified Plan fails best efforts. Opposition, Docket 22, ¶ 1. Trustee also believes that the Debtor's Schedules are inaccurate and that the Debtor's Official Form 107 Statement of Financial Affairs seem to have missing information. *Id.* Questions 4 and 5 on the Statement of Financial Affairs fail to provide any gross income for the year 2024. Petition, Docket 15, ps. 7-8. Debtor's Schedule I states that he receives \$580.89 in pension or retirement income, and that he receives \$430.00 in other monthly income. *Id.* at p. 4. And Debtor's Schedule J shows that he has a net monthly income of \$1,356.44. *Id.* at p. 6.

Debtor's Declaration also states that he has a net disposable income of \$1,356.44. Declaration, Docket 20. And Debtor's Petition has paycheck details attached which shows that he has received income for 2024. Petition, Docket 1, p. 51.

Therefore, based on this information, the Debtor does have a gross monthly income for the year 2024 that should be listed on the Statement of Financial Affairs. Additionally, there appears to be some inaccuracies with regards to the Debtor's Official Form 122C-1 because this form states that the Debtor current monthly income is \$0.00. *Id.* at p. 46. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Modified Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **XXXXXXX**

### **Improper Classification of a Claim**

Trustee believes that the Modified Plan incorrectly lists Schools Financial Credit Union ("Creditor") as a class 4 creditor. Opposition, Docket 22, ¶ 1. Creditor filed a Proof of Claim on March 6, 2024, in the amount of \$3,063.39, which is secured by a 2016 Chevrolet Colorado. Claim No. 3. According to the Creditor's Proof of Claim, the debt will be paid off prior to the completion of the Modified Plan. Opposition, Docket 22, ¶ 1. Because the debt will be paid off prior to the completion of the Modified Plan, Trustee believes that the Creditor should be listed as a class 2(A) creditor. *Id.*

Class 4 creditors are for secured claims that mature after the completion of the Plan. Here, it appears that the Creditor's secured claim will be paid off prior to the completion of the Modified Plan, so they would not be a class 4 creditor under § 3.10 of the Modified Plan. § 3.08(c)(1) of the Modified Plan states that:

Class 2 claims that cannot be reduced based on value of collateral. Debtor is prohibited from reducing a claim if the claim holder has a purchase money security interest and the claim either was incurred within 910 days of the filing of the case and is secured by a motor vehicle acquired for the personal use of Debtor, or was incurred within 1-year of the filing of the case and is secured by any other thing of value. These claims must be included in Class 2(A).

Therefore, Creditor's secured claim would properly be listed as a class 2(A) creditor in the Modified Plan, as opposed to class 4.

However, as noted above, this statement is grossly inaccurate and creates the inaccurate appearance that the monthly projected disposable income will not include the monthly car payment amount.

At the hearing, **XXXXXXX**

## Attorney Fees

Trustee objects to confirmation of the Modified Plan because Debtor's Attorney did not file a motion to change the attorney fee election pursuant to Local Bankruptcy Rule 2016-1(d). Objection, Docket 22, ¶ 2. In Debtor's original Plan that was filed on February 21, 2024, Debtor's Attorney did not check either box in § 3.05. Plan, Docket 3, § 3.05. In the Modified Plan, Debtor's Attorney chose to comply with Local Bankruptcy Rule 2016-1(c). Modified Plan, Docket 19, § 3.05. Local Bankruptcy Rule 2016-1(d) states:

Debtor's counsel shall elect compensation under subdivision (b) or subdivision (c) in the first Chapter 13 plan filed, i.e., Chapter 13 plan § 3.05, EDC 3-080. Any failure to elect compensation in the first Chapter 13 plan filed shall be deemed an election to seek compensation and expenses under subdivision (b). Except as provided in Rule 60, that election, or failure to elect, is irrevocable. Fed. R. Civ. P. 60, incorporated by Fed. R. Bankr. P. 9024.

Therefore, under Local Bankruptcy Rule 2016-1(d), Debtor's Attorney was deemed to have elected compensation and expenses under subdivision (b) in the original Plan. Failure to elect is irrevocable, and in order to make a change to the type of compensation that Debtor's Attorney wishes to seek, a motion would need to be approved under Federal Rules of Bankruptcy 9024.

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, Michael Joseph Bettencourt ("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)(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, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on February 28, 2024. By the court's calculation, 27 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. Opposition was stated at the hearing.

**The Objection to Confirmation of Plan is ~~sustained~~ and the Chapter 13 Plan is not confirmed.**

### **April 23, 2024 Hearing**

In light of the March default, but Debtor having cured a prior default, the Trustee requested a continuance of the hearing to afford the Debtor an extra chance to get this Plan current and not have the case dismissed.

As of the court's review on April 17, 2024, no new documents have been filed regarding the Trustee's Objection to Confirmation of the Plan. However, a Notice of Requirement to File Certificate About a Financial Management Course was sent to the Debtor on April 10, 2024.

No evidence has been filed by Debtor as of the court's April 21, 2024 review of the Docket. This Bankruptcy Case was filed on January 5, 2024, and it appears that it is not a case that Debtor can prosecute.

At the hearing, **XXXXXXX**

Based on the evidence presented, Debtor is not able to fund this Plan and prosecute this case.

The Objection ~~is sustained and the Chapter 13 Plan is not confirmed.~~

### **REVIEW OF THE OBJECTION**

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

1. John Hiser ("Debtor") is delinquent \$2,165 in plan payments to the Trustee. Docket 16, p. 2:3-9.
2. Debtor told Trustee at the Meeting of Creditors that his parents will contribute \$1,500 per month. Trustee asked Debtor to confirm this in a Declaration, but no evidence in support of the parents' contribution has yet been provided. *Id.* at p. 2:13-19.
3. At the Meeting of Creditors Debtor admitted he has a court ordered domestic obligation for child support, but neither Schedule I nor J lists this obligation. Debtor also failed to submit a Domestic Support Obligation form. *Id.* at p. 2:20-24.
4. At the Meeting of Creditors Debtor admitted he does not own a vehicle and uses his parent's truck. Debtor's Statement of Financial Affairs fails to identify any property the Debtor holds for someone else. *Id.* at ps. 2:25-3:2.

Trustee submits the Declaration of Christina Lloyd to authenticate the facts alleged in the Objection. Decl., Docket 18.

### **DISCUSSION**

#### **Delinquency**

Debtor is \$2,165 delinquent in plan payments, which represents one month of the 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 has indicated that his parents will contribute \$1,500 a month, but no evidence supporting this claim has been submitted.

#### **Inaccurate or Missing Information**

Debtor's Schedules I and J and Statement of financial Affairs contain missing or inaccurate information. Debtor has not reported his domestic support obligation in Schedule I and J nor filled out Form EDC 003-088, the Domestic Support Obligation Checklist. Further, Debtor has failed to state in his Statement of Financial Affairs that he is holding and using his parent's truck. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, counsel for the Debtor reported that the delinquency has been cured. The Trustee confirmed that the delinquency was cured, but is now delinquent for March 2024.

In light of the March default, the Trustee requested a continuance of the hearing to afford the Debtor an extra chance to get this Plan current and not have the case 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 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 Plan is **sustained** and the ~~Chapter 13 Plan is not confirmed.~~

23 thru 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2024. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

The debtor, Tanya Norfles (“Debtor”) seeks confirmation of the Modified Plan due to health concerns as the Debtor had to take time off from work, thereby becoming delinquent. Declaration, Docket 176, ¶ 2. The Modified Plan provides \$700.00 in monthly plan payments which will commence on March 25, 2024 for 6 months, Wheels Financial Group’s claim is reduced to the amount already paid by the Trustee, and Peritus Portfolio Services’s claim is reduced to the amount already paid by the Trustee. Modified Plan, Docket 178. 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 April 9, 2024. Opposition, Docket 190. Trustee opposes confirmation of the Plan on the basis that:

- A. Trustee cannot assess the feasibility of the Modified Plan. *Id.*



- B. Debtor is paid ahead under the proposed Modified Plan, so the Trustee requests that the Debtor clarify the actual amount paid through February 2024. *Id.* at ¶ 1.
- C. Debtor’s Schedule I and J filed on March 13, 2024 are marked amended rather than supplemental. *Id.* at ¶ 2.
- D. Debtor’s Certificate of Service does not show that Schedules I and J were served on the interested parties. *Id.* at ¶ 3.
- E. It is unclear if the Debtor has dispute over a home owners association (“HOA”) claim, or if there is a second HOA claim that could affect the feasibility of the Modified Plan. *Id.* at ¶ 4.
- F. The Motion to Confirm Modify Plan filed by Debtor does not cite applicable code sections to support it, which is required under Local Bankruptcy Rule 9014-1(d) and Federal Rules of Bankruptcy Procedure 9013. *Id.* at ¶ 5.

Trustee submits the Declaration of Angelina Fernandez to support the facts alleged in the Opposition. Decl., Docket 191.

## **DEBTOR’S REPLY**

Debtor filed a Reply on April 16, 2024. Reply, Docket 195. Debtor replies to the Trustee’s Opposition on the following basis:

- A. Debtor requests that the amount be paid into the Plan be corrected to state that “Debtor has paid a total of \$23,547.00 through March 2024. Plan Payments of \$700.00 per month will commence April 25, 2024 for 5 months”. *Id.* at ¶ 1.
- B. Schedules I and J have been further amended correcting that the amendment is a supplement. *Id.* at ¶ 2.
- C. Debtor requests that the claim (POC 12-1) filed by Severaid and Glahn, P.C. be provided for as Natomas Field Townhomes Association in the order confirming. *Id.* at 3.

## **DISCUSSION**

### **Amount Paid Into Plan**

Trustee states that Debtor is paid ahead under the proposed Modified Plan by \$365.00. Opposition, Docket 190, ¶ 1. Under the proposed Modified Plan, the Debtor is supposed to have paid a total of \$23,881.97 by March 25, 2024. *Id.* However, according to the Trustee’s records, the Debtor has paid a total of \$24,246.97, thus, leaving an excess amount of \$365.00 paid into the Plan. *Id.* Trustee requests that the “Debtor clarify that the actual amount paid in through month 54 (February 2024) is \$23,181.97, then

\$1,065.00 for March 2024 (month 55), then \$700.00 commencing in April 2024 (month 56)". *Id.*

Debtor replies by requesting that the court include in the Order that "Debtor has paid a total of \$23,547.00 through March 2024. Plan Payments of \$700.00 per month will commence April 25, 2024 for 5 months". Reply, Docket 195, ¶ 1. The court is still unclear as to what amount has been paid into the Plan, and what amount will be paid in the remaining months of the Plan.

### **Schedule I and J Incorrectly Marked as Amended**

Trustee opposes confirmation of the Modified Plan on the basis that Debtor's Schedule I and J, which were filed on March 13, 2024, are marked amended rather than supplemental. Opposition, Docket, ¶ 2. As of the court's review of the documents filed, the Debtor's Schedule I and J which were filed on March 13, 2024 are marked as amended. Schedules, Docket 180. However, Debtor has since filed a new Schedule I and J which corrects this mistake and marks the Schedules as supplemental. Schedules, Docket 196.

### **Home Owners Association Claim**

Trustee states that the Modified Plan may not comply with applicable law because it appears that there are two claims for a Home Owners Association ("HOA"). Opposition, Docket 190, ¶ 4. A Proof of Claim was filed on October 23, 2019 by Natomas Field Townhouse Association in the amount of \$4,454.35. Claim No. 9.

Then on July 6, 2020, a Proof of Claim was filed for Severaid & Glahn, P.C. in the amount of \$4,454.35. Claim No. 12. The Trustee is unsure if this is a duplicate claim or if there is a claim that is unprovided for in the Modified Plan. Opposition, Docket 190, ¶ 4.

Debtor replies to this issue by stating that the Debtor requests that the Proof of Claim for Severaid & Glahn, P.C. be provided for as Natomas Field Townhouse Association in the order confirming, indicating that this is a duplicate claim. Reply, Docket 195, ¶ 3.

Natomas Field Townhomes Association filed Proof of Claim 9-1 on October 23, 2024, for a (\$4,454.35) secured claim for unpaid HOA fees. The second Attachment to POC 9-1 states that these fees are for the period June 18, 2018 through August 2019.

However, on April 4, 2024, a withdrawal of Proof of Claim 9-1 was filed. In the Withdrawal, a letter dated March 21, 2024, sent to David Cusick the Chapter 13 Trustee, by the attorney for the Association creditor. The Withdrawal states:

1. After filing the Bankruptcy Petition Debtor and the Association entered into a payment plan and Debtor has now cured the arrearage in full.
2. A check for \$2,389.27 to refund the payments received from the Chapter 13 Trustee in this case.
3. The claim has been paid in full.

This indicates that Debtor has significantly more in projected disposable income to fund the Plan (which Plan provided for paying the secured claim in addition to it now being disclosed that Debtor paid it directly through post-petition, outside a Chapter Plan, excess non-disclosed projected disposable income monies payments).

Debtor's request for this court to "slide an Objection to Claim under the table," forgo Due Process, and just make a claim disappear. While it may well be that it is clear on its face that the attorneys may have filed a duplicate proof of claim, the court is not empowered to "just do whatever the court thinks should be the *right* result."

This request buried in Debtor's Reply to the Trustee's Opposition, demonstrates at best a cavalier attitude of the Debtor to Federal Bankruptcy Law and Federal Court, and at worst a knowing, intentional, and willful plan to violate Federal Law and the U.S. Constitution. Such conduct violates not only the Bankruptcy Code and U.S. Constitution, but runs afoul of Federal Rule of Bankruptcy Procedure 9011 and the certifications made by Debtor when seeking that relief.

This "under the table" effort to have the court disallow Proof of Claim 12-1 filed by Severaid & Glahn, PC, when coupled with Debtor having a "extra-judicial" secret payment plan for the Natomas Field Townhomes Association for its secured claim( Proof of Claim 9-1) outside of the Chapter 13 Plan, which demonstrates Debtor having additional projected disposable income, may well establish that this Bankruptcy Case should be dismissed for cause.

If this Bankruptcy Case is dismissed for how Debtor seeks to prosecute her case in Federal Court, hiding undisclosed projected disposable income, and establishing a secret "special deal" duplicate payment plan for Natomas Field Townhomes Association may be a basis for dismissal of this Bankruptcy Case with prejudice. A dismissal with prejudice would result in all of Debtor's debt included in this Bankruptcy Case would be nondischargeable for Debtor's financial eternity.

At the hearing, **XXXXXXX**

### **Motion to Modify Citing Applicable Law and Proof of Service**

The Trustee notes that Debtor's Motion to Modify Plan does not cite to any applicable code section to support it which is required under Local Bankruptcy Rule 9014-1(d) and Federal Rules of Bankruptcy Procedure 9013. Opposition, Docket 190, ¶ 5. Trustee also notes that the Debtor's Amended Schedules were not listed on the Certificate of Service filed on March 13, 2024. Certificate, Docket 179. Therefore, the Trustee is not sure that these documents were served on the interested parties. Opposition, Docket 190, ¶ 3. Debtor has since filed another Amended Schedule on April 16, 2024. Schedules, Docket 196. Debtor's Reply does not address either of these issues, so it is not clear whether these documents were properly served on the interested parties and what applicable law the Debtor is bringing the Motion under, such as 11 U.S.C. § 1329.

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:

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, Tanya Norfles (“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.

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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, persons having filed a Request for Notice, and Office of the United States Trustee on February 15, 2024. By the court’s calculation, 34 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 XXXXXXX**

#### **April 23, 2024 Hearing**

The Motion was continued to be heard here in conjunction with Debtor’s Motion to Confirm. As of the court’s review of the docket, the Debtor has filed a Modified Plan, which the Trustee opposes. At the hearing, XXXXXXX

#### **REVIEW OF THE MOTION**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Tanya Michelle Norfles (“Debtor”), is delinquent \$730 in plan payments. Debtor will need to have paid \$1,095 by the hearing date to become current.

Docket 162 p. 1:17-22. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 164.

#### **DEBTOR’S RESPONSE**

Debtor filed an Opposition and supporting Declaration on March 5, 2024. Dockets 166, 167. Debtor states she will be filing a Modified Plan to address and cure the delinquency. Decl., ¶ 41 Dckt. She

explains that she became delinquent due to catching various illness that prevented her from working. *Id.* at ¶ 2. She is currently in month 54 of her 60 month Plan.

## **DISCUSSION**

### **Delinquent**

Debtor is \$730 delinquent in plan payments, which represents multiple months of the \$365 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).

### **Plan and Motion to Confirm Filed**

Debtor has filed a Modified Plan (Dckt. 178) and Motion to Confirm (Dckt. 174) to address the defaults. From the court's preliminary review, the Motion states that Debtor caught COVID and another affliction and had to take time off from work. Debtor does not state the sick leave benefits, unemployment benefits, or COVID payments the Debtor may have received. The proposed Plan provides for all defaulted payments to be forgiven, with Plan payments of \$700 a month to begin again March 2024, and continue thereafter for the six remaining months of the Plan.

Debtor's Declaration (Dckt. 176) states that Debtor had COVID and another affliction, but does not address the financial consequences of such. Debtor provides no testimony as to how much in income she lost and what was not covered by sick leave, COVID Stimulus Payments, unemployment benefits, or other benefits Debtor may have received.

### Amended Schedules I and J Filed with the Motion to Confirm

Debtor filed "Amended" Schedules I and J on March 13, 2024. Dckt. 180. By stating under penalty of perjury Debtor was filing "Amended" Schedules, these relate all the way back to the filing of this Bankruptcy Case on August 16, 2019, and thereby causing all of the prior orders of this court to have been based on faulting, non-accurate income and expenses.

On Amended Schedule I Debtor states having monthly income after deductions of \$3,918.30. *Id.* at 5. Debtor lists having (\$800) in monthly deductions/withholding for travel expenses. Debtor does not state whether such expenses are reimbursed or not reimbursed, or why her employer who is paying her wages deducts travel expenses from her wages.

On Supplemental Schedule J Debtor lists having monthly expenses of \$3,217.81 for her family unit of one person. This includes a housing expense of \$1,081.00, and debtor having only (\$10) a month in home maintenance and repairs (clearing an unrealistic, unreasonably low amount). *Id.* at 6. Debtor includes self-employment taxes of (\$214) a month on Amended Schedule J. *Id.* at 7.

On Amended Schedule J Debtor states that she has \$700 a month in Net Income to fund a Plan.

### Prior Schedules Filed

On the incorrect Original Schedule I, which Debtor has corrected with the Amended Schedule I, Debtor stated under penalty of perjury having income, after deductions, of \$2,225.00. Dckt. 1 at 41-42. This included \$1,060 in income from a “second job” for which no withholding is disclosed. *Id.* No provision is made on Original Schedule I for paying any taxes on that additional income.

With the March 13, 2024 Amended Schedule I, Debtor states under penalty of perjury that she actually had \$3,918.30 in monthly income after deductions – this is almost \$700 a month greater than Debtor stated at the filing of this case.

On incorrect Original Schedule J, which Debtor has corrected with the Amended Schedule J, Debtor stated under penalty of perjury that she never has any repair or maintenance expenses for her residence. *Id.* at 43. Debtor also states under penalty of perjury having only (\$210) a month in food and housekeeping supplies a month. After allowing (\$40) a month for housekeeping supplies, that leaves only \$170 a month for food. Over a thirty (30) day month, with three (3) meals a day, Debtor stated having only \$1.89 to spend per meal. This is highly unrealistic.

However, with the income and expenses numbers used by Debtor, \$2,160 a month to fund a plan (Debtor’s mortgage, property taxes, and insurance not included on Original Schedule J). The Original Plan (Dckt. 3) provided for monthly payments of (\$1,285.76) to be paid to the creditor having a lien on Debtor’s residence. With a monthly plan payment of \$2,160, after deducting the secured claim payment, Debtor had \$874.24 for Debtor’s counsel’s fees (\$3,135.00), Trustee Fees, two vehicles loans ((\$484.00 a month), HOA arrearage (\$75.00 a month) and then payments to other creditors.

On several occasions since the filing of this Case Debtor filed several Amended/Supplemental Schedules I and J. Though stated to be both Amended and Supplemental under penalty of perjury, it is legally impossible to be both. These include:

- A. Amended/Supplemental Schedule J filed October 9, 2019 (two months after this case was filed). Dckt. 38. This states Debtor has only \$725 a month in Monthly Net Income to fund a Plan. Debtor did add (\$1,168.18) for her mortgage expense and (\$144.00) for HOA Dues.
- B. Amended/Supplemental Schedules I and J filed on January 14, 2020 (four and one-half months after this case was filed). Dckt. 62. By these Amended/Supplemental Schedule Debtor stating having take home monthly income of \$3,005.00, monthly expenses of (\$2,255.99), and Monthly Net Income of \$750.00 to fund a Plan.
- C. Supplemental Schedules I and J filed on February 15, 2021. Dckt. 101. Debtor reported on Supplemental Schedule I having monthly income of only \$3,570.30 after deductions, (\$3,046.99) in monthly expenses, and only \$520.31 of Monthly Income to fund the Plan.
- D. Amended/Supplemental Schedules I and J filed on December 29, 2022. Dckt. 140. Debtor reported her monthly income further reduced to \$3,916.20, monthly expenses of (\$3,918.30), and Monthly Net Income of only \$365.31 to fund a Plan.

As stated above, Debtor filed Amended Schedule I and J on March 13, 2024, providing financial information correcting the Original Schedules I and J, and providing the correct information for this case

from filing to March 13, 2024. Dckt. 180. Debtor's monthly income was during this case \$3,918.30, after deductions, and (\$3,217.81) in expenses, resulting in \$700.49 in Monthly Net Income to fund the Plan since September 2019. That would \$700 a month for fifty-five (55) months, for a total of \$38,500.

In her Motion to Confirm another Modified Plan in this Case, Debtor states that she has only paid \$23,181.97 to fund the Plan as of March 2024. That is only sixty percent (60%) of the Monthly Net Income Debtor states under penalty of perjury in the Amended Schedules I and J (Dckt. 180).

On its face, it appears that Debtor is lacking the financial ability to make up all of the now disclosed under-funding of the Plan, and showing that a Plan in this Case cannot be completed.

At the hearing, counsel for the Trustee reported that Debtor is still delinquent for a month.

On March 13, 2024, Debtor filed a Modified Plan, Motion to Confirm, and supporting pleadings. Dckts. 174-181.

The Trustee requested the court continuing this hearing and set it to be conducted with the confirmation hearing.

The hearing on the Motion is continued to 2:00 p.m. on April 23, 2024 (Specially Set Day and Time).

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

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

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

**IT IS ORDERED** that the Motion is **XXXXXXXX**



**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, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on April 2, 2024. By the court’s calculation, 21 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 without prejudice.**

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

1. Ahsan Imtiaz (“Debtor”) is delinquent \$1,200 in plan payments.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 19.

**Debtor’s Argument  
in Opposition**

Debtor’s counsel filed a Reply on April 3, 2024, asserting that the original, timely check was destroyed in the mail and that a replacement cashier’s check for \$1,200 had been sent. Docket 21. Debtor also submitted Exhibits in support, purporting to show the destroyed check as well as the fresh check sent. Docket 22.

There is no accompanying Declaration in support of Debtor's Reply providing evidence in support of the arguments stated in the Opposition or authenticating the exhibits filed with the Opposition.

## DISCUSSION

With this \$1,200 payment, Debtor would be current until the next payment is due on April 25, 2024, which would resolve Trustee's Objection.

Trustee, confirming that the check ~~was/was not~~ received, 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 the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is ~~overruled, and Ahsan-Imtiaz's~~ ("Debtor") Chapter 13 Plan filed on February 22, 2024 is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on April 3, 2024. 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:

1. Cynthia Martin (“Debtor”) may be unable to make plan payments. Sacramento County Utility Building filed a secured claim in the amount of \$490.34 that has not been provided for. Docket 14 ¶ 1.
2. Debtor has listed \$0 in payment for administrative expenses under section 3.06 of the Plan, but Debtor’s counsel has taken a \$1,500 retainer and is seeking an additional \$2,500 through the Plan. Debtor’s counsel has also taken more than the 25% retainer allowed under Local Bankruptcy Rule 2016-1(c)(3). If total fees are \$4,000, only \$1,000 may be taken as a retainer, unless the \$500 are expenses allowed under Local Bankruptcy Rule 2016-1(c)(2). *Id.* at ¶ 2.

3. The Plan fails to contain Debtor's attorney's and debtor's wet signatures or the "/s/" electronic signatures in violation of Local Bankruptcy Rule 9004-1(c). *Id.* at ¶ 3.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 16.

## **DISCUSSION**

Trustee's objections are well-taken.

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

The Plan does not provide for the secured claim of Sacramento County Utility Building (POC 3-1) in the amount of \$490.34. 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. 11 U.S.C. § 1325(a)(5). 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.

### **Attorney's Fees and Signatures**

Debtor's attorney suggests he should be paid but allocates \$0 in administrative expense payments in the Plan. Furthermore, Local Bankruptcy Rule 2016-1(c)(3) states:

Attorneys who claim fees under subdivision (c) shall not seek, nor accept, a retainer greater than the sum of (A) 25% of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7); and (B) the amount of costs in subdivision (c)(2), as increased by subdivision (c)(7). Absent compliance with California Rule of Professional Conduct 1.15(b), any retainer received shall be deposited in the attorney's trust account.

The court is unsure if the \$1,500 retainer fee is only in attorney's fees, or if it includes \$500 costs allowed by Local Bankruptcy Rule 2016-1(c)(2).

At the hearing, **XXXXXXX**

Finally, Local Bankruptcy Rule 9004-1(c) requires either the wet signature or the "/s/" phrase, which has not been complied with in this case.

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 Not 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 April 2, 2024. By the court’s calculation, 21 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). Movant is extremely late in bringing this Motion, failing to meet the required notice period by 14 days.

At the hearing, **XXXXXXX**

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).

Because only 21 days’ notice was given, the notice period required by Local Bankruptcy Rule 9014-1(f)(1) has not been complied with and parties in interest have not been afforded the required opportunity to file oppositions.

The Chapter 13 Trustee has filed an Opposition.

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

The debtor, Tammera Mae Ridge (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$200 for 36 months with an estimated 4% dividend to general unsecured creditors. Amended Plan, Docket 44. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Chapter 13 Trustee, David Cusick, did not file a response in this case, likely due to the service issues.

## DISCUSSION

The Chapter 13 Trustee was unable to weigh in on the feasibility and merits of the proposed Amended Plan as Debtor has not filed this Motion with the requisite notice. This is grounds to deny the Motion. Local Bankruptcy Rule 9014-1(l).

At the hearing, **XXXXXXX**

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 Tamera Mae Ridge (“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.

**28 thru 29**

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

-----

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 20, 2024. By the court’s calculation, 34 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). Movant is one day late of the required notice period. At the hearing, **XXXXXXX**

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, Romy Elizabeth Oster (“Debtor”), seeks confirmation of the Second Amended Plan. The Amended Plan provides for five monthly payments of \$150 and then monthly payments of \$650 for 55 months to Creditor SPS 1 TD Residence. The Plan further calls for additional monthly payments of \$2,506.73 for 48 months and then \$2,800 for 12 months with 100% to general unsecured creditors. Amended Plan, Docket 60. 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 April 9, 2024. Docket 67. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has stopped making payments under the Plan and there is a \$5,013.46 delinquent in plan payments. Docket 67 ¶ 1.



## DISCUSSION

### Delinquency

The Chapter 13 Trustee asserts that Debtor is \$5,013.46 delinquent in plan payments, which represents multiple months of the 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).

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, Romy Elizabeth Oster (“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 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, persons having filed a Request for Notice, and Office of the United States Trustee on February 14, 2024. By the court's calculation, 35 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 ~~XXXXXXX~~.**

### **April 23, 2024 Hearing**

The hearing was continued be heard in conjunction with the Debtor's Motion to Confirm the Amended Plan. At the hearing, ~~XXXXXXX~~

### **REVIEW OF THE MOTION**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Romy Oster ("Debtor"), is delinquent \$2,506.73 in plan payments.
2. After the court sustained Trustee's Objection to the First Amended Plan, Docket 49, Debtor has failed to file a Second Amended Plan.

Docket 50 ¶¶ 1-2. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 52.

### **DEBTOR'S RESPONSE**

Debtor filed a Response on February 26, 2024. Dckt. 54. Debtor states the delinquency will be cured through a Second Amended Plan, which Debtor has set and served for April 23, 2024. *Id.* at ¶ 1.

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,506.73 delinquent in plan payments, which represents one month of the 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).

### **Motion to Confirm Filed**

Debtor has filed a Motion to Confirm Second Modified Plan on March 12, 2024 (Dckt. 56) to address the defaults. From the court's preliminary review, it appears that the Motion states some grounds for confirmation of a Plan, but it does not appear to comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 that a motion state the grounds particularity upon which relief is based.

Debtor's Declaration has been filed in support of the Motion to Confirm Second Modified Plan. Dckt. 52. The Declaration in states personal knowledge testimony in support of the Motion to Confirm.

However, as of the court's March 14, 2024 review of the Docket, no Second Modified Plan had been filed by Debtor.

At the hearing, Debtor's counsel reported that he would promptly file the Second Modified Plan, which had already been served on all parties in interest, to correct an apparent uploading/filing error.

The Trustee concurred with the request for a continuance.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. April 23, 2024, to be heard in conjunction with the Debtor's Motion to Confirm the Amended Plan.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 Motion to Dismiss is **XXXXXXX**.

30 thru 31

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 1, 2024. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

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

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

Brian Stewart Weiss, Trustee of the Brian Stewart Weiss Revocable Trust Dated October 21, 2021 (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor holds a second Deed of Trust in the real property commonly known as 337 Falcon Drive, Vallejo, California 94589 (“Property”).
2. Debtor Plan does not provide for the total payoff of its Deed of Trust at the contractual rate of interest of 12.75%, over the life of the proposed 60-month plan, in violation of 11 U.S.C. § 506 and 11 U.S.C. § 1325(a)(5).
3. Debtor’s Plan does not provide for repaying Creditor’s claim with the prime-plus interest rate authorized by *Till*.

4. Debtor's Plan is not feasible because he does not have enough monthly disposable income to pay all secured creditors in the case.

Creditor states that it is the assignee of the Val-Chris Investments, Inc. note and deed of trust. The terms of the Note are stated by Creditor to be:

Note, Original Amount.....(\$100,000)  
Monthly Interest Payments Only.....(\$1,062.50)  
Lump Sum Payment July 1, 2025.....(\$101,062.50)

Opposition, p. 2:8-16.

### Review of Chapter 13 Plan

Creditor's Claim (listed as "ValChris Invest") is provided as a Class 2(A) claim that is to be paid in full during the term of the Chapter 13 Plan. The claim is listed as being (\$108,000) as of the filing of this Bankruptcy Case, which when amortized over sixty (60) months with 8.5% interest, is computed by Debtor to be \$2,055.00 in monthly payments to Creditor. When the court uses the Microsoft Excel Simple Loan Calculator, the court computes the monthly payment for an (\$108,000) obligation amortized over sixty (60) months to be \$2,215.79.

With respect to the amount of the monthly payment with an 8.5% interest rate, at the hearing,

**XXXXXX**

Provision of Creditor claim in Class 2(A) and modification of the interest rate. As is well known, 11 U.S.C. § 1322(b)(2) states a limitation on modification of claims secured only by a debtor's primary residence. However, 11 U.S.C. § 1322(c)(2) provides:

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(2) in a case in which **the last payment on the original payment schedule** for a claim secured only by a **security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due**, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

11 U.S.C. § 1325(a)(5) requires that for a secured claim requires that the creditor holding a secured claim *only* receive "the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such [secured] claim; . . ." For such a secured claim, a debtor is not required to pay the contract interest rate.

With respect to the proposed Plan treatment for Creditor's secured claim, the "battle" appears to be over the proper *Till* interest rate.

## DISCUSSION

Creditor has not filed a proof of claim in the Bankruptcy Case as of yet. In the Objection, Creditor's counsel argues that the amount of Creditor's secured claim as of the commencement of this Bankruptcy Case is (\$119,108.24). Objection, p. 5:1-4; Dckt. 19.

Creditor has not filed any evidence (in the absence of a proof of claim being filed which is prima facie evidence of the claim) in support of the Opposition or secured claim asserted.

Creditor also fails to take into account the provisions of 11 U.S.C. § 1322(c)(2) which allows for modification of Creditor's secured claim.

However, Creditor does provide an analysis of the *Till* interest computation. Creditor asserts that the Federal Prime Rate is 8.5%, to which there would need to be an additional 1% to 3% additional interest to address the risk factors in this case.

In looking at the risk factors Creditor, using a fair market value of \$459,000 and the senior lien securing a claim of (\$299,923.00), there is \$159,077 in value securing Creditor's (\$119,108.24) claim to be provided for in the Plan. That is a \$39,986 equity cushion (approximately 33%). Creditor notes that if it were forced to foreclose and then resell the property, the costs of sale (computed at 8%) would be (\$36,736), exhausting most of Creditor's equity cushion.

At the hearing, **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 hearing.

The Objection to the Chapter 13 Plan filed by Brian Stewart Weiss, Trustee of the Brian Stewart Weiss Revocable Trust Dated October 21, 2021 ("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 **XXXXXXX**.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on April 3, 2024. 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:

1. Pablo Silva (“Debtor”) has not provided Trustee with his 2022 and 2023 tax returns, or a written statement that no such documentation exists. Docket 25 ¶ 1.
2. Debtor has not provided Trustee with the following business documents: 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documentation exists, and a business questionnaire. *Id.* at ¶ 2.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 27.

## DISCUSSION

Trustee's objections are well-taken.

### 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(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor 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.

### Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the years 2022 and 2023. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(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), Debtor having failed to provide the required documentation. 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.



# FINAL RULINGS

32. [23-22495-E-13](#)  
[DEF-2](#)

JAMES ROEHR  
David Foyil

MOTION TO CONFIRM PLAN  
3-5-24 [54]

**Final Ruling:** No appearance at the April 23, 2024 Hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, administrative claimants, parties requesting special notice, and Office of the United States Trustee on March 5, 2024. 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 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 debtor, James Louis Roehr (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on April 9, 2024. Docket 69. 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, James Louis Roehr (“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 March 5, 2024 at Docket 56, 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.

33. [23-24595-E-13](#)  
[TLA-1](#)

**BRIAN MEREDITH**  
Thomas Amberg

**MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF AMBERG HARVEY  
FOR THOMAS L. AMBERG, JR.,  
DEBTORS ATTORNEY(S)**  
3-18-24 [18]

**Final Ruling:** No appearance at the April 23, 2024 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, and Office of the United States Trustee on March 18, 2024. By the court’s calculation, 36 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.**

Thomas Amberg, the Attorney (“Applicant”) for Brian Russell Meredith, the Chapter 13 Debtor (“Client”), makes an Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 29, 2023, through March 18, 2024. Applicant requests fees in the amount of \$3,705. Applicant has already received fees in the amount of \$1,000 for work done prepetition, so Applicant is asking that the Chapter 13 Trustee, David Cusick (“Trustee”) is authorized to pay the balance of the fees of \$2,705 through the confirmed Chapter 13 Plan. Applicant is not requesting costs.

## **APPLICABLE LAW**

### **Reasonable Fees**

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

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

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

### **Lodestar Analysis**

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

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization

to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate includes meeting with client to analyze the situation, creating and reviewing schedules, proposing a Chapter 13 Plan, attending the 341 hearings, confirming a Chapter 13 Plan, and reviewing claims. Docket 18 ¶ 8. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES REQUESTED**

**Fees**

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>
Thomas Amberg, Attorney	11.4	\$325.00	<u>\$3,705.00</u>
<b>Total Fees for Period of Application</b>			\$3,705.00

**FEES ALLOWED**

**Fees**

**Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Interim Fees in the amount of \$3,705.00 are approved pursuant

to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution 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	\$3,705
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pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Thomas Amberg, the Attorney (“Applicant”), for Brian Russell Meredith, the Chapter 13 Debtor (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Thomas Amberg is allowed the following fees and expenses as a professional of the Estate:

Thomas Amberg, Professional employed by the Chapter 13 Debtor

Fees in the amount of \$3,705

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. The chapter 13 Trustee is authorized to distribute \$2,705 through the confirmed Chapter 13 Plan, and Applicant is authorized to withdraw and apply to approved fees the \$1,000 retainer paid for prepetition work done in the case.

**Final Ruling: No appearance at the April 23, 2024 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, attorneys of record who have appeared in the case, and Office of the United States Trustee on March 23, 2024. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

The Motion to Appoint Trustee 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 Appoint Trustee is granted.**

#### **PLEADINGS FILED AS ONE DOCUMENT**

Debtor James Randall Pettay and Sharon Marie Pettay (“Debtor”) filed the Motion, supporting Memo, Notice of Hearing, Exhibits, an Certificate of Service in this matter as one document. Docket 80. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

#### **THE MOTION**

On March 13, 2024, Debtor moved this court for an order to reappoint David Cusick, the Chapter 13 Trustee, as Trustee in this case. This Chapter 13 case was filed on August 14, 2012. A Plan was confirmed on October 5, 2012. Docket 16. Debtor completed their Plan and then received a discharge on December 18, 2017. Docket 69. The case was closed on January 2, 2018. Docket 71.

Debtor moved to reopen the case on April 19, 2023, and the case was reopened on April 20, 2024. Dockets 73, 74. Debtor explains that Mr. Pettay was a class member of a class action lawsuit filed on behalf of truckers who had driven for Walmart, filed in 2017, the last year of the Chapter 13 case. Mot., Docket 80 ¶ 6. Therefore, Debtor must seek relief from this court before the administrator in the class action litigation can distribute proceeds to Debtor. Debtor seems to expect a distribution of approximately \$98,684.93 from this litigation.

Rule 5010 states:

A case may be reopened on motion of the debtor or other party in interest pursuant to §350(b) of the Code. In a chapter 7, 12, or 13 case a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is necessary to protect the interests of creditors and the debtor or to insure efficient administration of the case.

Therefore, the U.S. Trustee does not appoint a Chapter 13 Trustee in a reopened case unless a court orders otherwise. Regarding appointment of a Trustee, Collier states that “appointment of a trustee is not required unless the case is being reopened to administer an asset.” 9 Collier on Bankruptcy ¶ 5010.03. In this case, the court finds appointment of a Trustee is necessary to administer the proceeds of the class action litigation.

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 Appoint Trustee filed by the debtor, James Randall Pettay and Sharon Marie Pettay (“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 Appoint Trustee is granted. The Office of the United States Trustee shall appoint David Cusick, the standing Chapter 13 Trustee, as the Chapter 13 Trustee in this case to administer assets of the estate.

**Final Ruling:** No appearance at the April 23, 2024 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 March 12, 2024. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Marvin and Winifred Jenkins (“Debtor”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on April 9, 2024. Non-Opposition, Docket 73. 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, Marvin and Winifred Jenkins (“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 March 12, 2024, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

36. [23-24375-E-13](#)      **ROBERT/SAMANTHA DAHL**      **MOTION TO CONFIRM PLAN**  
[WLG-1](#)                      **Nicholas Wajda**                      **3-5-24 [26]**

**Final Ruling:** No appearance at the April 23, 2024 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, attorneys of record who have appeared in the case, and Office of the United States Trustee on March 5, 2024. 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 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 debtor, Robert Jacob Dahl and Samantha Rae Dahl (“Debtor”) have provided evidence in support of confirmation. *See* Declaration, Docket 28; Exhibits, Docket 29. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on April 9, 2024. Docket 35. 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, Robert Jacob Dahl and Samantha Rae Dahl (“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 March 5, 2024 at Docket 30, 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.