

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 10, 2023 at 2:00 p.m.

1. <u>20-25605</u> -E-13 <u>CYB</u> -5	CURTIS/CARMEN BURKS Candace Brooks	MOTION TO MODIFY PLAN 11-30-22 <u>[131]</u>
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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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 30, 2022. 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, Curtis Terence Burks and Carmen Vernita Burks (“Debtor”) seeks confirmation of the Modified Plan to change the classification of U.S. Bank National Association and Rushmore Loan Management Services from a Class 1 Creditor to Class 4 because Debtor received a loan modification from Creditor. Additionally, Debtor seeks to reclassify Honda Financial Services claim from a Class 2A to a

Class 3 due to Honda being paid in full by Debtor's automobile insurance company. Motion, Dckt. 131 at 3.

The Modified Plan provides \$26,792.00 to be paid through November 2022, followed by plan payments of \$721.00 per month for the duration of the Plan. Modified Plan, Dckt. 133. 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 December 20, 2022. Dckt. 139. Trustee opposes confirmation of the Plan on the basis that:

- A. Prior Plan payments are not authorized.
- B. Not best efforts.
- C. American Honda Finance not listed as Class 3.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Section 7 of the Plan states all payments made by the Trustee are waived. Trustee has already disbursed \$8,439.57 in prior payments.

Therefore, Debtor may not be able to comply with the Plan. Additionally, Debtor indicates they intend to reclassify Honda Financial Services as Class 3. However, Honda is not listed as Class 3 in the proposed Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Disposable Income / Not Best Effort

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

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

Debtor increased voluntary retirement contributions from \$480.00, Supplemental Schedule I, Dckt. 117, to \$842.40, Supplemental Schedule I, Dckt. 136. Debtor does not explain the need to increase the voluntary contributions. The Plan proposes to pay a 7 percent dividend to unsecured claims, which total \$92,065.71. Debtor could increase the Plan payment which would lead to an increase in payments to unsecured claims. Thus, the court may not approve the Plan.

Looking at some of the Plan terms, they might be due to a clerical error. Others may demonstrate that Debtor is not prosecuting not only this Plan, but the Bankruptcy Case in good faith.

For the Class 2 Honda Finance Claim, the Modified Plan makes no provision for how the creditor was or is to be paid, and further expressly states that “All payments previously Class 1 or Class 2 payments paid by the Chapter 13 trustee and [appears to be a clerical error, with the word intended to be “are”] waived.

This covers the Class 1 payments made not only to Honda Finance, but also Capital One Auto Finance for its Class 2(A) secured claim. Confirmed Plan, ¶ 3.07; dckt. 78. While Capital One Auto Finance is included in Class 2(A) of the modified plan, it provides only for prospective payment of claims.

Thus, on its face, the Modified Plan appears to state that Debtor will prosecute both Capital One Auto Finance and Honda Finance to recover all of the plan payments previously made, with the only payments to be made to either being what is provided for in the Modified Plan.

Honda Finance is not provided for in the Modified Plan, so it appears Debtor will recover all payments previously received by Honda Finance and Honda Finance will be paid nothing through the Plan.

In the Motion to Confirm the Second Modified Plan, Debtor states that Honda Finance is now provided for as a Class 3 Claim - which would provide for the surrender of the collateral to Honda Finance. However, the Second Modified Plan does not list Honda Finance as being provided for in Class 3.

Destruction of Honda Finance’s Collateral

In the Motion to Confirm the Second Modified Plan and the Declaration of the co-debtors (Dckt. 134), that the Honda Accord was involved in an accident, was a total loss, and Honda Financial Services was paid in full on its secured claim. In the Motion to Incur Debt to purchase a replacement vehicle (Dckt. 122) Debtor provide an analysis of the insurance proceeds, the payment of the Honda Finance claim, and the \$25,628.81 in net proceeds after the payment of the secured claim which Debtor used as the down payment on the replacement vehicle.

Debtor’s Reasonable and Necessary Expenses in Computing Projected Disposable Income

In confirming the First Amended Plan (Order, Dckt. 97), the court and parties in interest relied upon the financial information provided under penalty of perjury by Debtor in Amended Schedules I and J. Dckt. 80. The information financial information provided under penalty of perjury as of the September 21, 2021 filing of the Amended Schedules I and J includes the following:

- A. Combined Monthly Gross Income.....\$12,246
- B. Combined Payroll Deductions.....(\$3,608)
 - 1. Includes Voluntary Retirement Contribution of.....(\$480)
- C. Combined Take Home Income.....\$8,638
- D. Expenses for Family of Four.....(\$4,776)

1. This included an additional (\$380) for possible increases in Debtor's Mortgage Payment.

E. Projected Disposable Income.....\$3,862

Moving to the Second Amended Schedules I and J filed on November 30, 2022, (Dckt. 136) to support the present Motion, the financial information includes:

- a. Combined Monthly Gross Income.....\$12,670
- b. Combined Deductions.....(\$4,267) (18.2% increase)
 - i. Includes increasing Voluntary Retirement Contribution from (\$480) to.....(\$842) (75.4% increase)
- c. Combined Take Home Income.....\$8,403 (2.7% reduction)
- d. Expenses for a Family of Four.....(\$7,682) (this now includes the mortgage payment)
 - i. Debtor sets medical and dental expenses at (\$300) a month on Second Amended Schedule J. However, on Second Amended Schedule I Debtor lists a deduction of (\$365) a month into an "HSA" (which the court infers to be a Health Savings account pre-tax, which monies are disbursed out to pay medical expenses. Thus, it appears that a monthly medical and dental expense of (\$300) to be deducted from Debtor's Take-Home income is illusory, that expense having already been deducted/paid through the (\$365) monthly HSA deduction.
- e. Projected Disposable Income.....\$721
 - i. With the mortgage payment of (\$3,002.50) being placed into Class 4 the "apples to apples" comparison of monies left after payment of all but mortgage expenses is \$3,723.
 - ii. The Debtor again states that Debtor "allocates \$380.00 in their budget for possible increase in their mortgage payment." Second Amended Schedule I, ¶ 24.

In reading this Debtor retaining \$380 a month for some possible future increase that may, or may not occur, what is sounds like is that Debtor has a plan to pocket \$380 a month, diverting it way from creditors. That total's \$22,800 over 60 months of a Plan. Debtor chooses to do this rather than a simple *ex parte* motion to modify plan to decrease the plan payment by the amount of some future increase when it actually occurs.

Additionally, it appears that Debtor is double deducting (\$300) a month in medical and dental expenses, which are already being paid from the (\$365) HSA monthly deduction. Over sixty months, at \$300 a month, Debtor would be pocketing an additional \$18,000 that is being diverted from creditors.

Combined, the phantom \$380 expense for possible future increases in the mortgage payment and the \$300 for medical expenses already covered by the (\$365) monthly HSA deduction total \$40,800 of projected disposable income that is not being paid into the Plan.

Increase in Retirement Contribution

In the Motion to Confirm the Second Modified Plan (Dckt. 131), while Debtor identifies various financial amounts and changes, no mention is made of Debtor increasing voluntary retirement contributions by 75%.

In their Declaration, the two joint-debtors provide no testimony why doubling of the voluntary retirement contribution is necessary or proper. They stand silent on this change diverting money away from the Plan.

Denial of Motion

Debtor is not providing Debtor's projected disposable income to fund this Plan. Debtor has, and seeks to continue, keeping \$380 a month for a non-existent expense and \$300 a month for medical expenses that are already funded by the (\$365) a month deduction into Debtor's Health Savings Account to pay such expenses.

Additionally, Debtor offers no explanation for increasing voluntary retirement contributions by 75% from (\$480) an month to (\$842) for the approximately (Debtor not clearly identifying the plan months for which payments have been made and the number of months for the modified payments) remaining thirty-eight (38) months of the Second Modified Plan. This \$362 a month increase of the voluntary retirement contribution over a period of thirty-eight months would result in an additional \$13,756 being diverted away from the Plan.

When added to the phantom mortgage expense and already HSA provided for medical expenses, that totals \$54,556 that Debtor seeks to divert from the Plan and into Debtor's pockets.

This Second Modified Plan not only fails to provide for payment of Debtor's projected disposable income, but manifests not merely a lack of good faith, but bad faith on behalf of Debtor, and each of them. They carefully avoid disclosing this in their Motion and Declaration. The double deducting of medical expenses is obvious. The phantom possible future mortgage expense is admitted by Debtor.

This Second Modified Bankruptcy Plan and the prosecution of this case by Debtor has been and is in bad faith.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Curtis Terence Burks and Carmen Vernita Burks (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2022. By the court's calculation, 57 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.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to insure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

It is unclear how a "bankruptcy regular" such as Movant and its experienced counsel have missed this requirement

At the hearing, **XXXXXXX**

The Hearing on the Motion to Confirm is continued to XXXXXXXXXX

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Terry Robert Dasno ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick

("Trustee"), filed a Non-Opposition on December 20, 2022. Dckt. 132. ~~The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

However, Debtor has not complied with Local Bankruptcy Rule 7005-1, not using the required Certificate of Service Form. Local Bankruptcy Rule 7005-1 was amended and the mandatory certificate of service form required pursuant to General Order 22-4 that was filed on October 6, 2022. The use of the mandatory certificate of service form has been required since

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

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

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

IT IS ORDERED that the Hearing on the Motion to Confirm is continued to **xxxxxxxxxx**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 3, 2022. 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.

The Objection to Confirmation of Plan is XXXXXXXXXX

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

- A. The debtor, Michael Allen Coffman (“Debtor”) and Susan Carol Coffman (“Late Co-Debtor”) failed to appear at 341 Meeting of Creditors.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Appear at 341 Meeting

The two debtors did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and

be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Counsel for the two debtors explained the issues facing the debtors and how Counsel and debtors were moving forward in the prosecution of this case. Counsel for the Chapter 13 Trustee concurred with the request to continued the hearing.

September 20, 2022 Status Report

On September 20, 2022, Trustee filed a Status Report indicating neither debtor did not appear at the continued meeting of creditors. Additionally, Debtor's Attorney informed Trustee that debtor the Late Co-Debtor Susan Carol Coffman has passed away.

September 27, 2022 Hearing

The Late Co-Debtor having passed away, the court was prepared to sustain the Objection to Confirmation. Debtor's counsel can canvas heirs and other possible representative to be appointed in this case to continue in prosecution, or the case may be dismissed.

At the hearing, the Trustee agreed to a continuance so a successor representative can be appointed and the case prosecuted.

Trustee's Status Report

Trustee filed a status report on December 19, 2022. Dckt. 30. Trustee still objects to confirmation of the Plan. Trustee states that the surviving Debtor admitted at Meeting of Creditors on December 15, 2022 that their tax returns are still being prepared, set to be filed end of December. The Meeting is continued to January 19, 2023 at 1:00 p.m.

January 10, 2022 Hearing

At the hearing, **XXXXXXXXXX**

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

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

The 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 **XXXXXXXXXX**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 10, 2022. By the court’s calculation, 61 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 granted and the Plan is confirmed.
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The debtor, Peggy Caryn Somkopulos (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for \$3,638.67 through August of 2022 and \$4,000.00 per month commencing October 2022. Amended Plan, Dckt. 73. 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 December 27, 2022. Dckt. 82. Trustee opposes confirmation of the Plan on the basis that:

- A. Creditor Deutsche Bank National Trust Company (“Creditor”) may not be adequately protected.
- B. Debtor removed assets on their amended Schedule A/B.

- C. Debtor's Amended Form 122C-1 shows net income from rental property and Social Security Income as \$3,025.72. However, Debtor's Amended Schedule J shows the total of these two as \$5,593.72.

DEBTOR'S REPLY

Ensminger Provisions

Debtor filed a Reply on January 3, 2022. Dckt. 85. Debtor states Creditor is adequately protected because there is a \$2,337.00 payment toward Principle and Interest, while Debtor also owes \$1,088.00 monthly toward escrow.

Additionally, upon the court's review, Debtor's Plan contains the most recent Ensminger Provisions approved by the court. From review of the provisions, the court finds Creditor is adequately protected.

Rectified Schedule Errors

Debtor's Reply also indicates there were errors in Schedule A/B/C and has made corrections. Upon the court's review, Debtor has filed Amended Schedules A/B and C, listing the assets that were inadvertently removed. Dckts. 88-89.

122C-1 Form

Debtor confirms the Current Monthly Income on the 122C-1 Form is correct. Debtor states, "Based on the actual disbursement of the backed-up Social being disbursed directly to the debtor thereby allowing for the increased monthly payment to \$3,743.72. Security due and scheduled originally on schedule B, but is now being disbursed and the increase payment can be made accordingly."

Based on the court's review of 122C-1, Dckt. 76, Debtor states under penalty of perjury, that their income six months prior to filing the bankruptcy case includes:

Debtor Income Details for the Period 11/01/2021 to 04/30/2022

Rent and Other Real Property Income

Source of Income: Rental Company

Net Income: \$1,850.00

Non-Current Monthly Income - Social Security Act Income

Source of Income: SDI

Constant Income: \$232.00 per month

Non-Current Monthly Income - Social Security Act Income

Source of Income: SSI

Constant Income: \$943.72 per month

These numbers would yield a net income of \$3,025.75. Based on the court's review of Schedule I/J, Dckt. 13, Debtor states under penalty of perjury:

Net income from rental property and from operating a business, profession, or farm: \$1,850.00

Social Security: \$2,526.00

These numbers would yield a net income of \$4,376.00. Although Debtor states the Current Monthly Income on the 122C-1 Form is correct, there are still discrepancies with Schedule I/J. This may be a result of increase in social security payments after the filing of the Petition. At the hearing, ~~XXXXXXXXXX~~

~~————— The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, 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, Peggy Caryn Somkopulos (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on November 10, 2022, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 14, 2022. By the court's calculation, 57 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor may not be able to make Plan payments because:
 - 1. The terms are vague and requires parties to research the court's docket to find the court's prior order, Dckt. 134.
 - 2. Debtor's budget is negative \$219.00 per month and Debtor admits he is borrowing money from a friend for the next six months to pay expenses.
 - 3. It is not clear whether Debtor's Attorney will be paid more than the \$4,000 "No-Look" fee.

- B. Debtor may fail the liquidation analysis because:
 - 1. There are assets of unknown values listed on Debtor's Schedule A/B which could indicate that Debtor may fail the liquidation analysis.
- C. Debtor has failed to provide business documents.

DEBTOR'S RESPONSE

Debtor filed a response on January 3, 2023, Dckt. 162, stating:

- 1. The matter was converted to Chapter 13 to give Debtor the opportunity to sell their former residence. Additionally, there are \$129,449.62 in net proceeds from the Fire Victim's Trust which may become available. Debtor says this is set forth in the court's Order, Dckt. 134.
- 2. Debtor believes they have until June 2023 to sell their property, although this is not mentioned in the court's Order.
- 3. Although Debtor has a negative budget, Debtor does not believe payments while the property is being sold was contemplated.
- 4. Debtor's attorney states so far they have received \$2,500.00 in fees and are requesting an extra \$4,000.00 "given the amount of work I had put into the case."

DISCUSSION

Review of Plan Terms

The monthly Plan payment amounts and the term of the Plan are stated in Section 7, the Additional Provisions, to the Chapter 13 Plan. Dckt. 143 at 8. These Additional Provisions provide:

- A. They state that "Plan Payments and Plan Duration should be consistent with the Court's Order filed 10/19/22 as Docket #134."

Looking at the plan language of this provision, it does not specify any Plan payments or duration of the Plan. It merely states that some unknown, unstated terms of the Plan should possibly be consistent with, but are not specified to be, consistent with some other non-Chapter13 Plan related order of the court.

The court's prior order (Dckt. 134) conditioned the conversion of this case on terms which include the following:

- 1. All net proceeds of the \$194,164.72 from the Victim Trust Fund for Paradise Camp Fire victims shall be disbursed directly to Debtor's counsel to be held in Debtor's counsel's trust account.

2. Debtor's counsel shall then deposit the net proceeds into a blocked account established by the Debtor, who is the fiduciary of the bankruptcy estate, and no monies shall be disbursed therefrom without further order of the court.
 3. Any subsequent Victim Trust Fund monies to be disbursed to Debtor shall be deposited into the blocked account.
 4. The Debtor shall file a motion for payment of the Chapter 7 administrative expenses no later than twenty (20) days after the court's final order allowing such administrative expenses.
 5. That from the initial Victim Trust Fund distribution, the monies shall be used to pay the Chapter 7 administrative expenses, payment to creditor Creative Judgment Solutions on its secured claim, and the Chapter 13 administrative expenses, without the confirmation of a plan required. This was a condition on the conversion.
 6. An additional condition of the conversion, that Debtor is to proceed with the sale of the Acton Property
- B. Any payment on the Claim of Caraly Johnson shall not be paid to her, but to her attorney, for deposit into his trust account. This appears to be bankruptcy claim of Debtor's soon to be ex-spouse. It is unclear what happens to the money after it is deposited in Caraly Johnson's attorney's trust account.

Subsequent to the filing of the Plan, the court dismissed without prejudice the Debtor's Objection to the Claim of Caraly Johnson. Order, Dckt. 155. On November 11, 2022 Debtor filed a Notice of Withdrawal (which the court construed to be an ex parte motion to dismiss the Objection to Claim) and a Stipulation (which has not been approved or ordered by the court), providing: (1) Chapter 13 Plan distributions on Caraly Johnson's claim shall be disbursed by the Chapter 13 Trustee to Debtor's counsel; (2) Debtor's counsel shall deposit them in his trust account; and (3) the monies from the trust account will be disbursed from Debtor's counsel's trust account "after [the Debtor's and Caraly Johnson's] respective interests in the funds have been determined by the Butte County Superior Court in the Dissolution of Marriage proceeding,"

As written, the Chapter 13 Plan requires the monies to be held in Caraly Johnson's attorney's trust account, with no provision made for the disbursement thereof.

- C. Finally, it provides for Debtor's counsel to be paid \$4,000.00 by the Trustee for his services as Debtor's counsel.

This provision appears to flush away the requirements for Debtor's counsel to either elect the "no-look fee" or opt-out and seek recovery of fees using the standards of 11 U.S.C. § 329 and § 330. Plan, ¶ 3.05. It is unclear how Debtor and Debtor's counsel can elect to opt out from the Local Bankruptcy Rules (see Rule 2016-1) and impose their private determination of fees on the court.

Creative Judgment Solutions is listed as having a Class 2 Claim (Plan ¶ 3.08), with no monthly payment provision stated. One is directed to "See Nonstandard Provisions." As discussed above, the

Additional Provisions do not specify how the claim is to be paid, but that it is unstated, but it will be “consistent” with the court’s order converting the case.

The only other class of claims provided for are Class 7 general unsecured claims (Plan ¶ 3.14). No minimum distribution percentage is stated and one is again directed to “See Nonstandard Provisions.” The Additional Provisions do not provide for any distribution on unsecured claims. To the extent that Debtor and Debtor’s counsel want to rely on their “consistent with the court’s conversion order,” it makes no reference to payments to creditors holding general unsecured claims.

Ruling

Trustee’s objections are well-taken.

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).

Section 7 of Debtor’s Plan states “Plan Payments and Plan Duration should be consistent with the Court’s Order filed on 10/19/22 as Docket #134.” It is unclear what the Plan terms are and may cause confusion for the Trustee, Debtor, and other parties in interest, when determining whether Debtor is complying with the Plan. Section 7 should be updated to reflect the proper Plan Payments and Plan Duration to avoid confusion.

To comply with the Plan, Section 2.01 requires monthly Plan payments. Debtor not contemplating a Plan payment is in violation of the Plan. Additionally, the negative income and having to borrow money from a Plan indicates Debtor may be unable to make Plan payments even if they contemplated them in the Plan.

Debtor’s Plan indicates they are complying with Local Bankruptcy Rule 2016-1(c). Under 2016-1(c), in a nonbusiness case, the maximum fee to be charged is \$4,000.00 in a nonbusiness case. Debtor’s attorney is seeking \$6,500.00. “If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees.” Local Bankruptcy Rule 2016-1(c)(3). Debtor’s attorney has not applied for additional fees. Rather, they simply add the additional fees to the Plan. This is in violation of Local Bankruptcy Rule 2016-1(c), therefore, the Plan cannot be confirmed.

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

Debtor May Fail Liquidation Analysis

Debtor’s plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Upon review of Debtor’s Schedules A/B, certain property including: Chevy ½ Ton Truck, MPG Ultralite 2800, and PG&E Claim For Damages in Camp Fire in Paradise have a value of either \$0.00 or “unknown.” Without the proper valuation of these assets, it is unclear whether Debtor passes the liquidation analysis.

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, and
- C. Six months of bank account statements, and

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.

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

This Plan, the vague “consistent with” terms, Debtor’s counsel filing a response but no declaration filed by Debtor providing evidence of facts alleged therein, and not specifying a sale date for the Property but Debtor’s response merely being that it is Debtor’s belief that he should have until the end of June 2023, do not demonstrate a Debtor prosecuting a Chapter 13 case and proposed plan in good faith.

Debtor’s counsel then states that in prior, non-confirmation hearing, Debtor does not believe that he would be required to make any Plan payments in a Chapter 13 case. Rather, that his Plan is that he pay when he determines reasonable, what he determines reasonable, and on terms that he concludes are “consistent with” the court’s prior order imposing conditions on the conversion of this case to one under Chapter 13.

With such vague, Debtor determined provisions, it is not beyond possible that if the Plan were confirmed, Debtor and Debtor’s counsel would come forward and assert that the confirmed Plan vacates the court’s prior order, it being replaced by the subsequently confirmed Plan. Debtor and Debtor’s counsel would then dictate what the vague “consistent with terms” are, as determined by Debtor and Debtor’s counsel.

This conduct puts into question the viability of this case in Chapter 13 and Debtor’s ability to fulfill the duties and obligations of a Chapter 13 debtor, as well as his fiduciary duties to the Bankruptcy Estate and ultimately the Chapter 13 Plan Estate.

The court does note that there are only two creditors in this case: Creative Judgment Solutions on its secured claim and Caraly Johnson on her claim as Debtor’s soon to be ex-wife. It may well be that this close “circle of parties” have led Debtor and Debtor’s counsel to slip into a “yeah, it really doesn’t matter, we know what we know.” However, that doesn’t provide the court with a confirmable plan.

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).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 8, 2022. By the court's calculation, 33 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.

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

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

- A. Debtor may not be able to make Plan payments.
- B. The Plan may not Debtor's best efforts.
- C. Debtor has failed to provide Trustee with sixty days of employer payment advices.

DISCUSSION

Trustee'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).

The Internal Revenue Service filed a secured tax claim in the amount of \$36,836.88. Proof of Claim 3-1. The Plan does not provide for treatment of the claim. It is unclear whether Debtor's pension payments will be garnished due to failure to provide for the Internal Revenue Service's claim.

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

Failure to Provide Disposable Income / Not Best Effort

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.

Form 122C-2 - Employment Concerns

In Trustee's lengthy discussion under best efforts, it appears the Trustee has heartburn with whether debtor Matt Denny Sanchez was working for Calpers and whether debtor Esther Anna Maria EDD, or whether this was other compensation like pension or retirement. From review of Debtor's attachments to their Current Monthly Income Form 122C-2, debtor Matt Denny Sanchez states an income from their employer Calpers of \$5,957.72 per month and debtor Esther Anna Maria Sanchez states an income from their employer EDD of \$557.50 per month. Form 122C-2, Dckt. 1 at 59-60. Additionally, Debtor provides a breakdown of their paychecks as an additional attachment, further pointing to being employed, not receiving pension or retirement funds.

Form 122C-2 - Tax Withholding and Involuntary Deductions Discrepancies

Additionally, Trustee believes Debtor made mathematical errors in deductions on Form 122C-2. Form 122-C-2 shows Debtor's taxes as \$913.38 and involuntary deductions as \$115.88.

Further, Debtor's Amended Schedule I shows tax withholdings of \$682.43 and an involuntary deduction of \$20.00 for union dues for debtor Matt Denny Sanchez's employment.

However, Debtor's Paycheck Details (Dckt. 1 at 61) show tax withholdings totaling \$378.19 and no involuntary deductions. Based on the paycheck details, debtor would have positive disposable income of \$378.79, rather than a negative income of \$272.28.

Debtor should resolve the petition in order for a proper evaluation of whether the Plan is in Debtor's best efforts.

High Expenses

Upon review of Debtor's Schedule J, Debtor has no dependants. For the two co-debtors, there are a few expenses higher than a typical bankruptcy debtor.

Food and housekeeping supplies.....\$1,000.00

Clothing, laundry, and dry cleaning.....\$280.00

Personal care products and services.....\$300.00

Transportation.....\$1,000.00

Schedule J, Dckt. 1 at 38. Without these high expenses, there would be more disposable income to fund the Plan. At the hearing, **XXXXXXXXXX**

Failure to Provide Pay Advices

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

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).

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 December 7, 2022. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), / Name of Creditor ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in Plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on January 3, 2023. Dckt. 17. Debtor states they are working with counsel to amend the Plan.

DISCUSSION

Delinquency

Debtor is \$5,183.00 delinquent in plan payments, which represents one month of the \$5,183.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 5, 2022. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Susan Elizabeth English ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$1,490.00 per month for 2 months then \$2,290.00 per month for 58 months. Amended Plan, Dckt. 25. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 19, 2022. Dckt. 29. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not provided documentation, as requested by Trustee, as to the value of the mobile home Debtor has fifty-percent interest in.

DEBTOR'S SISTER'S DECLARATION

Debtor's sister, Lynda Blaise Beach, filed a declaration stating she is willing and able to assist Debtor to pay unsecured claims. Dckt. 32. Debtor's sister is willing to immediately give her sister \$12,500.00.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a supplemental declaration on December 29, 2022. Dckt. 33. Debtor states after her mother passed away ten (10) years ago, her sister and Debtor agreed the mobile home was her sister's. Debtor has not paid for any repairs or expenses, nor has Debtor been working on or monitoring the mobile home.

The court notes, however, under penalty of perjury, on Debtor's Statement of Financial Affairs, Debtor admits to transferring the mobile home to her sister in January of 2022. Dckt. 1 at 39 ¶ 18. This runs contrary to Debtor's suggestion that Debtor and Debtor's sister agreed "right after" her mother's death, ten years ago, that the mobile home was her sisters.

At the hearing, **XXXXXXX**

DISCUSSION

Failure to Provide Value of Asset

Debtor admitted, at the 341 Meeting, that the mobile home was inherited jointly, with her sister, from their late mother's estate, and that Debtor's sister is actively looking to sell the mobile home. Objection to Confirmation, Dckt. 15. Trustee requested documentation to the value of the mobile home. *Id.* Trustee believes that Debtor's 50% interest in the property should be paid to unsecured creditors, but cannot accurately determine the amount until the supportive documentation requested from the Debtor has been provided. *Id.* Debtor still has not provided that documentation.

Debtor is required to cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required documentation.

However, Trustee indicates sale efforts have progressed because a "Zillow" and "Redfin" search show a sale price of \$167,000.00. Therefore, it appears Trustee has a rough value of the mobile home.

Also, Debtor's sister declares under penalty of perjury that they are ready and willing to provide their sister with the funds necessary to pay unsecured creditors. Additionally, the Plan proposes to pay one-hundred percent of unsecured claims. As such, the court does not find that failure to provide the documentation as to the value of the mobile home is grounds, in and of itself, to deny confirmation of this Plan.

Transfer of Interest in Mobile Home and Debtor's Fiduciary Duties

While Debtor now testifies in a supplemental Declaration that she and her sister "agreed ten years ago that the mobile home was her sisters, it appears that the legal title did not reflect that until January 1, 2022, which is only nine months before the commencement of this Chapter 13 case on September 1, 2022. This raises various issues for Debtor and Debtor's counsel, both having fiduciary duties to the Bankruptcy Estate, including those arising under 11 U.S.C. § 544(a), § 547, and § 548 concerning the January 1, 2022 transfer.

The court notes that Debtor states in her statement of her financial affairs that the 50% ownership in the Mobile Home had a value of \$5,000.00. This contrasts sharply with the reported \$167,000 sales price in 2022.

Terms of Plan and Addressing the Transfer Issue

Here, Debtor's Amended Plan is quite simple. It is a 60 month term, during which for the first two months Debtor makes monthly Plan payments of \$1,490.00, and then for the remaining sixty months makes monthly Plan payments of \$2,290.00. Amended Plan Nonstandard Provisions, § 7.01; Dckt. 25.

Of significant interest to Debtor is to cure the arrearages on the secured claims of Golden 1 Credit Union and Special Loan Servicing, LLC that are secured by Debtor's residence. The only other claims to be paid are \$7,665.69 in general unsecured claims.

Looking at the proofs of claim filed, both Golden 1 Credit Union POC 2-1 for (\$50,730.46), and Specialized Loan Servicing POC 3-1 for (\$63,752.68) appear to be grossly oversecured by the Almond Avenue Property which Debtor lists on Schedule A/B as having a value of \$467,000 (Dckt. 1 at 9). Neither creditor listed a value of its collateral on their respective proofs of claim, but both stated that none of the claims were unsecured.

The balance of Claims filed are for general unsecured claims consisting of the following:

Proof of Claim 1-1	Cavalry SPV I, LLC	(\$3,339.77)
Proof of Claim 4-1	Cavalry SPV I, LLC	(\$1,614.52)
Proof of Claim 5-1	Portfolio Recovery Associates, LLC	(\$4,325.92)
		=====
Total General Unsecured Claims Filed		(\$9,280.21)

The Proof of Claim deadline for non-governmental creditors expired on November 10, 2022.

However, the deadline for governmental units to file proofs of claim does not expire until February 28, 2023. Dckt. 11.

Debtor and her sister have proposed a solution, with Debtor's sister gifting Debtor \$12,500.00 so that the general unsecured claims can be paid in full right at the start of the Plan, leaving only Golden 1 Credit Union and Specialized Loan Servicing to be paid on their substantially oversecured claims.

With the unsecured claims out of the way, then creditors who would benefit from avoiding the transfer of the mobile home interest are done and out of the case. This minimizes the economic impact.

As provided in 11 U.S.C. § 546, the avoiding powers under 11 U.S.C. §§ 544, 545, 548, or 553 must be exercised by the later of two years after entry of the order for relief in the bankruptcy case (here September 1, 2022) or one year after the appointment of a trustee if appointed in the two year period after

commencement of the case. (This does not alter the State statute of limitations on exercising avoiding powers under State law.)

With this Plan, by February 24, 2023, the Trustee and parties in interest will know whether governmental claims are filed and whether that dollar amount then results with the Debtor, as a fiduciary of the Bankruptcy Estate or Plan Estate, to prosecute avoiding actions. Further, if the Debtor fails to, whether conversion to Chapter 7 is necessary so that a Chapter 7 trustee fulfills such duties of a fiduciary of the bankruptcy estate.

At the hearing, **XXXXXXX**

~~————— The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, 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, Susan Elizabeth English (“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 December 3, 2022, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 20, 2022. By the court's calculation, 37 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 XXXXXXX

At the prior continued hearing on October 18, 2022, counsel for the Debtor, counsel for the Chapter 13 Trustee, and counsel for creditors had a productive discussion about how the Debtor could prosecute the proposed Amended Chapter 13 Plan in this case.

The Parties agreed to continue the hearing on the Motion to Confirm the proposed Amended Chapter 13 Plan to 2:00 p.m. on January 10, 2023.

It was further agreed that the order continuing the hearing would further authorize the Chapter 13 Trustee to make the \$1,435.83 adequate protection payment to creditor Freedom Mortgage Corporation on its secured claim which is provided for in paragraph 7.02.2 of the Section 7 Non Standard Provisions of the proposed Amended Plan. Dckt. 50.

The Trustee will further investigate whether Debtor has refund in 2022, of which the Amended Plan requires that \$2,400.00 must be paid into the Plan. Non Stand Provision, ¶ 7.01

Trustee reported that Debtor is \$2,400 in arrears

JANUARY 10, 2023 HEARING

The court's review of the Docket on January 9, 2023, disclosed that nothing new has been filed in connection with this Motion.

At the hearing, **XXXXXXX**

REVIEW OF MOTION AND HISTORY OF PROCEEDINGS

The debtor, Dennis A. Frazier ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$1,750.00 for 57 months, and a 100% dividend to unsecured claims totaling \$12,047.35. Amended Plan, Dckt. 50. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S CONDITIONAL OBJECTION

First Trust ("Creditor FT") holding a secured claim filed a Conditional Objection on April 7, 2022. Dckt. 75. Creditor FT conditionally opposes confirmation of the Plan on the basis that:

- A. Creditor FT requires clarification that the Plan will be amended to incorporate the entirety of Creditor FT's judgment if ongoing adversary proceeding is resolved in Creditor FT's favor.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on April 11, 2022. Dckt. 78. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan is contingent on the court's granting of Debtor's Motions to Value Secured Claim and To Avoid Lien.
- B. It is unclear whether Debtor intends to prosecute the ongoing adversary proceeding.
- C. Debtor failed to file supplemental Schedules I and/or J.

DEBTOR'S REPLY

Debtor filed a reply to Trustee's opposition on April 19, 2022. Dckt. 84. In their reply, Debtor responds to Trustee with the following:

- A. Debtor's Motion to Avoid Lien is set for hearing on May 10, 2022 and has not been opposed yet.
- B. Regarding the Adversary Proceeding, Case No. 22-02008, Debtor and Creditor FT applied for Bankruptcy Dispute Resolution ("BDR"). As a means of resolving the claim. Debtor will file a cross-complaint if BDR is not successful.

DISCUSSION

Clarification of Creditor FT's Claim

Creditor FT has a recorded deed of trust secured by Debtor's residence in the amount of \$75,000.00. Claim 2-1. Debtor did not object to Creditor FT's secured claim. Creditor FT initiated Adversary Proceeding No. 22-02008 ("*First Trust v. Frazier*") to determine whether the deed of trust is a valid and enforceable lien against Debtor's residence. Objection, Dckt. 75 at 2:16-18. It should be noted that Creditor FT's Objection contains a typographical error and mistakenly references the case number as 22-020078 rather than 22-02008.

Creditor FT is aware that Debtor's Plan provides an "opaque statement" indicating that Debtor will amend the Plan within fourteen (14) days of the "entry of order [of the judgment in *First Trust v. Frazier*]." *Id.* at 2:27-28. However, Creditor FT requests the language to specifically state:

[I]n the event that the judgment in [*First Trust v. Frazier*] provides that the Deed of Trust is [a] valid lien on Debtor's real property and/or is a judgment for money owed by Debtor to Creditor First Trust, that the Amended Plan will be further amended to be entirely consistent with the judgment in [*First Trust v. Frazier*].

Id. at 3.

Debtor's Reply (Dckt. 84) does not indicate whether they accept the above language of Creditor FT.

Debtor's Reliance on Motion to Avoid Lien

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Kelstin Group, Inc., dba Pacific Credit Services ("Kelstin"). Debtor filed a Motion to Avoid Lien in connection with this claim on April 1, 2022 and it is set for hearing on May 10, 2022. See Dckt. 69. Trustee filed a Response indicating non-opposition on April 11, 2022. Dckt. 81.

Trustee notes that Debtor's Plan also relies on a Motion to Value Secured Claim and Avoid Lien in connection with Creditor FT's secured claim. Dckt. 78 at 2:1-2. Debtor has not filed such motion. If Debtor does not file such Motions and/or they are not granted, Debtor's Plan will be insufficient to pay Creditor FT's claim in full. *Id.* at 2:4-7. In Debtor's Reply, with respect to Creditor FT, Debtor "requests that the Motion to [be] continued [a]fter completion of [the BDR] process." Dckt. 84 at 1:24-26. The court is unsure what Motion Debtor is referring to, as Debtor has not filed any Motions in connection with Creditor FT's claim. Regardless, without the court valuing the claim(s) of Kelstin and First Trust, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor's Prosecution of Adversary Proceeding

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Trustee states that it is unclear, based on the Amended Plan, whether Debtor intends to prosecute *First Trust v. Frazier*. Dckt. 78 at 2:16-18. Debtor's Plan states, "Debtor shall prosecute Adversary #22-

020078[.]” Dckt. 50 at 7. The trustee is uncertain of treatment of Creditor FT’s claim if the Plan is confirmed.

Similarly to the typographical error made by Creditor FT in its Objection, Debtor appears to have erred in providing the correct case number. The court finds that Debtor meant to state they intended to prosecute #22-02008.

Debtor’s Reply states that Debtor and Creditor FT applied for Bankruptcy Dispute Resolution (“BDR”) to resolve the claim without further litigation. Dckt. 84 at 2:3-5. In the event that the BDR is unsuccessful, Debtor intends to apply for permission to file a cross complaint against Creditor FT. *Id.* at 2:6-8.

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

Debtor Failed to File Schedules I/J

Trustee states Debtor’s bankruptcy case was filed on November 9, 2021. Dckt. 78 at 2:19-20. Accordingly, Trustee is uncertain if Debtor’s income and expenses have changes in the last five (5) months. *Id.* at 2:20-21. Debtor’s Reply does not address this deficiency. Without Debtor’s supplemental Schedules I/J, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

April 26, 2022 Hearing

At the hearing, Counsel for Debtor advised the court that Debtor and Creditor FT agreed to participate in the BDRP in an effort to resolve their disputes. All parties in interest at the hearing agreed to a continuance of this hearing to allow the BDRP mediation to proceed.

Motion to Avoid Lien

On April 1, 2022 Debtor filed a Motion to Avoid Lien of Kelstin. Dckt. 69. On May 15, 2022 an Order Granting Motion to Avoid Lien was entered. Dckt. 91. The Order states the judgment lien is avoided in its entirety pursuant 11 U.S.C. § 522(f)(1). This seems to resolve part of Trustee’s opposition to the Motion to Confirm Amended Plan.

July 12, 2022 Hearing

At the hearing the Parties agreed to continue this hearing, as determination of confirmation is impacted by the Adversary Proceeding (22-2008) between Debtor and Creditor FT, and confirmation cannot be determined until that matter is resolved.

U.S. Bank Trust National Association Opposition

U.S. Bank Trust National Association, as trustee for RMTP Trust Series 2021 Cottage-TT-V, its successors and/or assigns (“Creditor USBT”), filed an Opposition on October 4, 2022. Dckt. 103. The Opposition states that:

- A. Creditor USBT's claim is secured by a Deed of Trust on Debtor's principal residence located at 2 Odom Court, Sacramento, California. As of November 1, 2021, Debtor was in default by \$29,419.27.
- B. Creditor USBT further states that the Amended Plan includes provisions to address pre-petition arrears due, and adequate protection payments, while a loan modification application is pending. Creditor USBT states that Debtor initiated the application process, as detailed in the Amended Plan, with Freedom Mortgage Corporation, the prior loan servicer. However, the loan has since been transferred to Creditor USBT.
- C. Creditor USBT states that no loan modification application is currently pending.
- D. Additionally, no adequate protection payments of \$1,435.83 have been paid yet.

Therefore, Creditor USBT requests that the Plan be further amended to provide for the payment of the pre-petition arrears in full and maintenance of the regular post-petition payments as they become due.

October 18, 2022 Hearing

At the hearing, counsel for the Debtor, counsel for the Chapter 13 Trustee, and counsel for creditors had a productive discussion about how the Debtor could prosecute the proposed Amended Chapter 13 Plan in this case.

The Parties agreed to continue the hearing on the Motion to Confirm the proposed Amended Chapter 13 Plan to 2:00 p.m. on January 10, 2023.

It was further agreed that the order continuing the hearing would further authorize the Chapter 13 Trustee to make the \$1,435.83 adequate protection payment to creditor Freedom Mortgage Corporation on its secured claim which is provided for in paragraph 7.02.2 of the Section 7 Non Standard Provisions of the proposed Amended Plan. Dckt. 50.

The Trustee will further investigate whether Debtor has refund in 2022, of which the Amended Plan requires that \$2,400.00 must be paid into the Plan. Non Stand Provision, ¶ 7.01

Trustee reported that Debtor is \$2,400 in arrears

January 10, 2023

At the hearing, **XXXXXXXXXX**

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Dennis A. Frazier (“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
XXXXXXXXXX

10. [22-22848-E-13](#)
[AP-1](#)

JEFFREY/NIKEA HARRISON
Thomas Amberg

**OBJECTION TO CONFIRMATION OF
PLAN BY ROCKET MORTGAGE, LLC**
12-6-22 [\[21\]](#)

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 December 6, 2022. By the court’s calculation, 35 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is overruled.
--

Rocket Mortgage, LLC f/k/a Quicken Loans, LLC (“Creditor”), a creditor holding a secured claim, opposes confirmation of the Plan on the basis that:

- A. The Plan was not proposed in good faith because it is the third bankruptcy filing in three (3) years.

DEBTOR'S RESPONSE

Debtor filed a response on December 27, 2022. Dckt. 26. Debtor counters Creditor's argument that the Plan was not proposed in good faith. Debtor, additionally, filed a Declaration, Dckt. 27, indicating the reasons the prior cases were dismissed and why they believe this third case will be successful. Additionally, Debtor states they have already made their first Plan payment to Trustee.

DISCUSSION

Multiple Bankruptcy Filings

Creditor argues that Debtor has filed three (3) bankruptcy cases in the last three years, with the intent to delay a scheduled or postponed foreclosure sale on their property. Creditor cites *In re Goeb*, 675 F.2d 1386 (9th Cir. 1982) and *In re Warren*, 89 B.R. 87 (B.A.P. 9th Cir. 1988).

Under the Ninth Circuit decision, *In re Goeb*, the Ninth Circuit states to determine whether there is good faith, a bankruptcy court, "must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Act, or otherwise proposed his Chapter 13 plan in an inequitable manner." *In re Goeb*, 675 F.2d at 1390. The Ninth Circuit states a court must make its determination in light of all mitigating factors.

Under the Ninth Circuit Bankruptcy Appellate Panel Decision (B.A.P.), *In re Warren*, the B.A.P. listed a number of guidelines for determining good faith:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. at 93. However, as explained in the leading treatise on bankruptcy, “the fact that bankruptcy relief has been sought previously should cease to be a factor in determining good faith when a debtor proposes to pay to creditors all that the debtor can reasonably afford to pay.” 8 Collier on Bankruptcy P 1325.04 (16th 2022). Although a debtor’s history of filings and dismissals is relevant, a judge should ask whether there was misrepresentation, manipulation, or otherwise inequity in filing the petition or plan. *Eisen v. Curry (In re Eisen)*, 14 F.3d 469, 470 (9th Cir. 1994).

Here, Debtor had two prior Chapter 13 cases filed in the last three (3) years. A review of the two prior cases show:

	Case No. 20-21596	Case No. 21-20806
Date Filed	March 16, 2020	March 8, 2021
Plan Confirmed	No	July 15, 2021, Dckt. 48
Modified Plan Confirmed	N/A	March 24, 2022, Dckt. 79
Total Paid By Debtor	\$0.00	\$21,915.26
Case Dismissed	May 3, 2020	July 19, 2022
Reason Dismissed	Debtor filed an Ex Parte Motion to Dismiss on May 1, 2020 for reasons unknown. Motion, Dckt. 16.	Debtor was delinquent less than three months in Plan payments. Motion, Dckt. 80. Debtors filed a Nonopposition to Trustee’s Dismissal. Dckt. 84.
Number of Months Case Pending	3	17

Additionally, Debtor’s Declaration in the pending case, Dckt. 27, provides explanation for the dismissed cases:

Case No. 20-21596 Debtor filed at the start of the pandemic and was unable to maintain payments due to the uncertainty of their job.

Case No. 21-20806 Debtor’s income was initially stable, until personal matters caused lower income and increased expenses.

As for the pending case, Debtor states family affairs and their employment is now stable. Therefore, the believe the proposed Plan is feasible.

Unlike Creditor, the court does not find Debtor's prior filings indicate bad faith. As Debtor explained, the first case was filed at the start of the pandemic. Economic instability was at the forefront of many American families. Additionally, knowing Debtor could not make payments, they filed an ex parte motion to dismiss, rather than waiting for the Trustee to move the court to dismiss.

Debtor's second case spanned well over a year. Debtor was diligently prosecuted the case, until, as explained in their declaration, income was reduced and expenses increased.

Looking at Schedule I, Jeffrey Harrison has been employed by a major airline for the past 17 years. Co-debtor Nikea Harrison has been employed one year with her current employer and also has a new second job (having been so employed for one week when the case was filed). Dckt. 12 at 29-30.

The court does not find, under the totality of circumstances, that the current case was not proposed in good faith. The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation.

In saying this, the court does not ignore Creditor's concerns or the multiple filings. The 2020 - 2022 period has been one of much dislocation and disruption for lenders and borrowers alike. Additionally, the court notes that Debtor was thrown a family obligation curve. These are not excuses for failing to perform a bankruptcy plan or complete a case, but factors to consider.

As Debtor's experience knows, while bankruptcy has its redemptive side, it also requires good faith compliance with the law. This includes financial reality in presenting and prosecuting a plan. Looking at Schedule A/B, Debtors list owning two vehicles with 175,000+ miles on them, and a third vehicle with 70,000 miles. With Debtor's Plan, \$3,939 a month must be paid into the Plan by the Debtor, with his continuing for 60 months. Plan ¶¶ 2.01, 2.03. Looking at Schedules I and J, that is Debtor's entire projected disposable income. Dckt. 12 at 33. If any significant repairs were required on the older vehicles, the Plan would flip upside down.

Taking all of the facts and circumstances into account, and the cure payments required to be made to Creditor, the Objection to Confirmation is overruled.

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 Rocket Mortgage, LLC f/k/a Quicken Loans, LLC ("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 is overruled, and Jeffrey Jerome Harrison and Nikea Latrese Harrison's ("Debtor") Chapter 13 Plan filed on November 10, 2022, 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.

11. [22-22352](#)-E-13
[DPC-1](#)

MAUREEN MCGUIRE
Mary Ellen Terranella

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
DAVID CUSICK
10-27-22 [\[12\]](#)

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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice, on October 27, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX
--

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

- A. Debtor may not be able to afford the Plan payment, but the plan lacks enough information regarding Debtor's real property and any potential sale thereof.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor does not provided adequate details as to the Alameda County Property and the sale of the Property. Debtor claims the sale of the Property will pay all secured and unsecured claims in full, however, does not provide the court any material details on the sale including the address of the property, the date, time, and estimated proceeds of the sale, and more. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, counsel for the Debtor stated that the address of the Property is in the Petition, the 2247 Buena Vista Ave, and the property is being sold, with a motion to sell being filed.

The Parties requested a continuance so that Debtor's counsel can "iron out" these issues, including what interest the Debtor holds in the property, which is property of Debtor's Mother's Trust, for which Debtor is the trustee owing a fiduciary duty to the beneficiaries of the Trust.

Trustee's Status Report

Trustee filed a Status Report on December 19, 2022. Dckt. 21. Trustee states Debtor claims their interest in the property is only \$250,000 and repairs are \$250,000. Therefore, Debtor does not appear to be able to pay any sum unless this information is incorrect.

Debtor's Response

Debtor filed a response on December 27, 2022. Dckt. 24. Debtor states they have amended Schedules A and B to more clearly describe their interest in the Property. Additionally, Debtor agrees Debtor has a beneficial interest in the trust which is property of the bankruptcy estate, not the property itself. Upon review of Debtor's Amended Schedule A/B, Dckt. 23, Debtor states:

Debtor is the trustee of her deceased mother's trust. The content of the trust is real property located at 2247 Buena Vista Avenue, Alameda . . . Debtor and her sister, Kathleen Shelby, are currently the sole beneficiaries of the trust. . . [Debtor] entered into a CA Residential Purchase Agreement . . . with a Sales Price of \$435,092.10; such sale requires approval of the court . . . The sales price reflects significant repairs needed to the property . . . Debtor's beneficial share of sales proceeds will pay off all secured claims and all filed claims.

Amended Schedule A/B, Dckt. 23.

January 10, 2022

At the hearing, **XXXXXXXXXX**

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

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

The 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 **xxxxxx**

12. [21-23887-E-13](#)
[SMJ-1](#)

**NIKOLAAS BOS/SARAH
BEST**
Scott Johnson

**MOTION TO APPROVE LOAN
MODIFICATION**
12-6-22 [\[26\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 6, 2022. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Approve Loan Modification is granted.
--

The Motion to Approve Loan Modification filed by Nikolaas Bos and Sarah Michel Best (“Debtor”) seeks court approval for Debtor to incur post-petition credit. Pennymac Loan Services, LLC (“Creditor”), whose claim the Plan provides for as a Class 4 creditor, Order Confirming Plan, Dckt. 9, has agreed to a loan modification.

The current amount of the secured claim is \$567,073.39. The payments include \$2,511.69 in principal and interest, and \$1,056.63 in escrow, for a total payment of \$3,568.32 per month with a 3.25% fixed annual interest rate.

The new claim balance will be \$581,583.45. The payments will include \$3,303.82 per month in principal and interest, and \$1,070.31 per month for the initial monthly escrow payment, for a total payment of \$4,374.13.

The modification will capitalize on delinquent interest for unpaid mortgage fees, delinquent escrow payments, and bankruptcy attorney fees and costs. Exhibit A, Dckt. 29 at 14. Given Creditor's Proof of Claim indicates no delinquency prior to filing, Proof of Claim 4-1, it appears Debtor has become delinquent in payments to Creditor post-petition.

The Motion is supported by the Declaration of Debtor. Dckt. 28. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

Trustee's Opposition

Trustee filed an opposition on December 19, 2022. Dckt. 31. Trustee's concerns include:

1. The loan modification is silent on whether they will continue to treat Creditor as a Class 4 claimant, or move them to a different class.
2. Trustee does not believe the loan modification is in Debtor's best interest because it increases their monthly mortgage payment, interest rate and extends the term of their loan.
3. The proposed loan modification increases Debtor's total monthly payment by \$775.96 per month. Trustee requests Supplemental Schedule J to ensure Debtor can continue making Plan payments.

DISCUSSION

The court agrees Trustee's concerns. An increase in the mortgage payment, interest, and length of the term does not appear in best interest of the Debtor. Additionally, Debtor's Plan payment is \$2,650.00. Plan, Dckt. 3. Debtor's most recent Schedule J shows net income of \$2,672.77. Schedule J, Dckt. 1. Therefore, without Debtor amending their Schedules to show either an increase in income or decrease in expenses, this loan modification does not seem feasible.

At the hearing, **XXXXXXXXXX**

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

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

The Motion to Approve Loan Modification filed by Nikolaas Bos and Sarah Michel Best (“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 Loan Modification is **xxxxxxxxxx**.

FINAL RULINGS

13. [20-20571-E-13](#)
[BLG-2](#)

GEMIE/JULIETA BACANI
Chad Johnson

MOTION TO MODIFY PLAN
11-17-22 [\[27\]](#)

Final Ruling: No appearance at the January 10, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 17, 2022. By the court's calculation, 54 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, Gemie Nabung Bacani and Julieta Mejia Bacani ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on December 20, 2022. Dckt. 36. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Gemie Nabung Bacani and Julieta Mejia Bacani (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on November 17, 2022, 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.

14. [22-22917-E-13](#)
[DPC-1](#)

JOHN DOUGHERTY
Mary Ellen Terranella

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
12-13-22 [17]

14 thru 15

Final Ruling: No appearance at the January 10, 2023 Hearing is required.

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 December 13, 2022. 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.

<p>The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on February 7, 2023.</p>

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

A. Debtor failed to appear at the First Meeting of Creditors.

B. Debtor's tax returns have not been provided to Trustee.

In addition, Trustee requests this objection be continued to after the continued First Meeting of Creditors, set for January 26, 2023 at 1:00 p.m.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

Failure to Provide Tax Returns

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

Continuance of January 10, 2023 Hearing

The Trustee requests that the court continue this hearing to after the January 26, 2023 continued meeting of creditors. The court concurs that a continuance is in the best interests of the court and parties (time, money, and resources), and saves them the time and expense of having to come to court to hear that message.

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 hearing on the Objection to Confirmation of Plan is continued to **2:00 p.m. on February 7, 2023.**

Final Ruling: No appearance at the January 10, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on December 15, 2022. By the court’s calculation, 26 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.

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

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

- A. Debtor has failed to satisfy credit counseling requirements.
- B. Debtor’s Plan does not provide for Creditor’s claim.

DISCUSSION

Creditor’s objections are well-taken.

Credit Counseling

On November 16, 2022, the court entered an order allowing a thirty-day temporary waiver of credit counseling. The court set a deadline to December 14, 2022. Order, Dckt. 14. Debtor has not updated the court with whether they have received credit counseling. Attempting to confirm a plan while failing to file a certificate of credit counseling is in violation of 11 U.S.C. § 521((b)(1). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide for a Secured Claim

Creditor has not filed a Proof of Claim in this case. However, Debtor's Schedule D estimates the amount of Creditor's claim as \$191,645.00 and indicates that it is secured by judgment lien on Debtor's residence. The Plan does not provide for treatment of this claim.

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

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

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

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

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

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

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

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

Continuance of Hearing

The Chapter 13 Trustee has also filed an Objection to Confirmation, which grounds include Debtor not having yet attended the First Meeting of Creditors. That Meeting has been continued to January 26, 2023, and the Trustee requested his Objection to Confirmation be continued to a hearing date after January 26, 2023.

Continuance of both the Trustee's and Creditor's hearings on the Objection to Confirmation make sense and will save the court and parties in interest their time, resources, and monies from having to appear on January 10, 2023.

Continuance of the hearing and not denying of confirmation at this time will not alter the parties respective positions.

The court notes that Debtor has now filed a Motion to Avoid Creditor's Judgment Lien on the Vintage Court property. By Debtor's alleged calculations, the Property has a value of \$847,000 and is subject to the following encumbrances and homestead exemption ahead of Creditor's judgment lien:

- A. First Deed of Trust securing.....(\$305,000)
- B. Second Deed of Trust securing.....(\$ 99,670)
- C. PACE Loan.....(\$ 20,000)
- D. Abstract of Judgment.....(\$ 3,609)
- E. Homestead Exemption.....(\$422,330)

The alleged senior liens and homestead exemption total (\$850,000), which would consume the value of the Property, leaving nothing for Creditor's judgment lien. That Motion was just filed and Creditor has not yet had the opportunity to respond.

For Creditor, the condition precedent fight will be on the Motion to Avoid Judgment Lien.

The court continues the hearing on the Objection to Confirmation of Plan is to 2:00 p.m. on February 7, 2023, the first available Chapter 13 law and motion date after the January 26, 2023 continued First Meeting of Creditors.

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 Cheryl Henry (“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 hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on February 7, 2023.