UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 14, 2025 at 2:00 p.m.

1.	**24-24800-E-13** **JCW-1**	**CYNTHIA PEREZ** **Chad Johnson**	**OBJECTION TO CONFIRMATION OF PLAN BY BRIDGECREST ACCEPTANCE CORPORATION** **12-19-24 [13]**

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, attorneys of record, and Office of the United States Trustee on December 19, 2024. 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. At the hearing **----------**.

The Objection to Confirmation of Plan is overruled, and the Plan as amended is confirmed.

Bridgecrest Acceptance Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Plan fails to pay the applicable prime plus interest rate on its secured claim.

Debtor files a Response on January 5, 2025. Docket 17. Debtor agrees the interest rate on the claim should be adjusted to the rate specified in *Till*. Debtor argues that with the interest rate adjustment Debtor can still fund the Plan, and so in the Order confirming the court can include language adjusting the interest rate to 8%, the prime rate, with a 1.25% adjustment to 9.25%.

DISCUSSION
Interest Rate

Creditor's claim is secured by a 2017 Hyundai Elantra. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8%, plus a 1.25% risk adjustment, for a 9.25% interest rate. Because the Plan is feasible paying the proper interest rate, the Objection is overruled and the Plan is amended to pay an interest rate of 9.25% on Creditor's claim.

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 Bridgecrest Acceptance Corporation ("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 Cynthia Perez's ("Debtor") Chapter 13 Plan filed on October 25, 2024, is confirmed as amended to pay an interest rate of 9.25% on Creditor's claim. 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.

2. 24-20714-E-13 SMJ-1 — BRITTANY DOWDY — Scott Johnson — CONTINUED MOTION TO MODIFY PLAN — 11-11-24 [22]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 13, 2024. By the court's calculation, 34 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). Movant is one day late of the required notice period. The hearing is continued, with the court concluding that service is adequate.

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

The Motion to Confirm the Modified Plan is xxxxxxx.

January 14, 2025 Hearing

The court continued the hearing on this Motion to afford Debtor an opportunity to submit a supplemental Declaration evidencing Debtor's ability to fund the Plan and her job security by January 7, 2025. Order, Docket 39.

Debtor filed her Supplemental Declaration on January 8, 2025. Docket 41. Debtor states:

1. Prior to filing her Motion to Modify she "had to go out on disability and her income decreased. This caused her to fall behind on payments and temporarily reduce payments." *Id.* at ¶ 2.

2. However, Debtor testifies she will return to her regular job with net monthly income of $4,600. *Id.* at ¶ 3.

3. She testifies she will be able to make the increased payment in April after having been back to work for a month. *Id.* at ¶ 4.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

The debtor, Brittany Antionette Dowdy ("Debtor") seeks confirmation of the Modified Plan due to Debtor falling behind on plan payments having to go out on disability. Declaration ¶ 8, Docket 24. The Modified Plan provides for Debtor having paid a total of $4,050.00 through October 2024. Starting November 2024, Debtor shall pay $500.00 per month for 5 months, then in April 2025 increase the payment to $750.00 per month for 47 months. Modified Plan, Docket 28. 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 November 26, 2024. Docket 34. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor had not filed Supplemental Schedules I and J to show she can make plan payments. However, on December 9, 2024, Debtor filed the supplemental Schedules.

B. The confirmed and modified plan propose no less than 0% to unsecured creditors. The Trustee calculates that the modified plan will pay approximately 3.557% to unsecured creditors. A plan has been confirmed and it is past the claims bar date. *Id.* at 2:8-13.

DISCUSSION

As noted above, Debtor has filed the Supplemental Schedules at Docket 37.

The hearing is continued to allow the Debtor to file a Supplemental Declaration providing evidence of the future employment and the ability to fund the Plan.

The hearing on the Motion to Confirm the Modified Plan is continued to 2:00 p.m. on January 14, 2025.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Brittany Antionette Dowdy ("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 Modified Plan is **xxxxxxx**.

3.	**24-24029-E-13 DPC-1**	**SANDRA BROWN AND MICHAEL TIBBETTS Michael Hays**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 10-23-24 [24]**

Item 3 thru 4

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on October 23, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

January 14, 2025 Hearing

The court continued the hearing upon the parties' request to allow Debtor time to confirm the treatment with the Creditor and provide more definite terms and "check points" for the marketing and sale of the Property. Order, Docket 32. Creditor has filed an Objection to Confirmation (DCN. MB-1), being heard in conjunction with this Objection. Trustee filed a Status Report on January 8, 2025. Docket 50. Trustee states:

1. Debtor is current under plan payments. *Id.* at ¶ 1.

2. There is still no Schedule I attachment for business/ rental income. *Id.* at ¶ 2.

3. Trustee previously objected based on the plan payment amount was slightly too low to fund the plan, and Debtor agreed to increase the plan payment by $40, which will be sufficient to fund that Plan and can be added to the order confirming plan. *Id.* at ¶ 3.

4. Trustee has finally received the 11 U.S.C. § 521 business documents. *Id.* at ¶ 4.

5. Debtor has failed to file any additional documents or information in regard to the feasibility of the sale of the real property or information regarding the payment of the creditor's claim. The Trustee believes that this issue has not been resolved. *Id.* st ¶ 5.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

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

1. Debtor Sandra Ann Brown and Michael Dean Tibbetts ("Debtor") appear to improperly attempt to use the Ensminger Provisions, failing to provide for what would occur in the event of a default if payments are not made. Obj. 2:3-17, Docket 24.

2. The monthly adequate protection payments pending sale are $40 deficient per month. *Id.* at 2:18-25.

3. Debtor has not provided the business attachment in response to Schedule I line 8. *Id.* at 2:26-3:4.

4. Debtor has failed to provide certain 11 U.S.C. § 521 business documents. *Id.* at 3:5-15.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 26.

Debtor's Response

On November 14, 2024, Debtor filed a Response to the Trustee's Objection. Dckt. 28. The Response says to read the Clancy Callahan's Declaration for how it is asserted that the Trustee's Objections have been addressed. It further states that the Debtor are able to increase the monthly Plan payment by $40.

Mr. Callahan is identified as the office manager for Debtor's counsel. Dec., p. 2:2-3; Dckt. 29. Counsel's Office Manager first states that the proposed payment of $3,200.00 to Creditor Treadway is the

regular amount called for on the amortization schedule. Mr. Callahan does not state how he has personal knowledge of such fact.

Mr. Callahan then testifies that he did not attend the 341 Meeting, but that he has Heard Debtor's Counsel Say what the Debtors testified to at the 341 Meeting. *Id*.; p. 2:14-20.

With respect to the Ensminger Provisions, Mr. Callahan then contains to Hear What Debtor's Counsel Said about the plan payment amounts. *Id*.; p. 2:4-11.

With respect to the Business Income and Expense Statement, Mr. Callahan testifies as to what he Heard Debtor's Counsel Say to Mr. Callahan about the expenses. *Id*.; p. 2:12-24.

Mr. Callahan does testify that he was filing the Business Questionnaire on November 14, 2024. *Id*.; p. 2:24-25.

DISCUSSION

Nonstandard Provisions

Trustee objects on the basis that the Nonstandard Provisions do not include all factors a court would look for in approving Nonstandard Provisions. Trustee is not clear on what is lacking, whether it be the lack of Proof of Claim in the case or some other defect. Trustee does not cite to case or rule authority to support his position that courts look for those specific factors.

The Nonstandard Provisions clearly identify the creditor and the amount to be paid, but they do not account for an event of default.

With respect to the monthly Plan payment, it states that Debtor will make a payment of $3,431.00 commencing October 25, 2024, which is to be done what Debtor is attempting to sell a non-residential portion of the Property. Plan, § 7 Nonstandard Provisions, first paragraph. Dckt. 12.

The second, and last, paragraph of the Nonstandard Provisions says that Debtor expects to close a sale no later than March 15, 2025, but as written, this payment scheme would go into infinity.

Moreover, Trustee estimates the monthly payment is a bit shy of the required amount to make the Plan work.

At the hearing, counsel for the Trustee reported a concern that these provisions do not provide adequate protection for a sale of property provision.

Failure to File Documents Related to Business

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

A. Questionnaire,
B. Six months of profit and loss statements,

C. Six months of bank account statements for Pacific Crest Federal Credit Union, 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 Trustee reported that the Business Questionnaire and documents have been received.

Failure to File Business Documents Required by Schedule I

Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Continuance of Hearing

The Parties agreed to continue the hearing to 2:00 p.m. on January 14, 2025, to allow Debtor time to confirm the treatment with the Creditor and provide more definite terms and "check points" for the marketing and sale of the Property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 **XXXXXXX**.

4.	**24-24029-E-13 MB-1**	**SANDRA BROWN AND MICHAEL TIBBETTS Michael Hays**	**OBJECTION TO CONFIRMATION OF PLAN BY VIRGIL & CAROL TREADWAY 12-17-24 [41]**

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

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 17, 2024. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Virgil and Carol Treadway ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor's Plan fails to cure the arrearage of approximately $130,600.00 due and owing to the Treadways as of the date of the petition. Obj. 2:8-9, Docket 41.

2. The Plan is underfunded as it does not account for five tax liens against the property. *Id.* at 2:17-19.

3. The Debtors' plan was not proposed in good faith by neglecting to cure Creditor's arrearage or account for the tax liens. *Id.* at 3:16-19.

Creditor submits the Declaration of Carol Treadway to authenticate the facts alleged in the Objection. Decl., Docket 42.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $130,600 in pre-petition arrearage. POC 11-1. The Plan does not propose to cure that arrearage, instead placing Creditor in Cass 4. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Infeasible Plan

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Plan is a liquidation Plan, attempting to make adequate protection payments of $3,431 per month to Creditor with a sale being completed by March of 2025. Plan, Docket 12. However, Creditor asserts there are tax liens on the Property that are not being account for in the monthly adequate protection payment, and those tax liens are senior in priority. It appears the Plan is underfunded as proposed. Thus, the Plan may not be confirmed.

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 Virgil and Carol Treadway ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

5. 24-24730-E-13 BLG-2 | **LIZBETH/DANIEL ALARCON** | **MOTION TO AVOID LIEN OF LAZER BROADCASTING CORPORATION**
Chad Johnson | **11-26-24 [17]**

Item 5 thru 7

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, Creditor, creditors, and Office of the United States Trustee on November 26, 2024. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted, and the lien is avoided in its entirety.

This Motion requests an order avoiding the judicial lien of Lazer Broadcasting Corporation ("Creditor") against property of the debtor, Lizbeth Navar Alarcon and Daniel Alarcon ("Debtor") commonly known as 1408 Seymour Cir, Lincoln, CA 95648 ("Property").

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick, filed an Opposition on December 30, 2024. Docket 40. Trustee nots a discrepancy in the amount of a homestead exemption Debtor has claimed to have taken, Debtor stating in the Motion that the exemption is $565,000, but Debtor claiming an exemption of $282,500 on their Schedules. Schedule A/B at 18, Docket 1.

Debtor has not filed amended schedules to claim the higher amount. In resolving the discrepancy regarding the amount claimed as exempt, the Debtor filed Amended Schedule C on January 9, 2025. Dckt. 44.

DISCUSSION

A judgment was entered against Debtor in favor of Creditor in the amount of $14,269.00. Exhibit A, Dckt. 20. An abstract of judgment was recorded with Solano County on May 23, 2018, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $923,400.00 as of the petition date. Schedule A at 12, Docket 1. The unavoidable consensual liens that total $799,205.00 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 23, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $282,500.00 on Schedule C. Schedule C at 18, Docket 1. However, in Amended Schedule C filed on January 9, 2025, the Debtor claims an exemption in the amount of $565,000.00. Dckt. 44.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Lizbeth Navar Alarcon and Daniel Alarcon ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Lazer Broadcasting Corporation, California Superior Court for Solano County Case No. FCM157118, recorded on May 23, 2018, Document No. 201800035130, with the Solano County Recorder, against the real property commonly known as 1408 Seymour Cir, Lincoln, CA 95648, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

6. 24-24730-E-13 BLG-3 — LIZBETH/DANIEL ALARCON — Chad Johnson — MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD — 12-17-24 [34]

Final Ruling: No appearance at the January 14, 2025 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 the Franchise Tax Board, Debtor's attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of the Franchise Tax Board ("FTB") is granted, and the FTB's secured claim is determined to have a value of $0.

The Motion filed by Lizbeth Navar Alarcon and Daniel Alarcon ("Debtor") to value the secured claim of the Franchise Tax Board ("FTB" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 36. Debtor is the owner of real property commonly known as 3928 Danbury Way, Fairfield, CA 94533 ("Property"). Debtor also owns the following various items of personal property:

Personal Property Asset	Equity
2021 GMC Sierra 2500	$10,957.00
Acorns Securities … 6942	$500.00
Clothing	$1,000.00
Electronics	$500.00
Household Goods & Furniture	$1,500.00
Jewelry	$1,000.00

Life Policy … LZ343713	$6,837.34
Life Policy … LZ343717	$7,706.31
Pets	$100.00
Robinhood … 6674	$1,000.00
Sports & Hobby Equipment	$250.00
TOTAL	$31,350.65

("Personal Property").

Debtor seeks to value the Property at a replacement value of $923,400.00 as of the petition filing date. There is a first mortgage deed of trust on the Property in the amount of $799,205, leaving $124,195 in equity. Debtor seeks to value the Personal Property at a replacement value of $31,350.65 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a Nonopposition on December 30, 2025. Docket 38.

FTB filed its tax lien on June 27, 2024. Mot. 2:9-10, Docket 34. The IRS' tax lien came before the FTB's tax lien, and so the IRS' lien exhausts all of this available equity in the amount of $155,545.65. Therefore, Creditor's claim secured by a later in priority tax lien is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the remaining equity in the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Lizbeth Navar Alarcon and Daniel Alarcon ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Franchise Tax Board ("FTB" or "Creditor") secured by a later in priority tax lien recorded against the real property commonly known as 3928 Danbury Way, Fairfield, CA 94533, and the following carious items of personal property:

Personal Property Asset	**Equity**
2021 GMC Sierra 2500	$10,957.00
Acorns Securities … 6942	$500.00
Clothing	$1,000.00
Electronics	$500.00
Household Goods & Furniture	$1,500.00
Jewelry	$1,000.00
Life Policy … LZ343713	$6,837.34
Life Policy … LZ343717	$7,706.31
Pets	$100.00
Robinhood … 6674	$1,000.00
Sports & Hobby Equipment	$250.00
TOTAL	$31,350.65

is determined to be a secured claim in the amount of $0.00, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan. The Internal Revenue Service holds an earlier in priority tax lien that exhausts all available equity in the real and personal property.

7. 24-24730-E-13 BLG-1 — LIZBETH/DANIEL ALARCON — Chad Johnson — MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE — 12-17-24 [30]

Final Ruling: No appearance at the January 14, 2025 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 the IRS, Debtor's attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted, and the IRS' secured claim is determined to have a value of $155,545.65.

The Motion filed by Lizbeth Navar Alarcon and Daniel Alarcon ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 32. Debtor is the owner of real property commonly known as 3928 Danbury Way, Fairfield, CA 94533 ("Property"). Debtor also owns the following various items of personal property:

Personal Property Asset	Equity
2021 GMC Sierra 2500	$10,957.00
Acorns Securities … 6942	$500.00
Clothing	$1,000.00
Electronics	$500.00
Household Goods & Furniture	$1,500.00
Jewelry	$1,000.00

Life Policy … LZ343713	$6,837.34
Life Policy … LZ343717	$7,706.31
Pets	$100.00
Robinhood … 6674	$1,000.00
Sports & Hobby Equipment	$250.00
TOTAL	$31,350.65

("Personal Property").

Debtor seeks to value the Property at a replacement value of $923,400.00 as of the petition filing date. There is a first mortgage deed of trust on the Property in the amount of $799,205, leaving $124,195 in equity. Debtor seeks to value the Personal Property at a replacement value of $31,350.65 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a Nonopposition on December 30, 2025. Docket 42.

Creditor filed an Amended Proof of Claim No. 15-2 on January 2, 2025. The IRS consented to this valuation and valued its secured claim in the amount requested in this Motion, $155,545.65. POC 15-2 at 2.

Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 15-2, the court determines the value of the secured claim to be $155,545.65, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Lizbeth Navar Alarcon and Daniel Alarcon ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the Internal Revenue Service ("IRS" or "Creditor") secured by real property commonly known as 3928 Danbury Way, Fairfield, CA 94533, and the following items of personal property:

Personal Property Asset	**Equity**

2021 GMC Sierra 2500	$10,957.00
Acorns Securities … 6942	$500.00
Clothing	$1,000.00
Electronics	$500.00
Household Goods & Furniture	$1,500.00
Jewelry	$1,000.00
Life Policy … LZ343713	$6,837.34
Life Policy … LZ343717	$7,706.31
Pets	$100.00
Robinhood … 6674	$1,000.00
Sports & Hobby Equipment	$250.00
TOTAL	$31,350.65

is determined to be a secured claim in the amount of $155,545.65, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

8. 24-25534-E-13 MC-1 KEITH GAINES Muoi Chea

MOTION TO VALUE COLLATERAL OF NAVY FEDERAL CREDIT UNION 12-30-24 [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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 30, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Navy Federal Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $22,285.00.

The Motion filed by Keith Lamahl Gaines ("Debtor") to value the secured claim of Navy Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 14. Debtor is the owner of a 2022 Kia EV6 Wind Sport Utility 4D ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $22,385.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on April of 2022, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $51,040.00. Declaration ¶ 3, Docket 14. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $22,385.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Keith Lamahl Gaines ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Navy Federal Credit Union ("Creditor") secured by an asset described as a 2022 Kia EV6 Wind Sport Utility 4D ("Vehicle") is determined to be a secured claim in the amount of $22,385.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $22,385.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

9. 23-22540-E-13 JJF-2 — SATINDER SINGH — Ryan Wood — MOTION FOR PAYMENT OF FUNDS — 12-12-24 [332]

DEBTOR DISMISSED: 09/13/24

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

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's surviving heirs, Deceased Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 12, 2024. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion for Payment of Unclaimed Funds 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 for Payment of Unclaimed Funds is xxxxxxx .

Creditor Placerville Investment Group LLC ("Movant") moves this court for an Order for payments of funds currently held by the Clerk of the Court.

Throughout the pendency of this bankruptcy case, now deceased Debtor Satinder Singh had been making plan payments. However, no plan was ever confirmed, and so the monies have been held by Trustee. After the case wad dismissed, Trustee turned the funds over to the Clerk of the Court, who now holds the funds. Movant asserts it is entitled to these funds as secured creditor in the case, and its collateral was used to generate these funds.

APPLICABLE LAW

28 U.S.C. § 2041 states:

> All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court.
>
> **This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court**.

(emphasis added). As Judge Lee from the Fresno Division has stated:

> The bankruptcy court has a duty to make sure that unclaimed funds are paid to the proper party. *In re Scott*, 346 B.R. 557, 558 (Bankr.N.D.Ga.2006) (citation omitted). When a claimant submits an application for payment of unclaimed funds on account of a secured claim, the court must make a determination that the claimant is not only the proper party to make the claim, but that the claimant is also entitled to the funds. The burden of proving an entity's entitlement to unclaimed funds rests with the applicant. *In re Acker*, 275 B.R. 143, 144 (Bankr.D.D.C.2002) (citation omitted).

In re Johnnie Ray Pena and Bertha Alicia Pena, 456 B.R. 451, 453 (Bankr. E.D. 2011).

The Eastern District of California abides by the Guidelines for Applications for Payment of Unclaimed Funds in determining if an Application is properly made. *Guidelines for Applications for Payment of Unclaimed Funds*, https://www.caeb.uscourts.gov/documents/forms/Guidelines/GL.Appl.pdf (last visited January 8, 2025). These Guidelines state an Application must include the following:

- The exact dollar amount of the dividend check(s) issued by the trustee to the original creditor/claimant and tendered to the court as unclaimed funds;
- The full name, address, and telephone number of the person or entity that is the original owner of the funds;
- A brief history of the claim from the time of the filing of the original claim to the present addressing possible reasons (such as change of address, any sale, merger, consolidations, buy-out, dissolution, marriage or death of the

original creditor/claimant and relevant supporting documentation) for the funds not being deliverable at the time of the initial distribution;

- An affirmative statement as to why the alleged owner is entitled to receive the requested funds;
- The applicant's identity and relationship to the original creditor/claimant;
- Taxpayer identification number for each party to whom funds are to be paid;
- If the applicant is the agent or representative of the owner of the funds a statement that the owner of the funds has authorized the agent or representative to collect the funds, supported by an original power of attorney containing the notarized signature of the owner of the funds and such grant of authority;
- If the applicant is the agent or representative of the owner of the funds, the date copies of the application and supporting documentation were mailed to the owner of the funds;
- The applicant's certification under penalty of perjury that the information set forth in the application is true to the best of the applicant's knowledge, information and belief.
- Notice to the U.S. Attorney is required when funds are being claimed by Fund Locators and any funds disbursed from 6133BK. Volume 13, Chapter 10, Section 1020.60 (c) and 1020.70 (a).

DISCUSSION

Movant has established that it is the owner of the unclaimed funds. However, Movant has not stated the exact dollar amount of the funds it is seeking to claim.

At the hearing, **xxxxxxx**

~~Movant has provided evidence that the funds were earned using its collateral with the business Wheatland 99 Cent & Liquor Store ("Store"). The record shows the deceased Debtor had no other job or income apart from operating the Store. Movant has shown its claim is secured by the inventory, goodwill, fixtures, furnishing and equipment related to the business. Ex. C, Docket 118. Therefore, Movant is entitled to these funds. The Motion is granted.~~

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

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

The Motion for Payment of Unclaimed Funds filed by Placerville Investment Group LLC ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Movant is entitled to the unclaimed funds in the amount of **xxxxxxx**.

10. 24-21440-E-13 PGM-2 | **ERIKA/KEVIN NORMAN** | **Peter Macaluso** | **MOTION TO CONFIRM PLAN** | **12-4-24 [163]**

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 parties in interest, and Office of the United States Trustee on December 4, 2024. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx

The debtor, Erika Lizeth Norman and Kevin James Norman ("Debtor") seek confirmation of the Modified Plan. The Modified Plan proposed consolidates the cases and creditors' claims of the two debtors under one Plan. The Modified Plan provides Debtor having paid $12,906 through October of 2024 with monthly payments of $7,000 to commence in November of 2024 for 54 months thereafter. Creditors with general unsecured claims will receive a 0% distribution. Modified Plan, Docket 166. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Chapter 13 Trustee filed a Nonopposition on January 2, 2025. Docket 176.

CREDITOR SUTTER'S OPPOSITION

Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees in interest ("Sutter") holding a secured claim filed an Opposition on January 7, 2025. Docket 180. Creditor opposes confirmation of the Plan on the basis that:

A. Sutter and Debtor entered into a court-approved Stipulation on November 22, 2024. Docket 158. That Stipulation requires Debtor to maintain normal monthly payments to Sutter. However, the Plan proposed to repay 3 post-petition payments, not maintaining normal monthly payments. Sutter objects for this reason.

B. Sutter provides the following calculation and statement:

> Since the filing of the instant case on April 8, 2024, Creditor has received a total of $14,369.40, which consists of $10,777.05 paid by the Trustee in the instant case and $3,592.35 paid by the Trustee via the Kevin Norman case #24-23545. With monthly payments at $3,592.35, the amount received thus far only satisfies 4 post-petition payments, leaving 5 additional post-petition payments due from September 1, 2024 through January 1, 2025. Creditor objects to any inclusion of post-petition payments into the Plan. However, even if Creditor accepted that treatment, the Consolidated Plan only provides for 3 out of the 5 post-petition payments outstanding. As such, Creditor objects to this treatment and requests that the Consolidated Plan be amended to conform with the terms as agreed upon and formalized in the Stipulation.

Opp'n 4:5-14, Docket 180.

CREDITOR RUDOLPH'S OPPOSITION

Rudolph Incorporated, its successors and/or assignees ("Rudolph") holding a secured claim filed an Opposition on January 7, 2025. Docket 182. Creditor opposes confirmation of the Plan on the basis that:

A. Rudolph and Debtor entered into a court-approved Stipulation on January 6, 2025. Docket 178. That Stipulation requires Debtor to pay Rudolph's claim with interest accruing at the contractual rate of 21.99%. Debtors' Consolidated Plan, however, only provides for 5.0% interest, significantly less than the agreed upon amount. Opp'n 3:20-4:2, Docket 182.

DISCUSSION

The basis of these objections is founded in the fact that Debtor is proposing a Plan that does not abide by the terms of the court-approved Stipulations. As to Sutter, Debtor has missed post-petition

payments where the Stipulation requires Debtor to maintain normal monthly payments. The Plan does not address this issue.

As to Rudolph, the court-approved Stipulation required Debtor to pay the contractual rate of interest at 21.99%. Debtor's Plan proposes to pay interest at 5% in violation of the Stipulation.

At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Erika Lizeth Norman and Kevin James Norman ("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 **xxxxxxx**.

11. 19-23242-E-13 PLC-3 | **JAMES/ALICIA ANGELES** Peter Cianchetta | **MOTION TO RELEASE VEHICLE TITLE TO DEBTORS AND/OR MOTION TO DEMAND PENALTIES PURSUANT TO CALIFORNIA VEHICLE CODE 5753(E) 11-19-24 [70]**

Item 11 thru 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.

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 Creditor, the Chapter 13 Trustee, and Office of the United States Trustee on November 19, 2024. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

The Motion to Release Vehicle Title to Debtor and Demand for Penalties 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 Release Vehicle Title to Debtor and Demand for Penalties is XXXXXXX .

Debtor James Robert Angeles and Alicia Soto Angeles ("Movant") moves this court for an Order compelling creditor Consumer Portfolio Services ("Creditor") to release title to their 2019 Kia Rio with VIN ending in 0062 ("Vehicle"). Movant seeks relief pursuant to Cal. Vehicle Code § 5753(c) and (e) based on the grounds that Debtor has completed their confirmed Chapter 13 Plan, paid Creditor its claim in full, has asked Creditor to return title, and Creditor has not done so.

Debtor states in their Motion:

1. Creditor was put on notice Debtor completed plan payments on or about July 3, 2024, with the Chapter 13 Trustee filing the Notice of Completed Plan. Mot. 4:27-5:2.

2. Creditor has been given two written demands to return the title. Creditor has not returned the title.

3. The maximum penalty allowed under Cal. Vehicle Code § 5753(e) is $2,500. The penalty accrues at $25 dollar per day that title is not returned,

and it has been over 100 days without Creditor returning the title. *Id.* at 5:9-12.

4. Creditor is also required to pay attorneys fees in the amount of $1,425 based on Cal. Vehicle Code § 5753, Cal. Business and Professions Code § 17200, and pursuant to the terms of the contract between Debtor and Creditor. *Id.* at 5:13-17.

Debtor's attorney filed his Declaration in support at Docket 72. He testifies as to his hourly rate and time spent on the Motion. However, Debtor submits no authenticated evidence by Declaration or otherwise that they have not received title to the Vehicle. Debtor submits as Exhibits their letters to Creditor demanding return of title, but there is no authenticating Declaration submitted with these Exhibits.

At the hearing, **xxxxxxx**

APPLICABLE LAW

Cal. Vehicle Code § 5753(c) and (e) states:

(c)(1) Within 15 business days after receiving payment in full for the satisfaction of a security interest and a written instrument signed by the grantor of the security interest designating the transferee and authorizing release of the legal owner's interest, the legal owner shall release its security interest and mail, transmit, or deliver the vehicle's certificate of ownership to the transferee who, due to satisfaction of the security interest, is lawfully entitled to the transfer of legal ownership.

(2) If a lease provides a lessee with the option to purchase the leased vehicle, within 15 business days after receiving payment in full for the purchase, and all documents necessary to effect the transfer, the lessor shall mail, transmit, or deliver the vehicle's certificate of ownership to the transferee, who, due to purchase of the vehicle, is lawfully entitled to the transfer of legal ownership.

. . .

(e) A legal owner or lessor that fails to satisfy the requirements of subdivisions (c) and (d), shall, without offset or reduction, pay the transferee twenty-five dollars ($25) per day for each day that the requirements of subdivisions (c) and (d) remain unsatisfied, not to exceed a maximum payment of two thousand five hundred dollars ($2,500). If the legal owner or lessor fails to pay this amount within 60 days following written demand by the transferee, the amount shall be trebled, not to exceed a maximum payment of seven thousand five hundred dollars ($7,500), and the transferee shall be entitled to costs and reasonable attorneys fees incurred in any court action brought to collect the payment. The right to recover these payments is cumulative with and is not in substitution or derogation of any remedy otherwise available at law or equity.

In a Chapter 13 case, the confirmed Chapter 13 Plan becomes the new contract between a debtor and their creditors. *In re Frazier*, 448 B.R. 803, 810 (Bankr. E.D. Cal. 2011) ("It is the Chapter 13 Plan, by

which the debtor commits him or herself to a plan, which becomes the new contract between the debtor and creditors."). After the Plan is completed, a debtor has paid the full amount of the 11 U.S.C. § 506(a) value of the secured claim, which gives a debtor "the right to demand and receive the release of [a] lien." *Id.*

DISCUSSION

In this case, Debtor has completed the Plan. Docket 52. Debtor has paid Creditor's allowed secured claim in full under the terms of the confirmed Plan. Creditor is therefore obligated to return title to Debtor upon Debtor's demand. As creditor has not returned title to the Vehicle in this case, Creditor is in violation of Cal. Vehicle Code § 5753(c). Cal. Vehicle Code § 5753(e) permits the court to issue monetary sanctions as well as reasonable attorneys fees.

As Debtor made the demand for title on September 20, 2024, and over 100 days have lapsed without Creditor returning title, the court imposes the maximum statutory fine of $2,500 on Creditor.

Proper Procedure for Seeking Relief Requested

It appears that the Motion requests three types of relief: (1) the court determine the right, title, and interests between Debtor and Creditor in the Vehicle, (2) grant injunctive relief for the court to order Creditor to do certain acts, and (3) order the payment of monetary damages consisting of statutory damages and an award of attorney's fees.

In Federal Rule of Bankruptcy Procedure 7001, determinations of rights title and interest, injunctive relief, and an action to recover money must be sought through an adversary Proceeding.

> **Rule 7001. Types of Adversary Proceedings**
>
> An adversary proceeding is governed by the rules in this Part VII. The following are adversary proceedings:
>
> (a) **a proceeding to recover money or property**—except a proceeding to compel the debtor to deliver property to the trustee, a proceeding by an individual debtor to recover tangible personal property under § 542(a), or a proceeding under § 554(b), § 725, Rule 2017, or Rule 6002;
>
> (b) a proceeding to determine the validity, priority, or extent of a lien or other interest in property—except a proceeding under Rule 3012 or Rule 4003(d);
> . . .
> (g) a proceeding to obtain an injunction or other equitable relief—except when the relief is provided in a Chapter 9, 11, 12, or 13 plan; . . . .

Fed. R. Bankr. P. 7001 (emphasis added).

At the hearing, **XXXXXXX**

~~The court further finds the requested attorneys fees of $1,425 reasonable related to Debtor's efforts in recovering title. Debtor's attorney has submitted a Declaration in support testifying to the amount of work he performed related to this Motion. Docket 72. Therefore, the court awards Debtor's attorney's fees in the amount of $1,425 for his work related to this Motion.~~

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 Release Vehicle Title to Debtor and Demand for Penalties filed by Debtor James Robert Angeles and Alicia Soto Angeles ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** ~~that the Motion is granted, and Consumer Portfolio Services is ordered to return Title of the 2019 Kia Rio, vin ending in 0062, to Movant pursuant to Cal. Vehicle Code § 5753(c), Debtor having completed their Chapter 13 Plan and paying Consumer Portfolio Service's allowed secured claim in full.~~
>
> ~~**IT IS FURTHER ORDERED** that Consumer Portfolio Services is ordered to pay sanctions of $2,500 pursuant to Cal. Vehicle Code § 5753(e) for failure to return Title to Movant despite Movant making a demand for title.~~
>
> ~~**IT IS FURTHER ORDERED** that Consumer Portfolio Services is ordered to pay reasonable attorneys fees of $1,425 to Movant pursuant to Cal. Vehicle Code § 5753(e) for all of Movant's attorney's work related to prosecuting this Motion.~~

12. 19-23242-E-13 PLC-4 | **JAMES/ALICIA ANGELES** **Peter Cianchetta** | **MOTION TO RELEASE VEHICLE TITLE TO DEBTORS AND/OR MOTION TO DEMAND PENALTIES PURSUANT TO CALIFORNIA VEHICLE CODE 5753(E) 11-19-24 [75]**

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 Creditor, the Chapter 13 Trustee, and Office of the United States Trustee on November 19, 2024. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

The Motion to Release Vehicle Title to Debtor and Demand for Penalties 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 Release Vehicle Title to Debtor and Demand for Penalties is xxxxxxx .

Debtor James Robert Angeles and Alicia Soto Angeles ("Movant") moves this court for an Order compelling creditor Chrysler Capital ("Creditor") to release title to their 2014 Dodge Durango with vin ending in 6395 ("Vehicle"). Movant seeks relief pursuant to Cal. Vehicle Code § 5753(c) and (e) based on the grounds that Debtor has completed their confirmed Chapter 13 Plan, paid Creditor its claim in full, has asked Creditor to return title, and Creditor has not done so.

Debtor states in their Motion:

1. Creditor was put on notice Debtor completed plan payments on or about July 3, 2024, with the Chapter 13 Trustee filing the Notice of Completed Plan. Mot. 5:1-3.

2. Creditor has been given two written demands to return the title. Creditor has not returned the title.

3. The maximum penalty allowed under Cal. Vehicle Code § 5753(e) is $2,500. The penalty accrues at $25 dollar per day that title is not returned,

and it has been over 100 days without Creditor returning the title. *Id.* at 5:9-12.

4. Creditor is also required to pay attorneys fees in the amount of $1,425 based on Cal. Vehicle Code § 5753, Cal. Business and Professions Code § 17200, and pursuant to the terms of the contract between Debtor and Creditor. *Id.* at 5:13-17.

Debtor's attorney filed his Declaration in support at Docket 72. He testifies as to his hourly rate and time spent on the Motion. However, Debtor submits no authenticated evidence by Declaration or otherwise that they have not received title to the Vehicle. Debtor submits as Exhibits their letters to Creditor demanding return of title, but there is no authenticating Declaration submitted with these Exhibits. At the hearing, **xxxxxxx**

APPLICABLE LAW

Cal. Vehicle Code § 5753(c) and (e) states:

(c)(1) Within 15 business days after receiving payment in full for the satisfaction of a security interest and a written instrument signed by the grantor of the security interest designating the transferee and authorizing release of the legal owner's interest, the legal owner shall release its security interest and mail, transmit, or deliver the vehicle's certificate of ownership to the transferee who, due to satisfaction of the security interest, is lawfully entitled to the transfer of legal ownership.

(2) If a lease provides a lessee with the option to purchase the leased vehicle, within 15 business days after receiving payment in full for the purchase, and all documents necessary to effect the transfer, the lessor shall mail, transmit, or deliver the vehicle's certificate of ownership to the transferee, who, due to purchase of the vehicle, is lawfully entitled to the transfer of legal ownership.

. . .

(e) A legal owner or lessor that fails to satisfy the requirements of subdivisions (c) and (d), shall, without offset or reduction, pay the transferee twenty-five dollars ($25) per day for each day that the requirements of subdivisions (c) and (d) remain unsatisfied, not to exceed a maximum payment of two thousand five hundred dollars ($2,500). If the legal owner or lessor fails to pay this amount within 60 days following written demand by the transferee, the amount shall be trebled, not to exceed a maximum payment of seven thousand five hundred dollars ($7,500), and the transferee shall be entitled to costs and reasonable attorneys fees incurred in any court action brought to collect the payment. The right to recover these payments is cumulative with and is not in substitution or derogation of any remedy otherwise available at law or equity.

In a Chapter 13 case, the confirmed Chapter 13 Plan becomes the new contract between a debtor and creditors. *In re Frazier*, 448 B.R. 803, 810 (Bankr. E.D. Cal. 2011) ("It is the Chapter 13 Plan, by which the debtor commits him or herself to a plan, which becomes the new contract between the debtor and

creditors."). After the Plan is completed, a debtor has paid the full amount of the 11 U.S.C. § 506(a) value of the secured claim, which gives a debtor "the right to demand and receive the release of [a] lien." *Id.*

DISCUSSION

In this case, Debtor has completed the Plan. Docket 52. Debtor has paid Creditor's allowed secured claim in full under the terms of the confirmed Plan. Creditor is therefore obligated to return title to Debtor upon Debtor's demand. As creditor has not returned title to the Vehicle in this case, Creditor is in violation of Cal. Vehicle Code § 5753(c). Cal. Vehicle Code § 5753(e) permits the court to issue monetary sanctions as well as reasonable attorneys fees when a lender violates that section.

As Debtor made the demand for title on September 20, 2024, and over 100 days have lapsed without Creditor returning title, the court imposes the maximum statutory fine of $2,500 on Creditor.

Proper Procedure for Seeking Relief Requested

It appears that the Motion requests three types of relief: (1) the court determine the right, title, and interests between Debtor and Creditor in the Vehicle, (2) grant injunctive relief for the court to order Creditor to do certain acts, and (3) order the payment of monetary damages consisting of statutory damages and an award of attorney's fees.

In Federal Rule of Bankruptcy Procedure 7001, determinations of rights title and interest, injunctive relief, and an action to recover money must be sought through an adversary Proceeding.

> **Rule 7001. Types of Adversary Proceedings**
>
> An adversary proceeding is governed by the rules in this Part VII. The following are adversary proceedings:
>
> (a) **a proceeding to recover money or property**—except a proceeding to compel the debtor to deliver property to the trustee, a proceeding by an individual debtor to recover tangible personal property under § 542(a), or a proceeding under § 554(b), § 725, Rule 2017, or Rule 6002;
>
> (b) a proceeding to determine the validity, priority, or extent of a lien or other interest in property—except a proceeding under Rule 3012 or Rule 4003(d);
> . . .
> (g) a proceeding to obtain an injunction or other equitable relief—except when the relief is provided in a Chapter 9, 11, 12, or 13 plan; . . . .

Fed. R. Bankr. P. 7001 (emphasis added).

At the hearing, **XXXXXXX**

~~The court further finds the requested attorneys fees of $1,425 reasonable related to Debtor's efforts in recovering title. Debtor's attorney has submitted a Declaration in support testifying to the amount of work he performed related to this Motion. Docket 72. Therefore, the court awards Debtor's attorney's fees in the amount of $1,425 for his work related to this Motion.~~

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 Release Vehicle Title to Debtor and Demand for Penalties filed by Debtor James Robert Angeles and Alicia Soto Angeles ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that the Motion is granted, and Chrysler Capital is ordered to return Title of the 2014 Dodge Durango, vin ending in 6395, to Movant pursuant to Cal. Vehicle Code § 5753(c), Debtor having completed their Chapter 13 Plan and paying Chrysler Capital's allowed secured claim in full.~~
>
> ~~**IT IS FURTHER ORDERED** that Chrysler Capital is ordered to pay sanctions of $2,500 pursuant to Cal. Vehicle Code § 5753(e) for failure to return Title to Movant despite Movant making a demand for title.~~
>
> ~~**IT IS FURTHER ORDERED** that Chrysler Capital is ordered to pay reasonable attorneys fees of $1,425 to Movant pursuant to Cal. Vehicle Code § 5753(e) for all of Movant's attorney's work related to prosecuting this Motion.~~

13. 24-24648-E-13 DPC-2 | **REGINA SAUCEDO** **Timothy Walsh** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **12-9-24 [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, and Office of the United States Trustee on December 9, 2024. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Regina Rodiguez Saucedo ("Debtor") failed to appear and be examined at the First Meeting of Creditors held on December 5, 2024. Obj. 2:5-6, Docket 21.

2. The Debtor failed to make the first Plan payment, which was due on November 25, 2024, and is $4,950.05. *Id.* at 2:10-12.

3. Debtor has had eight bankruptcy cases since 2018. Her record shows she cannot successfully prosecute a case. *Id.* at 2:18-28.

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

DISCUSSION

Failure to Appear at 341 Meeting

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

Delinquency

Debtor is $4,905 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The delinquency is especially concerning in this case given Debtor's unsuccessful history in bankruptcy. It appears this case is following the trend of her past cases.

At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

14. 24-24554-E-13 **JOLENE NORTON**
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST NATIONAL ASSOCIATION
12-12-24 [32]

Item 14 thru 15

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (pro se), Chapter 13 Trustee,, and Office of the United States Trustee on December 12, 2024. 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

NO DOCKET CONTROL NUMBER

Creditor is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

PLEADINGS FILED AS ONE DOCUMENT

Creditor filed the Objection and Certificate of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply

as required by Local Bankruptcy Rule 9004-1(a). **Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).**

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

THE OBJECTION

U.S. Bank Trust National Association, as Trustee of BKPL-EG Holding Trust, its successors and/or assignees ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Jolene Norton's ("Debtor") proposed Plan cannot be confirmed as it fails to account for the arrearage owed on Creditor's claim. Obj. 2:20-27.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $17,634.07in pre-petition arrearage. POC 2-1. The Plan does not propose to cure that arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

The 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 U.S. Bank Trust National Association, as Trustee of BKPL-EG Holding Trust, its successors and/or assignees ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

15. 24-24554-E-13 DPC-2 | **JOLENE NORTON, Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK, 12-10-24 [24]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (pro se), and Office of the United States Trustee on December 10, 2024. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Jolene Norton ("Debtor") failed to appear and be examined at the 341 Meeting. Obj. 2:1-5.

2. Debtor failed to provide to Trustee with verification of both the Social Security number and identification. *Id.* at 2:6-9.

3. Debtor is $700.00 delinquent in Plan payments. *Id.* at 2:11.

4. Debtor failed to provide Trustee with 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing and any tax transcript or copies of the Federal Income Tax Return with attachments for the most recent pre-petition tax year. *Id.* at 2:17-27.

5. Debtor Plan is difficult to understand, and the pages are mixed up. *Id.* at 2:28-3:4.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 26.

DISCUSSION

Failure to Appear at 341 Meeting

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

Failure to Authenticate Identification Prior to Meeting of Creditors

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court she did not provide the required identification. That is cause to sustain the Objection.

Delinquency

Debtor is $700 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Pay Stubs

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).

Failure to Provide Tax Returns

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).

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.

16. 24-24764-E-13 DPC-1 | **KEANNA ALMEDA** / **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **12-18-24 [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, and Office of the United States Trustee on December 18, 2024 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. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Keanna Gayle Almeda ("Debtor") is delinquent in plan payments. Obj. 1:25-2:1, Docket 21.

2. It is unclear the treatment of creditor American Auto Financing, Inc., where it appears Creditor's collateral may have been totaled in a vehicle accident, but insurance proceeds have not appeared on any Schedules. *Id.* at 2:2-10.

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

DISCUSSION

Delinquency

Debtor is $460 delinquent in plan payments, which represents more than a month of the $360 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Creditor's Treatment Under Proposed Plan

The Plan states that Creditor's collateral, a 2013 Dodge Durango, was in an accident post-petition. Plan at 4, Docket 12. It is not clear if there are insurance proceeds as Debtor has not filed any Supplemental Schedules or filed any statements informing the court of the status of that vehicle. Debtor's current Schedules have the vehicle listed in "Fair Condition." Schedule A/B at 3, Docket 13. This treatment of Creditor is not confirmable.

At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

17. 24-20965-E-13 JOHN/BARBARA HUESTIS
Scott Johnson

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, AS TO DEBTOR
12-27-24 [43]

Item 17 thru 18

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on December 27, 2024. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Substitute is granted.

Joint Debtor, Barbara Jean Huestis, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, John Warren Huestis. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 13 on March 12, 2024. On June 13, 2024, Debtor's Chapter 13 Plan was confirmed. Dckt. 37. On August 19, 2024, Debtor John Warren Huestis passed away. Notice of Death, Docket 40. Joint Debtor asserts that she is the lawful successor and representative of deceased Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Notice of Death was filed on November 1, 2024. Dckt. 40. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner. Decl., Docket 45.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id*.

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

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

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The

> motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Barbara Jean Huestis is substituted as the successor-in-interest to John Warren Huestis and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.
>
> **IT IS FURTHER ORDERED** that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor John Warren Huestis is granted.

18. 24-20965-E-13 SMJ-2 JOHN/BARBARA HUESTIS Scott Johnson MOTION TO SELL 12-27-24 [47]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on December 27, 2024. By the court's calculation, 18 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Barbara Jean Huestis, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 4525 Cameron Road, Cameron Park, CA 95682 ("Property").

The proposed purchaser of the Property is Janine A Keck ("Buyer"), and the terms of the sale are:

A. $720,000 purchase price closing on January 17, 2024,

B. Debtor is represented by Gregory A Hauck, an agent with Neighborhood Real Estate. Buyer is represented by Julie Ryan, an agent with Grant Oerding, Windermere – El Dorado/Folsom,

C. 5% brokers' commission.

Creditor Wells Fargo, holding a second in priority deed of trust in the Property, filed a Nonopposition on January 8, 2025. Docket 52.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate as Debtor can pay all allowed claims in full and complete her case early, especially with the recent unfortunate passing of her husband, John Warren Huestis.

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately $36,000. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission to be split evenly between seller and buyer's brokers.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court to allow the sale to close quickly with the closing date fast approaching. Mot. 3:21-23, Docket 47.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Barbara Jean Huestis, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Barbara Jean Huestis, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Janine A Keck or nominee ("Buyer"), the Property commonly known as 4525 Cameron Road, Cameron Park, CA 95682 ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $720,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 49, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than five percent of the actual purchase price upon consummation of the sale. The five percent commission shall be split evenly between seller's agent, Gregory A Hauck, an agent with Neighborhood Real Estate, and Buyer's agent, Julie Ryan, an agent with Grant Oerding, Windermere – El Dorado/Folsom.

E. After payment of the above expenses and secured claims, the Chapter 13 Trustee shall make a demand in escrow for sufficient funds to complete the Plan, including payment of all administrative expenses. The amount demanded by the Trustee shall be disbursed directly to the Chapter 13 Trustee. If there is a dispute as to the amount requested by the Trustee, that dispute shall be resolved by the court. The full amount demanded by the Chapter 13 Trustee shall be disbursed notwithstanding the Debtor objecting to or disputing the amount requested by the Trustee.

F. After payment in full of the amount demanded by the Chapter 13 Trustee have been disbursed from escrow directly to the Chapter 13 Trustee, all remaining net sales proceeds shall be disbursed directly to the Debtor.

G. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

19. 24-22068-E-13 JLK-1 | **ALYN OJANPERA GRAYSON AND EDWARD GRAYSON** | **MOTION TO CONFIRM PLAN 11-13-24 [44]**
James Keenan

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 all creditors and parties in interest on November 13, 2024. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Alyn Marie Ojanpera Grayson and Edward Allen Grayson ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides Debtors shall pay $1,250.00 per month for the first 6 months of the plan, and $2,821.00 per month for the remaining 54 months of the plan. Amended Plan, Docket 46. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The court notes that there are three versions of the Amended Plan on the Docket, and all appear to contain the same terms. Moreover, Debtor has not submitted any evidence by way of Declaration or otherwise that would support confirmation. At the hearing, **xxxxxxx**

CREDITOR'S OPPOSITION

FirstKey Master Funding 2021-A Collateral Trust, U.S. Bank Trust National Association as Collateral Trust Trustee ("Creditor") holding a secured claim filed an Opposition on December 27, 2024. Docket 55. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor has misclassified Creditor's claim in Class 1 of the Plan. Creditor's claim matured before filing the petition, and so Creditor should be a Class 2 claim. *Id.* at 3:21-4:2.

B. Debtor's Plan proposes to pay 0% interest on the secured claim which is not permitted under *Till.* Debtor should pay the contractual interest rate of 4%. *Id.* at 4:5-17.

C. The step-up in Debtor's Plan is not feasible. Debtor's Schedule I and J do not show Debtor can afford the step up. *Id.* at 4:18-28.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 30, 2024. Docket 58. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is $1,571.00 delinquent in Plan payments to the Trustee where they paid $1,250 in December and not the step-up payment of $2821. *Id.* at 2:3-9.

B. Debtor has misclassified secured creditors in Class 1 when those creditors' claims matured prior to filing the petition. *Id.* at 2:3-21.

C. Debtor's Amended Notice of Hearing is in violation of Local Bankruptcy Rule 9014-1(d)(3)(B)(iii) where it failed to inform parties where to look for the pre-hearing disposition. *Id.* at 2:25-3:4.

D. There is no Declaration submitted in support. *Id.* at 3:5-7.

DISCUSSION
Misclassified Claims

Debtor has classified Creditor in Class 1 of their Plan, which Class only deals with claims that "mature after this plan, including those secured by Debtor's principal residence." Plan § 3.07, Docket 46. Creditor and Trustee inform the court that this claim is fully matured and due in full.

At the hearing, **xxxxxxx**

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 0%. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth

Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court fixes the interest rate at 4%, which is the agreed upon contractual monthly interest rate.

Delinquency

Debtor is $$1,571 delinquent in plan payments as Debtor did not make the step-up in the required monthly payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Moreover, Debtor's Schedule I and J at Docket 1 shoe a monthly disposable income of $1,250, and there is no evidence shown that Debtor can afford the proposed step up. At the hearing, **xxxxxxx**

Procedural Issues

Local Bankruptcy Rule 9014-1(d)(3)(B)(iii) states:

> The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

The Notice for this Motion does not contain this required language and is procedurally deficient. At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Alyn Marie Ojanpera Grayson and Edward Allen Grayson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

20. 24-24173-E-13 BRB-1 | **JESUS/ALISHA GUTIERREZ** Peter Macaluso | **OBJECTION TO CONFIRMATION OF PLAN BY SAMANTHA RYAN 12-23-24 [59]**

Item 20 thru 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 23, 2024. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

Creditor Samantha Ryan ("Creditor") filed this Objection to Confirmation separately, likely meaning to file this as an opposition to Debtor's Motion to Confirm Amended Plan. Moreover, Creditor reused a Docket Control Number. Creditor is reminded that the Local Rules require the use of a new Docket Control Number with each motion or objection. LOCAL BANKR. R. 9014-1(c). The Court will consider the Objection, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

THE OBJECTION

Creditor opposes confirmation of the Plan on the basis that:

1. Neither Debtor's Plan nor Petition were filed in good faith. Debtor filed the Plan solely to defeat state court litigation, which is an unfair manipulation of the Bankruptcy Code.

2. Debtor has undervalued their primary residence, which is a misrepresentation of facts on the petition. Listing it at $600,000, but available automated valuation models from home valuation estimator websites estimate its value between $624,000 and $789,000.

3. Debtor's attempt to discharge this debt is a flagrant misuse of Chapter 13. Similar cases have been denied confirmation when courts found debtors were exploiting bankruptcy protections for improper purposes.

Creditor submits the Declaration of Bradley R. Bowles to authenticate the facts alleged in the Objection. Decl., Docket 61.

DEBTOR'S REPLY

Debtor filed a Reply on January 7, 2025. Docket 65. Debtor states:

1. Debtor has proposed a plan that is allowed based on the Current-Monthly-Income, the Liquidation Analysis, and is funded by the Debtors' Disposable Income over 5 years.

2. There has been no evidence showing the Plan or Petition was filed in bad faith. Filing a petition to restructure debt obligations is the purpose of bankruptcy. *Id.* at 2:7-15.

3. The Plan is feasible. *Id.* at 2:17-19.

4. Creditor's claim is unsecured. Creditor can bring a nondischargeable action if she desires, but that is an issue for another day unrelated to confirmation. *Id.* at 2:21-3:3.

DISCUSSION
Good Faith Requirement of
11 U.S.C. § 1325(a)(3)

11 U.S.C. § 1325(a)(3) states:

(a) Except as provided in subsection (b), the court shall confirm a plan if—
. . .
(3) the plan has been proposed in good faith and not by any means forbidden by law.
. .

The Ninth Circuit has ruled "[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his

Chapter 13 plan in an inequitable manner" in ruling on whether a Plan was proposed in bad faith. *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

Here, the record does not show the petition or Plan have been filed in bad faith. Creditor asks the court to find that because Debtor filed on the eve of needing to make a payment of a debt, and Debtor turning to bankruptcy as they can not afford to repay that debt, that the filing was made in bad faith. The court cannot make such a determination. Such logic would apply to consumers who also file on the eve or even day of foreclosure. Yet it is not uncommon to see debtors turn to bankruptcy for a last-minute cessation of a foreclosure.

Creditor asks the court to find Debtor has misrepresented facts on the petition, specifically that Debtor has undervalued their home. However, on the low end of Creditor's own calculation of $624,000, this number is within the ballpark of the number $600,000 that Debtor provided. This argument is without merit.

Creditor argues that Debtor is improperly attempting to discharge a nondischargeable debt, and such attempt is an abuse of the Bankruptcy Code. Creditor is mistaken. A determination of nondischargeability may only be made through an adversary proceeding, and it is the Creditor's burden to prosecute such a proceeding. *See* Fed. R. Bankr. P. 4007, 7001. Such an adversary proceeding appears to have been initiated on December 26, 2024. Docket 63.

Finally, the court does not find that this petition was filed to defeat state court litigation. The record shows litigation had been concluded. In fact, Creditor's attorney's own testimony states "The litigation **was eventually resolved** through a Settlement Agreement between Creditor." Decl. ¶ 3, Docket 61 (emphasis added). As the state court litigation has been resolved, the filing of this case cannot have been to defeat state court litigation. This argument is also without merit.

The Objection is overruled. The court will discuss confirmation in the related Motion to Confirm being heard in conjunction with this Objection.

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 Samantha Ryan ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled.

21. 24-24173-E-13 JESUS/ALISHA GUTIERREZ MOTION TO CONFIRM PLAN
PGM-1 Peter Macaluso 11-13-24 [24]

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

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, all creditors and parties in interest, and Office of the United States Trustee on November 11, 2024. By the court's calculation, 64 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

The debtor, Jesus Figueroa Gutierrez and Alisha Marie Gutierrez ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid $4,900 through October of 2024, one payment of $4,000 in November of 2024, and then 58 monthly payments of $4,400 commencing thereafter. Amended Plan, Docket 26. 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 23, 2024. Docket 53. Trustee opposes on the grounds that the IRS filed a claim on November 27, 2024, and to properly account for this claim, Debtor would need to increase their monthly payments to $4,841 per month for 60 months.

Debtor filed a Reply on January 7, 2025, stating that Debtor can make in the increase in payments to $4,850 and has filed Amended Schedules I and J to show the payment is feasible. Docket 64.

DISCUSSION

The court has reviewed the Docket and the most recently filed Amended Schedules I and J on November 13, 2024, show Debtor has monthly disposable income of $4,400, not $4,850 as Debtor stated in the Reply. *See* Am. Schedule I and J, Docket 29. Without evidence that Debtor can afford the increase in plan payments, the Plan is not feasible as proposed. At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor Jesus Figueroa Gutierrez and Alisha Marie Gutierrez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.~~

22. 23-24174-E-13 THS-5 | **MICHAEL/SUSAN MARASCO** **Timothy Stearns** | **MOTION TO APPROVE DEBTORS' ATTORNEY FEE ARRANGEMENT 11-27-24 [116]**

Item 22 thru 24

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

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, all creditors and parties in interest, and Office of the United States Trustee on December 2, 2024. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Approve Debtor's Attorney Fee Arrangement 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 Debtor's Attorney Fee Arrangement is granted.

REUSED DOCKET CONTROL NUMBER

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

THE MOTION

Debtor Michael Joe Marasco and Susan Diane Marasco and their counsel, Timothy Stearns ("Movant"), moves this court for an Order approving attorney's fee of $4,500 related to prosecuting the case. The Motion states:

> 1. The fee arrangement was entered into in August of 2023, prior to the most recent Local Rules and the changed fee arrangement. Mot. 1:19, Docket 116.

2. The flat fee agreement provided Debtor would pay $4,000 up front with $500 to be paid through the Plan. *Id.* at 1:20-21.

3. Movant makes the request pursuant to Fed. R. Civ. P. 60 and Local Bankruptcy Rule 2016-1(e). *Id.* at 1:26-2:1.

Mr. Stearns submits his Declaration in support. Docket 117. Mr. Stearns testifies that the fee agreement predated the new Local Rules, and he is bringing this Motion as Trustee objected to this fee arrangement in his objections to the Third Amended Plan. *Id.* at ¶ 5.

TRUSTEE'S RESPONSE

Trustee filed a Response on December 30, 2024. Docket 130. Trustee does not oppose the amount of attorney's fees requested. However, Trustee notes that Movant provided the incorrect address that written opposition should be filed to in the Notice of Hearing. Movant stated opposition should be filed to the Office of US Trustee, but Movant must state that written opposition should be filed with the court directly. At the hearing, **xxxxxxx**

Trustee also noted there is no Declaration of Debtor on file to support this Motion.

DISCUSSION

Mr. Stearns states that the fee arrangement entered into with Debtor predated the adoption of the new Local Rules. As Mr. Stearns notes, the new version of the Local Rules were adopted on November 1, 2023 by General Order 23-08. However, this Chapter 13 Case was not filed until November 21, 2023, during which the new version of the Local Rules was in effect. Therefore, Mr. Stearns must comply with the current version of the Rules.

Local Bankruptcy Rule 2016-1 provides the fee arrangements for attorneys in a Chapter 13 case. Local Bankruptcy Rule 2016-1(b) provides a debtor's attorney may apply to the court for his or her fees, and Local Bankruptcy Rule 2016-1(c) provides a debtor's attorney may receive fees without court approval, referred to as no-look fees. Debtor's attorney inadvertently marked that he would request no-look fees pursuant to Local Bankruptcy Rule 2016-1(c) on the most recently filed Amended Plan. Am. Plan, Docket 107. There is no confirmed Plan in this case.

Local Bankruptcy Rule 2016-1(e) states:

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

Debtor's initial Chapter 13 Plan filed on November 21, 2023, also inadvertently marked that he would request no-look fees pursuant to Local Bankruptcy Rule 2016-1(c). Plan, Docket 11. Therefore, Debtor may only change its election by this Motion pursuant to Fed. R. Civ. P. 60 incorporated into bankruptcy by Fed. R. Bankr. P. 9024.

Fed. R. Civ. P. 60 states:

> (a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

Movant has provided evidence that opting into the no-look fee provision was a mistake arising from an oversight. The court permits Movant to change its election of attorneys fees, opting into being paid by court-approved application.

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

In this case, the court finds the requested fee arrangement of $4,500 with $4,000 being paid prior to filing the case and $500 to be paid over the life of the Plan to be reasonable. The requested fees are lower than what the Local Rules permit under the no-look provision.

The court would note, however, that no Plan has been confirmed in this case with the case being more than a year old. Moreover, as discussed below, the most recently proposed Amended Plan contains much of the same issues that the court originally found made previous versions of the Plan not confirmable. Counsel is reminded that although the court now approves the fee arrangement, such fees are subject to potential disgorgement pursuant to 11 U.S.C. § 329(b) if the services provided are not reasonable compared to fees requested.

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 Debtor's Attorney Fee Arrangement filed by Debtor Michael Joe Marasco and Susan Diane Marasco and their counsel, Timothy Stearns, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Timothy Stearns is allowed the following fees and expenses as a professional of the Estate:
>
> Timothy Stearns, Professional employed by Chapter 13 Debtor

Fees in the amount of $4,500,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor. Mr. Stearns is authorized to retain the pre-petition retainer in the amount of $4,000 and apply that amount toward this fee award.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the remainder of the fees and costs in the amount of $500 allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under a confirmed Plan.

23. 23-24174-E-13 THS-6 — MICHAEL/SUSAN MARASCO — Timothy Stearns — MOTION TO CONFIRM PLAN — 11-27-24 [106]

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

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, all creditors and parties in interest, and Office of the United States Trustee on November 27, 2024. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Michael Joe Marasco and Susan Diane Marasco ("Debtor"), seek confirmation of the Fourth Amended Plan. The Amended Plan provides for 36 monthly payments of $1,625, ultimately ending in a sale of Debtor's residence to pay their mortgage in full y October 31, 2025. Amended Plan, Docket 107. 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 30, 2024. Docket 127. Trustee opposes confirmation of the Plan on the basis that:

A. Trustee opposed confirmation of the prior plan and is now opposing confirmation to the current plan, for most of the same reasons, where Debtor has not attempted to address the majority of the Trustee's opposition. *Id.* at 2:3-5.

B. The Plan proposes no less than 5% to unsecured and a 36-month length, (Page 1, §2.03), and the Trustee continues to object to confirmation under 11 U.S.C. §1325(b.) The plan should be a 60 month plan, and should be Debtors' projected disposable income. *Id.* at 2:8-11.

C. There has been a dramatic decrease in reported income from $16,251 to around $1,300 with no explanation. *Id.* at 2:12-20.

D. Additionally, under *In re Wiegand*, 386 BR 238, (BAP 9th Cir 2008), while the Debtor can deduct business expenses when determining projected disposable income, they cannot when determining current monthly income, which determines the commitment period. *Id.* at 2:21-23.

E. Debtor is not submitted any documents evidencing their business income, such as six (6) months of bank statement along with Profit & Loss Statements, asking the court to take their word for it. *Id.* at 2:27-3:4.

F. Debtor is currently delinquent $435 to Trustee. *Id.* at 3:12.

G. It is not clear if priority claims will be paid in full within the term of the Plan as required by 11 U.S.C. § 1325(a)(1) And 11 U.S.C. § 1322(a)(2) as Debtor states they are paying priority taxes outside the Plan. *Id.* at 3:13-22.

H. Debtor provided the incorrect address that written opposition should be filed to in the Notice of Hearing. Movant stated opposition should be filed to the Office of US Trustee, but Movant must state that written opposition should be filed with the court directly. *Id.* at 3:23-26.

DISCUSSION

Term of the Plan

Trustee opposes confirmation on the basis that as Debtor is over the median income, they should be in a 60 month Plan, not 36 months as proposed by the Debtor. Congress provides that if the Trustee or holder of an allowed unsecured claim objects to confirmation, then the amount distributed to creditors with unsecured claims must be either: (1) not less than the full amount of the claim, or (2) the debtor must provide for all of the projected disposable income to be paid into the plan during the applicable commitment period. 11 U.S.C. § 1325(b)(1).

The term "applicable commitment period" is statutorily defined by Congress in 11 U.S.C. § 1325(b)(4) as follows:

> (4) For purposes of this subsection, the "applicable commitment period"—
>
> (A) subject to subparagraph (B), shall be—
>
> > (i) 3 years; or
> >
> > (ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—
> >
> > > (I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;
> > >
> > > (II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or
> > >
> > > (III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $825 per month for each individual in excess of 4; and
>
> (B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

When the "current monthly income" of the debtor and the debtor's spouse, when multiplied by 12 is greater than the annual median income for the debtor/debtor's household in the debtor's state, the plan term must be 60 months if not all unsecured claims are paid in full. This is different from the forward looking projected disposable income much must be used to fund the Chapter 13 plan as required by 11 U.S.C. § 1325(b)(1) if the plan does not provide for paying all unsecured claims in full.

The term "current monthly income" is defined in 11 U.S.C. § 101(10A) as a backward looking six month pre-bankruptcy average of income received by the debtor and co-debtor spouse if it is a joint bankruptcy case.

The Bankruptcy Appellate Panel for the Ninth Circuit considered the interpretation of these statutory provisions and Congress' choice of using the statutorily defined "current monthly income" in computing the applicable commitment period rather than projected disposable income in *Drummond v. Wiegand (In re Wiegand)*, 386 B.R. 238 (B.A.P. 9th Cir. 2008). There, as here, the Bankruptcy Appellate Panel was considering whether for a self-employed person the gross income generated from a business was used to compute the applicable commitment period, without deductions for business expenses.

The Bankruptcy Appellate Panel concluded that since Congress expressly provides for computation of business expenses being deducted from self-employed business income to compute disposable income as provided in 11 U.S.C. § 1325(b)(2), Congress not so providing for purposes of

computing "current monthly income" as defined in 11 U.S.C. § 101(10A) and § 1325(b)(4) for determining the applicable commitment period, a self-employed persons "current monthly income" is the gross income. *Drummond v. Wiegand (In re Wiegand)*, 386 B.R. at 242-243. In finding that Congress has a gross income "current income" for the self-employed that is different than "take-home income" for employees, the Bankruptcy Appellate Panel noted:

> We also observe that our plain meaning interpretation is not absurd because the Code is replete with rules and requirements that impact sole proprietors differently than wage earners. For example, an individual chapter 13 debtor in business may be expected to have more debt associated with his or her operation than someone who works for wages. That the "profit" from the business does not exceed what another makes in salary does not relieve the sole proprietor from the debt limits for eligibility for chapter 13 relief. It may be that Congress simply did not want those persons generating significant revenues through a business to have access to three-year chapter 13-plans.

Id. at 243.

Therefore, in this case, where Debtor is above median income, the Plan should be a 60-month Plan. Debtor has not responded to this argument at all, instead opting to again propose a 36-month Plan. The court addressed this in the Civil Minutes at the hearing held on September 24, 2024, and Debtor has again ignored the Trustee and the court.

Here, Debtor's Statement of Current Monthly Income states that the two debtors had combined income of $12,041.83 per month Debtor Dckt. 12 at 51. Debtor further states on the Statement that the applicable commitment period is five (5) years. *Id*.

Unexplained Reduction in Income

Debtor has amended its Statement of Financial Affairs and Schedules many times. Debtor's initial Form 122C-1 listed monthly income as $16,251. Docket 69 at 1. There has been a dramatic decrease in reported income to $4,618 on the most recently filed Form 122C-1. Docket 109 at 1. These conflicting numbers are shocking provided with no explanation from Debtor. There feasibility issues pursuant to 11 U.S.C. § 1325(a)(6).

Moreover, Debtor has marked recently filed Schedules as both supplemental and amended. Dockets 99, 100. Amended Schedules seek to amend the originally filed Schedules, correcting any information that may have been misreported. Information in the Amended Schedules will date back to the date of the originally filed Schedules. There is no change of circumstances when Amended Schedules are filed as the Amended Schedules seek to correct errors relating to the originally filed Schedules.

Supplemental Schedules on the other hand indicate a later change of circumstances, whether it be Debtor has received new employment or otherwise needs to update the court on new information that has occurred sometime after the original Schedules were filed. Supplemental Schedules do not date back to the originally filed Schedules.

Here, Debtor has checked the box for "amended" and "supplemental" regarding the most recently filed Schedules. Such designation is impossible. If the Schedules are actually amended, then any

information in the Amended Schedules would relate back to the original Schedules, so information regarding any previous pleadings Debtor filed under penalty of perjury would have been misreported.

If Debtor means for the Schedules to be supplemental, then new information has arisen and the previous pleadings would not be affected by the new information in the Supplemental Schedules.

At the hearing, **xxxxxxx**

Failure to File Documents Related to Business

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

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

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

Delinquency

Debtor is $435 delinquent in plan payments, which represents a portion of the $1,625 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Other Objections

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Debtor lists priority debt, but Debtor does not provide for paying the priority debt through the Plan, instead opting to pay priority debt outside the Plan. Trustee is unable to determine whether the priority claims will be paid in full.

Finally, Debtor must comply with Local Bankruptcy Rule 9014-1(f) and correctly state with where written opposition must be filed.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael Joe Marasco and Susan Diane Marasco ("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 Fourth Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

24. 23-24174-E-13 THS-7 — MICHAEL/SUSAN MARASCO — Timothy Stearns — MOTION TO EMPLOY ELITE REAL ESTATE GROUP AS REALTOR(S) — 11-27-24 [112]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and parties in interest, and Office of the United States Trustee on November 27, 2024. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

Michael Joe Marasco and Susan Diane Marasco ("Debtor") seek to employ Sandra Haugen of Elite Real Estate Group ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks employment of Broker to sell their real property commonly known as 14906 Windmill Dr., Weed, Ca 96094 ("Property").

TRUSTEE'S RESPONSE

Trustee filed a Response on December 30, 2024. Docket 125. Trustee does not oppose the relief requested. However, Trustee notes that Movant provided the incorrect address that written opposition should be filed to in the Notice of Hearing. Movant stated opposition should be filed to the Office of US Trustee, but Movant must state that written opposition should be filed with the court directly.

At the hearing, **xxxxxxx**

DISCUSSION

Debtor moves the court for an Order employing Broker to sell the Property as the sale is part of Debtor's proposed Chapter 13 Plan, where proceeds of the sale will be used to pay their mortgage in full.

Ms Haugen testifies that she will market and sell the Property. Decl. ¶ 4, Docket 113. She testifies that she and her firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶ 9.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Sandra Haugen of Elite Real Estate Group as Broker for the Chapter 13 Estate. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Michael Joe Marasco and Susan Diane Marasco ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, effective January 14, 2025, and Debtor is authorized to employ Sandra Haugen of Elite Real Estate Group ("Broker") for Debtor.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by broker in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

25. 24-24880-E-13 DPC-2 | **KRISTOPHER ROHDE** **Michael Hays** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **12-16-24 [27]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 Office of the United States Trustee on December 16, 2024. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Kristopher Timothy Rohde ("Debtor") is delinquent in plan payments, not having paid his initial plan payment of $1,685. Obj. 1:26-2:2.

2. Debtor failed to appear and be examined at the 341 Meeting of Creditors. *Id.* at 2:3-4.

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Objection. Decl., Docket 29.

DISCUSSION
Delinquency

Debtor is $1,685 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Appear at 341 Meeting

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

26. 24-24781-E-13 DPC-1 | **JENNIFER AMADI** Arete Kostopoulos | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 12-16-24 [18]

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

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 Office of the United States Trustee on December 16, 2024. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Jennifer Lynn Amadi ("Debtor") has misclassified the claim of Specialized Loan Servicing/New Rez LLC dba Shellpoint Mortgage Servicing as servicer for Goldman Sachs Mortgage Company ("Creditor"). Creditor is in Class 4, but because there is an arrearage, Creditor should be in Class 1.

Creditor submits the Declaration of Kristen Koo to authenticate the facts alleged in the Objection. Decl., Docket 20.

DISCUSSION

Misclassified Claims

Debtor has classified Creditor in Class 4 of her Plan, which Class only deals with claims that "mature after the completion of the plan, are not in default, and are not modified by this plan." Plan § 3.10, Docket 7. Trustee reports Debtor is delinquent regarding this claim.

At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

27. 23-21584-E-13 MS-4 | **CASSANDRA VISCIA** Mark Shmorgon | **MOTION TO MODIFY PLAN** 12-10-24 [92]

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, other parties in interest, and Office of the United States Trustee on December 10, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx.

The debtor, Cassandra Elliene Viscia ("Debtor") seeks confirmation of the Modified Plan to cure the delinquency that was caused by her job loss. Mot. ¶ 11, Docket 92. The Modified Plan provides for Debtor having paid $29,800.08 into her Plan as of month 19, and Debtor will pay $2,845 per month for months 20-60. Modified Plan, Docket 96. 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 30, 2024. Docket 101. Trustee opposes confirmation of the Plan on the basis that:

A. Debtors' current Supplemental Schedule I reflect monthly voluntary retirement contributions of $192.12 while unsecured creditors receive 0%. This appears to violated 11 U.S.C. § 1325(b). Opp'n 1:25-2:2

B. It is not clear to the Trustee how the post-petition arrearage owed to Newrez LLC will be cured. *Id.* at 2:3-12.

C. The Notice of Hearing was not signed in violation of Local Bankruptcy Rule 9004-1(c). *Id.* at 2:13-15.

DISCUSSION

Best Efforts

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.

Where Debtor is making a voluntary retirement contribution while unsecured creditors receive 0%, the Plan may not be proposed with Debtor's best efforts. At the hearing, **xxxxxxx**

Other Objections

Trustee requires clarity around how he will distribute payments to the post-petition delinquency of Newrez LLC. At the hearing, **xxxxxxx**

Debtor has filed an Amended Notice with the document properly signed. Docket 106.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Cassandra Elliene Viscia ("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 **xxxxxxx**.

28. 24-24690-E-13 DPC-1 | **DANETTE LIZARRAGA** **Matthew Gilbert** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **12-11-24 [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 Office of the United States Trustee on December 11, 2024. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Danette Rochelle Lizarraga ("Debtor") is delinquent $5,135.00. Obj. 1:25, Docket 12.

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Objection. Decl., Docket 14.

DISCUSSION

Delinquency

Debtor is $5,135 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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.

29. 24-25073-E-13 PGM-1 | **SHELLEY BETTENCOURT-TILLMAN** Peter Macaluso | **CONTINUED MOTION FOR JOINT ADMINISTRATION** 11-19-24 [10]

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 7 Trustee, creditors, and Office of the United States Trustee on November 19, 2024. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

The Motion to for Joint Administration, which the court construes to be a Motion to Substantively Consolidate Case no. 24-25073 with Case no. 24-24505 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 Substantively Consolidate Case of this Shelley L. Bettencourt-Tillman Bankruptcy Case, No. 24-25073 with the Leon Moses Tillman Chapter 13 Bankruptcy, Case No. 24-24505, Shelley L. Bettencourt-Tillman's spouse, is granted, with the Substantive Consolidation effective as of the October 7, 2024 filing of Case no. 24-24505.

The cases are substantively consolidated under Case No. 24-24505, the earlier filed Case.

PRELIMINARY MATTERS

The court would note that an analogous Motion to Consolidate has not been filed in the related case of Leon Moses, case no. 24-24505. A Motion to Consolidate must be filed there to put those creditors on the same notice. Moreover, the Certificate of Service with this Motion appears to have been served on the Creditors in the Leon Moses case. Docket 13. The creditors in this instant case must have been served notice of the Motion as well. At the hearing, **xxxxxxx**

THE MOTION

Debtor Shelley L. Bettencourt-Tillman ("Debtor") has filed a Motion titled "Motion for Joint Administration of Related Case, which requests

> Debtor moves the Court for an Order Joining the instant case with Debtor's spouse's case #24-24505-E-13C. This Motion is brought pursuant to Rule 42(a) of the Fed. R. Civ. P. . . .

Mot. 1:17-20, Docket 10. Federal Rule of Civil Procedure 42, which is incorporated into Federal Rules of Bankruptcy Procedure 7042 and 9014(c). The Notice of Hearing is titled "Notice of Hearing on Motion for Joint Administration of Related Cases." Notice, Docket 127.

However, consolidation of bankruptcy cases is expressly provided for in Federal Rule of Bankruptcy Procedure 1015 promulgated by the United States Supreme Court. The court applies the proper Rule for consolidation, whether joint administration or substantive consolidation, below.

It appears the two Debtors desire to substantively consolidate their cases, not merely have them "jointly administered," by the language of this Motion.

Debtor includes in the Motion the following grounds, stated with particularity (Fed. R. Bankr. P. 9013), and moves this court for an order substantively consolidating on the following grounds:

1. Counsel met with Debtors and determined that the Debtors should have been filed jointly. Mot. ¶ 3, Docket 10.

2. The Meeting of Creditors in Mr. Tillman's case is scheduled for November 21, 2024. Mrs. Bettemcourt-Tillman does not have a Meeting of Creditors scheduled. Neither case has been confirmed. *Id.* at ¶ 4.

3. Debtors are requesting that Shelley L. Bettencourt-Tillman case be joined with Leon Moses Tillman Sr. case and be administered as one case with the schedules and Plan filed with the Court as case #24-24505-E-13C. *Id.* at ¶ 5.

APPLICABLE LAW

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:

> (a) CASES INVOLVING SAME DEBTOR. If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.
>
> (b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general

> partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).
>
> (c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

The advisory notes to this Rule states:

> Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates.

Notably, "neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law." 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Substantive consolidation of assets and liabilities between different entities may be "dealt with as if the assets were held, and the liabilities incurred, by a single entity. This type of consolidation generally is referred to as substantive consolidation. . . The power to consolidate substantively is derived from the court's general equitable powers as set forth in section 105. . ." *Id.* at ¶ 1015.02[3]. The court is also aware that "[t]he power to consolidate should be used sparingly because of the potential harm to creditors of substantive consolidation." *Id.* at ¶ 105.09[1][d] (internal quotations omitted).

The Ninth Circuit has recognized the power of the bankruptcy courts to substantively consolidate cases of two separate debtors as an equitable remedy available to the bankruptcy courts. *See In re Bonham*, 229 F. 3d 750, 763 (9th Cir. 2000) ("The bankruptcy court's power of substantive consolidation has been considered part of the bankruptcy court's general equitable powers since the passage of the Bankruptcy Act of 1898."). When the bankruptcy court finds substantive consolidation is proper and issues an order accordingly, "[t]he consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-company claims are extinguished; and, the creditors of the consolidated entities are combined for purposes of voting on reorganization plans." *Id.* at 764.

The primary purpose of substantive consolidation is to ensure the equitable treatment of all creditors. *Id.* The Ninth Circuit has instructed that "in ordering substantive consolidation, courts must consider whether there is a disregard of corporate formalities and commingling of assets by various entities; and balance the benefits that substantive consolidation would bring against the harms that it would cause." *Id.* at 765. In making a determination of whether to order substantive consolidation, the Ninth Circuit has adopted the test used by the Second Circuit. Bankruptcy courts are to consider "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. . . The presence of either factor is a sufficient basis to order substantive consolidation." *Id.* at 766.

The first factor is satisfied when the record shows "lenders structure their loans according to their expectations regarding th[e] borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets." *Id.* (internal quotations omitted). The second factor is met when "the time and expense necessary even to attempt to unscramble [the debtors] [is] so substantial as to threaten the realization of any net assets for all the creditors or where no accurate identification and allocation of assets is possible." *Id.* (internal quotations omitted).

Joint administration is the alternative to consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when "the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds." 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

> (a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.
>
> (b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7 r subchapter V of chapter 11 of the Code.
>
> (c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.
>
> > (1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.
> >
> > . . .
>
> (d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of

a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

DISCUSSION

Substantive Consolidation is Proper

In this case, the court has enough evidence to find that substantive consolidation of the two cases is warranted. For example, Debtors have filed and claimed the same exemptions. Decl. ¶ 2, Docket 12. In applying the first factor in the test set forth in *Bonham*, the court assumes that the vast majority of creditors have dealt with both Debtors as a single economic unit, considering the Debtors are married.

Regarding the second factor as set forth in *Bonham*, the court must find that the affairs of the debtor are so entangled that consolidation will benefit all creditors. The court finds this factor is also met, Debtors being married and sharing debts based on community property interests.

Additionally, while the court does not take silence as "consent," it does note that no creditor has come forward asserting that substantive consolidation is not proper or that it would result in economic detriment to creditors.

The court grants the Motion and Bankruptcy Case no. 24-25073 of Shelley L. Bettencourt-Tillman is substantively consolidated with Case no. 24-24505 of Leon Moses Tillman, with the Substantive Consolidation effective as of the October 7, 2024 filing of Case no. 24-24505. This effective date for consolidation is without prejudice to any person who did not receive notice of or had actual knowledge of the filing of the Motion to Substantively Consolidate these two cases.

The consolidated case shall proceed going forward under Case No. 24-24505, and be titled:

In Re Shelley L. Bettencourt-Tillman,
Debtor
and

In re Leon Moses Tillman,
Debtor

Substantively Consolidated Bankruptcy Cases

All rights and powers of the respective bankruptcy estates, including avoiding transfers and recovery of assets, are preserved in full force and effect for the Consolidated Bankruptcy Estate.

All pleadings in the Substantively Consolidated Bankruptcy Cases shall be filed in Case 24-24505, and for the Shelley L. Bettencourt-Tillman bankruptcy filed, 24-25073, a Notice of Substantively Consolidated Cases shall be placed on the Docket and the Clerk of the Court shall file all further pleadings, absent a subsequent order of the court, for the Shelley L. Bettencourt-Tillman case into the Substantively Consolidated Bankruptcy Cases being administered with Case No. 24-24505.

The consolidated Debtors shall file and serve a Notice of Substantively Consolidated Bankruptcy Cases shall be served on all Parties in Interest in each of the two Bankruptcy Case, providing notice and direction to:

A. The two Bankruptcy Cases are substantively consolidated, and will be administered as one joint case, 11 U.S.C. § 302, under Case No. 24-24505.

B. All pleadings and other documents shall be filed in Case No. 24-24505.

C. Proofs of Claim do not need to be refiled.

D. Debtors shall file an Amended Master Address list listing all parties in interest in the Joint Bankruptcy Case.

E. Debtor shall file and serve Notice of Substantively Consolidated Joint Bankruptcy Case within two weeks of the entry of the Order creating the Joint Bankruptcy Case.

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

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

The Motion to for Joint Administration, which the court construes to be a Motion to Substantively Consolidate Case no. 24-25073 with Case no. 24-24505, filed by Shelley L. Bettencourt-Tillman ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

30. 24-24204-E-13 PGM-1 | **KUAJI HILL** | **Peter Macaluso** | **MOTION TO CONFIRM PLAN** | **12-6-24 [41]**

Final Ruling: No appearance at the January 14, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 6, 2024. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Kuaji Yvette Hill ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 45; Exhibits, Docket 44. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Kuaji Yvette Hill ("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 6, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

31. 20-22006-E-13 TLA-4 | **BROOKS PARFITT** | **MOTION TO MODIFY PLAN**
Thomas Amberg | **11-14-24 [108]**

Final Ruling: No appearance at the January 14, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 14, 2024. By the court's calculation, 61 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, Brooks Gregory Parfitt ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 110. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on December 130, 2024. Docket 113. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Brooks Gregory Parfitt ("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 14, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

32. 24-24611-E-13 MRL-1 | **GARRICK BROWN AND STACIE HAGSTEDT** | **MOTION TO CONFIRM PLAN** | **11-27-24 [16]**
Mikalah Liviakis

Final Ruling: No appearance at the January 14, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 29, 2024. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Garrick Hayden-Scott Brown and Stacie Maureen Hagstedt ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 18. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-

Opposition on December 23, 2024. Docket 20. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Garrick Hayden-Scott Brown and Stacie Maureen Hagstedt ("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 October 15, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

33. 24-25011-E-13 THN-1 — DENNIS MCCAFFERTY — Teresa Hung-Nguyen — MOTION TO CONFIRM PLAN 12-2-24 [27]

Final Ruling: No appearance at the January 14, 2025 Hearing is required.

The Motion to Confirm the Chapter 13 Plan is dismissed without prejudice.

Dennis Michael McCafferty ("Debtor") having filed an *Ex Parte* Motion to Dismiss the pending Motion on January 6, 2025, Dckt. 42; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Wells Fargo Bank, N.A. ("Creditor"); the *Ex Parte* Motion is granted, Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by Dennis Michael McCafferty ("Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure

41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 42, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Chapter 13 Plan is dismissed without prejudice.

34. 20-25519-E-13 MS-1 | **ANDREW/RINA CARAGAN** **Mark Shmorgon** | **MOTION TO EMPLOY RICHARD E. DONAHOO AS SPECIAL COUNSEL 12-13-24 [85]**

Final Ruling: No appearance at the January 14, 2025 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, all creditors and parties in interest, and Office of the United States Trustee on December 13, 2024. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Andrew Caragan and Rina Caragan ("Debtor") seeks to employ Richard E. Donahoo as special counsel ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Counsel to pursue civil claims against Mr. Caragan's former employers Transcore, LP and GOTECHNOW.COM, LLC for violations of the Labor Code including failure to pay prevailing wages earned on public works projects.

Debtor argues that Counsel's appointment and retention is necessary as it will allow them to possibly recover sufficient funds to allow for a greater distribution to the unsecured creditors.

Richard E. Donahoo testifies that he will prosecute Debtor's state law claim, and he provides some insight as to the causes of action. Mr. Donahoo testifies that he does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl. ¶ 10, Docket 91.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Richard E. Donahoo as Special Counsel for the Chapter 13 Estate. Approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Andrew Caragan and Rina Caragan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, effective January 14, 2025, and Debtor is authorized to employ Richard E. Donahoo as Special Counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or contingency fee or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of

whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

35. 24-22526-E-13 DPC-2 | **CYNTHIA JIMENEZ** **Nikki GFarris** | **MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7** **12-4-24 [66]**

Final Ruling: No appearance at the January 14, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 4, 2024. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Reconvert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

This Motion to Convert the Chapter 13 bankruptcy case of Cynthia Marie Jimenez ("Debtor") has been filed by David Cusick ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be converted because Debtor is delinquent in plan payments in the amount of $2,900 with another plan payment of $1,450 coming due prior to the hearing. Mot. 1:19-21, Docket 66. Trustee moves for conversion as there may be substantial non-exempt assets.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

The court finds that conversion is proper. Debtor has not been making plan payments, which is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Trustee has not received any plan payments in the case. Moreover, Debtor's Schedules appear to show substantial non-exempt equity in the assets, including multiple vehicles and bank accounts. Am. Schedule A/B, Docket 44.

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case under Chapter 7.

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 Convert the Chapter 13 case filed by David Cusick ("Movant"), the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

36. 21-23841-E-13 **DENNIS FRAZIER**
Peter Macaluso

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING TRANSFER OF CLAIM
12-3-24 [214]

Final Ruling: No appearance at the January 14, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 3, 2024. The court computes that 42 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $28 due on November 15, 2024.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

37. 24-24750-E-13 **JEFFREY VAN HEE** **MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY**
RPM-1 **Joe Laub** **12-4-24 [27]**

DEBTOR DISMISSED: 12/15/24

Final Ruling: No appearance at the January 14, 2024 hearing is required.

The case having previously been dismissed, the Motion is denied as moot without prejudice. Order, Docket 45.

The Motion to Dismiss is denied without prejudice as moot, the case having been dismissed on December 15, 2024.

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 Absence of Stay having been presented to the court, the case having been previously dismissed, the Debtor's Bankruptcy Case having been dismissed rendering this Motion moot, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice, this Bankruptcy Case having been dismissed by prior order of the court.

38. 24-25153-E-13 **CLAUDINE BINGHAM** **MOTION TO CONFIRM PLAN**
THN-1 **Teresa Hung-Nguyen** **11-27-24 [19]**

Final Ruling: No appearance at the January 14, 2025 hearing is required.

The hearing on the Motion to Confirm Plan has been continued to 2:00 p.m. on February 11, 2025, by prior Order of the court (Dckt. 60).

39. 24-21861-E-13 PLG-1 | **AUDRA KUNKLE** | **MOTION TO MODIFY PLAN**
Steven Alpert | **11-27-24 [21]**

Final Ruling: No appearance at the January 14, 2025 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, all creditors and parties in interest, and Office of the United States Trustee on November 27, 2024. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied without prejudice.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Audra Lee Ann Kunkle ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 25. However, the Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 23, 2024. Trustee opposes confirmation on the grounds that Debtor is improperly changing the interest rate of the Class 2(A) claim of Golden 1 Credit Union, and there may be a liquidation problem.

Debtor filed a Reply agreeing that the Plan is not confirmable and that Debtor no longer wishes to seek confirmation of this Plan. Docket 30.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

40. 24-23271-E-13 CCR-1 | **BARBARA DODGE** **Eric Schwab** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY KRISTOFER ORRE AND SARAH ORRE 9-12-24 [23]**

Item 40 thru 42

Final Ruling: No appearance at the January 14, 2025 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, Chapter 13 Trustee, and Office of the United States Trustee on September 12, 2024. 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 hearing on the Objection to Confirmation of Plan has been continued to 2:00 p.m. on February 25, 2025, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

January 14, 2025 Hearing

The court continued the hearing on this Objection by order granting the *Ex Parte* Motion for a continuance. Docket 54. A review of the Docket on January 9, 2025 reveals nothing new has been filed with the court.

On January 10, 2025, Creditor and Debtor filed an Ex Parte Joint Motion to continue the hearing to 2:00 p.m. on February 25, 2025.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on February 25, 2025, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

REVIEW OF OBJECTION

Kristofer Orre and Sarah Orre ("Creditor") holding a secured claim oppose confirmation of the Plan on the basis that:

1. Debtor Barbara Ann Dodge ("Debtor") did not file this Plan and case in good faith, in violation of 11 U.S.C. § 1325(a)(3) and (7). Debtor has engaged in hiding assets prepetition by transferring money to avoid paying Creditor's claim, as well as misrepresenting costs on Debtor's Schedule J in the present case. Docket 23.

Creditor submits the Declaration of Sarah Orre to authenticate the facts alleged in the Objection. Decl., Docket 25.

DEBTOR'S REPLY

Debtor filed a Reply on October 2, 2024, asking the court continue the hearing on this Objection to November 5, 2024 at 2:00 p.m. to be heard in conjunction with the related Motion to Avoid Judicial Lien. Docket 32.

DISCUSSION

Good Faith Requirement of 11 U.S.C. § 1325(a)(3)

11 U.S.C. § 1325(a)(3) states:

(a) Except as provided in subsection (b), the court shall confirm a plan if—
. . .
(3) the plan has been proposed in good faith and not by any means forbidden by law;

The Ninth Circuit has ruled "[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner" in ruling on whether a Plan was proposed in bad faith. *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

The evidence before the court in this case shows that Debtor owed Creditor $252,581.56 resulting from an arbitration award entered by the Superior Court of California, County of Santa Cruz, case no. 23CV01407. Decl. ¶ 6, Docket 25. Creditor argues that Debtor closed certain accounts prepetition and moved funds from the closed accounts in order to frustrate collection attempts. If true, the court could infer the plan has been filed in bad faith.

At the hearing, the parties requested that the hearing be continued to 2:00 p.m. on November 5, 2024. The hearing on the Debtor's Motion to avoid the judicial lien of Creditor has been continued to that time and date.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 5, 2024.

November 5, 0224 Hearing

By prior Order of the Court, Dckt. 44, the hearing has been continued to 2:00 p.m. on December 10, 2024.

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 Kristofer Orre and Sarah Orre ("Creditor"), 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 has been continued to **2:00 p.m. on February 25, 2025**, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.
> .

41. 24-23271-E-13 DPC-1 | **BARBARA DODGE** **Eric Schwab** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-11-24 [19]**

Final Ruling: No appearance at the January 14, 2025 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, parties requesting special notice, and Office of the United States Trustee on September 11, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on February 25, 2025.

January 14, 2025 Hearing

The court continued the hearing on this Objection to be heard with the related Objection and Motion. A review of the Docket on January 9, 2025 reveals nothing new has been filed with the court.

REVIEW OF OBJECTION

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

1. Debtor Barbara Ann Dodge's ("Debtor") Plan relies on a Motion to Avoid Judicial Lien, and if the Motion is not granted, the Plan is not confirmable because it will fail the liquidation test. Obj. 2:3-14, Docket 19.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 21.

DISCUSSION
Debtor's Reliance on Motion to Avoid Judicial Lien

Debtor's Plan relies on avoiding the judicial lien of Kristofer Orre and Sarah Orre ("Creditor"). If Debtor succeeds on that Motion and the claim is placed in the general unsecured class of creditors, then Debtor's Plan passes the liquidation test. However, if the Motion does not succeed and Creditor's claim stays secured, Debtor's Plan will not provide unsecured creditors with more than what they would receive under a Chapter 7. 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date."

At the hearing, the parties requested that the hearing be continued to 2:00 p.m. on November 5, 2024. The hearing on the Debtor's Motion to avoid the judicial lien of Creditor has been continued to that time and date.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 5, 2024.

November 5, 2024 Hearing

The court continued the two related matters to December 10, 2024. Dockets 43, 44. Therefore, the court continues the hearing on Trustee's Objection to the same time and date to be heard in conjunction with the related matters at 2:00 p.m. on December 10, 2024.

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 25, 2025.**

42. 24-23271-E-13 EJS-1 | **BARBARA DODGE** **Eric Schwab** | **CONTINUE MOTION TO AVOID LIEN OF KRISTOFER ORRE & SARAH ORRE 8-13-24 [10]**

Final Ruling: No appearance at the January 14, 2025 Hearing is required.

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, all creditor and parties in interest, and Office of the United States Trustee on August 13, 2024. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Avoid Judicial Lien has been continued to 2:00 p.m. on February 25, 2025, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

The Motion was continued multiple times. In the most recent continuance, the court granted a Stipulation filed by the parties requesting the continuance. Order, Docket 53. In the Order, creditors Kristofer Orre and Sarah Orre were to obtain a valuation and file opposition to the Motion on or before December 31, 2024. No oppositions were ever filed.

This Motion requests an order avoiding the judicial lien of Creditor against property of the debtor, Barbara Ann Dodge ("Debtor") commonly known as 9021 Brydon Way, Sacramento, Ca 95826 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $255,416.56. Exhibit D, Dckt. 13. Debtor has not properly filed the Abstract of Judgment with the court as it lacks recorder information. The court is unable to determine where and when the judgment was recorded.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $528,100 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total $0 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 20, Docket 1. However, Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $532,000 on Schedule C. Schedule C at 17, Docket 1.

JANUARY 14, 2025 HEARING

On January 10, 2025, the Debtor and Creditors Kristofer and Sarah Orre filed an *Ex Parte* Joint Motion requesting that the hearing be continued to 2:00 p.m. on February 25, 2025, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Barbara Ann Dodge ("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 Avoid Judicial Lien has been continued to **2:00 p.m. on February 25, 2025**, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

43. 24-25484-E-13 MOH-1 | **KRISTIN VRABLICK** / **Michael Hays** | **MOTION TO EXTEND AUTOMATIC STAY** **12-5-24 [11]**

Final Ruling: No appearance at the January 14, 2025 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, all creditors and parties in interest, and Office of the United States Trustee on December 6, 2024. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

On December 4, 2024, Debtor Kristin Vrablick commenced this Chapter 13 Case. Debtor had one prior bankruptcy case that was pending and dismissed within one year prior to the filing of the Current Case. That prior case is 23-23508, which was dismissed on January 19, 2024.[1]

On December 5, 2024, Debtor filed a Motion to Extend the Automatic Stay pursuant to 11 U.S.C. § 362(c)(3)(B). This addresses the provisions of 11 U.S.C. § 362(c)(3)(A) that provides for the automatic stay to terminate as to an individual debtor thirty days after a bankruptcy case is filed if there was a prior case for that individual debtor that was pending and dismissed within one year of the filing of the second case – unless the court extends the automatic stay before the expiration of that 30-day period.

As Debtor notes in the Motion to Extend the Stay (Dckt. 11) and in a Motion to Shorten Time (Dckt. 15), due to the court's holiday calendar there are not regularly scheduled hearing dates that are at least

[1] Debtor has another case that was filed within the past year, 24-21480, which was a Chapter 7 Case the Debtor successfully prosecuted and was granted a discharge, with the discharge having been entered on July 23, 2024.

fourteen days after the filing of this case (the minimum notice period under the Local Bankruptcy Rules) and before thirty days after the December 5, 2024 filing of this Case.

Motion to Extend Automatic Stay

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

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Grounds Stated By Debtor

In the Motion, Debtor addresses several health issues which impeded her prosecution of the prior Chapter 13 Case that was dismissed. Motion, ¶ 2); Dckt. 11. Debtor's daughter is now residing with the Debtor and is actively involved in assisting the Debtor in prosecuting this Bankruptcy Case. With Debtor's daughter now living with the Debtor, the Daughter is providing additional monies for living expenses.

Debtor has a proposed Plan filed, Dckt. 9. Debtor's Declaration, Dckt. 14, provides testimony of some of the events leading to the dismissal of the prior case and the active work she and her daughter are doing with Debtor's counsel in this Bankruptcy Case.

Granting Motion and Extending the Automatic Stay

As noted above, the plain language of 11 U.S.C. § 362(c)(3)(A) causes the termination of the automatic stay only as to the debtor if it is not extended within thirty days of the filing of the second

bankruptcy case – the stay does not terminate as to the estate or other persons or property for which automatic stay is granted by Congress in 11 U.S.C. § 362(a).

When addressing this type of situation where hearing dates are tight and setting shortened hearing dates would not provide a meaningful period for presentation of argument, the court has addressed the granting or denying a motion seeking to extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B) on an *ex parte* basis for an interim period of time, and then conducted a hearing set consistent with the normal at least 28-day notice, written opposition required, time period. As provided in 11 U.S.C. § 102(1), the term "after notice and hearing" means such notice as is appropriate and opportunity for hearing as appropriate, and authorizes the court to issue an order without a hearing if there is insufficient time for a hearing. Here, the court determines that there is insufficient time for a meaningful hearing, and the court determines that is it better to maintain the status quo pending any opposing party having the opportunity to present written opposition. Additionally, if the stay (11 U.S.C. § 362(a)(1), (2), (5)) were to terminate as to the Debtor, it would not terminate the stay as to the Bankruptcy Estate (11 U.S.C. § 362(a)(2), (3), (4), (7)) in this Case which holds all of the assets of the pre-petition debtor.

No written Opposition was ever filed in the case after the court extended the stay on an interim basis by order. Docket 19.

Here, the Debtor has presented the court with changed circumstances and reasons why the Debtor appears to be filing and prosecuting this Case in good faith. In addition to the grounds stated in the Motion, Debtor has also successfully prosecuted a Chapter 7 Case, obtaining her discharge.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Kristin Vrablick ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

44. 24-24789-E-13 JCW-1 | **JULIO BAPTISTA** Scott Johnson | **OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK** 12-19-24 [14]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 14, 2025 Hearing is required.

Ally Bank ("Creditor") having filed a Notice of Withdrawal, Dckt. 18, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection was dismissed without prejudice, and the matter is removed from the calendar.**

45. 24-24192-E-13 DPC-1 | **CHRISTOPHER SMITH** Scott Johnson | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** 12-2-24 [18]

Final Ruling: No appearance at the January 14, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 2, 2024. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Christopher John Smith's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on May 23, 2024. Case No. 24-22244. Debtor received a discharge on September 9, 2024. Case No. 24-22244, Docket 15.

The instant case was filed under Chapter 13 on September 19, 2024.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on September 9, 2024, which is less than four years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 24-24192), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

The court shall issue 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 Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 24-24192, the case shall be closed without the entry of a discharge.

46. 24-24542-E-13 MJH-2 | **MONALISA SILAPAN** / **Mark Wolff** | **MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7** **12-31-24 [33]**

Final Ruling: No appearance at the January 14, 2025 hearing is required.

The court continued the hearing on the Motion to Convert to January 22, 2025 at 9:00 a.m. by prior Order. Docket 42. No appearance at the January 14, 2025 Hearing is required.

Creditor Michael J. Harrington, as Trustee of the Michael J. Harrington Living Trust established August 20, 2023, aka Claim No. One ("Creditor") moves this court for an Order converting this Chapter 13 case to a proceeding under Chapter 7 pursuant to 11 U.S.C. § 1307(c)(1) and (5). Creditor asserts that the case should be dismissed or converted based on the following grounds:

A. On December 17, 2024, the Court sustained two objections to confirmation (DCN: DPC1 and MJH-1) and found that Debtor was not eligible pursuant to 11 U.S.C. 109(e). No Chapter 13 Plan can be confirmed. Mot. 2:11-13, Docket 33.

B. The case should be converted as the Chapter 13 Trustee, David Cusick, has presented evidence in his own Motion (DCN. DPC-2) that Debtor has significant assets. *Id.* at 2:19-24.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C.

§ 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

The court indeed found in its Civil Minutes at Docket 39 that Debtor's unsecured debts exceeded the debt limit of Chapter 13. Debtor's inability to prosecute a Chapter 13 case for eligibility reasons constitutes a for cause reason for dismissal or conversion. As there may be assets available for creditors if the case were converted to one under Chapter 7, the court finds conversion is appropriate.

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c).