UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 28, 2025 at 2:00 p.m.

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1. 24-24730-E-13 BLG-2 | **LIZBETH/DANIEL ALARCON** **Chad Johnson** | **CONTINUED AMENDED MOTION TO AVOID LIEN OF LAZER BROADCASTING CORPORATION 1-14-25 [51]**

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.

January 28, 2025 Hearing

The court continued the hearing on this Motion as the Motion contained a clerical error. The Motion stated two separate addresses for real property against which the lien was accorded. Debtor was to file by January 15, 2024, a corrected Motion stating one address. Order, Docket 57.

On January 14, 2025, Debtor filed the corrected Motion. Docket 51. The correct address of the real property is 3928 Danbury Way, Fairfield, CA 94533, as properly stated in the Motion.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

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 3928 Danbury Way, Fairfield, CA 94533 ("Property").

CHAPTER 13 TRUSTEE'S RESPONSE

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).

However, the Motion contains a clerical error, incorrectly identifying the property in the body of the Motion but correctly stating it in the prayer requesting the relief.

The court continues the hearing to allow for a corrected Motion to be filed.

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 3928 Danbury Way, Fairfield, CA 94533, 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.

2.	**24-24401-E-13** **DPC-1**	**PAULINE MONTIEL** **Fred Ihejirika**
		CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
Item 2 thru 3		**11-18-24 [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, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on November 18, 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.

The Objection to Confirmation of Plan is xxxxxxx.

January 28, 2025 Hearing

The court continued the hearing on this Objection to be heard in conjunction with the related Motion to Value, which the court has granted by final ruling.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

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

1. Debtor Pauline Bernice Montiel ("Debtor") has proposed a Plan that relies on a Motion to Value the collateral of One Main Financial. No such Motion has been filed, and the Plan is not confirmable unless the Motion is filed and granted. Obj. 2:9-20, Docket 15.

2. Debtor has not submitted the required attachment to Schedule I question 8a. *Id.* at 3:5-14.

3. The Plan calls for Attorney fees to be determined by complying with LBR 2016-1(c) but discloses that $5,000.00 total was charged with $2,000.00 paid prior to filing and $3,000.00 to be paid through the plan. LBR 2016-1(c)(3) limits the retainer to 25% of the fee, so only $1,250.00 is allowed as a retainer. The Trustee request's that the additional amount of $750.00 that was paid by the Debtor over the maximum amount be returned to the Debtor by the Debtor's attorney. *Id.* at 3:15-23.

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Objection. Decl., Docket 17.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

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

Debtor has now filed and set for hearing on January 28, 2025, the Motion to Value. Dckt. 22.

Attorney's Fees: Retainer

When opting into the no-look fee provisions of Rule 2016-1(c), "an attorney shall not seek, nor accept, a retainer greater than the sum of (A) 25% of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7); and (B) the amount of costs in subdivision (c)(2), as increased by subdivision (c)(7)." Local Bankruptcy Rule 2016-1(c)(3). The fee specified in subdivision (c)(1) for a non-business case is $8,500, but can be less if the debtor and attorney so choose. Trustee contends that, because Debtor's attorney has opted for the lesser amount, the attorney should only be able to accept a retainer in the amount

of 25% of the lesser amount, and should refund the amount in excess of the 25% retainer to be in compliance with Local Bankruptcy Rule 2016-1(c).

At the hearing, counsel for the Debtor explained that the Debtor has financial care insurance that covers bankruptcy, and under the insurance plan funds the payment received by counsel. Counsel for the Debtor and counsel for the Trustee will meet and address this issue to insure that none of Debtor's insurance coverage is lost or wasted.

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.

The Trustee reports that this has been resolved, with an Amended Schedule I having been filed.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on January 28, 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 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**.

3. 24-24401-E-13 FI-1 | **PAULINE MONTIEL** **Fred Ihejirika** | **MOTION TO VALUE COLLATERAL OF ONE MAIN FINANCIAL GROUP, LLC 12-16-24 [22]**

Final Ruling: No appearance at the January 28, 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 Chapter 13 Trustee, Creditor, other parties in interest, and Office of the United States Trustee on December 16, 2024. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of One Main Financial Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $6,861.00.

The Motion filed by Pauline Bernice Montiel ("Debtor") to value the secured claim of One Main Financial Group, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 24. Debtor is the owner of a 2013 Chrysler 300 automobile ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $6,861.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a Nonopposition on January 14, 2025. Docket 33.

DISCUSSION

The lien on the Vehicle's title secures a non-purchase-money loan to secure a debt owed to Creditor with a balance of approximately $17,488. Declaration ¶ 3, Docket 24. 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 $6,861.00, 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 Pauline Bernice Montiel ("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 One Main Financial Group, LLC ("Creditor") secured by an asset described as 2013 Chrysler 300 automobile ("Vehicle") is determined to be a secured claim in the amount of $6,861.00, 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 $6,861.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

4. 24-22625-E-13 JAMES WALTHOFF **MOTION TO DISMISS CASE**
Peter Macaluso **11-22-24 [41]**

Item 4 thru 5

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 22, 2024. By the court's calculation, 67 days' notice was provided. The court set the hearing for January 28, 2025. Dckt. 47.

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

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

Debtor James D. Walthoff ("Debtor") moves to dismiss his own case pursuant to 11 U.S.C. § 1307(b). That right is nearly absolute. The court issued an order setting the hearing on this Motion to be heard in conjunction with the Creditor's Objection to Homestead Exemption.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by James D. Walthoff ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

5. 24-22625-E-13 DNL-1 | **JAMES WALTHOFF** Peter Macaluso | **CONTINUED OBJECTION TO HOMESTEAD EXEMPTION 8-26-24 [20]**

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

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

Sufficient Notice not Provided. There is no complete Proof of Service filed in this case, so the court is unable to determine which parties have been served and when. The Proof of Service filed only contains the front page of the form.

The Debtor has filed an Opposition to the Objection to Claim of Exemption, documenting that Debtor was served.

A review of the Verification of Master Address List filed by Debtor lists Experian, Equifax Information Services, LLC, TransUnion, LLC, Amex, Buchalter Law, and Creditor's State Court Counsel as the only persons for noticing in this Bankruptcy Case. Dckt. 4. On Schedule D Debtor lists having no creditor's with secured claims, and on Schedule E/F having no creditors with priority unsecured claims and having two creditors, Other than Creditor brining this Objection, with general unsecured claims, those being Amex and Buchalter Law (those to claims totaling less than $10,000).

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

The Objection to Claimed Exemptions is xxxxxxx.

January 28, 2025 Hearing

The court continued the hearing on this Objection at the Parties request. The Objection is being heard in conjunction with Debtor's Motion to Dismiss this case. At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

Crystal Rista ("Creditor") objects to James D. Walthoff's ("Debtor") claimed homestead exemption under Cal. Code Civ. P. § 704.730 in the property commonly known as 6331 Rushmore Dr., Sacramento, California 95842 ("Property"). Creditor states:

A. Debtor claims to hold title to as a joint tenant and approximate value of $400,000.00. The Debtor further states that the Property is community property. Obj. 2:10-11, Docket 20.

B. Debtor's Schedule C asserts an exemption in the amount of $600,000.00 against the Property pursuant to Cal. Code Civ. Pro. § 704.730.

C. Debtor Schedules Creditor's counsel, Huber Fox, as an unsecured creditor with a claim in the amount of $1,226,052.51. On August 21, 2024, Creditor filed POC 2-1 for $1,446,922.50 ("POC 2-1") on account for her judgment against the Debtor for financial abuse of an elder, inclusive of attorney's fees and costs and interest awarded by the Superior Court. *Id.* at 2:16-18.

D. During its efforts to enforce the Judgment prepetition, Creditor's counsel determined from public records that the Debtor and his spouse had transferred their interest in the Property to MRDC, LLC, on or about May 13, 2023, and recorded on May 18, 2023—shortly after the bench trial that would result in entry of the Judgment on July 10, 2023. *Id.* at 2:19-22.

E. Property records reveal that, on June 19, 2024, MRDC, LLC, and an individual named Rachelle Carr, executed a grant deed in favor of the Debtor and spouse, which was recorded on June 25, 2024. *Id.* at 2:23-25.

F. Debtor's schedules do not disclose any interest in MRDC, LLC, and a search of California Secretary of State records show no entity operating under that name in California. *Id.* at 2:26-27.

G. Here, the Debtor does not appear to have had either a legal or equitable interest in the Property on the petition date either directly or through MRDC, LLC. In fact, the Debtor appears to have transferred his interest in the Property with the intent to hinder, delay, or defraud the Judgment Creditor in the aftermath of the bench trial that ultimately resulted in the Judgment, only to promptly reverse the transfer postpetition. *Id.* at 3:13-17.

Jonathan Huber, counsel who represented Debtor in the state court proceeding, submitted his Declaration in support. Docket 22. Mr. Huber authenticates the facts alleged in the Objection.

Exhibit B, which is identified as a Title Transfer Report appears to be a report provided by a third party, Data Tree, with the footer on the bottom of the page stating, "2024 First America Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF." Exhibit B; Dckt. 23.

On the last page of Exhibit B is the following disclaimer:

> Disclaimer: This report: (i) is **not an insured product or service or an abstract, legal opinion or a representation of the condition of title to real property**, and (ii) is issued exclusively for the benefit of First American Data Tree LLC (Data Tree) customers and may not be used or relied upon by any other person. Estimated property values are: (i) based on available data; (ii) are not guaranteed or warranted;

> (iii) do not constitute an appraisal; and (iv) should not be relied upon in lieu of an appraisal. Data Tree does not represent or warrant that the information is complete or free from error, and expressly disclaims any liability to any person or entity for loss or damage caused by errors or omissions in the report. If the "verified" logo {(3t-") is displayed, or a record is designated "verified; Data Tree's algorithm matched fields from two or more data sources to confirm source data.

Id. While it provides information that one would likely follow up and document with the county recorder or testimony from a third-party (likely a title company), this is hearsay concerning purported transactions involving the Property.

DEBTOR'S OPPOSITION

On September 24, 2024, Debtor filed an Opposition. Docket 27. Debtor states the Objection is untimely as it was filed on August 26, 2024, where the 341 Meeting concluded on July 25, 2024. *Id.* at 1:22-2:6. Debtor asserts Fed. R. Bankr. P. 4003(b) provides that a party in interest may object to a debtor's claimed exemptions within 30 days after the conclusion of the Section 341 meeting of creditors. *Id.* at 2:13-15. Therefore, Debtor argues the exemption stands pursuant to *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992).

Debtor does not dispute any of the factual allegations, including the alleged transfers of the Property. Debtor's sole basis for Opposition is alleging that the Objection to Claim of Exemption was not filed.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Importantly, a debtor may only claim an exemption he was entitled to claim on the Petition Date, pursuant to the so-called "snapshot" rule. *Wilson v. Rigby*, 909 F.3d 306, 308 (9th Cir. 2018).

Fed R. Bankr. P. 4003(b)(1) states:

(b) Objecting to a Claim of Exemptions.

> (1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Computation of Deadline For
Filing Objection to Exemption

In Debtor's Opposition, the simple computation of thirty days from the July 25, 2024 completion of the 341 is made as follows:

July 26 - July 31.....6 days
August 1 - August 24.....24 days

Thirty days expires, by the Debtor's calculation on August 24, 2024.

The computation of time is not left to the discretion of a judge, but have been set by the United States Supreme Court in Federal Rule of Bankruptcy Procedure 9006. In pertinent part, Federal Rule of Bankruptcy Procedure 9006 states:

> Rule 9006. Computing and Extending Time; Time for Motion Papers [Effective until December 1, 2024]
>
> (a) Computing Time. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.
>
> (1) Period stated in days or a longer unit. When the period is stated in days or a longer unit of time:
>
> (A) **exclude the day of the event that triggers the period**;
>
> (B) **count every day**, including intermediate Saturdays, Sundays, and legal holidays; and
>
> (C) **include the last day of the period**, **but if the last day is a Saturday, Sunday**, or legal holiday, **the period continues to run until the end of the next day** that is not a Saturday, Sunday, or legal holiday.
>
> . . .
>
> (4) "Last day" defined. Unless a different time is set by a statute, local rule, or order in the case, the last day ends:
>
> (A) for electronic filing, at midnight in the court's time zone; and
>
> (B) for filing by other means, when the clerk's office is scheduled to close.
>
> (5) "Next day" defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
>
> . . . .

July 25, 2024 was a Thursday. Thirty days later, August 24, 2024, was a Saturday, and August 25, 2024 was a Sunday, neither of which is the "last day" in the thirty day period for the filing of an Opposition to Claim of Exemption. Monday August 26, 2024, is the last day that an Objection to Claim of Exemption could be filed in this Bankruptcy Case.

The Objection to Claim of Exemption having been filed on August 26, 2024, it was timely filed and the Opposition based on timeliness is overruled.

ISSUES OUTSTANDING

Both the Objection to Claim of Exemption and the Opposition present the court with "challenges." Some relate to evidence and authentication thereof. Some relate to not denying allegations in the Objection and relying on a "statute of limitations" affirmative defense. Additionally, though admissible, non-hearsay evidence of transfers has not been presented to the court, it can be heard and some say that the Debtor transferred the Property to a third-party (the limited liability company) and did not obtain title back until after the case was filed.

Possible Transfers of Property

In the evidence submitted, Creditor presents to the court that it has been heard that some say that on May 18, 2023, a deed dated June 19, 2023, transferring title to the Property from Debtor and his spouse to an entity identified as MRDC, LLC. Then, on June 25, 2024, a deed dated June 19, 2024, transferring title to Debtor and his spouse from MRDC, LLC was recorded.

The transfer to MRDC, LLC was recorded on May 18, 2023. This Bankruptcy Case was filed on June 17, 2024, which is approximately only thirteen months after the deed to MRDC, LLC was recorded.

Exhibit C; Dckt. 23, is a copy of a Grant Deed by which MRDC, LLC transfers title to the Property to Debtor and his Spouse as joint tenants. This Grant Deed is dated June 19, 2024. On page 1 of the Grant Deed, in the section for the Transfer Tax, it states that the tax is $0.00 because the transfer was a "Gift," referencing California Revenue and Taxation Code § 11930. That Code Section provides:

> § 11930. Transfer by inter vivos gift or by death
>
> Any tax imposed pursuant to this part shall not apply to any deed, instrument, or other writing which purports to grant, assign, transfer, convey, divide, allocate, or vest lands, tenements, or realty, or any interest therein, if by reason of such inter vivos gift or by reason of the death of any person, such lands, tenements, realty, or interests therein are transferred outright to, or in trust for the benefit of, any person or entity.

Cal Rev & Tax Code § 11930. If such a gift were made, presumably the tax reporting of the gift will be consistent therewith.

In response to paragraph 18 of the Statement of Financial Affairs Debtor states under penalty of perjury that within two years before the filing of this Bankruptcy Case the Debtor did not "sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your

business or financial affairs." Dckt. 13 at 25. The is not consistent with the allegations of Creditor that in May 2023 title to the Property was transferred to MRDC, LLC.

Creditor also alleges (but does not evidence other than counsel's finding) that MRDC, LLC is not an entity registered to do business in California.

The court notes that for the MRDC, LLC Deed to Debtor and Debtor's Spouse, it is dated June 19, 2024, but was not recorded until June 25, 2024. Exhibit C; Dckt. 23. Debtor commenced this Chapter 13 Bankruptcy Case on June 17, 2024 - two days before the date of the Grant Deed from MRDC, LLC.

In looking further at the Schedules filed by Debtor, there are no creditors listed on Schedule D as having secured claims. Dckt. 13 at 11.

October 8, 2024 Hearing

At the hearing, the court set a new briefing schedule to allow Creditor to file supplemental opposition pleadings and properly filed, admissible, authenticated evidence in support of the Objection, and for Debtor to file supplemental opposition pleadings and evidence.

The hearing on the Objection to Claimed Exemptions is continued to 2:00 p.m on December 10, 2024. Creditor shall filed and serve supplemental pleadings and evidence on or before November 7, 2024. Debtor shall file supplemental opposition pleadings and evidence on or before November 21, 2024. Replies, if any, shall be filed and served on or before November 27, 2024.

December 10, 2024 Hearing

The court continued the hearing as it set a new briefing schedule to allow Creditor to file supplemental opposition pleadings and properly filed, admissible, authenticated evidence in support of the Objection, and for Debtor to file supplemental opposition pleadings and evidence.

Creditor filed its supplemental pleadings on November 7, 2024. Dockets 37, 38. Creditor states:

1. As already discussed, in accordance with well-settled law, the Debtor is limited to the exemptions he was entitled to claim on the petition date. Supp. Pleading 2:1-2, Docket 37.

2. Regarding the transfers to and from MRDC, LLC, the Debtor—having gone through trial with the assistance of counsel and waiting on entry of the judgment— voluntarily chose to transfer his interest to the LLC. It appears that the transfer had the clear intent to hinder, delay, or defraud the Judgment Creditor in the aftermath of the bench trial that ultimately resulted in the Judgment. The Debtor then waited a year before promptly transferring the Subject Property back from MRDC, LLC, once he had the "cover" of bankruptcy. *Id.* at 2:7-12.

Creditor also requests the court take judicial notice of the attached exhibits at Docket 38. The Exhibits include evidence of the assignment of the Property and then the transfer of the Property back to Debtor after the bankruptcy was filed.

Debtor's Supplemental Pleadings

Debtor filed his Supplemental Pleading on November 21, 2024. Docket 40. Debtor states:

1. The transfer does not constitute a change in ownership because the transfer did not result in the beneficial use of the Property. *Id.* at 2:22-3:1.

2. The transfer was more akin to a transfer into a revocable trust, which holding arrangement can be declared a homestead. *Id.* at 3:4-9.

3. There was no reassessment charged by the County, so there was no ownership change. *Id.* at 3:15-22.

One day after filing his Supplemental Pleadings, Debtor filed a Motion to dismiss his own case. Docket 41. This Motion was not served on any parties, so the court has held off on issuing the Order in the event there may be some reason the court should not dismiss the case.

DISCUSSION

Creditor cites to the snapshot rule, asserting that Debtor may only claim exemptions he was entitled to as of the filed. Since title was in the LLC as of the filing, Creditor concludes no exemption. Debtor's opposition just argues that the court should treat the transfer to a limited liability company the same as if it was made to a revocable trust. Creditor's response is that it is not a trust and there is no evidence of a "gift transfer."

As the Supreme Court has directed trial court judges in the federal courts, it is for the judge to get the law right. *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). Neither party provides the court with a good analysis of the law relating to this transfer and what rights arise under California Law.

With respect to there having been "gift" transfers to the LLC and then back to the Debtor, Objection has provided copies of the two deeds (which Creditor had to provide as part of its objection). Exhibits F and G; Dckt. 38.

Exhibit F is a certified copy of the Grant Deed by which James Walthoff (the Debtor) and Francieline Walthoff grant title to the Property to MRDC, LLC. The Grant Deed is dated May 13, 2023, and has a recording date of May 18, 2023.

The Grant Deed to MRDC, LLC has a documentary transfer tax of $0.00, stating that "None Due - Gift T&T Code 11930." California Revenue and Taxation Code § 11930 provides (emphasis added):

§ 11930. Transfer by inter vivos gift or by death

Any tax imposed pursuant to this part shall not apply to any deed, instrument, or other writing which purports to grant, assign, transfer, convey, divide, allocate, or

> vest lands, tenements, or realty, or any interest therein, **if by reason of such inter vivos gift or by reason of the death of any person**, such lands, tenements, realty, or **interests therein are transferred outright to, or in trust for the benefit of, any person or entity.**

Then, Exhibit G is a certified copy of the Grant Deed From MRDC, LLC to James Walthoff (the Debtor) and Francieline Walthoff. Dckt. 38. The Grant Deed From MRDC , LLC to James Walthoff and Francieline Walthoff is dated June 19, 2024, and a recording date of June 25, 2024. The June 19, 2024, date of the Grant Deed is two days after this Bankruptcy Case was filed on June 17, 2024.

The Grant Deed from MRDC, LLC to James Walthoff and Francieline Walthoff states that the documentary transfer tax is $0.00, "None Due - Gift R&T Code 11930." *Id*.

California Law Relating to Transfers of Homestead Property to Third-Parties

Debtor appears to argue that the transfer, because there was no ownership change where the Debtor continually resided in the Property, was like transferring property into a revocable trust. Debtor cites the court to *Fisch, Spiegler, Ginsburg & Ladner v. Appel*, 13 Cal. Rptr. 2d 471 (Cal. Ct. App. 1992) to support its contention.

In *Fisch* the judgment debtors had quitclaimed title to their residence to a revocable family trust.

> The Appels [the judgment debtors] say they are entitled to revoke the trust, an assertion which Fisch does not dispute. Although the trust instrument is not part of the record, in light of the Appels' uncontradicted statement it appears the Appels are trustors. This gave them a contingent reversionary interest in the subject property (*see In re Moffat* (C.D. Cal. 1989) 107 Bankr. 255, 259), an interest in real property within the meaning of section 704.910, subdivision (c). Furthermore, the Appels maintain they have life estates in the trust assets, another claim which Fisch fails to dispute. This too amounts to an interest in real property within the meaning of section 704.910, subdivision (c). While a trust is not a natural person, and the homestead exemption applies only to property of natural persons (§ 703.020, subd. (a)), there is no requirement title be held by a natural person. "[H]omestead statutes are to be construed liberally on behalf of the homesteader." (*Ingebretsen v. McNamer* (1982) 137 Cal. App.3d 957, 960.) We determine placing title to property in a revocable living trust does not preclude homeowners from availing themselves of the benefits of the homestead law.

Fisch, Spiegler, Ginsburg & Ladner v. Appel, 10 Cal. App. 4th at 1813. In *Fisch* the person claiming the homestead exemption resided in the property and had the ability to have or control title to the property in which the exemption was claimed.

California law defines a "homestead" in which an exemption may be claimed to as follows:

> (c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien

> attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

Cal Code Civ Proc § 704.710(c). This focuses on the residency in the property and that a judgment lien of the person who is residing in the property attaches to that property in which the homestead exemption is claimed.

In Miller and Star California Real Estate, 12 Cal. Real Estate (4th ed.) § 43.16, the following statement is made:

> No requirement that legal title be continuously owned. The statutory definition of "homestead" requires only that the judgment debtor reside in the property claimed to be exempt as his or her principal dwelling at the time the judgment lien attaches to the property, and continuously thereafter.[19] Neither the declared homestead exemption nor the automatic homestead exemption requires that the judgment debtor continuously own legal title to the property, but in any case the judgment debtor must continue to reside at the property as his or her principal dwelling during any period while he or she does not own legal title, at least in the case of the automatic exemption.[20]
>
> 20
>
> *Tarlesson v. Broadway Foreclosure Investments, LLC*, 184 Cal. App. 4th 931, 937, 109 Cal. Rptr. 3d 319 (1st Dist. 2010) (automatic exemption); *In re Moffat*, 107 B.R. 255, 260 (Bankr. C.D. Cal. 1989), aff'd, 119 B.R. 201 (B.A.P. 9th Cir. 1990), aff'd, 959 F.2d 740 (9th Cir. 1992) (automatic exemption). In *Tarlesson*, the court expressly did not address whether an ownership interest is required for the declared homestead.
>
> See § 43:26 (equitable interests).

The discussion in Miller and Starr continues under § 43.26, equitable interests, providing the following analysis:

> § 43:26. Equitable interests
>
> Equitable interests in property may be homesteaded. A party may homestead "any interest in real property."[1] An equitable title that supports a right of occupancy is sufficient to enable the owner to claim a homestead of the premises.[2]

Vendee under installment contract of sale. A vendee in possession of property pursuant to a contract of sale under which the vendor retains legal title can declare a homestead upon his or her equitable interest in the property.[3] This interest is subordinate to the rights of the vendor, but superior to any third-party claim to the property that accrues after the declarant records the declaration of homestead.[4]

1
Civ. Proc. Code, § 704.910. [Declared homestead definitions.]

See Estate or interest in real property to which a homestead claim may attach, 74 A.L.R.2d 1355.

2
Fisch, Spiegler, Ginsburg & Ladner v. Appel, 10 Cal. App. 4th 1810, 1813, 13 Cal. Rptr. 2d 471 (4th Dist. 1992); *Tarlesson v. Broadway Foreclosure Investments, LLC*, 184 Cal. App. 4th 931, 936–937, 109 Cal. Rptr. 3d 319 (1st Dist. 2010) (automatic exemption; referring to prior declared homestead decisions as reflecting rule that "judgment debtors who continuously reside in their dwelling retain a sufficient equitable interest in the property to claim a homestead exemption").

3
Civ. Proc. Code, § 704.910, subd. (c). *Perry v. Ross*, 104 Cal. 15, 19, 37 P. 757 (1894); *In re Reid's Estate*, 26 Cal. App. 2d 362, 366, 367, 79 P.2d 451 (3d Dist. 1938).

But see Snyder v. Pine Grove Lumber Co., 40 Cal. App. 2d 660, 664, 666, 105 P.2d 369 (3d Dist. 1940).

4
Longmaid v. Coulter, 123 Cal. 208, 217, 55 P. 791 (1898); *Alexander v. Jackson*, 92 Cal. 514, 519, 28 P. 593 (1891).

See Snyder v. Pine Grove Lumber Co., 40 Cal. App. 2d 660, 664–666, 105 P.2d 369 (3d Dist. 1940).

Case Example:

Just before the court entered judgment in a lawsuit against the owner of the property, the owner conveyed the property to his son. The transfer was without consideration and pursuant to an agreement that the son would hold the title in trust and it would not be effective until the owner's death. The owner recorded a homestead declaration on the property and then the creditor recovered a judgment against the owner. The court held that the transfer to the son was a fraudulent conveyance,[5] but since the grantor retained a beneficial interest in the property that was subject to the homestead declaration, the creditor's claim was subject to the homestead.[6]

5
See § 43:10 (homestead with intent to defeat existing creditors' claims).

6
Breeden v. Smith, 120 Cal. App. 2d 62, 65, 66, 260 P.2d 185 (4th Dist. 1953).

Trust interest in real property. Although a trustee may be an "owner," he or she is precluded from declaring a homestead on the property held in trust unless he or she also resides on the property.[7] The equitable interest in property of a trustee, or the spouse of a trustee, who resides on the property can be subject to a homestead declaration.[8] However, the declarant whose only interest in the property is as a beneficiary of a trust cannot declare a homestead on trust property on which he or she resides.[9]

Revocable living trust. A homestead declaration may be recorded on property held in a revocable living trust. Because the living trust is revocable, the trustee/trustor has a contingent reversionary interest in the property that is a sufficient property interest to support a homestead. His or her life estate in the trust assets also is sufficient to support a homestead.[10]

Comment:

The basis for the court's decision was the revocability of the trust. Even if a third party were trustee, the property qualifies for the exemption. The property also would qualify for the automatic exemption because any property on which the debtor and/or the debtor's spouse resides qualifies for the exemption without qualification regarding their title interest in the property,[11] although dictum in one case suggests otherwise.[12]

11
Civ. Proc. Code, § 704.710.

See § 43:16 (automatic exemption; residency, ownership, and use).

12

See California Coastal Com'n v. Allen, 167 Cal. App. 4th 322, 329, 83 Cal. Rptr. 3d 906 (2d Dist. 2008) (asserting that since the automatic exemption applies only to the "dwelling of a natural person" the interest of the grantor of a revocable trust could not qualify for the exemption)

§ 43:26. Equitable interests, 12 Cal. Real Est. § 43:26 (4th ed.) [the court having reorganized the footnotes so that they followed the paragraph in which they are referenced rather than having all of the footnotes at the end of the cited text].

The obvious citation by Miller and Starr above relevant to the bankruptcy case before the court is *Breeden v. Smith*, 120 Cal. App. 2d 62, 65, 66, 260 P.2d 185 (4th Dist. 1953). In *Breeden*, the California Court of Appeal states:

> In its findings, filed on August 12, 1952, the [trial] court found . . .that on April 9, 1951, Robert Smith conveyed all his right, title and interest in this property to Stanley Smith without consideration and with intent to defraud his creditors; that the property was then worth $ 8,000; that Stanley Smith accepted and received this deed with the intent to hold the property "as a secret trust for said Robert Smith"; "that since said conveyance the title to the above described real property has remained in the name of" Stanley Smith; that despite such conveyance Robert Smith and his wife remained in exclusive possession of said property until January 1, 1952, . . . As conclusions of law, it was found that on February 15, 1951, Breeden became a creditor of the senior Smiths; that said conveyance was fraudulent as to creditors, and the senior Smiths became insolvent by reason thereof; and that the plaintiffs were entitled to a judgment decreeing that this conveyance was fraudulent as to Breeden, and should be set aside and annulled "insofar as it affects the rights of" Breeden. Judgment was entered on August 12, 1952, adjudging solely that this conveyance was fraudulent as to Breeden, and "hereby is set aside and annulled insofar as it affects the rights of the plaintiff Joseph W. Breeden." No appeal was taken from that judgment.

Breeden v. Smith, 120 Cal. App. 2d at 63-64. The Court of Appeal then affirmed the trial court's conclusion that the homestead exemption could be claimed in the transferred property, stating:

> While the court found that all right and title had been conveyed to the son by the deed of April 9, 1951, and that "title" had remained "in the name of" the son, it further found that such title had been thus accepted and received by the son in trust for the father, and there is nothing to indicate that such situation was ever changed. It does not appear, therefore, that the father had no interest in this property which could be homesteaded. The only thing the judgment purported to do was to declare this conveyance fraudulent as to this creditor and to set it aside insofar as it affects his rights. There being no "inadvertent omission," it clearly appears it was intended to do no more. It did not make any adjudication as to whether or not there was a valid homestead on the property, no such issue having been presented, and it did not adjudicate that the property would be subject to sale on an execution to be issued pursuant to that judgment. The practical effect of the findings and judgment was to hold that the father had been the real owner of the property since the conveyance to the son. The father had a very substantial interest in the property after the conveyance, in fact the full equitable interest, and the homesteads were filed before any judgment was entered.

Id., at 65-66. Then, in holding the homestead exemption enforceable, the Court of Appeal states:

> Had the appellants filed a homestead before this conveyance was made the respondents would have had no enforceable claim against this property. The judgment in this action did not establish such a claim, and nothing in the findings therein establishes the right to sell the property. The principles involved in the cases setting forth the general rules are not favorable to the only attack here made upon these homesteads. (*Montgomery v. Bullock*, 11 Cal.2d 58 [77 P.2d 846]; *Prudential Ins. Co. v. Beck*, 39 Cal. App.2d 355 [103 P.2d 241].) A homestead was filed shortly after this suit was brought and another one was filed before the judgment became a lien. (*Yager v. Yager*, 7 Cal.2d 213 [60 P.2d 422, 106 A.L.R. 664].) The question of

the validity or invalidity of the homestead was not raised or decided at the trial of the action. (*Duhart v. O'Rourke*, 99 Cal.App.2d 277 [221 P.2d 767].)

The court having found that the full interest in this property, other than the bare legal title, was in Robert Smith all the time, nothing appears in the record which would adversely affect the validity of the homesteads filed before judgment was entered. In the absence of any showing that the respondents were entitled to a sale of the property on execution it was error to refuse the restraining order asked for. While the respondents could have proceeded under sections 1245 to 1259 of the Civil Code, if the circumstances warranted, no such procedure is involved in this appeal.

Id., at 66.

Breeden was cited by another California Court of Appeal panel in 2010, *Broadway Foreclosure Investments, LLC v. Tarlesson*, 184 Cal. App. 4th 931 (2010), addressing what interest a judgment debtor must have in the residence. In Broadway the court was addressing a situation where title to the residence was transferred to a third-party for the purported purpose of arranging "mortgage financing." *Broadway Foreclosure Investments, LLC v. Tarlesson*, 184 Cal. App. 4th 93, 935 (2010). In affirming that judgment debtor's right to assert a homestead exemption, the California Court of Appeal states:

Courts "adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor." *(Amin v. Khazindar*, *supra*, 112 Cal.App.4th at p. 588.) . . .

. . .

Several California cases recognize that judgment debtors who continuously reside in their dwellings retain a sufficient equitable interest in the property to claim a homestead exemption even when they have conveyed title to another. (*Breeden v. Smith* (1953) 120 Cal.App.2d 62, 66; *Putnam Sand & Gravel Co. v. Albers* (1971) 14 Cal.App.3d 722, 726; *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 81.) Such a result is consistent with the purpose of California's homestead exemption to protect one's dwelling against creditors. (*Amin v. Khazindar, supra*, 112 Cal.App.4th at p. 588; *accord, Wells Fargo Financial Leasing, Inc. v. D & M Cabinets*, *supra*, 177 Cal.App.4th at p. 67.)

. . .

(5) Broadway does not dispute that the property was Tarlesson's principal residence when it acquired its judgment lien. Nor does it dispute that she has continuously resided in the home since 1984, and there is no evidence that rebuts Tarlesson's claim that, "At all times I retained the beneficial interest in my home, which was acknowledged by Peola [Lane]." In the circumstances, Tarlesson's continuous occupancy of her home qualifies it as her "homestead" under section 704.710, subdivision (c). We will not also read a requirement into section 703.020 or 704.710 that Tarlesson must have held continuous title to her home to claim the homestead exemption. [6]

6

In its reply brief, Broadway refers to a separate statutory definition of a "declared homestead owner" in section 704.910, subdivision (b)(1). But this case deals solely with an automatic homestead

> exemption claim rather than a declared homestead. We will not further address an argument raised for the first time in a reply brief. *(Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1372, fn. 11 [131 Cal. Rptr. 2d 524].)

Broadway Foreclosure Investments, LLC v. Tarlesson, 184 Cal. App. 4th 931, 936, 937, 938

Based on the court's basic review of California law, the fact that Debtor and his non-debtor spouse transferred the Property into the LLC as a gift to try and keep it from Creditor is not a bar to the homestead exemption being claimed by Debtor. Debtor has not provided any testimony in opposing the Objection to Claim of Exemption. Rather, Debtor has left it to more general arguments by Debtor's counsel.

The court has the two Grant Deeds which state that there was no documentary transfer taxes paid because the transfers were exempt as gifts.

Based on California Law as identified by the court, the "mere" placing the title to the property in the name of another does not terminate the homestead exemption rights of someone who owned, continues to live in, and has an interest in/control of title to the property. Here, the two Grant Deeds demonstrate such control.

As noted above, Debtor now seeks to dismiss this Chapter 13 Case, seeking is almost absolute right to so do.

At the hearing, the parties requested a continuance . The hearing on the Objection to Claimed Exemptions is continued to 2:00 p.m. on January 28, 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 Objection to Claimed Exemptions filed by Crystal Rista ("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 Claimed Exemptions is **XXXXXXX**.

6. 24-20837-E-13 DPC-3 | **TERRI AND JOSE PALACIOS** | **Leo Spanos** | **CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 8-20-24 [61]**

Item 6 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 Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 20, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is xxxxxxx.

January 28, 2025 Hearing

The court continued the hearing on this Motion so that the Parties could get their Stipulation on the Docket. On January 17, 2025, the Debtor filed their Supplemental Status Report regarding Plan confirmation. Docket 111. Debtor states that their proposed Amended Plan makes the following changes that Debtor hopes will be amenable to Trustee:

1. Increases the unsecured priority claims from $68,896.00 to $69,204.08;

2. Increases the distribution to general unsecured creditors from 41% to 52%;

3. Increases the approximate total of general unsecured creditors to $224,708 to $258,098.04;

4. Adds language in the nonstandard provision referencing the Order Voiding Lien of Enerbank USA ("Regions Bank"); and

5. Increases payments from –

FROM:	TO:
$3,125 x 4 months	$3,125 x 4 months
$3,590 x 46 months	$3,590 x 48 months
$4,496 x 10 months	$20,000 x 1 month (from 401k)
	$7,198.50 x 7 months

Debtor has also filed an Amended Schedule C at Docket 109 where Debtor has elected to take a single set of California exemptions. Docket 109.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Terri Lashai Cook Palacios and Jose Camacho Palacios' ("Debtors") claimed exemptions under both California and Arizona state laws. Trustee states:

A. Debtors are claiming different state exemptions under Arizona and California law, Ariz. Rev. State § 33 and C.C.P. § 704. Obj. 2:1-3, Docket 61.

B. Schedule C shows that 6255 N. Camino Pimeria Alta property as exempt, for "(Jose Camacho Palacios only)", under Arizona Rev. Stat. §33-1101(A) in the amount of $400,000.00, and the 5273 Cumberland Drive property is exempt, for "(Terri Lashai Cook Palacios only)", under C.C.P. § 704.730(A)(2) for $189,900.00. Obj. 2:4-7, Docket 61.

C. If Debtors reside in separate homesteads, they are only entitled to claim one of the spouses' homesteads as exempt. *Id.* at 2:8-9.

D. Debtors have not stated any authority that they can claim both properties exempt under Arizona Rev. Stat. § 33-1101(A) and C.C.P. § 704.730, or if they are allowed to stack the homestead exemption by claiming both properties exempt with different state statutes. Obj. 2:10-13, Docket 61.

E. In addition to the above claimed exemptions, the Debtors have also duplicated all their community assets, and amounts, on Amended Schedule C, citing all assets are exempt under both Ariz. Rev. Stat. § 33 and C.C.P. § 704 exemptions. With the Court's previous ruling, the Debtors' Amended Schedule C does not appear proper and it does not appear that the Debtors are allowed Debtors to stack different state exemption codes for the same community assets using two different states simultaneously. Obj. 2:14-20, Docket 61.

DEBTORS' RESPONSE

Debtors filed a Response to Trustee's Objection on September 8, 2024. Docket 70. Debtors state:

A. Debtors lived at 5228 Whitetail Run Court, Antelope, CA 95843 ("Whitetail property") from July 2007 through December 2021. *Id.* at ¶ 1.

B. In July 2020, the Debtors purchased real property at 6255 N. Camino Pimeria Alta, #114, Tucson, AZ 85718 ("Camino property"). *Id.* at ¶ 5.

C. Debtor Mr. Palacios lives at the Camino Property for work and to be close to their children. *Id.*

D. In February 2022, Debtors purchased real property at 5273 Cumberland Drive, Roseville, CA 95747 ("Cumberland property").

E. Since purchasing it, Debtor Mrs. Palacios lives in the Cumberland Property, visiting the Camino Property occasionally for holidays, weekends, and to see the children. *Id.* at ¶ 10.

F. Debtor Mrs. Palacios satisfies the statutory requirements of 11 U.S.C. § 522 to claim the California homestead exemption in the Cumberland Property. *Id.* at 4:11-5:10.

G. The language of Cal. Code Civ. P. § 704.720(c) states:

> "[i]f the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt."

Because Mrs. Palacios is not seeking a separate homestead exemption, the prohibition under § 704.720(c) does not apply. *Id.* a 5:1-4.

H. Debtor Mr. Palacios satisfies the statutory requirements of 11 U.S.C. § 522 to claim the Arizona homestead exemption in the Camino Property.

I. Under Arizona Rev. Statute § 33-1101(A), Mr. Palacios is entitled to a homestead exemption of $400,000. Arizona Rev. Statute § 33-1101(B) states: "Only one homestead exemption may be held by a married couple or a single person under this section. . ." Because neither Mr. and Mrs. Palacios are seeking another homestead exemption under this section, the homestead exemption is properly claimed here. *Id.* at 5:13-6:5.

DISCUSSION

Federal law allows states to opt out of the federal exemption scheme. 11 U.S.C. § 522(b). 11 U.S.C. § 522(b)(2) and (3)(A) state:

(b)

> (2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize. . .
>
> (3) Property listed in this paragraph is—
>
> > (A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place. . .

These two sections read together show the law allows a state to opt out of the federal exemption scheme entirely.

California has made such an election. *See* Cal. Code Civ. P. § 703.130. Therefore, a debtor filing bankruptcy who is domiciled in California must use the California exemptions, including the homestead exemption.

However, this is a unique case where it is asserted that these two debtors, a husband and wife, live in and are domiciled in two separate states, but they are filing jointly in California, which is their right. The venue statute for bankruptcy is broad, providing a potential debtor with various venues. *See* 28 U.S.C. § 1408 (stating venue is proper for a debtor where that debtor is domiciled, resides, or has a principal place of business).

Legal Basis, Analysis, and
Arguments Presented by the Parties

The court is presented with a very interesting and unique argument – two married Debtors who seek to assert that they are each domiciled in different States and can claim double exemptions, one under California Law and the other under Arizona Law.

The legal analysis for each sides position is thin and no evidence has been provided by Debtors for the Opposition.

Determination of Domicile

In this Bankruptcy Case what has been presented to this court is that the two Debtors and their children lived in California from July 2007 through December 2021, except as explained in the following. Opposition, ¶ 1; Dckt 70. In 2019, the Debtors rented property in Arizona and Jose Palacios and their two children moved to Arizona. *Id.*; ¶ 2. Debtors' two children began attending Arizona schools and Debtor Jose Palacios began looking for work in Arizona. *Id.*; ¶ 3.

However, Debtor Terri Palacios continued to work and live in California. *Id*.; ¶ 2.

In July 2020, the two Debtors purchased the 6255 N. Camino Pimeria Alta, #114, Tucson Arizona Property. Debtor Jose Palacios and the two children live in the Arizona Property. *Id*. ¶¶ 5,6.

Debtor Terri Palacios visits the Arizona Property on weekends and other occasions, but "continues to work and reside" in California. *Id*., ¶ 7.

In February 2022, the Debtors purchases the 5273 Cumberland Drive, Roseville California Property, and Debtor Terri Palacios lives there - splitting her time between the Roseville Property and the Arizona Property. *Id*., ¶ 10, 11.

For income taxes, the Debtors have in:

1. 2023 filed taxes in California as Nonresident or Part-Year Residents

2. 2022

    a. filed taxes in California as Nonresident or Part-Year Residents

    b. filed taxes in Arizona as Nonresidents.

What neither the Trustee nor Debtors provide the court is an analysis of the applicable law on several points. The first is how a person's domicile is determined. In *Lew v. Moss*, 797 F.2d 747, 749-750 (9th Cir. 1986), the Ninth Circuit Court of Appeals provides the following discussion on determination of domicile in connection with determining whether there was federal diversity jurisdiction (emphasis added and this court restructuring, shown in the *indented italic text*, the third paragraph to put the nonexclusive list of factors on separate lines for ease of review by the Parties):

> Second, a person is "domiciled" in a location where he or she has established a **"fixed habitation** or abode in a particular place, and **[intends] to remain there permanently or indefinitely**.'" *Owens v. Huntling*, 115 F.2d 160, 162 (9th Cir. 1940) (quoting *Pickering v. Winch*, 48 Ore. 500, 87 P. 763, 765 (1906)); 1 J. Moore, Moore's Federal Practice para. 0.74(3.-3), at 707.58-60 (1985) [hereinafter Moore's]. . .
>
> Finally, a person's old domicile is not lost until a new one is acquired. *Barber v. Varleta*, 199 F.2d 419, 423 (9th Cir. 1952); see also Restatement (Second) of Conflicts §§ 18-20 (1971) (and examples provided). A change in domicile requires the confluence of (a) **physical presence at the new location** with (b) **an intention to remain there indefinitely**. *See Owens*, 115 F.2d at 162; 13B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3613, at 544-45 (1984 & Supp. 1986) [hereinafter Wright & Miller].
>
> Courts in other jurisdictions have recognized additional principles relevant to our present analysis. The courts have held that the determination of an individual's domicile involves a number of factors (no single factor controlling), including:

current residence,
voting registration and voting practices,
location of personal and real property,
location of brokerage and bank accounts,
location of spouse and family,
membership in unions and other organizations,
place of employment or business,
driver's license and automobile registration, and
payment of taxes.

Wright & Miller, *supra* § 3612, at 529-31 (citing authorities). *See also Bruton v. Shank*, 349 F.2d 630, 631 n.2 (8th Cir. 1965); *S.S. Dadzie v. Leslie*, 550 F. Supp. 77, 79 n.3 (E.D. Pa. 1982); *Mizell v. Eli Lilly & Co.*, 526 F. Supp. 589, 592-93 (D. S.C. 1981); *Griffin v. Matthews*, 310 F. Supp. 341, 342-43 (M.D. N.C. 1969), aff'd, 423 F.2d 272 (4th Cir. 1970). The courts have also stated that domicile is evaluated in terms of "objective facts," and that "'statements of intent are entitled to little weight when in conflict with facts.'" *Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553, 556 (5th Cir. 1985) (quoting, *Hendry v. Masonite Corp*., 455 F.2d 955, 956 (5th Cir.), cert. denied, 409 U.S. 1023, 93 S. Ct. 464, 34 L. Ed. 2d 315 (1972)); *Korn v. Korn*, 398 F.2d 689, 691-92 n.4 (3rd Cir. 1968).

In 2024, the Ninth Circuit reviewed the concept of domicile, again noting that it has both a physical and subjective intent requirement, stating:

> "'Domicile' is, of course, a concept widely used in both federal and state courts for jurisdiction and conflict-of-law purposes, and its meaning is generally uncontroverted." *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 104 L. Ed. 2d 29, 109 S. Ct. 1597 (1989). "A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return." *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citing *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986)). "A person residing in a given state is not necessarily domiciled there . . . ." *Id*. A person generally assumes the domicile of his or her parents, and she may have only one domicile at a time. *See Lew*, 797 F.2d at 750-51. Domicile may be changed by being physically present in the new jurisdiction with the intent to remain there. *See Mississippi Band*, 490 U.S. at 48; Kanter, 265 F.3d at 857. Thus, domicile includes a subjective as well as an objective component, although the subjective component may be established by objective factors.

Von Kennel Gaudin v. Remis, 379 F.3d 631, 636-637 (9th Cir. 2004).

The distinction between "residence" and "domicile" for purposes of 11 U.S.C. § 522 is discussed in 4 Collier on Bankruptcy (16th Edition) ¶ 522.06, which includes:

> "Domicile" as used in section 522 means more than mere residence.[16] Although domicile and residence are often loosely used as synonymous terms, the specified reference to each in the Code[17] indicates an intention to maintain a legal distinction between them. The residence of a debtor may be nothing more than a place of sojourn. While ordinarily used in a sense of fixed and permanent abode, as

distinguished from a place of temporary occupation, the term "residence" does not include the intention required for domicile. Domicile means actual residence coupled with a present intention to remain there.[18] It is the place where one intends to return when one is absent and where one's political rights are exercised. Mere physical removal to another jurisdiction without the requisite intent is insufficient to effect a change of domicile. The fact that the debtor, therefore, has resided elsewhere during the 730-day period will not defeat the applicability of the law of the state where the debtor keeps the principal home.[19] It may be, however, that under the laws of the state of the debtor's domicile that the debtor must also reside within the state to obtain its exemption privileges.[20]

. . .

The facts on which the question of domicile will be decided are those existing at the time of the filing of the petition and a subsequent change by the debtor will have no effect upon this determination.[26]

[16] The determination of the debtor's domicile is governed by federal common law. *See Farm Credit Bank of Wichita v. Hodgson (In re Hodgson)*, 167 B.R. 945 (D. Kan. 1994) (federal law applies in order to insure uniform nationwide application of bankruptcy laws); *In re Mendoza*, 597 B.R. 686, 688 (Bankr. S.D. Fla. 2019) (citing Treatise); *see also Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989) (term "domicile" in federal statute shall be interpreted under federal law absent clear expression by Congress that state law definition is applicable).

[17] See 11 U.S.C. § 101.

[18] *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); *see also Lowenschuss v. Selnick (In re Lowenschuss*), 171 F.3d 673, 684, 41 C.B.C.2d 1049 (9th Cir. 1999) (debtor satisfied both physical presence and intent requirements for establishing domicile), *cert. denied*, 528 U.S. 877, 120 S. Ct. 185, 145 L. Ed. 2d 156 (1999); *In re Mendoza*, 597 B.R. 686 (Bankr. S.D. Fla. 2019) (noncitizen debtors who were lawfully residing in Florida and intended to permanently reside there if their asylum application was granted were domiciled in Florida).

[19] *In re Porvaznik*, 456 B.R. 738 (Bankr. M.D. Pa. 2011) (debtor's domicile remained unchanged even though she resided during the 730-day period in another state where her husband was stationed as a member of the military); *Smith v. Wellberg (In re Wellberg*), 4 C.B.C.2d 1007, 12 B.R. 48 (Bankr. E.D. Va. 1981) (domicile is not affected or changed by entry into the armed forces).

[20] *See In re Chandler*, 362 B.R. 723 (Bankr. N.D. W. Va. 2007) (debtor may claim federal exemptions because Georgia opt-out statute is not applicable to nonresidents); *In re Volk*, 7 C.B.C.2d 1096, 26 B.R. 457 (Bankr. D. S.D. 1983). (debtors who were nonresidents of South Dakota were not prohibited from claiming exemptions under the federal exemption system because the South Dakota opt-out provision provided

only that residents of South Dakota were barred from claiming exemptions under section 522(d)); *see also In re Calhoun*, 47 B.R. 119 (Bankr. E.D. Va. 1985) (debtors' interest in real estate in Kansas under installment purchase agreement was a real property interest under Kansas law, and to claim that interest as exempt, they must comply with Virginia exemption statute, which required recording of homestead deed in county where the property was located).

. . .

[26] *White v. Stump*, 266 U.S. 310, 45 S. Ct. 103, 69 L. Ed. 301 (1924).

4 Collier on Bankruptcy P 522.06

While presented with arguments, the court has not been presented with objective evidence, buy either party, to make the determination of the domicile of each of the two Debtors.

Both California and Arizona Law provide that if a judgment debtor is married, one homestead exemption may be claimed.

> Arizona Revised Statute 33-1101. Homestead exemptions; persons entitled to hold homesteads; annual adjustment [emphasis added]
>
> A. Any person the age of eighteen or over, married or single, who resides within the state may hold as a homestead exempt from attachment, execution and forced sale, not exceeding $400,000 in value, any one of the following:
>
> 1. The person's interest in real property in one compact body upon which exists a dwelling house in which the person resides.
>
> 2. The person's interest in one condominium or cooperative in which the person resides.
>
> 3. A mobile home in which the person resides.
>
> 4. A mobile home in which the person resides plus the land upon which that mobile home is located.
>
> B. **Only one homestead exemption may be held by a married couple or a single person under this section.** The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed $400,000 in value.

Debtors read this statute to say that one homestead exemption may be claimed under this Code section (Statute) and a second homestead exemption may be claimed under another statute or law. No case law, legislative history, or statutory analysis is provided for this interpretation. Alternatively, this statute could possibly be read to say that under this statute, a married couple may claim one homestead exemption if they seek to claim it under this Arizona statute.

California Code of Civil Procedure § 704.720. Exemption from sale; Exemption of sale proceeds or indemnification [**emphasis** added]

> (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.
> . . .
> (c) **If the judgment debtor and spouse of the judgment debtor reside in separate homesteads**, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt.

California Code of Civil Procedure § 703.140, which provides for the California exemptions to apply in bankruptcy cases, provides [**emphasis** added]

> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision
>
> (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:
>
> > (1) **If spouses are joined in the petition**, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

In *Talmadge v. Duck*, 832 F.2d 1120 (9th Cir. 1987), the Ninth Circuit Court of Appeals reviewed the California statutes which provide that for joint debtors there can be only one set of exemptions, and the joint debtors cannot "double up" on the exemptions. The Ninth Circuit's decision includes:

> Section 703.140 is modeled on 11 U.S.C. § 522. However, unlike the guarantee in subsection 522(m), section 703.140 does not provide that joint debtors may each claim their own exemptions; it is silent as to whether a married couple is limited to a single set of exemptions. The only affirmative limitation of this kind is found in section 703.110, enacted prior to both sections 703.130 and 703.140, which provides:
>
> > Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount . . . .
>
> The primary issues in this case are whether California has in fact, via section 703.110, limited married debtors to a single set of exemptions, and if it has, whether the scheme adopted is constitutionally valid. We review the district court's conclusions of law *de novo*. *See Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986).

. . .
The relevant provisions are reproduced below, and the allegedly contradictory language is underscored. Section 703.110 provides in pertinent part:

> Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.

Section 703.140(a)(1) provides:

> If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

. . .
The ordinary meaning of "jointly may elect" seems to be simply that husband and wife must come to an agreement on whether or not to choose the exemptions listed in subsection 703.140(b). There would have to be agreement between the husband and [**10] wife because section 703.110 specifically limits the two spouses to one set of exemptions. Any other reading would make section 703.110 a nullity. Moreover, the Senate Legislative Committee Comment to the underscored language in section 703.110 explains that "this new sentence makes clear how the exemption scheme works with respect to married persons." (Emphasis added). The general language in section 703.110, therefore, was intended to modify all of California's exemption statutes which do not specifically express a contrary intent.

In re Talmadge, 832 F.2d at 1123-1124.

On this statutory language, the court is presented with the question that in light of the married Debtors electing to file bankruptcy in California, for Debtor Terri Palacios desiring to claim a homestead exemption pursuant to California Code of Civil Procedure § 703.140, then joint Debtor Jose Palacios must "jointly may elect to utilize the applicable exemption provisions of [Chapter 7 of the California Code of Civil Procedure]."

This separate residing of spouses is discussed in 8 WITKIN CALIFORNIA PROCEDURE 6TH ENFORCEMENT OF JUDGMENTS § 248 (2024), stating:

> (3) Effect of Spouses Residing Separately. If a judgment debtor and the debtor's spouse reside in separate homesteads, only one homestead is exempt and only the proceeds of the exempt homestead are exempt. (C.C.P. 704.720(c).) (On application of exemptions to marital property, see C.C.P. 703.110, supra, § 199.)

SEPTEMBER 24, 2024 HEARING

Based on the pleadings filed to date, the court has not been presented with the legal authorities and analysis for the legal conclusions, and the evidence for the court to make necessary factual objective and subjective (which must be based on objective evidence) factual findings to determine where the Debtors are domiciled and whether there may be two different sets of statutory exemptions claimed in this Bankruptcy Case.

At the Hearing, the Parties agreed to continue the hearing for a Scheduling Conference to address the scope of any evidentiary hearing, the legal issues presented, the scope of their dispute, and other issues for the effective administration of this Contested Matter.

The hearing on the Objection to Claimed Exemptions is continued to 1:30 p.m. on October 22, 2024 (Specially Set Time) for a Scheduling Conference. The Parties shall file, whether jointly or severally, a Status Report on or before October 15, 2024, addressing how this matter will proceed and the scope of any evidentiary hearing.

October 22, 2024 Hearing

The court continued the hearing on this Objection to afford the parties time to decide how they wish to proceed with prosecuting and defending against the Objection. The court set the following dates in continuing the hearing: "[t]he Parties shall file, whether jointly or severally, a Status Report on or before October 15, 2024, addressing how this matter will proceed and the scope of any evidentiary hearing." Order, Docket 85.

On October 15, 2024, Trustee filed a Status Report that appears to represent the status of both parties. Docket 87. Trustee states:

1. The parties agree that both separate Debtors are respectively domiciled in separate states, and this no longer remains an issue. *Id.* at 1:23-27.

2. What remains an issue is whether the joint Debtors are entitled to claim two sets of exemptions, one for Arizona and one for California. Despite conducting extensive research, the parties have been unable to find any cases on point beyond what the court has already found. Both parties agree that if the court would like for them to conduct further research and/or further brief the issue, then they are willing to do that, but they are also both willing to submit the matter to the court at this time on the remaining issue. *Id.* at 2:1-23.

3. Trustee argues that the Debtors cannot claim two states' exemptions as that would amount to stacking exemptions. Debtor would be required to pay much more to unsecured creditors if two sets of exemptions were not permitted. Trustee argues that, in this joint case, there is only one Bankruptcy Estate of which the community property constitutes, so only one set of exemptions may be used. *See Talmadge v. Duck*, 832 F.2d 1120 (9th Cir. 1987). Status Report 3:1-4:12, Docket 87.

4. Debtor argues that since the Debtors are claiming separate state exemptions, there is no stacking of exemptions, so Debtor should be entitled to claim both sets of exemptions. *Id.* at 4:13-17.

In the above, the Parties appear to state that the two debtors, husband and wife, and the parents of their one child, are permanently indefinitely residing in different locations, thus creating two different "domiciles." Thus, Debtor Terri Palacios presents to the court that she is and permanently intends to live separate and apart from children. (See discussion herein of domicile being more than where someone happens to currently reside.)

At the hearing, the court addressed with the Parties the need to file supplemental pleadings on the issue of whether two homestead exemptions can be claimed by one married couple.

Supplemental Pleadings shall be filed by the Parties on or before November 15, 2024.

The hearing on the Objection to Claimed Exemptions is continued to 1:30 p.m. on December 10, 2024 (Specially set time).

December 10, 2024 Hearing

The court continued the hearing on this motion to allow supplemental briefing on the issues, setting the deadline of November 15, 2024. On November 15, 2024, Trustee filed a status Report with the court. Docket 95. Trustee explained the parties are close to resolving their disagreement on the issues and should be filing an amended Status Report prior to the hearing.

On December 4, 2024, Debtors filed a Status Report informing the court that Debtors are currently in the process of reviewing a Schedule C that drops the Arizona exemptions and hope to have that on file shortly to resolve the Objection. Docket 96. That Amended Schedule C was not on file as of the court's review of the Docket on December 6, 2024.

At the hearing, counsel requested a continuance so they can get the Stipulation documented and Plan amended. The hearing on the Objection to Claimed Exemptions is continued to 2:00 p.m. on January 28, 2025. Supplemental Pleadings shall be filed and served on or before 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 Objection to Claimed Exemptions 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 Claimed Exemptions is **XXXXXXX**.

7. 24-20837-E-13 JLL-2 — TERRI AND JOSE PALACIOS — Leo Spanos — CONTINUED MOTION TO CONFIRM PLAN — 7-16-24 [46]

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 July 22, 2024. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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 ~~is granted.~~

January 28, 2025 Hearing

The court continued the hearing on this Motion so that the Parties could get their Stipulation on the Docket. On January 17, 2025, the Debtor filed their Supplemental Status Report regarding Plan confirmation. Docket 111. Debtor states that their proposed Amended Plan makes the following changes that Debtor hopes will be amenable to Trustee:

1. Increases the unsecured priority claims from $68,896.00 to $69,204.08;

2. Increases the distribution to general unsecured creditors from 41% to 52%;

3. Increases the approximate total of general unsecured creditors to $224,708 to $258,098.04;

4. Adds language in the nonstandard provision referencing the Order Voiding Lien of Enerbank USA ("Regions Bank"); and

5. Increases payments from –

FROM:	TO:
$3,125 x 4 months	$3,125 x 4 months
$3,590 x 46 months	$3,590 x 48 months
$4,496 x 10 months	$20,000 x 1 month (from 401k)
	$7,198.50 x 7 months

Debtor has also filed an Amended Schedule C at Docket 109 where Debtor has elected to take a single set of California exemptions. Docket 109.

The Amended Plan is included as an attachment to the status Report, but there is no independent Docket entry for the Amended Plan.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The debtor, Terri Lashai Cook Palacios and Jose Camacho Palacios ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for Debtor to pay $3,125 per month for 4 months, then $3,590 for 46 months, then $4,496 for 10 months with general unsecured creditors receiving a 41% dividend. Amended Plan, Docket 49. 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 August 27, 2024. Docket 65. Trustee opposes confirmation of the Plan on the basis that:

A. Unsecured creditors may not be receiving what they would receive in the event of a hypothetical Chapter 7 liquidation, 11 U.S.C. §1325(a)(4). Debtors' First Amended Plan proposes to pay no less than 41% of $224,408.00 (or $92,007.28) to unsecured creditors and $68,896.00 to priority claims, for a total of $160,903.28. However, Trustee calculates Debtor has $245,481 of non-exempt assets listed in ths Amended Schedule A/B. This liquidation analysis relies in part on Chapter 7 Trustee's Objection to Claimed Exemptions which is set for hearing on September 24, 2024. Obj. 1:23-2:11, Docket 65.

B. Debtors Plan relies on the Motion to Avoid Lien of Regions Bank/Enerbank USA, which is to be heard in conjunction with this Motion. *Id.* at 2:12-17.

C. Debtors failed to attach a statement for property or business income. *Id.* at 2:18-19.

DISCUSSION

Liquidation Analysis

Trustee argues that Debtor may potentially fail a liquidation analysis under 11 U.S.C. §1325(a)(4). 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." Here, General unsecured creditors will receive a 41% distribution, Am. Plan, Docket 49 § 3.12.

The Trustee estimates Debtor has $245,481 in non-exempt equity in assets of the estate. Trustee's calculation hinges on whether the court sustains trustee's Objection to Claimed Exemptions, which is set for hearing on September 24, 2024.

The Objection to Exemptions arises from the two Debtors attempting to claim exemptions under Arizona law and also under California law. Dckt. 61. In substance the two Debtor are seeking to claim two separate homestead exemptions. Additionally, the two Debtors seek to claim double exemptions in all assets, stating exemptions under California law and Arizona law for each asset on Schedule C.

The court has granted by final ruling the related Motion to Avoid Lien, so this part of the opposition is rendered moot.

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.

At the hearing, counsel for the Trustee reported that the hearing on the Objection to Exemptions is set for 2:00 p.m. on September 24, 2024.

September 24, 2024 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the Trustee's Objection to Claimed Exemptions.

At the Hearing, the Parties agreed to continue the hearing on this Motion to the same day and time of the Scheduling Conference on the Trustee's Objection to Exemptions.

The hearing on the Motion to Confirm the Amended Plan is continued to 1:30 p.m. on October 22, 2024 (Specially Set Time) , to be conducted in conjunction with the Scheduling Conference for the Trustee's Objection to Exemptions.

The hearing on the Motion to Confirm is continued to 2:00 p.m. on September 24, 2024, to be conducted in conjunction with the hearing on the Objection to Exemptions.

October 22, 2024 Hearing

The court continued the Motion to Confirm to be heard in conjunction with the Objection to Exemptions.

The court having set a supplemental briefing schedule and continued hearing on the Objection, the hearing on the hearing on the Motion to Confirm is continued to 1:30 p.m. on December 10, 2024 (Specially set time).

December 10, 2024 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the Trustee's Objection to Claimed Exemptions. A review of the Docket on December 4, 2024, reveals nothing new has been filed.

At the hearing, so they can get the Stipulation documented and Plan amended. The hearing on the Motion to Confirm is continued to 2:00 p.m. on January 28, 2025. Supplemental Pleadings shall be filed and served on or before 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 Amended Chapter 13 Plan filed by the debtor, Terri Lashai Cook Palacios and Jose Camacho Palacios ("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 **xxxxxxx**, 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.~~

8. 23-23038-E-13 PLC-4 — EDWARD LEWIS — Peter Cianchetta — MOTION TO MODIFY PLAN — 12-17-24 [70]

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 creditors that have filed claims, Chapter 13 Trustee, and Office of the United States Trustee on December 17, 2024. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx.

The debtor, Edward Harold Lewis ("Debtor") seeks confirmation of the Modified Plan deal with the IRS claim recently filed. Declaration ¶ 3, Docket 72. The Modified Plan provides for 60 monthly payments of $1,046.67. Modified Plan, Docket 73. 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 January 14, 2025. Docket 77. Trustee opposes confirmation on the basis that Debtor has not filed a Supplemental Schedule I with the Motion, so Trustee cannot assess the feasibility of this Plan.

DISCUSSION
Feasibility

The Proposed Modified Plan increases the monthly payment by approximately $180 from the previous version. Debtor states in his Declaration that his income is the same and that he is able to increase

the monthly payment by reducing entertainment expenses on his Schedule J. Decl. ¶ 7, Docket 78. Debtor has filed a Supplemental Schedule J. Docket 74. At the hearing, **xxxxxxx**

~~The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Edward Harold Lewis ("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 December 17, 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.~~

9. 21-23539-E-13 PGM-6 | **DEREK WOLF** **Peter Macaluso** | **CONTINUED MOTION TO MODIFY PLAN** **10-29-24 [331]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, attorneys of record, and Office of the United States Trustee on October 29, 2024. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx.

The debtor, Derek L Wolf ("Debtor") seeks confirmation of the Modified Plan. The Modified Plan provides for $28,388.96 through October of 2024 with $900 monthly payments to commence for 12 months thereafter. Modified Plan, Docket 335. Additionally, there is an explanation in the Non-Standard Provisions of the Plan how Debtor's mortgage has been treated. *Id.* 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 342. Trustee opposes confirmation of the Plan on the basis that:

A. A post-petition arrearage arose under the terms of the previously confirmed Plan for the months of September, October, November and December 2022, March, July, August, September, November 2023 in the amount of $8,870.85. The Non-Standard Provisions of the Plan do not clearly deal with this arrearage. *Id.* at 1:24-2:15.

B. The Plan is vastly overextended due to the post-petition delinquency and the pending R.E.S.P.A. accounting. *Id.* at 2:17-22.

C. The Plan relies on an R.E.S.P.A. accounting, which leaves too many issues in a state of flux. *Id.* at 2:23-3:2.

D. No supplemental Schedule I & J have been filed to support this motion. *Id.* at 3:3-10.

Opposition of U.S. Bank N.A., as Trustee

On January 23, 2025, U.S. Bank, N.A., as Trustee, ("USBT") filed an opposition to the Motion to Confirm set for the continued hearing on January 28, 2025. Dckt. 349. USBT and the Debtor have been meeting to try and resolve this issue of the amount of the claim and arrearage.

In addition to asserting that the treatment of its secured claim under the proposed Third Modified Plan, the Opposition hits the following points:

a. First, Creditor objects to the Third Proposed Modified Plan because it requires Creditor to waive post-petition payments owed, as it seeks to have Debtor deemed current as of October 25, 2024. . . The Third Proposed Modified Plan does not make any provision to cure the delinquency and as a result, impermissibly modifies Creditor's claim and right to full payments on an obligation secured by real property that is Debtor's principal residence. Opp., p. 2:1-3, 10–13; Dckt. 349.

b. Second, Debtor seeks to modify the plan solely to litigate his dispute as to the interest bearing principal amount owed. *See* Dkt. 333, ¶ 2. Debtor has been aware of this "dispute" but has not brought any motion to have the Court adjudicate the issue, despite being advised to do so at the July 2, 2024 hearing. This dispute need not be litigated in this Court, and doing so unnecessarily expends the Court and the Trustee's time and resources. *Id.*; p. 2:14-18.

c. Further, the dispute regarding the interest-bearing principal amount has no merit. Debtor contends that all California Housing Relief Funds and funds received from the Trustee should have been applied to the Loan's principal only. Dkt. 270.

Debtor is wrong. First, the California Housing Relief Fund grant received on August 17, 2022 should not have been applied solely to the principal. These funds were provided to reinstate the Loan, i.e., to pay off pre-petition amounts owed, which includes payment of principal, interest, and fees. *See* Dkt. 178, June 14, 2023 Status Report payment ledger (noting application of funds to post-petition principal, interest, and escrow, as well as pre-petition arrearages). Similarly, the $8,893.66 in reissued grant funds were applied to six delinquent monthly payments

(which consisted of principal, interest, and escrow), as well as to escrow and corporate advances. *See* Dkt. 271, Exh. 4. *Id.*; p. 2:19 - p. 3:1.

d. Third, the Trustee's payments were applied correctly. Debtor's reliance on the Trustee's Payment History to support his contention that the payments received from the Trustee should be applied solely to principal is flawed. *See* Dkt. 270, ¶ 9. Importantly, the confirmed plan does not require Creditor to apply the Trustee's payments to principal only. *See* Dkt. 60. *Id.*; p. 3:6-9.

DISCUSSION

Postpetition Arrearage

Trustee asserts that Debtor has not cured the post-petition arrearage, and that the terms of the Plan are not clear as to how the post-petition arrearage will be cured. Regarding the post-petition arrearage, the Plan states:

> 7. Debtor's first Plan payment was due November 2021 through March 2024, or (29) twenty-nine months, due for a total of $22,993.81 in Post-Petition Payments Due thru March of 2024.
>
> 8. While the Creditor returned $8,893.66 of the "Grant", these funds were reissued in late 2023, and applied to (6) six monthly post-petition payments totaling $7,572.48, and $1,063.84, and $257.34 corporate advances.
>
> 9. Of the $22,993.81 that has came due, less the $7,572.48 applied equals $15,421.33.
>
> 10. Of the $15,421.33 Post-Petition Payments Due, the Trustee has disbursed $17,628.83 since November of 2021, to the Class 1 Creditor, US Bank, N.A.(1st Deed of Trust), and has $1,976.57 "On-Hand" pending disbursement, for a total of $19,605.40 Post-Petition Arrears.
>
> 11. As such, the Trustee has disbursed $17,628.83, on a $15,421.33 class 1, which is $2,207.50 such that the Debtor's next Post-Petition Class 1 Payment was due for May 25, 2024.
>
> 12. Debtor then paid a total of $4,800.00 from April 2024 through September 2024.
>
> 13. As such,
>
> (1) The Debtor is Post-petition Current as of 8/25/24,
> (2) The "Non-interest Bearing Principle Balance is $36,400.00,
> (3) The Interest Bearing Principle Balance is $77,778.99, effective 6/1/24,
> (4) The on-going mortgage payment is $792.89 for principle, interest and escrow, effective 6/1/24

14. The Debtor disputes the total "Arrears" to be $1,970.08, as reflected in the 5/20/24, statement from Rushmore Servicing, and asserts that the Debtor is contractually current, as of October 25, 2024.

Modified Plan § 7, Docket 335.

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).

In determining the amount of the post-petition arrearage, at the hearing, **xxxxxxx**

R.E.S.P.A. Accounting

Trustee asserts that the Plan relies on a favorable R.E.S.P.A. accounting, and without this accounting, the Plan is severely overextended and not feasible.

Debtor has informed the court on numerous occasions that he is hiring an accountant to take a look at the numbers and identify the proper amount of the principal balance.

It is reported on the Docket that the Parties appear to be working out a Stipulation in determining the final principal balance owed on the deed of trust.

In finally determining the amount of principal balance, at the hearing, **xxxxxxx**

Supplemental Schedules

Debtor's most recently filed Schedules I and J are from approximately seven months ago on April 10, 2024. Docket 293. It is not clear Debtor can still afford to make plan payments in this case or that the income has remained the same, although those Schedules show a monthly disposable income sufficient to make the plan payments.

At the hearing, **xxxxxxx**

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Derek L Wolf ("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**.

10. 23-22540-E-13 JJF-2 | **SATINDER SINGH** / **Ryan Wood** | **CONTINUED 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 denied.

January 28, 2025 Hearing

The court continued the hearing on this Motion to allow Creditor to supplement the record and present law to the court how claiming these funds is proper in this instance. On January 15, 2025, Creditor submitted with the court a Supplemental Memorandum of Points and Authorities. Docket 348. Creditor states:

1. The decisions indicate that the Court has authority to distribute unclaimed funds to a creditor. The creditor must demonstrate that they are still entitled to the funds on account of the underlying obligation. *Id.* at 1:17-20.

2. Placerville Investment LLC filed a proof of claim. The debtor's petition scheduled it as Class 2(B), a secured claim, acknowledging that it was to be paid. Placerville's Application for Payment included evidence that it had received no payments. *Id.* at 2:21-28.

3. The debtor is deceased, and no estate representative has been appointed. *Id.* at 2:26.

4. The debtor's ex-wife and adult son (who both appeared at a hearing in this court) were provided notice. Neither of them filed objections or appeared at the hearing. The Court ordered $55,497 to be lodged with the Clerk. The subsequent attorney fees and costs application resulted in $28,227.76 to be paid by the Clerk. Applicant seeks payment of the balance, $27,269.24. *Id.* at 2:27-3:2.

Creditor also filed a Non-Opposition from Sonia Madaan, deceased Debtor's surviving spouse or partner, on behalf of herself and their three children. Docket 349.

In this Non-Opposition, Sonia Madaan provides the Non-Opposition for herself individually and her minor sons, and Humas Madaan (who is not a "minor son"). Humas Madaan is the adult son (18 years old) that counsel for the Late Debtor attempted to have substituted in for the Late Debtor.

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. Cal. 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).

The court notes that in 11 U.S.C. § 1326 Congress provides:

> § 1326. Payments
> (a)
> (1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—
>
> > (A) proposed by the plan to the trustee; . . .
>
> (2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the

> trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) [11 U.S.C. § 363 sale of property] **to the debtor**, after deducting any unpaid claim allowed under section 503(b).

11 U.S.C. § 1326(a) [emphasis added]. Collier's Treatise provides on the subject:

> Section 1326(a)(2) further provides that if a plan is not confirmed under chapter 13, the trustee must return all of the payments referred to in section 1326(a)(1)(A) to the debtor, deducting any unpaid claim for administrative expenses allowed under section 503(b). The trustee is also to deduct any unpaid payments that are due and owing to creditors under section 1326(a)(3). However, section 1326(a)(3) does not specifically provide for any payments. It provides for possible court orders modifying, increasing, or reducing payments under subsection (a) of section 1326. It is possible that this language refers to current personal property lease payments under section 1326(a)(1)(B) and **adequate protection payments** to certain secured creditors under section 1326(a)(1)(C), but then it would include those payments only if they had been modified, increased, or reduced by a court order under section 1326(a)(3). So it appears that the trustee is obligated to make payments to creditors, and withhold those payments from the debtor's refund, only if a specific order modifying payments to those creditors has previously been entered by the court and the trustee has not made any payments the trustee was ordered to make.

8 COLLIER ON BANKRUPTCY ¶ 1326.02 (emphasis added).

DISCUSSION

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

Movant cites the court to *In re Johnnie Ray Pena and Bertha Alicia Pena*, 456 B.R. 451, 453 (Bankr. E.D. Cal. 2011) and In re Acker, 275 B.R. 143 (Bankr. D.C. 2002) in support of its position. However, those cases are distinguishable.

In *Pena*, there had been a confirmed Chapter 13 Plan that required payment of that creditor's arrearage and post-petition mortgage. *Pena* at 452. That creditor had been paid $6,634.58 through the life of the Plan on account of its claim. *Id.* That creditor never claimed the funds simply because that creditor never cashed some of the checks. Importantly, therefore, those unclaimed funds resulted from that creditor failing to claim the money, and not from a Plan never having been confirmed.

Here, Movant was never paid on account of its claim during this case because no Plan was ever confirmed. Movant never received an adequate protection payment order in the interim to collect payments pending a Plan confirmation. Therefore, *Pena* is distinguishable and does not support Movant's position.

Like *Pena*, similar facts were present in *Acker*. Payments were again made to the creditor in *Acker* over the course of the case. *Acker* at 144. The creditor did not receive the payments due to their own actions, not because payments were not made to the creditor.

The case here is distinguishable for the same reasons, namely, no Plan had been confirmed and Movant had never been entitled to the funds. There is no adequate protection order distributing payments to Creditor on file. Therefore, 11 U.S.C. § 1326(a)(2) controls, and the court finds the payments are to go back to the Debtor, not the Creditor. The Motion is denied.

The court would finally note that there is no active Debtor in this case, the case having been dismissed while the Debtor had been deceased with no successor representative appointed. It also appears through pleadings in the record that there is no executor yet appointed in the probate case for the deceased Debtor. The clerk of the court will continue to hold the unclaimed funds until the rightful owner, the successor in interest to the deceased debtor, comes forward and can show that they are entitled to the funds.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Creditor Placerville Investment Group LLC ("Movant," "Creditor") 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.

January 14, 2025 Hearing

At the hearing, the court addressed with Movant what legal basis was being asserted for the court disbursing the monies from the Bankruptcy Estate to Movant as a creditor asserting a lien as opposed to the Debtor.

The court continues the hearing to allow the Movant to file supplemental pleadings addressing it right to the monies held by the Clerk of the Court, as well as further research by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion 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 for Payment of Unclaimed Funds is denied.

11. 24-21440-E-13 PGM-2 | **ERIKA/KEVIN NORMAN** | **Peter Macaluso** | **CONTINUED 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.

January 28, 2025 Hearing

The court continued the hearing on this Motion so Debtor can amend the Plan to harmonize with several court-approved stipulations, including the Plan providing for proper interest rates. On January 21, 2025, creditor JCT Inc., d/b/a Premier Pools and Spas ("JCT") filed an Opposition. Docket 187. Creditor states:

> 1. JCT has not participated in this case until now, but JCT has a secured claim by virtue of its judgment lien. POC 8-1. JCT objects to the Plan's confirmation on the basis that its claim is not provided for in Debtor's Plan at all. JCT should be placed in Classs2(A) of the Plan. Opp'n 3:6-17.

Failure to Provide for a Secured Claim

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it does not provide for payment of Creditor's entire obligation, and at the proper interest rate, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a claim secured only by the debtor's primary residence, but may modify other secured claims (11 U.S.C. § 1322(b)(2)). Notwithstanding the forgoing limitation, 11 U.S.C. § 1322(b)(3) authorizes the curing of any default on a secured claim. In addition, the Plan may provide for maintaining ongoing contract installment payments on a secured claim while curing default on such secured claim. 11 U.S.C. § 1322(b)(5).

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

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

At the hearing, **xxxxxxx** .

REVIEW OF THE MOTION

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, counsel for the Debtor reported that the interest rate should 21.99% and so amends the Plan. The Parties agreed to continue the hearing to afford Debtor additional time to address the issues relating to confirmation.

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 the Motion to Confirm the Modified Plan is **xxxxxxx**.

12. 19-23242-E-13 PLC-3 | **JAMES/ALICIA ANGELES** | **Peter Cianchetta** | **CONTINUED MOTION TO RELEASE VEHICLE TITLE TO DEBTORS AND/OR MOTION TO DEMAND PENALTIES PURSUANT TO CALIFORNIA VEHICLE CODE 5753(E)**

Item 12 thru 13

11-19-24 [70]

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.

January 28, 2025 Hearing

The court continued the hearing on this Motion because Debtor's counsel did not appear at the original hearing on this Motion. There are issues to be addressed, including what type of relief Movant is seeking. As of the court's review of the record on January 23, 2025, nothing new has been filed.

As this court stated in Footnote 18 in *Martin v. CitiFinancial Servs. (In re Martin),* 419 B.R. 122, 123 (Bankr. E.D. Cal. 2013) (emphasis added):

> 18
>
> The court is gravely concerned with Defendant's failure to respond to Plaintiff's requests to reconvey the Deed of Trust after completion of the Chapter 13 Plan. While of minimal cost and expense to **Defendant** to comply with its contractual and statutory obligations to reconvey the Deed of Trust and clear title for the consumer Plaintiff, it **has failed to fulfill its contractual and statutory obligations**. This **places an unreasonable and unnecessary burden on the average consumer**

debtor. Most benignly, one could assume that such a creditor is merely trying to save a few pennies by making the consumer bear the cost of clearing title. For those with a more sinister bent, one could think that such creditors are attempting to slander title to the consumer's property to try and leverage an unwarranted payment later to release the void lien as of record.

A consumer debtor and the court do not serve as a "for free title department" processing reconveyances for a creditor. Prevailing plaintiffs may seek recovery of their attorneys' fees and expenses, as this Plaintiff has, for **the reasonable attorneys' fees and costs to** clear a cloud on title following completion of a confirmed Chapter 13 Plan. Such **litigation requires an experienced, sophisticated attorney who understands the interplay between state real property law and federal bankruptcy law to effectively prosecute an action to enforce the Plaintiff's rights** obtained through completion of the Chapter 13 Plan. **Such attorneys' fees are not inexpensive, as the Plaintiff must go through multiple steps in not only filing and properly serving the Complaint**, and having the default entered, but prosecuting a motion providing the court with the sufficient legal and evidentiary basis for entry of a judgment in the litigation.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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.

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).

Debtor's counsel did not appear at the hearing. The court continues the hearing to afford Debtor's counsel to address these issues.

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

13. 19-23242-E-13 PLC-4 | **JAMES/ALICIA ANGELES** | **Peter Cianchetta** | **CONTINUED 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.

January 28, 2025 Hearing

The court continued the hearing on this Motion because Debtor's counsel did not appear at the original hearing on this Motion. There are issues to be addressed, including what type of relief Movant is seeking. As of the court's review of the record on January 23, 2025, nothing new has been filed.

18

The court is gravely concerned with Defendant's failure to respond to Plaintiff's requests to reconvey the Deed of Trust after completion of the Chapter 13 Plan. While of minimal cost and expense to **Defendant** to comply with its contractual and statutory obligations to reconvey the Deed of Trust and clear title for the consumer

Plaintiff, it **has failed to fulfill its contractual and statutory obligations**. This **places an unreasonable and unnecessary burden on the average consumer debtor.** Most benignly, one could assume that such a creditor is merely trying to save a few pennies by making the consumer bear the cost of clearing title. For those with a more sinister bent, one could think that such creditors are attempting to slander title to the consumer's property to try and leverage an unwarranted payment later to release the void lien as of record.

A consumer debtor and the court do not serve as a "for free title department" processing reconveyances for a creditor. Prevailing plaintiffs may seek recovery of their attorneys' fees and expenses, as this Plaintiff has, for **the reasonable attorneys' fees and costs to** clear a cloud on title following completion of a confirmed Chapter 13 Plan. Such **litigation requires an experienced, sophisticated attorney who understands the interplay between state real property law and federal bankruptcy law to effectively prosecute an action to enforce the Plaintiff's rights** obtained through completion of the Chapter 13 Plan. **Such attorneys' fees are not inexpensive, as the Plaintiff must go through multiple steps in not only filing and properly serving the Complaint**, and having the default entered, but prosecuting a motion providing the court with the sufficient legal and evidentiary basis for entry of a judgment in the litigation.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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.

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).

Debtor's counsel did not appear at the hearing. The court continues the hearing to afford Debtor's counsel to address these issues.

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

14. 24-24242-E-13 RPH-2 | **MICHAEL/MERCEDES HICKEY** | **MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE**
Robert Huckaby | **12-5-24 [31]**

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

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 December 5, 2024. By the court's calculation, 54 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is xxxxxxx.

The Motion filed by Michael James Hickey and Mercedes Velasquez Hickey ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 33. The IRS is asserting a secured claim in the amount of $96,270.93. POC 4-1. Debtor is the owner of the following items of property:

1. 2303 Wasabe Dr., South Lake Tahoe, Ca 96150 ("Real Property"), valued at $800,000;

2. Hummer H2 2007 ("Hummer"), valued at $4,530;

3. Audi Q5-S 2023 ("Audi"), valued at $31,500;

4. various personal property and household items ("Personal Property"), valued at $5,800; and

5. various financial assets ("Financial Assets"), valued at $3,325.

See Schedule A/B at 12-17, Docket 1. 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 following creditors have liens in some of the items of property:

1. VW Credit, Inc., in the amount of $47,100.53 in the Audi (POC 5-1);

2. First mortgage of U.S. Bank National Association, PHH Mortgage Corporation in the amount of $809,379.85 (POC 3-1); and

3. Second mortgage of Real Time Resolutions, Inc., in the amount of $127,899.33 (POC 6-1).

The value of the Hummer, Personal Property, and Financial Assets amounts to $13,655, which would leave the net equity for the IRS claim to attach.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee"), filed an Opposition on January 14, 2025. Trustee opposes the Motion on the basis that the IRS is not provided for in the Plan, so that claim will not be paid through the Plan, and so Debtor cannot propose to value their secured claim. Trustee cites to 11 U.S.C. § 506(a)(1).

DISCUSSION

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor's assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

However, the court would agree that, because the IRS has not been provided for in the Plan, the Motion cannot be granted. The claim must be provided for so the claim may be modified. 11 U.S.C. § 1322(b)(2); 11 U.S.C. § 506(a).

At the hearing, **xxxxxxx**

~~Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 4-1, the court determines the value of the secured claim to be $13,655, 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 Michael James Hickey and Mercedes Velasquez Hickey ("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 the following assets:

1. 2303 Wasabe Dr., South Lake Tahoe, Ca 96150 ("Real Property"), valued at $800,000;

2. Hummer H2 2007 ("Hummer"), valued at $4,530;

3. Audi Q5-S 2023 ("Audi"), valued at $31,500;

4. various personal property and household items ("Personal Property"), valued at $5,800; and

5. various financial assets ("Financial Assets"), valued at $3,325.

is determined to be a secured claim in the amount of $13,655, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

15. 19-25359-E-13 WW-3 | **ANTHONY MOSELEY** / **Mark Wolff** | **MOTION TO DETERMINE CLAIM OF WELLS FARGO BANK, N.A. (CLAIM #1 AND CLAIM #2) HAVE BEEN PAID IN FULL** / **12-12-24 [62]**

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 that have filed claims, and Office of the United States Trustee on December 12, 2024. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion to Determine Claim of Wells Fargo Bank, N.A. has been Paid in Full 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 Determine Claim of Wells Fargo Bank, N.A. has been Paid in Full is xxxxxxx.

Stipulation Filed January 23, 2025
Dckt. 74

The Debtor, Creditor, and their respective attorneys have acted diligently and constructively in addressing this matter and now have stipulated to a resolution hereof. A Stipulation between Debtor and Creditor was filed on January 31, 2025 (Dckt. 74) and provides for the following resolution of this Motion:

1. Creditor will update its records to show that the amounts stated on the Proof of Claim have been paid in full. Stipulation, ¶ 1; Dckt. 74.

2. Creditor shall release its lien no later than 30 days after the entry of the Order approving the Stipulation. *Id.*; ¶ 2.

3. Creditor shall not seek recovery of any outstanding escrow advances relating to the Property or Proof of Claim. *Id.*; ¶ 3.

4. If the County of Sacramento should refund to Creditor the property tax payment Made by Creditor on or about November 19, 2024, Creditor shall forward those funds to Debtor no later than 30 days after receipt of such funds. *Id.*; ¶ 4.

5. Creditor shall pay Debtor's attorney's fees and costs in a very reasonable stated amount, within 30 days of the entry of the Order approving the Stipulation. *Id.*; ¶ 5.

6. The court's Order approving the Stipulation fully resolves this Motion.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

Debtor Anthony M. Moseley ("Debtor") moves this court for an order determining that, as Debtor has completed the Chapter 13 Plan, Wells Fargo's claim is deemed to have been paid in full and the lien should be released. Debtor states:

1. Debtor's confirmed Chapter 13 Plan provides for Wells Fargo's claim to be paid in full at 7.5% interest in Class 2. The payments were to be set up so that $1,000 went to the principal and $427.34 went to escrow monthly. Mot. 2:4-13, Docket 62.

2. The Plan length was for 72 months.

3. Upon competition of payments on Wells Fargo's claim, Debtor would pay future taxes and insurance related to his real property. *Id.* at 2:24-3:1.

4. The Chapter 13 Trustee has completed payments to Wells Fargo, paying the full amount of the claim in the amount of $34,122.92 with interest at 7.5%. Trustee additionally made all monthly payments on account of escrow. *Id.* at 3:2-11.

5. Debtor continues to receive monthly statements from Wells Fargo that there is an unpaid principal balance in the amount of $4,014.46, which continues to grow. *Id.* at 3:18-19.

6. Debtor seeks the court's help in setting the dispute, as Debtor does not understand the difference in the Chapter 13 Trustee's accounting and Wells Fargo's accounting. *Id.* at 4:25-5:7.

TRUSTEE'S NONOPPOSITION

The Chapter 13 Trustee filed a Response on January 14, 2025. Docket 67. Trustee states:

A. Trustee does not oppose the motion. According to the Trustee's records, the claim has been paid in full according to the Creditor's Proof of Claim and the escrow has been. *Id.* at 1:22-2:1.

B. Trustee has included as Exhibits the payment history showing the claim paid in full.

WELLS FARGO'S RESPONSE

Wells Fargo filed its Response on January 14, 2025. Docket 71. Wells Fargo states:

A. Trustee indeed disbursed $34,122.92 on the total debt claim. However, the Trustee did not make equal monthly installments of $1,000.00 to Wells Fargo on the total debt portion of the claim as required by the Plan and Order Confirming Plan. The Trustee payments on the total debt claim ranged from $69.55 to $2,314.67 per payment. *Id.* at 2:16-24.

B. The amount of the Trustee payments, along with the atypical Plan treatment, caused confusion in the allocation of the Trustee payments among principal, interest and escrow. Wells Fargo has determined that it inadvertently misapplied some of the Trustee disbursements on the total debt portion of the Claim to the escrow account. This resulted in an incorrect principal balance showing on the Debtor's statements. *Id.* at 2:19-24.

C. Wells Fargo made some advances for property taxes and insurance as Debtor failed to timely begin making those payments. *Id.* at 3:2-11.

D. The amount of the interest payments disbursed by the Trustee also caused confusion in the application of Trustee payments on the Loan. Per the Plan, interest was to be paid at the contract rate of 7.5%. The Trustee paid interest totaling $6,343.99. See Exhibit A. It is unclear how the interest payments were calculated. Based on an amortization of the total debt to be paid ($34,122.92) at 7.5% interest, over the initial Plan term of 60 months, Wells Fargo was anticipating that it would be paid a total of $6,902.28 in interest. *Id.* at 3:13-18.

E. In order to address the above issues, Wells Fargo has made a settlement offer to Debtor in which Wells Fargo agrees to immediately release its lien on the Property and waive all outstanding amounts shown as due on the Loan. Wells Fargo has also agreed to waive recovery of all escrow advances made on behalf of the Debtor after the Trustee stopped making escrow payments in 2023. *Id.* at 3:20-23.

DISCUSSION
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 Wells Fargo in the Property, (2) grant injunctive relief for the court to order Wells Fargo 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). However, it appears in this case, the parties have worked out a consensual agreement.

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 Determine Claim of Wells Fargo Bank, N.A. has been Paid in Full filed by Anthony M. Moseley ("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**.

16. 23-23959-E-13 RLC-1 | **LASHUNDA PHILLIPS** / **Carl Gustafson** | **MOTION FOR CLARIFICATION OF CONFIRMATION ORDER** / **12-20-24 [91]**

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, other parties in interest, and Office of the United States Trustee on December 20, 2024. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion for Clarification 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 Clarification is denied without prejudice.

Creditor Bankers Healthcare Group, LLC ("Movant") moves this court for an order "clarifying" the confirmation order in this case. Creditor argues that Plan is ambiguous as to which assets of the estate are community property subject to community claims. Specifically,

> 2. On July 26, 2024, the Court entered its Order Confirming Plan [Bankruptcy Case ECF No. 87] (the "Confirmation Order").
>
> 3. The Plan provided in pertinent part:
>
> > The Debts of The Debtor's nun-filing [sic] spouse, Robert Phillips, which Debtor Lashunda Phillips did not cosign and which hold a community interest, shall constitute a special class of community claims. These debts total an estimated sum of$191,750. They shall be repaid 100%. The creditors affected by this section and the approximate amount they are owed are:
> > ...
> > Banker's Healthcare Group $110,005.
>
> 10 Plan, p. 7.
>
> . . .

> 6. The Phillipses are therefore taking the position that the Plan effectuates a determination that each of the creditors referred to in the Plan held a claim against the Debtor, Lashunda Kelly Phillips. In other words, the Phillipses are taking the position in their Complaint that the Plan effectuated a determination that BHG's claim against Robert Phillips is actually a community debt, and thus, the Debtor was also liable, and therefore 11 U.S.C. § 1301(a) applied.
>
> 7. Presently, BHG seeks clarification from the Court as to whether its Confirmation Order (or, alternatively, whether the Plan itself) effectuated any determination as to: 1) whether BHG's claim against Robert Phillips was for a "consumer1" debt as that term is used in 11 U.S.C. § 130l(a); and 2) whether the BHG's claim is a "community claim" for which the Debtor is co-liable with Robert Phillips.

Motion, ¶¶ 2, 3, 6, 7; Dckt. 91.

Debtor Lashunda Kelly Phillips ("Debtor") filed an Opposition on January 10, 2025. Docket 95. Debtor states that this Motion seeks an impermissible advisory opinion, no case or controversy as used in Article III of the Constitution present in this Motion. The court agrees.

The law of this Circuit is as follows:

> The jurisdiction of federal courts is defined and limited by Article III of the Constitution. In terms relevant to the question for decision in this case, the judicial power of federal courts is constitutionally restricted to 'cases' and 'controversies.' Courts must refrain from deciding abstract or hypothetical controversies and from rendering impermissible advisory opinions with respect to such controversies. [A] federal court has neither the power to render advisory opinions nor to decide questions that cannot affect the rights of litigants in the case before them. Its judgments must resolve a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. An advisory opinion results if the court resolves a question of law that is not presented by the facts of the case.

Earth Island Institute v. Ruthenbeck, 490 F.3d 687, 694 (9th Cir. 2007) (internal quotations omitted).

Here, Movant asks the court to advise Movant on what the law states regarding this confirmed Chapter 13 Plan. The court does not have the authority to issues such relief. In effect, Movant seeks declaratory relief, which must be sought through an adversary proceeding. Fed. R. Bankr. P. 7001. The Motion is denied.

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 Clarification filed by Bankers Healthcare 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 for Clarification is denied without prejudice.

17. 24-24973-E-13 JCW-1 | **SARAH/AUSTIN FOWLER** | **Gary Fraley** | **OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK** | **12-13-24 [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, Chapter 13 Trustee, and Office of the United States Trustee on December 20, 2024. By the court's calculation, 39 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.

Ally Bank ("Creditor") having a secured claim opposes confirmation of the Plan on the basis that:

1. Sarah Elizabeth Fowler and Austin Thomas Fowler's ("Debtor") proposed Plan does not pay the prime rate of interest on its claim. Obj. 2:12-15, Docket 18.

DISCUSSION

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 5.99%. Creditor's claim is secured by a Dodge Ram 2500. 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. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Ally Bank ("Creditor") having 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.

18. 24-22674-E-13 EJS-1 ANDREW/JOANNA NEWBOLD Eric Schwab MOTION TO SELL O.S.T. 1-10-25 [42]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on January 10, 2025. By the court's calculation, 18 days' notice was provided. The court set the hearing for January 28, 2025. Dckt.47.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Andrew Francis Newbold and Joanna Hennessee Newbold, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 4524 Robertson Ave, Sacramento, CA 95821 ("Property").

The proposed purchaser of the Property is Michael Greison ("Buyer"), and the terms of the sale are:

a. Sales Price: $700,000.00

b. Payoff of Planet Home Lending: $666,118.25

e. Listing and Selling Broker's Commission: $7,000.00

f. Remainder will be Due to Seller after liens are paid off (est.): $3,772.47.

Mot. 1:27-2:5, Docket 42.

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 because Debtor will be able to pay secured creditors with proceeds from the sale

Motion to Employ Broker

On January 10, 2025, the Debtor filed an *Ex Parte* Application to Employ Berkshire Hathaway Home Services Elite Real Estate as their Broker for the marketing and sale of the Property. Dckt. 38. The Application is supported by the Declaration of Timothy Newbold, a Real Estate Agent with the Broker. Dckt. 39.

However, it appears that no proposed order has been uploaded for the court to grant the Application.

Movant has estimated that a broker's commission of one percent from the sale of the Property will be in the amount of $7,000. Mot. 2:3.

At the hearing, **xxxxxxx**

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 one percent commission. The commission is to be split evenly between Timothy Newbold, Debtor's broker, and Kevin Majdic-Barnes of Realty One Group Complete, Buyer's broker.

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 Andrew Francis Newbold and Joanna Hennessee Newbold, 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 Andrew Francis Newbold and Joanna Hennessee Newbold, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Michael Greison or nominee ("Buyer"), the Property commonly known as 4524 Robertson Ave, Sacramento, CA 95821 ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $700,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 45, 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. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than one percent of the actual purchase price upon consummation of the sale. The commission is to be split evenly between Timothy Newbold, Debtor's broker, and Kevin Majdic-Barnes of Realty One Group Complete, Buyer's broker.

E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

~~If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee's demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.~~

F. ~~After payment of the amounts provided above, including the disbursement to the Chapter 13 Trustee directly from escrow, any remaining net sale proceeds may be disbursed directly from escrow to the Chapter 13 Debtor.~~

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.

19. 24-22984-E-13 PGM-2 | **LUIS/KARLA SANCHEZ** | **MOTION TO CONFIRM PLAN**
Peter Macaluso | **12-12-24 [57]**

Item 19 thru 20

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

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 12, 2024. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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, Luis A. Sanchez and Karla Mariela Sanchez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid of total of $15,645.00 through October 2024 with plan payments of $5,215.00 per month to commence November 25, 2024 for 57 months. Amended Plan, Docket 61. 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 January 13, 2025. Docket 63. Trustee opposes confirmation of the Plan on the basis that:

A. The claim of Travis Credit Union/2022 Ford Maverick is misclassified in Class 4 because the claim will mature before the completion of the Plan. *Id.* at 2:2-9.

B. Debtor's Statement of Financial Affairs (SOFA) contains inaccurate information and has not been amended. Question #2 shows the Debtor,

Luis Sanchez, has lived at the same residence during the last three (3) years. The Trustee has received a copy of the Debtor's California Driver's License (CDL) which states that the Debtor lives at 10553 Fossil Way, Elk Grove, CA 95757. The CDL shows that it was issued on September 26, 2023 which would be within the last 3 years, so it seems that this address should be listed on the SOFA. *Id.* at 2:11-16.

C. Schedule G has not been amended: Question #1 asks "Do you have any executory contracts or unexpired leases?" Debtor marked the box "NO". Debtor admitted at the First Meeting of Creditors held on July 25, 2024, that he has a business lease. *Id.* at 2:17-19.

D. Debtor has still not submitted relevant bank account statements relating to their business, Taqueria Vallarta. *Id.* at 2:20-25.

E. Debtors failed to provide the Trustee with 60 days any of the payment advices received prior to the filing of the petition. The Trustee specifically requested the pay advices at the First Meeting of Creditors, held on August 15, 2024. *Id.* at 2:26-28.

F. The Plan is overextended, by Trustee's calculation taking 66 months to complete. *Id.* at 3:5-10.

G. Debtors' Plan relies on a Motion to Value Collateral being filed for creditor Retail Capitol's collateral, but there is no Motion on the Docket. *Id.* at 3:11-15.

CREDITOR'S OPPOSITION

Bank of America, N.A. ("Creditor") holding a secured claim filed an Objection to Confirmation that the court construes to be an Opposition on January 14, 2025. Docket 66. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor is impermissibly attempting to value Creditor's collateral at $53,670.00 with no Motion to value on file. Creditor submits a J.D. Power Valuation Report showing the collateral to be worth $65,665.00. *Id.* at 20-27.

On January 24, 2025, Creditor filed a Status Report (Dckt. 70) stating that the Parties are finalizing plan terms for Creditor's secured claim and the hearing should be continued.

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 that the claim is going to mature before the completion of the Plan.

At the hearing, **xxxxxxx**

Inaccurate or Missing Information

Debtor's Statement of financial Affairs and Schedule G contain outdated or inaccurate information. Trustee has requested Debtor correct the information on multiple occasions without Debtor complying. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Documents Related to Business

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

Failure to Provide 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).

Overextended Plan

By Trustee's calculations, the Plan will take 66 months to complete. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

Debtor's Reliance on Motion to Value Secured Claim

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

Improper Treatment of Creditor's Secured Claim

Creditor has filed a Proof of Claim (POC 1-1) where it asserts a secured claim in the amount of $56,376.38. According to this District's standard Plan Form, EDC 003-080, "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Plan Form EDC 003-080, § 3.02. Debtor has not complied with this language, instead providing for Creditor's secured claim in the amount of $53,670. Am. Plan § 3.08, Docket 61. Such treatment is impermissible without there being a Motion to Value or Objection to Claim granted by the court.

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, Luis A. Sanchez and Karla Mariela Sanchez ("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.	**24-22984-E-13** **CLB-2**	**LUIS/KARLA SANCHEZ** **Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.** **1-14-25 [66]**

Final Ruling

The Objection to Confirmation of Plan will be heard as an Opposition to the Motion to Confirm Amended Plan, Docket Control Number PGM-2, heard in conjunction with this Objection. The Motion to Confirm Amended Plan and the Plan were filed on December 12, 2024, and this Objection was file don January 14, 2025.

21. 24-24996-E-13 SKI-1 — KAREN SIMMONS, Matthew Gilbert — OBJECTION TO CONFIRMATION OF PLAN BY EXETER FINANCE LLC, 11-27-24 [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.

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 November 27, 2025. By the court's calculation, 62 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.

Exeter Finance LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Karen Renee Simmons' ("Debtor") Plan improperly treats Creditor's claim, attempting to value the collateral lower than replacement value. The Plan has valued Creditor's collateral at $17,811, Plan § 3.08 Docket 3, but the Creditor submits evidence that its collateral is worth anywhere from $19,998 to $23,998. Mot. 4:10-13, Docket 10.

Creditor submits the Declarations of John Eng and Nancy Wafer to authenticate the facts alleged in the Objection. Decls., Dockets 12, 14. Creditor also submits a J.D. Power Valuation Report as an Exhibit. Ex. D, Docket 13. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

Improper Treatment of Creditor's Secured Claim

Creditor has filed a Proof of Claim (POC 2-1) where it asserts a secured claim in the amount of $20,550.00. According to this District's standard Plan Form, EDC 003-080, "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Plan Form EDC 003-080, § 3.02. Debtor has not complied with this language, instead providing for Creditor's secured claim in the amount of $17,811, Plan § 3.08 Docket 3. Such treatment is impermissible without there being a Motion to Value or Objection to Claim granted by the court.

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

22. 24-24898-E-13 DPC-2 | **LYNETTE LISTER** Pro Se | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-23-24 [43]**

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

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 23, 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. The debtor Lynette Lister ("Debtor") has filed a blank plan and on the wrong form. Obj. 1:25-2:1.

2. Debtor failed to attend the meeting of creditors. *Id.* at 2:2-3.

3. Debtor has not provided photo identification, proof of social security, pay advices, or the last filed federal tax return to the Trustee as required under 11 U.S.C. §521(h). *Id.* at 2:4-7.

4. Debtor does not include reasonable living expenses with $0 for every category except $516 for car payment, and where this includes $0 for food, utilities, and clothing, this budget is not reasonable.

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Objection. Decl., Docket 45.

DISCUSSION

Blank Plan

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor initially proposed a plan that did not provide the required information and Plan terms.

Debtor filed an Amended Plan twice on January 14, 2025. Dockets 50, 51. Reviewing the last Amended Plan filed, Dckt. 51, it provides:

A. Monthly Plan payments of $516 for 60 months. Plan, ¶¶ 2.01, 2.03.

B. No payments on the Class 1 Secured Claim for which it is stated there is an $8,000 arrearage. *Id*.; ¶ 3.07.

C. No other payments to creditors are provided for in the Plan.

There are seventeen proofs of claim that have been filed in this Case, the one secured claim and sixteen unsecured claims.

Debtor has proposed a plan payment of $516 but has not proposed any other terms in the Plan, including payments to Classes 1–6 or a dividend amount to Class 7. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

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 for dismissal.

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.

23. 24-22599-E-13 CYB-4 | **JAMES JOHNSON** **Candace Brooks** | **MOTION TO SELL O.S.T.** **1-9-25 [67]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on January 10, 2025. By the court's calculation, 18 days' notice was provided. The court set the hearing for January 28, 2025. Dckt. 74.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits James Roy Johnson, 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 216 Harviture Way, Vallejo, California 94591 ("Property").

The proposed purchaser of the Property is Mark Misenhimer and Rosie Misenhimer ("Buyer"), and the terms of the sale are:

a. Sales Price: $520,000.00

b. Payoff of Selene Finance: $327,000

e. Listing and Selling Broker's Commission: $20,800.00

f. Remainder will be Due to Seller after liens are paid off (est.): 64,884.00-$73,384.00.

Mot., Docket 67.

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**.

The Motion mentions the court find that the Buyer here is has purchased the Property in good faith pursuant to 11 U.S.C. § 363(m). However, the court has not been presented with any evidence to make such a determination. At the hearing, **xxxxxxx**

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor will be able to pay secured creditors with proceeds from the sale.

Movant has estimated that a broker's commission of four percent from the sale of the Property will be in the amount of $20,800.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than four percent commission. The commission is to be split evenly between Randy Nicholas of Remax Accord, Debtor's broker, and Carla Burris of Burris Realty, Buyer's broker. The court entered its order authorizing the employment of Randy Nicholas of Remax Accord, as Debtor's Broker. Order; Dckt. 73.

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 as time is of the essence.

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 James Roy Johnson, 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 James Roy Johnson, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Mark Misenhimer and Rosie Misenhimer or nominee ("Buyer"), the Property commonly known as 216 Harviture Way, Vallejo, Ca 94591 ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $520,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A,

Dckt. 69, and the Addendums at Exhibit B, 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. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than four percent of the actual purchase price upon consummation of the sale. The commission is to be split evenly between Randy Nicholas of Remax Accord, Debtor's broker, and Carla Burris of Burris Realty, Buyer's broker.

E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

~~If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee's demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.~~

~~F. After payment of the amounts provided above, including the disbursement to the Chapter 13 Trustee directly from escrow, any remaining net sale proceeds may be disbursed directly from escrow to the Chapter 13 Debtor.~~

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.

FINAL RULINGS

24. 24-25073-E-13 LGT-1 | **SHELLEY BETTENCOURT-TILLMAN Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG 12-20-24 [21]**

Final Ruling: No appearance at the January 28, 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, and Office of the United States Trustee on December 20, 2024. By the court's calculation, 39 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 sustained.

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

1. Trustee has not yet concluded the Meeting of the Creditors as Debtor failed to provide any required documents.

Debtor filed a Nonopposition on January 14, 2025, stating she no longer wishes to pursue confirmation of this Plan. Docket 31.

DISCUSSION

Failure to Provide Documents Prior to 341 Meeting

Debtor did provide the required documents prior to the 341 Meeting. Attempting to confirm a plan while failing to provide adequate time for Trustee to examine documents is 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, Lilian Tsang ("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.

25. 24-25101-E-13 DPC-1 | **MARIE EUSTAQUIO** **Robert Goldstein** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **12-23-24 [13]**

Final Ruling: No appearance at the January 28, 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, and Office of the United States Trustee on December 23, 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.

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 Marie Magno Eustaquio's ("Debtor") Chapter 13 Plan contains misclassified claims. The claim of Mr. Cooper ("Creditor") is classified in class 1, but Debtor admitted at the 341 Meeting that she is current on the claim and it should be in class 4. Obj. 2:1-7, Docket 13.

2. Debtor has not properly signed her documents. *Id.*

3. Trustee believed Debtor may have a higher income than what is scheduled. Debtor received tax refunds in the amount of $3,019 for the tax year 2023, so Debtor can contribute more into her plan by either contributing a portion of her refund or reducing her tax expense. *Id.* at 2:15-3:6.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 15.

DISCUSSION

Misclassified Claims

Debtor has classified Creditor in Class 1 of her Plan, which Class only deals with "all delinquent secured claims that mature after the completion of this plan." Plan § 3.07, Docket 3. Trustee reports Debtor has testified she is not delinquent regarding this claim.

Debtor's Signatures

Local Bankruptcy Rule 9004-1(c) provides:

> All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in *propria persona*. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

Debtor has not complied with this rule in signing her documents.

Not Best Effort

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

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

Trustee alleges the Plan may not be filed with Debtor's best efforts where Debtor has a substantial tax return and is not contributing any of that amount to the Plan. The court agrees. Where the Debtor is receiving over $3,000 in her tax returns and proposes 9% to general unsecured creditors, the Plan is not proposed with Debtor's best efforts.

Amended Plan and
Motion to Confirmed Filed

On January 23, 2025, the Debtor filed an Amended Plan and Motion to Confirmed. Dckts. 19, 17. The hearing on the Motion to Confirm the Amended Plan is set for March 11, 2025. Cert. Service; Dckt. 18. This is a *de facto* withdrawal of the prior Plan.

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. 24-21118-E-13 JOHN CAMPOS MOTION TO MODIFY PLAN
WW-2 Mark Wolff 12-18-24 [71]

Final Ruling: No appearance at the January 28, 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, creditors, Chapter 13 Trustee, and Office of the United States Trustee on December 18, 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 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, John Steven Campos ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 73. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on January 14, 2025. Docket 78. 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, John Steven Campos ("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 December 18, 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.

27.	**24-24842-E-13** **DPC-1**	**SHIRLEY WILLIAMS** **David Ritzinger**	**OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **12-27-24 [16]**

Final Ruling: No appearance at the January 28, 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 27, 2024. By the court's calculation, 32 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 Shirley Williams' ("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 July 12, 2023. Case No. 23-22296. Debtor received a discharge on October 23, 2023. Case No. 23-22296, Docket 13.

The instant case was filed under Chapter 13 on October 28, 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 July 12, 2023, 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. 24-24842), 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. 24-24842, the case shall be closed without the entry of a discharge.

28. 24-24648-E-13 DPC-3 | **REGINA SAUCEDO** Timothy Walsh | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** 12-27-24 [25]

Final Ruling: No appearance at the January 28, 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 27, 2024. By the court's calculation, 32 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 Regina Rodiguez Saucedo'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 February 6, 2024. Case No. 24-20464. Debtor received a discharge on May 29, 2024. Case No. 24-20464, Docket 25.

The instant case was filed under Chapter 13 on October 16, 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 February 6, 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. 24-24648), 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. 24-24648, the case shall be closed without the entry of a discharge.

29. 24-24754-E-13 DPC-1 | **TONI HAMILTON** **Richard Jare** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **12-27-24 [28]**

Final Ruling: No appearance at the January 28, 2025 hearing is required.

The Objection to Discharge is dismissed without prejudice.

David Cusick, ("the Chapter 13 Trustee") having filed an *Ex Parte* Motion to Dismiss the pending Objection on January 15, 2025, Dckt. 42; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection 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 Toni Y. Hamilton ("Debtor"); the *Ex Parte* Motion is granted, the Chapter 13 Trustee's Objection is dismissed without prejudice, and the court removes this Objection 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 Objection to Discharge filed by David Cusick, ("the Chapter 13 Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Objection 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 Objection to Discharge is dismissed without prejudice.