

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 30, 2024 at 2:00 p.m.

1.	<u>23-21007</u> -E-13	MANJIT SINGH	CONTINUED MOTION TO MODIFY PLAN
	<u>PGM</u> -3	Peter Macaluso	10-11-23 <u>[53]</u>

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, parties requesting special notice, and Office of the United States Trustee on October 11, 2023. 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 30, 2024 Hearing

No new documents or supplemental pleadings have been filed related to this Motion. On December 15, 2023, the Chapter 13 Trustee, David Cusick (“Trustee”) filed a Notice of Filed Claims. Docket 80.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

The debtor, Manjit Singh (“Debtor”) seeks confirmation of the Modified Plan. In his Declaration, Debtor states it seeks modification because he has had a mortgage loan modification. Declaration, Dckt. 58. Debtor does not explain how this mortgage loan modification affects the plan payments, but does inform the court that he is “delinquent with plan payments because [he] was paying the mortgage directly, [not through the Plan].” *Id.* The Modified Plan provides for plan payments of \$70.00 to begin on November 25, 2023, where Debtor has already paid \$2,650.00 in the Plan to date. Debtor proposes a 100% dividend to unsecured creditors. Plan, Dckt. 57, ¶ 3.14. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

Trustee filed an Opposition on November 6, 2023. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

1. The Plan purports to be completed in 36 months, but as proposed, it would take likely 107 months to complete, thereby exceeding the statutory time limit under 11 U.S.C. § 1322(d). Debtor estimated his general unsecured claims total \$997.53 (Plan, Dckt. 57, ¶ 3.14), but Trustee informs the court that the general unsecured claims come in at \$9,975.23. This discrepancy likely explains the over-extension.
2. Debtor marked subsequently filed Schedules I and J as amended, not supplemental, but they likely should have been marked as supplemental.

Dckt. 67.

Debtor’s Reply to Trustee’s Opposition

On November 14, 2023 Debtor files its Reply to Trustee’s Opposition. Dckt. 72. In his Reply, Debtor states:

1. Debtor acknowledges the over-extension problem and agrees to increase plan payments to \$400.00 per month.

Dckt. 72.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor's proposed Modified Plan exceeds the statutory time limit allotted under 11 U.S.C. § 1322(d). According to the Chapter 13 Trustee, the Plan will complete in 107 months because Debtor, while proposing to pay all general unsecured claims, did not list the correct amount of general unsecured claims. Debtor stated it is amicable to a plan payment increase, but must submit a Modified Plan reflecting such increase. Failure to comply with 11 U.S.C. § 1322(d) is grounds for denial of confirmation.

On Supplemental Schedule I filed on November 14, 2023 (Dckt. 74), Debtor states having gross monthly income of \$5,250.01, with the only deduction being (\$970.45) for Taxes, Medicare, and Social Security. On Supplemental Schedule J (Dckt. 74), Debtor states having a family until of three persons, Debtor and Debtor's two minor children. On it Debtor lists (\$5,078.93) in expenses, generating a projected monthly net income of \$400. Dckt. 74 at 6-7.

On prior Supplemental Schedule J Debtor stated under penalty of perjury that Debtor's family unit had (\$5,479.56) in reasonable monthly expenses, thus there was only \$70.63 in projected monthly disposable income. Dckt. 60 at 6-7.

With respect to co-debtors, Debtor states that his former spouse resided in his community property state in the eight years prior to filing this case, and the state in which they lived is "-NONE-." Schedule J; Dckt 1 at 27.

To generate \$400 a month in projected disposable income, Debtor says in the Second Supplemental Schedule that the following reasonable and necessary expenses stated on First Supplemental Schedule J, showing only \$70 of projected disposable income to fund the Plan:

	First Supplemental Schedule J	Second Supplemental Schedule J	Expense Reduction to Fund Plan
Home Maintenance	(\$125)	(\$20)	\$105
Transportation	(\$600)	(\$500)	\$100
Entertainment	(\$125)	\$0	\$125
			=====
			\$330

With these changed expenses stated under penalty of perjury, Debtor states that he can now perform the plan even with a higher plan payment. Debtor provides no testimony as to how his reasonable and necessary expenses have dropped \$330.

The court also notes that some of Debtor's now stated reasonable and necessary expenses stated under penalty of perjury in the Second Supplemental Schedule J may be unreasonably low. These expenses include:

- A. Home repair and maintenance expense of only \$20 per month.

It is not clear how Debtor would have only \$240 a year for repairs and maintenance of his home for the three years of this Chapter 13 Plan.

B. Entertainment expenses of \$0.00 a month.

For the six years of the Chapter 13 Plan Debtor and his two minor children have no entertainment, no recreation, and no books or magazines (or their digital equivalent) for the three years of this Chapter 13 Plan.

While Debtor may desperately want to save his home from sale, such is not a justification for “creative” stated expenses to generate a predetermined necessary projected disposable expense. Either the expenses were reasonable and necessary when stated under penalty of perjury for the First Supplemental Schedule J, or they were misstated to try and shelter projected disposable income from funding the Plan.

At the hearing, counsel for Debtor explained that with the loan modification and Debtor’s desire to complete the Plan weighs heavily on the Debtor. The Trustee reported that the Debtor is using his mother’s car.

At the hearing, the Parties agreed to continue the hearing to allow the Debtor to document the ability to perform the plan by making several payments.

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, Manjit Singh (“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 .

2 thru 3

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on August 21, 2023. 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 XXXXXXX.

January 30, 2024 Hearing

A review of the Docket on January 24, 2024 reveals no new documents have been filed with the court in regard to this matter. However, Creditor MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee as serviced by Specialized Loan Servicing LLC ("Creditor") filed an Opposition to Debtor's Objection to Claim (DCN. PGM-1). Docket 73. Debtor filed a Reply to Creditor's Opposition on January 15, 2024. Docket 75. The court heard Debtor's Objection to Creditor's Claim on January 23, 2024, and continued that matter to March 12, 2024. Minutes, Docket 78 p. 1.

At the hearing, XXXXXXX

REVIEW OF OBJECTION

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

- A. Tax returns were not provided to the Trustee, the Debtor has not filed all tax returns required under 11 U.S.C. § 1308, and the priority claims by the Internal Revenue Service and the Franchise Tax Board will not allow the Plan to be completed in 36 months.
- B. The Debtor failed to provide documents as requested by the Plan. Debtor is self-employed, and owns two LLCs. The Debtor only provided the Trustee with a 6-month Profit and Loss Statement for one LLC.
- C. Debtor may be unable to make the payments called for by the Plan. Schedule I does not appear to contain accurate business income. The Debtor admitted at the Meeting of Creditors that his ex-wife resides with the debtor and helps with the expenses. The Debtor had failed to comply with the Plan as the non-standard provision calls for an adversary to be filed within 30 days of filing, and no adversary appears filed. Wells Fargo Bank, N.A., had filed a proof of claim identifying that the Debtor is delinquent, and it was misclassified in Class 4 and should be listed in Class 1 of the Plan.
- D. The Plan payment may not be the Debtor’s best efforts under 11 U.S.C. § 1325(b). The Trustee believes 60 months is required and the Debtor may have a required payment to unsecured creditors other than 0%.

Dckt. 33.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Provide Tax Returns

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

Failure to File Tax Returns

Claims by two different tax entities show tax returns have not been filed. The Internal Revenue Service shows years 2017, 2018, 2019, 2020, 2021 or 2022 returns have not been filed. Claims by the Franchise Tax Board show 2013, 2016, 2017, 2019, 2020, 2021, and 2022 tax returns have not been filed. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Documents Related to Business

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

- A. The business questionnaire,
- B. Two years of tax returns from 2022 and 2021, and
- C. Six months of bank statements for all bank accounts

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 Afford Plan Payment / Cannot Comply with the Plan

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

- A. Schedule I does not appear to contain accurate business income as Line #8a lists debtors net business income as \$4,500 and the business income and expenses list the debtors average net monthly income as \$4,000. Dckt. 14. The Statement of Affairs does not list any year-to-date income. It is not clear to the Trustee if the Debtor is generating income from the real property in Naples, Texas, if any income is being produced from this property and if the debtor is receiving any income from the property, or if the Debtor actually intends to surrender the property.
- B. The Debtor admitted at the Meeting of Creditors that his ex-wife resides with him and helps with the expenses.
- C. The Debtor has failed to comply with the Plan. The non-standard provision calls for an adversary to be filed within 30 days of filing. Debtor's voluntary petition was filed July 5, 2023; no adversary appears filed.
- D. Wells Fargo Bank, N.A., has filed a proof of claim, identifying that the debtor is delinquent \$988.45 (Claim 3-1). It appears this creditor is misclassified in Class 4 and should be listed in Class 1 of the Plan.

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

Not Best Effort

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

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

commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Debtor claims to be below median income and lists \$4,500 of calculated monthly disposable income on Form 122C-1. Dckt. 14. The Plan proposes to pay a 0% percent dividend to unsecured claims. The debtor failed to list his gross business income of approximately \$12,625.00 on Form 122C-1. The Trustee believes with this income, the Debtor is above median and a 60 month term may be required. Thus, the court may not approve the Plan.

At the hearing, Debtor's counsel requested additional time to address these issues. Rather than sustaining the objection, the court continues the hearing to afford Debtor and Debtor's counsel a little more flexibility in putting forward and amended plan.

October 2024, 2023 Hearing

At the hearing, counsel for the Debtor addressed what information had been provided and the efforts Debtor was making to confirmation of the Plan. The Trustee concurred with the request for an extension.

December 5, 2023 Hearing

A review of the docket on November 29, 2023 reveals that Debtor filed an amended Statement of Financial Affairs, shedding light on the Debtor's current financial affairs. Dckt. 62. The amendment adds an additional Federal Court pre-petition piece of litigation. *Id.* at 4.

The review of the Docket on November 29, 2023 further reveals that Creditor MEB Loan Trust IV, U.S. Bank Trust National Association filed its Proof of Claim on September 13, 2023. POC 25-1. Creditor asserts a Claim in the amount of \$200,726.02. However, the parties have not submitted any supplemental briefing addressing the effect of a 1099-C on debt forgiveness.

At the hearing, counsel for the Debtor reported that no agreement has been achieved. Debtor has now filed an Objection to Creditor's Claim, which is set for hearing on January 23, 2024.

The court continues the hearing to allow for further review and the prosecution of the Claim Objection, if necessary.

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**.

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 July 26, 2023. 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.

The Objection to Confirmation of Plan is XXXXXXX.

January 30, 2024 Hearing

A review of the Docket on January 24, 2024 reveals no new documents have been unlauded with the court in regard to this matter. However, Creditor MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee as serviced by Specialized Loan Servicing LLC ("Creditor") filed an Opposition to Debtor's Objection to Claim (DCN. PGM-1). Docket 73. Debtor filed a Reply to Creditor's Opposition on January 15, 2024. Docket 75. The court heard Debtor's Objection to Creditor's Claim on January 23, 2024, and continued that matter to March 12, 2024. Minutes, Docket 78 p. 1.

At the hearing, XXXXXXX

REVIEW OF OBJECTION

MEB Loan Trust IV, U.S. Bank Trust National Association, acting as trustee serviced by Specialized Loan Servicing LLC (“Creditor”) holding a secured claim, opposes confirmation of the Plan on the basis that:

- A. The Creditor has a claim secured by the property commonly known as 3704 Larkspur Lane, Cameron Park, California 95682 (“Property”). The Creditor will file its proof of claim by the deadline of September 13, 2023. In the mean time, Creditor will file a copy of the note, deed of trust, and assignment of deed of trust to evidence the claim. A review of the docket on October 18, 2023 shows Creditor did file its Proof of Claim on September 13, 2023.
- B. The Plan fails to provide for the curing of the default on the Creditor’s claim pursuant to 11 U.S.C. § 1322(b)(5).

Objection, Dckt. 23.

DEBTOR’S REPLY TO CREDITOR’S OPPOSITION

- A. Creditor has no standing as no proof of claim has been filed.

The court notes that while failing to file a proof of claim, which is *prima facie* evidence of the obligation, or a declaration providing testimony of the facts alleged (such as the amount of the debt and alleged defaults) may render the Objection evidentiary insufficient, it does not deprive Creditor of standing to object to how Debtor proposes to deal with the obligation owed to Creditor. In any case, Creditor now has its proof of claim on file.

- B. Creditor’s note, deed of trust, and assignment have not been authenticated.
- C. Creditor’s alleged claim was forgiven in 2019.

Reply, Dckt. 37.

CREDITOR’S RESPONSE TO DEBTOR’S REPLY

Creditor filed its Response to Debtor’s Reply on September 22, 2023. Dckt. 40. In its Response, Debtor states:

- A. On September 13, 2023, Creditor filed its Proof of Claim as Claim 25-1 in the amount of \$200,726.02 with arrears in the amount of \$113,388.60.
- B. The lien referred to by Debtor (previous servicer, Bank of America) has not been released by either Creditor or Bank of America.
- C. Creditor is in contact with Bank of America and is obtaining signed declarations of individuals who are familiar with the situation.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$200,726.02 in this case, including arrearages in the amount of \$113,388.60. Debtor's Schedule D estimates the amount of Creditor's claim as \$0.00 and indicates that he was released from this obligation on September 27, 2019. The Plan does not provide for this claim.

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

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

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

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

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

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

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

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

Alleged Claim was Allegedly Forgiven

The Debtor claims that the alleged claim was forgiven by the previous servicer, Bank of America, in 2019. The Debtor attached exhibits to this effect (Dckt. 38), but failed to file any declaration supporting its contention.

Unauthenticated Exhibits 2 and 3 are stated to be Bank of America's release of the obligation that is the basis of the claim and the Bank of America Tax Statement documenting the forgiveness of the obligation, respectively. Dckt. 38.

Exhibit 2 is dated September 16, 2019, states that the Bank "will release the obligation from your home equity line of credit." Exhibit 3 is a 2019 Tax Statement from Bank of American stating that the obligation of Debtor in the amount of \$188,462.28 was discharged in 2019 by Bank of America.

Looking at Exhibit 2, it does not state that the obligation was determined uncollectible and Bank of America deemed a bad debt with little likelihood of payment, but states "Amount of Debt Discharged 188,462.28."

While not authenticated, it is helpful information for Creditor in tracking down whether the obligation has previously been discharged and is no longer enforceable.

In its Reply, Movant states that it is obtaining declarations from Bank of America concerning the alleged forgiveness of the obligation and its claim in this case. Movant requests that the hearing on the Objection be continued.

At the hearing, Creditor states that it is asserting a claim in this case.

The court continues the hearing to allow Debtor and Creditor to investigate the claim and prior 1099 Statement of Debt Forgiveness.

October 24, 2023 Hearing

At the hearing, counsel for the Debtor reported the efforts made to date to address the issue of whether the debt has been forgiven. Counsel for Creditor concurred with a continuance as Creditor and Debtor work to address the effect of the 1099-C "debt forgiveness" tax statement, with counsel to proceed with determining the information from Bank of America about its records on this specific debt and treatment of 1099-C debt forgiveness tax reporting.

December 5, 2023 Hearing

A review of the Docket on November 29, 2023 reveals that Creditor filed its Proof of Claim on September 13, 2023. POC 25-1. Creditor asserts a Claim in the amount of \$200,726.02. However, the parties have not submitted any supplemental briefing addressing the effect of a 1099-C on debt forgiveness.

At the hearing, counsel for the Debtor reported that no agreement has been achieved. Debtor has now filed an Objection to Creditor's Claim, which is set for hearing on January 23, 2024.

The court continues the hearing to allow for further review and the prosecution of the Claim Objection, if necessary.

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 MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee as serviced by Specialized Loan Servicing 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 Plan is **XXXXXXX**.

4. 23-22522 -E-13 LC-2	LINDA CATRON Pro Se	AMENDED MOTION TO SET ASIDE DISMISSAL OF CASE 12-12-23 [35]
DEBTOR DISMISSED: 10/19/23		

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 Proof of Service filed, and the court does not know if the Motion and supporting pleadings were served on the required parties pursuant to Local Bankruptcy Rule 7005-1. Failure to comply with the Local Bankruptcy Rules is cause to dismiss the case or impose other appropriate sanctions. Local Bankruptcy Rule 1001-1(g). At the hearing, **XXXXXXX**

The Motion to Vacate has been set for hearing.

The Motion to Set Aside Dismissal of the case is denied.
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Linda Catron (“Debtor”) filed the instant case on July 31, 2023. Dckt. 1. The Docket reveals Debtor never filed a Plan or Motion to Confirm.

On August 2, 2023, a Notice of Intent to Dismiss for not filing the necessary documents was served by the Clerk of the Court on Debtor (pro se) and creditors. Dckt. 9. On October 18, 2023, a hearing on the Notice of Intent to Dismiss was held, and the Motion was granted. Dckt. 20.

On November 2, 2023, Debtor filed her first Motion to Set Aside Dismissal, informing the court she attempted to appear at the October 18, 2023 Hearing via zoom, but there were technical difficulties. Docket 29. She further informed the court she tried to hire counsel, but her case was referred to another lawyer who she is meeting with now due to her case being complicated. *Id.* at p. 2. She explains that she was unable to diligently prosecute her case that resulted in dismissal due to her having cancer and other ongoing medical issues. *Id.* Debtor subsequently filed two more Motions to Set Aside Dismissal (Dockets 33 & 35), saying the same things and only changing the date of filing at the bottom of the Motions.

Debtor seeks to have the order dismissing the case vacated, the court assuming pursuant to Federal Rule of Civil Procedure 60(b).

CHAPTER 13 TRUSTEE’S OPPOSITION

1. There has been no proof of service filed.
2. Pursuant to 11 U.S.C. § 521(i), a case is “automatically dismissed” on the 46th day if all information required by the documents described under 11 U.S.C. § 521(a)(1), including schedules, have not been filed. The court may extend this deadline by 45 days. However, over 90 days has lapsed since the beginning of the case, so the case must be automatically dismissed.

Docket 36.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;

- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., *FEDERAL PRACTICE AND PROCEDURE* § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., *MOORE’S FEDERAL PRACTICE* ¶¶ 60.24[1]–[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The grounds for the Notice of Intent to Dismiss includes not timely filing the following required documents:

1. Chapter 13 Plan
2. Form 122C-1 Statement of Monthly Income
3. Schedule A/B - Real and Personal Property
4. Schedule C - Exempt Property
5. Schedule D - Secured Creditors

6. Schedule E/F - Unsecured Claims
7. Schedule G - Executory Contracts
8. Schedule H - Codebtors
9. Schedule I - Current Income
10. Schedule J - Current Expend
11. Statement of Financial Affairs
12. Summary of Assets and Liabilities

Docket 9. The petition lacked almost every single necessary document to pursue a Chapter 13 case. Debtor was given over two months before the October 18, 2023 Hearing to file the necessary documents, but she failed to do so. Notwithstanding this failure, Debtor informs the court she has been dealing with cancer and other ongoing medical issues, resulting in her being unable to prosecute the case.

The Debtor continues to prosecute this case in *pro se*. Debtor filed her first recent Chapter 13 case on February 28, 2023, which was dismissed on July 28, 2023. CH 13 Case 23-20616.

This Bankruptcy Case, No. 23-22522, was filed on July 31, 2023 and dismissed on October 19, 2023.

On January 10, 2024, Debtor commenced a new Chapter 13 case, No. 24-20101, which Debtor is prosecuting *in pro se*. Debtor has filed a Motion to Impose the Automatic Stay in that case, the hearing for which is set for 9:00 a.m. on January 30, 2024. 24-20101; Dckt. 9. That Chapter 13 case is assigned to the Hon. Fredrick Clement, the judge to who the prior case was assigned. In that Motion Debtor identifies some complex claims she seeks to assert against some of her creditors. Debtor states in the Motion that she has claims against certain of her family members. Debtor also states that she is still seeking to obtain council.

Debtor's assets are now property of her Bankruptcy Estate in Chapter 13 Case 24-20101.

In Case 24-20101, Debtor has also filed a Notice of Hearing on the Court's Notice of Intent to Dismiss for failing to file the necessary documents to proceed with the prosecution of her Bankruptcy Case. Dckt. 13. The hearing is noticed for 9:00 a.m. on February 27, 2024 before Judge Clement.

As stated by the Chapter 13 Trustee, Congress provides in 11 U.S.C. § 521(i) for the automatic dismissal of a bankruptcy case for the failure to file the necessary documents (including Schedules and Statement of Financial Affairs) by the Debtor. 11 U.S.C. § 521(i), emphasis added, provides:

11 U.S.C. § 521

(i)

(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the **case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.**

(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 7 days after such request.

(3) Subject to paragraph (4) and **upon request of the debtor made within 45 days after the date of the filing of the petition** described in paragraph (1), the court **may allow the debtor an additional period of not to exceed 45 days to** file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.

(4) Notwithstanding any other provision of this subsection, **on the motion of the trustee** filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, **the court may decline to dismiss the case** if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.

It is Congress which provides for the automatic dismissal of a bankruptcy case for the debtor's failure to file the required documents. The court may, if timely requested by the Debtor, grant a 45 day extension of time. The court may also not dismiss the case based on the Chapter 13 trustee filing a timely motion requesting such. Neither have occurred in this Case.

At the hearing, **XXXXXXX**

~~Therefore, in light of the foregoing, 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 to Vacate filed by Linda Catron ("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** .

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, other part(ies) in interest, and Office of the United States Trustee on January 11, 2024. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Vacate is xxxxxxx .

Thomas Meadows ("Debtor") filed the instant case on December 5, 2023. Dckt. 1. The Docket reveals Debtor never filed a Plan or Motion to Confirm.

On December 7, 2023, a Notice of Intent to Dismiss for not filing the necessary documents was served by the Clerk of the Court on Debtor (*pro se*) and creditors. Dckt. 10. On December 22, 2023, Debtor filed a request for extension of time under Fed. R. Bankr. P. 1007(c) and Local Bankruptcy Rule 1007-1(b) asking the court for additional time in filing the necessary documents. Dckt. 12. This court granted that request by Order on December 26, 2023, and set the deadline to file missing documents to January 2, 2024. Dckt. 14.

On January 3, 2024, the missing documents were not filed, and so the case was dismissed for incomplete filing. Dckt. 19. However, on January 8, 2024, it was apparent that Debtor intended to prosecute the case as he paid the filing fee in full, almost five days after the case was dismissed.

On January 10, 2024, Debtor filed his Motion to Vacate. Dckt. 21. Debtor explains:

1. Debtor's significant other left him and took their two year old daughter with her. Additionally, Debtor's significant other also took their only car.
2. Debtor had been working for Amazon in Vacaville, but due to not having a vehicle he lost that job.
3. Debtor was enrolled in a program to be a bus driver for the City of Vacaville, but was dropped from the program when he could not get a copy of his birth certificate from the hospital in Los Angeles where he was born. However, Debtor now has the birth certificate and is re-enrolled in the program.
4. Debtor's mother had significant surgery at the end of December 2023 and Debtor was providing her with support in Southern California.
5. Debtor is now involved in a battle for shared custody of his daughter.
6. Debtor is also now facing eviction.

The Chapter 13 Trustee filed a Response to Debtor's Motion to Vacate. Response; Dckt. 22. The Trustee notes that if the documents are not filed by January 19, 2024, as required by 11 U.S.C. § 521(i), the case will be dismissed pursuant to that statute unless the court were to extend that statutory deadline as well. The Trustee also notes that on the Master Mailing List Debtor has listed only one creditor. That Creditor is identified as North Village Development, Inc., to be sent care of Joshua Taylor, Esq. at Sierra Pacific Properties, Inc. Dckt. 4. The Trustee's Response does not assert an opposition to the Motion. The Chapter 13 Trustee has also noticed this Motion for hearing at 2:00 p.m. on January 30, 2024.

Debtor seeks to have the order dismissing the case vacated, the court assuming per Federal Rule of Civil Procedure 60(b).

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;

- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., *FEDERAL PRACTICE AND PROCEDURE* § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., *MOORE’S FEDERAL PRACTICE* ¶¶ 60.24[1]–[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Review of Prior Bankruptcy Filings by Debtor

A review of the Docket discloses that the Debtor filed four prior bankruptcy cases in 2018, with the most recent having been filed on October 25, 2018, and dismissed on November 13, 2018.

These prior cases are:

- A. 18-26704 - dismissed after 19 days for Incomplete Documents;
- B. 18-26258 - dismissed after 19 days for Incomplete Documents;
- C. 18-25181 - dismissed after 44 days for Incomplete Documents; and

D. 18-24094 - dismissed after 82 days for Failure to Make Payments Required by the Chapter 13 Plan.

In this case, Debtor has presented the court with real life issues explaining the delay in filing the necessary documents. These issues include explaining how he lost his job, why he is now filing this petition, and circumstances surrounding his home life that explain a delay in filing necessary documents. Debtor further shows he is in the process of becoming employed so that he may prosecute a Chapter 13 case. Evidence of the filing being made in good faith is demonstrated by paying the filing fee in full.

As stated by the Chapter 13 Trustee, Congress provides in 11 U.S.C. § 521(i) for the automatic dismissal of a bankruptcy case for the failure to file the necessary documents (including Schedules and Statement of Financial Affairs) by the Debtor. 11 U.S.C. § 521(i), emphasis added, provides:

11 U.S.C. § 521

(i)

(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the **case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.**

(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 7 days after such request.

(3) Subject to paragraph (4) and **upon request of the debtor made within 45 days after the date of the filing of the petition** described in paragraph (1), the court **may allow the debtor an additional period of not to exceed 45 days to** file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.

(4) Notwithstanding any other provision of this subsection, **on the motion of the trustee** filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, **the court may decline to dismiss the case** if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.

It is Congress which provides for the automatic dismissal of a bankruptcy case for the debtor's failure to file the required documents. The court may, if timely requested by the Debtor, grant a 45 day extension of time. The court may also not dismiss the case based on the Chapter 13 trustee filing a timely motion requesting such. Neither have occurred in this Case.

Debtor, addressing his intent to file the necessary documents and prosecute the case diligently explained at the hearing, **XXXXXXX**

Therefore, in light of the foregoing, the Motion is **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 Vacate filed by Thomas Ray Meadows (“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** .

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2023. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is XXXX.

January 30, 2024 Hearing

A review of the Docket on January 25, 2024, reveals that no new documents have been filed with the court. At the hearing, XXXXXXX

REVIEW OF THE MOTION

Milton Raul Perez ("Debtor") seeks permission to enter into a refinancing agreement of his mortgage loan on his residence commonly known as 717 Auburn Court, Vallejo, California 94589 ("Property"). Dec., Dckt. 140. Debtor has already been approved for the loan refinance. The loan is in the amount of \$220,000.00 at 12% interest, and Debtor asserts the loan term is 11 months. *Id.* According to debtor, this refinanced loan is enough to pay off the existing first mortgage and a second mortgage, paying off the entire Chapter 13 Plan. The refinanced loan monthly payment will be \$2,280.00, which is less than Debtor's current monthly mortgage and plan payment.

1 Oak Ventures step Fund (“Creditor”) filed an Opposition to this Motion on December 5, 2023. Dckt. 143. In its Opposition, creditor states it is a secured creditor with a junior lien on Debtor primary residence, the Property. Creditor has a Claim for \$219,614.10 of which \$128,194.64 are arrears, but after Debtor’s plan payments over the years, now is owed only \$113,503.57 on the principal and arrears. POC 5-1. Creditor seems to object on numerous grounds, not citing to any law in the process. Creditor’s main objection appears that it will not be paid out in full from proceeds of the refinancing agreement. Dckt. 143 ¶ 5. Creditor further states the loan is not in the best interest of the Debtor, calling for a balloon payment in one year, and Debtor would be better off if he refinanced out of his loan with Creditor instead. *Id.* at ¶ 7.

DISCUSSION

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

Reasonableness / Best Interest of Debtor

Debtor does not address the reasonableness of incurring debt to refinance his mortgage loan. The loan calls for a substantial interest charge—12%. While it may be true that Debtor would be making smaller monthly payments in the interim, Debtor does not explain to the court how he can afford a massive balloon payment at the end of his 11 month refinance. As such, the transaction may not be in the best interest of Debtor.

At the hearing, counsel for Debtor explained the economic rationale for Debtor doing this short-term refinance, getting the Plan fully funded from the loan proceeds and creditors paid, and then pursuing a refinance outside of bankruptcy.

Demand amounts are still being computed and some additional information is required, and the Parties requested a short continuance.

JANUARY 9, 2024 HEARING

A review of the Docket on January 5, 2024 reveals that no new documents have been filed. At the hearing, counsel for the Debtor reported that a demand has now been filed by One Oak. There may be an issue as to the amount of attorney’s fees provided in the demand.

A further continuance was requested to allow the final closing terms resolved. All Parties in attendance agreed to the continuance.

The hearing is continued to 2:00 p.m. on January 30, 2024.

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

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

The Motion to Incur Debt filed by Milton Raul Perez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Incur Debt is continued to **XXXXXXX** .

FINAL RULINGS

7. [22-21314-E-13](#)
[DPC-5](#)

NADIA ZHIRY
Peter Macaluso

CONTINUED MOTION TO DISMISS
CASE
6-21-23 [\[260\]](#)

7 thru 10

Final Ruling: No appearance at the January 30, 2024 Hearing is required.

Debtor's Atty: Peter G. Macaluso

Notes:

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

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on March 12, 2024.

January 30, 2024 Hearing

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

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

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

REVIEW OF MOTION

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

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 3, 2023. Dckt. 272. Debtor states an amended plan will be filed. Debtor awaits the discharge of the Receiver in a civil action in Superior Court. *Id.* Debtor then plans

to file a motion for final payment to Debtor's contractor, which will allow for the increase in payments to satisfy the claims in the Chapter 13 case, specifically the non-dischargable claim of the City of Sacramento, California. *Id.*

Failure to Provide Evidence

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

FILING OF SECOND AMENDED PLAN

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

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

August 22, 2023 Hearing

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

NOVEMBER 7, 2023 STATUS CONFERENCE

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

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 332. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to **2:00 p.m. on March 12, 2024.**

8. 22-21314-E-13 KSR-1	NADIA ZHIRY Peter Macaluso	CONTINUED MOTION TO EXCUSE TURNOVER AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY 5-31-22 [12]
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Final Ruling: No appearance at the January 30, 2024 Hearing is required.

Debtor's Atty: Peter G. Macaluso

Notes:

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

The hearing on the Motion to Excuse Turnover is continued to 2:00 p.m. on March 12, 2024.

January 30, 2024 Hearing

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

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

REVIEW OF MOTION

JULY 11, 2023 CONTINUED STATUS CONFERENCE

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

A. Debtor has completed all of the repairs and abatements on the Property and has received final approval for all such repairs and abatements from the City.

B. Debtor has moved to discharge the Receiver and conclude those state court proceedings.

C. Upon the determination of the Receiver's claim (fees and expenses), the Debtor will provide for payment of those through the Chapter 13 Plan.

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

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

NOVEMBER 7, 2023 STATUS CONFERENCE

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

NOVEMBER 21, 2023 HEARING

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

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

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

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

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

IT IS ORDERED that the hearing on the Motion to Excuse Turnover is continued to **2:00 p.m. on March 12, 2024.**

9. 22-21314-E-13 PGM-3	NADIA ZHIRY Peter Macaluso	CONTINUED OBJECTION TO CLAIM OF GERARD F. KEENA, II, RECEIVER, CLAIM NUMBER 1 4-23-23 [193]
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Final Ruling: No appearance at the January 30, 2024 Hearing is required.

Debtor's Atty: Peter G. Macaluso

Notes:

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

**The hearing on the Objection to Claim of Gerard Keena, II, POC 1-1 is
continued to 2:00 p.m. on March 12, 2024.**

January 30, 2024 Hearing

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court's own motion. Docket 350. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

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

REVIEW OF OBJECTION

Nadia Zhiry, Chapter 13 Debtor, ("Debtor") requests that the court disallow the claim of Gerard F. Keena, II, ("Receiver"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The

Claim is asserted to be secured in the amount of \$183,585.18. Debtor asserts, without stating the legal basis supporting such argument, that:

1. Receiver has no claim:

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

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

2. Receiver has no standing:

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

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

3. Receiver is owed no funds:

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

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

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

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

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

RECEIVER'S RESPONSE

Receiver filed a response on May 30, 2023. Dckt. 234. Receiver indicates they amended their Proof of Claim to clarify distinctions between the *in personam* and *in rem* claim. The court notes, once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006. The court acknowledges that Receiver attempts to address Debtor's contentions that Receiver would be violating the discharge injunction.

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

Claim amount.....Unknown

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

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

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

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

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

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

DEBTOR'S REPLY

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

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

(2) Receiver has not had any fees approved;

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

Dckt. 240, at 1-2.

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

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

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

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

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

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

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

Pursuant to the court order that was provided to the court, and recorded on May 13, 2021, “[t]he Receiver may record a lien (‘Receiver’s Lien’) against the Subject Properties to secure the repayment of the

Receiver's compensation, costs, and expenses, in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver's Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances." Proof of Claim 1-2, Recorded Order Appointing a Receiver Pursuant to Stipulated Judgment, Attachment 1 at ¶ 7.

Continuance of Hearing

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

NOVEMBER 7, 2023 STATUS CONFERENCE

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

NOVEMBER 21, 2023 HEARING

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

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

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

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

The Objection to Claim of Gerard F. Keena, II, ("Receiver"), filed in this case by Nadia Zhiry, Chapter 13 Debtor, ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Claim of Gerard Keena, II, POC 1-1 is continued to **2:00 p.m. on March 12, 2024.**

Final Ruling: No appearance at the January 30, 2024 Hearing is required.

Debtor's Atty: Peter G. Macaluso

Notes:

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

The hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on March 12, 2024.

January 30, 2024 Hearing

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

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

REVIEW OF MOTION

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

CHAPTER 13 TRUSTEE'S OPPOSITION

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

A. Debtor is delinquent in Plan payments.

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

RECEIVER'S JOINDER

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

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

DEBTOR'S RESPONSE

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

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

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

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

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

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

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

DISCUSSION

Delinquency

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

Failure to Complete Plan Within Allotted Time

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

Failure to Afford Plan Payment / Cannot Comply with the Plan

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

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

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

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

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

Home Maintenance and Repairs	\$0.00	
Electricity, Heat, Natural Gas	\$200.00	This is for two residential properties on the Debtor's real property
Water, Sewer, Garbage	\$140.00	
Telephone, Internet, Cell Phone	\$50.00	
Food and Housekeeping Supplies	\$400.00	Assuming \$50 a month for housekeeping supplies, that leaves \$350 a month for food for the two adults. In a thirty day month, that allows for \$1.94 per meal per person for food (assuming three meals a day per person).
Clothing and Dry Cleaning	\$10.00	This allows each adult \$5 a month for clothing over the 60 months of the Plan. This is only \$60 per adult per year for clothing for five years.
Personal Care and Products	\$20.00	This allows each adult \$10 a month for personal care (such as haircuts and hair dressers) and products (such as lotions, creams, and the like).
Medical and Dental Expenses	\$25.00	This allows each adult \$12.50 a month for medical and dental co-pays, band-aids, creams, mouthwash, toothpaste and the like.
Transportation (gas, maintenance, and repairs)	\$100.00	<p>On Amended Schedule C, Debtor claims an exemption in a 2007 Kia Rondo with 165,000 miles on it. Dckt. 227. Debtor lists this as the only vehicle Debtor has an interest in on Amended Schedule A/B, stating it has a value of \$2,500.00. Dckt. 207.</p> <p>If one allows only \$35.00 a month for repairs for the next five years (which is only \$420 a year), there is \$65 for gas a month. Paying \$5.00 a gallon for gas, Debtor and her non-debtor Spouse can purchase only 13 gallons of gas a month. Assuming the 2007 vehicle gets 20 miles to the gallon, that would allow Debtor to drive only 65 miles a week, which is only 9 miles a day.</p>
Entertainment	\$10.00	This allows the Debtor and her non-debtor Spouse only \$5 a month for entertainment. Thus, for the five years of the Plan, Debtor and her non-debtor Spouse will have next to no entertainment in their lives.
Vehicle Insurance	\$50.00	For the 2007 vehicle that Debtor and her non-debtor Spouse can only drive for 9 miles a day, Debtor will pay \$600 a year in insurance.

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

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

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

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

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

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

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

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

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

In the General Statement of Claim that is attached to Amended Proof of Claim 1-2, the Receiver states that there were \$84,461.04 in fees and expenses incurred from his May 3, 2021 appointment (Date

on the State Court Order of Appointment) through July 29, 2021, and additional fees and expenses in the amount of \$88,124.14 incurred for the period July 30, 2021 through May 25, 2022 (the Chapter 13 filing date). Amended Proof of Claim No. 1-2 does not include amounts for fees and expenses incurred during this Chapter 13 Case.

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

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

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

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

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

NOVEMBER 7, 2023 STATUS CONFERENCE

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

NOVEMBER 21, 2023 HEARING

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

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Nadia Zhiry (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm the Amended Plan is continued to **2:00 p.m. on March 12, 2024.**

11. [23-23234](#)-E-13
[DPC](#)-1

RANDY HOWARD
Pro Se

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
11-9-23 [28]**

Final Ruling: No appearance at the January 30, 2024 Hearing is required.

The Objection to Confirmation of Plan is overruled as moot, the case having been dismissed by this court’s order on January 19, 2024 at Docket 51.

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 Confirmation of the Chapter 13 Plan filed by the Chapter 13 Trustee having been scheduled for hearing, this Chapter 13 Case having been dismissed prior to the hearing, and good cause appearing,

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