UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 1, 2022 at 2:00 p.m.

1.	**22-20007-E-13** **PGM-1**	**WANDA MOORE** **Peter Macaluso**	**MOTION TO EXTEND AUTOMATIC STAY** **1-17-22 [15]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 17, 2022. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay 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 Extend the Automatic Stay is granted.

Wanda L. Moore ("Debtor") seeks to have the provisions of the automatic stay provided by

11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-27246) was dismissed on October 20, 2021, after Debtor failed to appear, timely oppose, or otherwise defend in the matter. *See* Order, Bankr. E.D. Cal. No. 18-27246, Dckt. 151, October 20, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because due to the hardship of COVID-19, Debtor was not receiving rental income and their bills increased. Debtor states that they also experienced an increase in vehicle maintenance causing them to get behind on payments. Their financial situation further deteriorated when their rental property was damaged from tornadoes and required repairs. Moreover, in July 2021 Debtor moved to Virginia to care for their sick brother which caused additional financial hardship.

Trustee's Nonopposition

On January 24, 2022, the Chapter 13 Trustee filed a nonopposition to Debtor's Motion. Dckt. 22.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

2. **21-24018-E-13 DPC-1 2 thru 4** | **RONALD AHLERS Gabriel Liberman** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-10-22 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on January 10, 2022. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Ensminger Provisions are given no effect as the checkbox stating there are provisions was not checked on Section 1.2, page 1.

B. The payment to the mortgage creditor NewRez LLC DBA Shellpoint Mortgage Servicing does not appear sufficient to provide adequate protection to the creditor.

C. The additional provisions in Sections 7.01-7.05 are not identical to typical Ensminger Provisions and Trustee objects to the following:

1. Section 7.01 - Combines treatment of more than one

creditor which may lead to confusion. Additionally, Debtor fails to identify the pre-petition arrearage and the ongoing payment.

2. Section 7.02 - Does not state whether Trustee or Debtor will make the payment nor does it specify whether it may be modified if an order modifying the stay is entered.

3. Section 7.03 - Does not include what occurs during a default if Debtor fails to secure a loan modification.

4. Section 7.03 - Fails to provide what occurs in the event a loan modification is denied and Debtor fails to modify the plan within fourteen (14) days.

DISCUSSION

Trustee's objections are well-taken.

Nonstandard Provisions

Pursuant to Section 1.2 of the Plan, the court requires "If there are nonstandard provisions this box must be checked Here, they did not check the box, however, it appears Debtor wants to incorporate nonstandard provisions as seen on page 7-8 of the proposed Plan, Sections 7.01-7.05. Therefore, the Plan does not comply with 11 U.S.C. § 1325(a) and cannot be confirmed.

At the hearing, **xxxxxxx**

Ensminger Provisions

The "Ensminger Provisions" (the name being that of the consumer attorney who developed this adequate protection method) are adequate protection provisions that were worked out with consumer and creditor attorneys during the mortgage meltdown of the Great Recession. Consumer debtors needed to be able to exercise their rights to have creditors consider in good faith loan modification proposals (some required by law) and to provide creditors with adequate protection (dollars) while the debtor diligently prosecuted the loan modification.

This court noted two lines of abuse in this context. First, some debtors, who had no financial ability to pay for even a modified loan, were using it as a process to live in the home for free while the loan modification process draaaaaaggggggeddddd on and on. For those cases, some bankruptcy judges allowed the confirmation process drag on for extended periods of time (in some cases years), with no payments being made by the debtor who continued to live in the house.

The other line of cases arose before judges who concluded that until a plan was confirmed, the debtor had to make the full contract payments, often times which amounts were not what the debtor was obligated to pay under the loan modification laws. Some less than scrupulous creditors and their attorneys (which did not include the two creditors in this case with secured claims or their highly

respected attorneys) would draaaaaaaggggggg their feet on the loan modification application, prevent the plan from being confirmed, and then this line of judges would boot the debtor out of bankruptcy and dismiss their case.

The Ensminger Provision developed a legally and economically way to give the good faith debtors and a good faith creditors an opportunity to have the loan modification promptly addressed, the debtor paying a proper adequate protection payment (which, if not agreed by the parties, a rare event, would be an amount based on the value of the property, with a current market interest rate, amortized over thirty (30) years. This required the debtor to make a substantial payment (not getting to live in the house for free or next to nothing) and provided real money to the creditor for the period in which the loan modification application was diligently prosecuted by both the debtor and the creditor.

The relief from stay provisions bolstered the adequate protection and insured that the debtors who sought such process had a high likelihood of obtaining a loan modification.

The adequate protection was provided as a matter of Federal Law based on 11 U.S.C. § 361 enacted by Congress as part of the Bankruptcy Code. Rather than delaying the plan and having only a adequate protection payment being made to the one creditor with whom the loan modification was being sought, by making the adequate protection payments part of a confirmed plan, then all of the other creditors could received their payments.

Attached hereto as "Addendum Ensminger" is text of an Ensminger provision as it had been updated in 2016.

Combination of Secured Claim of Different Creditors as One Plan Treatment

Here, in the additional provisions, ¶ 7.01 the secured claims of two separate creditors are put into one class of claims. As shown in the Class 1 and Class 2 secured claims sections of the mandatory Chapter 13 Plan in this District, while they can be multiple secured claims in Class 1 or 2, each it specified as a separate subclass with the individual treatment for each subclass stated. Here, for the ¶ 7.01 there are no subclasses, with the secured claims appearing to be lumped into a combined class.

While one could piece through this section and infer subclasses and proper statement of individual secured claim treatment, it is important that such be clearly stated in the Plan. Though the court is confident that this was not done for a nefarious or improper purpose by Debtor and Debtor's counsel, allowing such in this case would be giving a green light for other parties and their counsel to being "creative" in changing the mandatory plan form and separate subclasses for improper purposes.

Lack of Adequate Protection

Here, the proposed plan states that an adequate protection payment of $1,300.00 a month will be paid to "Mr. Cooper," with Proof of Claim 4-1 in the amount of ($219,969.62), stating a pre-petition arrearage of ($52,144.76) has been filed for New Residential Mortgage Loan Trust 2017-1 by "Nationstar Mortgage LLC D/B/A Mr. Cooper.

A separate Objection to Confirmation has been filed by New Residential Mortgage Loan Trust 2017-2 ("NewRez 2017-1") (Dckt. 18). NewRez 2017-1 asserts having the claim secured by a first

deed of trust against the 3612 Meder Ct, Shingle Springs, California property (the "Property").

NewRez 2017-1 correctly states that is $1,300.00, which is slightly shy of the current $1,303.97 payment (principal, interest, taxes, insurance) under the loan as previously modified in 2017 for a forty (40) year amortization. This adequate protection payment is to be made during the period Debtor is diligently seeking a loan modification from this creditor.

NewRez 2017-1 asserts that the Plan terms are inconsistent and do not properly provide for its secured claim. Citing to the Additional Provisions in ¶ 7.03, NewRez 2017-1 states that it reads that paragraph to state:

A. If the loan is granted and there is no cure of pre-petition arrearage, then treatment of the claim as modified will be in Class 4 of the Plan.

1. NewRez 2017-1 states that the Plan does not state how this shift will occur.

2. NewRez 2017-1 states that "cannot even guess as to the Debtor's intent under this passage in Section 7.03 Loan Modification, page 7 of 8, in Section 7 Nonstandard Provisions."

The terms stated in ¶ 7.03 by the Debtor for the secured claim of NewRez 2017-1 and the separate secured claim of Shellpoint Mortgage Servicing (addressed below) are:

> 7.03 Loan Modification
>
> 1. Upon completion of a loan modification agreement with creditor Mr. Cooper, if any, the Debtor shall provide a copy of the agreement to the Chapter 13 Trustee and file a Motion for Approval of the Loan Modification within fourteen (14) days of the agreement being signed by the Debtor and Mr. Cooper and Shellpoint Mortgage Servicing.

The court reads this provision to state that if there is a loan modification agreement entered into with NewRez 2017-1, the Debtor will provide a copy of the agreement to the Trustee and promptly seek court authorization for the modification.

> 2. For a loan modification which does not provide for any pre-petition arrearage cure payments to be made during the life of the Plan, the claim shall be paid by the Debtor as a Class 4 Claim under this Plan pursuant to the terms of the loan modification, with no modification of this Plan required so long as the monthly plan payments to the Chapter 13 Trustee are reduced only by the monthly Class 4 payment in an amount not greater than the adequate protection payment.

The court reads this provision to state that if under the terms of the loan modification there are no pre-petition arrearage payments to be made during the term of the plan which could include

- situations where the arrearages are deferred to the end of the payment term and there

being no defaulted amounts due, owning, and unpaid;

- ♦ the entire obligation is reamortized over a new term, resulting in there being no amounts due, owing and unpaid; or

- ♦ the defaults are waived and the amount owed on the note is reduced;

then the claim will be paid as a Class 4 claim, there being no defaults, directly by the Debtor and not through the Trustee. Commonly, such a modification is done by a joint *ex parte* motion by the Debtor and the Trustee after the loan modification is approved or possibly, when a provision like this is included in the Plan, in the order approving the modification.

> 3. For a loan modification which requires arrearage cure payments to be made during the term of this plan, the Claim shall be paid as a Class 1 claim with the current monthly payment and the arrearage cure being paid through the Plan. If the Class 1 payment can be made without altering the treatment provided for creditors holding general unsecured claims, no modification of the plan shall be required, with the court order approving the modification documenting the agreed treatment of the Class 1 claim.

The court reads this provision to state that if under the loan modification there are some arrearages that have to be cured during the term of the Plan, then the claim – arrearage payment and current post-petition payments – will be paid as a Class 1 Claim through the Chapter 13 Trustee. Again, this payment under the Plan can be then stated by a modification through a joint *ex parte* motion or possibly, when a provision like this is included in the Plan, in the order approving the modification.

It appears that in its diligence, NewRez 2017-1 may have been reading too much, or two little, in this Plan provision.

An Objection to Confirmation (Dckt. 21) has also been filed by Citizen Bank, National Association ("Citizens Bank"). Proof of Claim 2-1 has been filed for Citizens Bank asserting a secured claim (second deed of trust on the Property) in the amount of ($467,687.67). It asserts in Proof of Claim 2-1 and the Objection to Confirmation that the entire obligation of ($467,687.67) was due in full as of the commencement of this Bankruptcy Case.

Citizens Bank asserts that providing adequate protection payments pending a determination of a loan modification impermissible modifies it claim that is secured by Debtor's primary residence. Citizens Bank reads more into 11 U.S.C. § 361 allowing for providing a creditor adequate protection in a bankruptcy case. The Plan does not modify the secured claim, but "merely" requires the Debtor to pay cash to Citizens Bank while the loan modification is being presented and considered (rather than Debtor just living there "rent free" while going through the loan modification process). Additionally, an adequate protection plan provision includes further relief from stay adequate protection provisions to protect the creditor being "forced" to take the adequate protection payment.

In addition to the proposed $700.00 adequate protection payment (whether such amount is adequate or reasonable is another factor to be considered), Debtor is also paying the senior lien holder an amount that includes an impound for property taxes and insurance, which has the effect of providing

Citizens Bank further protection.

Asserted Violation of 11 U.S.C. § 1322(b)(2)

Citizens Bank asserts that providing adequate protection (11 U.S.C. § 361) while a debtor is diligently prosecuting a loan modification that the creditor considers in good faith (and as may be required to do so as a matter of law) violates 11 U.S.C. § 1322(b)(2) which provides:

> (b) Subject to subsections (a) and (c) of this section, the plan may—
>
> (1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;
>
> (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;
>
> (3) provide for the curing or waiving of any default;
>
> (4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;
>
> (5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;
>
> (6) provide for the payment of all or any part of any claim allowed under section 1305 of this title;
>
> (7) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;
>
> (8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;
>
> (9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity;
>
> (10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full

payment of all allowed claims; and

(11) include any other appropriate provision not inconsistent with this title.

It is not clear how this shotgun citation to each and every provision of 11 U.S.C. § 1322(b), made with Federal Rule of Bankruptcy Procedure 9011 certifications, as supported by the Objection and evidence in support thereof, shows a violation of each of the eleven (11) provisions of 11 U.S.C. § 1322(b).

While in 11 U.S.C. § 1322(b)(2) it states that the plan may not modify the rights of a creditor whose claim is secured only by a debtor's primary residence; in the very next paragraph, § 1322(b)(3), it states that a debtor may provide for the curing or waiving of any default. In the Plan before the court, it does not modify Citizens Bank's secured claim, but does provide for a cure, but only if Citizens Bank agrees to a cure. It is up to Citizens Bank to give either a thumbs up or thumbs down to a proposed loan modification that is being diligently prosecuted, during with short period of time that the application and decision are being diligently being made, Citizens Bank is receiving cash adequate protection payments, in addition to adequate protection payments being made to the creditor holding the senior secured creditors.

Denial of Loan Modification Provision and Default

In ¶ 7.04 Debtor provides for what occurs in the event that a loan modification is not approved. This paragraph is not drafted with the full Ensminger Provision.

The court first notes that by Debtor lumping NewRez 2017-1 and Citizens Bank together, some confusion is created. As drafted, the denial of Loan Modification provision would be effective if only both "Mr. Cooper and Shellpoint Mortgage Servicing" (the respective loan servicers for the two creditor) do not approve a loan modification. Thus, if one approved and one did not approve, this provision would not be effective for the creditor who did not approve a loan modification.

In ¶ 7.05 Debtor provides for additional adequate protection in the event of a post-confirmation default by granting relief from the stay for the following grounds:

> 1. Default in timely adequate protection payment.
>
> 2. Default in the payment terms in a court approved loan modification agreement (if not a Class 4 claim for which the Plan terminates the automatic stay).
>
> 3. Failure to file and serve a modified plan and motion to confirm modified plan within fourteen (14) days of the mailing of the denial of loan modification.
>
> 4. Post- Petition non monetary default under the Deed of Trust, including, without limitation, the failure to timely pay post-petition payments.

These provisions generally include the standard Ensminger Provisions, for: (1) default in the adequate protection payments while the loan application is being diligently prosecution; (2) default in the modified terms in the event they include arrearage cure payments in Class 1; (3) failure to timely file and serve the modified plan and motion to confirm; and (4) any post-petition non-monetary default.

This slightly changes the standard Ensminger Default Provisions to that are part of the adequate protection package provided the creditor. The missing elements are:

A. The failure of the Debtor to diligently prosecute the loan modification applicant, including providing documents requested by the creditor within a reasonable time. Historically, the 30 day response period provided under the HAMP loan modification laws was recreated as part of the adequate protection provision.

B. That in the event of the failure to diligently prosecute the loan modification or failure to timely file and serve a modified plan and motion to confirm, that relief from the stay could be sought by ex parte motion, with the only issue being whether or not the failure to respond or act within the time periods occurred – no other grounds required. The debtor is provided with 14 days to file an opposition, supported by admissible evidence, relating only to those timeliness issues, and then set the matter for hearing on the first available regular Chapter 13 relief from stay date that is 21 days after the filing of the *ex parte* motion by the creditor.

Second, it states that if the two loan modifications are denied, then Debtor will within fourteen days file a modified plan and motion to confirm. However, what is missing is what happens if the modified plan and motion are not timely filed. The Ensminger Provision provides that if Debtor fails to file the modified plan and motion to confirm, then the creditor is entitled to *ex parte* relief from stay on fourteen (14) days notice, with the only issue being whether debtor failed to comply with this provision.

As this Ensminger Provision has been modified by Debtor, this part of the necessary adequate protection is not provided.

Plan Feasibility Issues

Reference is made to Debtor's repeated attempts and failures in prior Chapter 13 cases filed in this District. A short summary of these cases is:

Chapter 13 Case No.	Filed	Dismissed	Plan Status	Additional Information
20-202197 Represented by Experienced Bankruptcy Counsel	January 14, 2020	August 20, 2020	No Plan Confirmed	Case Dismissed because Debtor determined ineligible for Chapter 13
14-21926 Represented by Experienced Bankruptcy Counsel	February 27, 2014	June 3, 2014	No Plan Confirmed	Dismissed due to default in proposed plan payments.

While these two Chapter 13 cases over an eight year period may cause Citizens Bank angst, it does not appear to be an abusive, repeat filer situation. (Debtors also have a 2017 Chapter 7 case in which they were granted their discharge; 17-26982.)

Review of Schedules
and Proposed Plan

Given the substantial defaults, the Trustee and two objecting creditors raise feasibility issues. In reviewing Schedule A/B, Debtor lists the Property as having a value of $1,067,100.00. [Fn.2.]

Dckt. 1 at 12. Taking the two proofs of claims filed by the two objecting creditors (not including post-petition interest, fees, expenses, advances), the gross equity in the Property, based on Debtor's valuation, would be computed to be:

Value	$1,067,100
1st DOT NewRez 2017-1	($ 219,969.62)
2nd DOT Citizens Bank	($ 467,687.67)
	=========
Projected Gross Equity	$ 379,443

Allowing for a sales expense of ($85,000), Debtor would project having approximately $290,000 net proceeds from a sale.

FN. 2. The court notes that this amount is grossly different from that stated by Debtor in his 2020 bankruptcy case filed on January 14, 2020. In that case the value of the Property is stated to be $570,000. 30-20197; Schedule A/B, Dckt. 1 at 11.

On Schedule I, Debtor lists having gross income $6,928. *Id*. at 29-30. Debtor Ronald Ahlers is disabled, with his income limited to $2,739 in Social Security Benefits. For non-debtor Spouse, she is listed as having $3,188 in after deduction wages (IHSS payments) and $1,001. *Id*. Debtor and non-debtor Spouse pay only $188 a month for state income tax, federal income tax, and Social Security deductions. *Id*. [Fn.3.]

FN. 3. In the 2020 case Debtor stated that Non-Debtor Spouse generated IHSS income of only $1,558 a month and her social security was only $871 a month. 20-20197; Schedule I, Dckt. 1 at 28-29. However, on the Statement of Financial Affairs in the 2020 case, Debtor states that the Non-Debtor Spouses IHSS income in 2020 (which would be one month) was $2,795 (substantially higher than stated on Schedule I) and that her Social Security income was $871 (consistent with Schedule). *Id*. at 34.

On Schedule J (*Id*. at 31-32) Debtor lists having ($3,690) in monthly expenses (excluding mortgage, property insurance, property taxes). This leaves Debtor with $3,238.07 in projected disposable monthly income.

Under the terms of the proposed Plan, Debtor will contribute only $2,323.00 a month of the $3,238 of projected disposable income for a period of sixty months. Plan, ¶ 2.01; Dckt. 3.

The plan identifies the secured claim of the two objecting creditors, a $432.36 secured property tax obligation, and $5,000 in general unsecured claims. The plan is to pay the property tax claim and the general unsecured claims a 100% dividend, with no interest.

It is not clear to the court why there would be a five year plan that provides for no present value interest, when the Debtor is contributing only seventy-two percent (72%) of the projected disposable income into the Plan.

By Debtor's Schedules, both NewRez 2017-1 and Citizens Bank are grossly oversecured on their claims. On a purely economic basis, while the two creditors may be amiable to modifying the loans so as to have performing loans rather than foreclosing, and Citizens Bank having to come up with approximately $225,000 to address the senior defaulted loan, why they would discount the amount due is not clear.

Using the Microsoft Excel Loan Mortgage Calculator, for the ($225,000) loan, amortized over thirty-years at four percent (4%) interest, the monthly payment for principal and interest would be ($1,075). For the Citizens Bank ($467,687.67) secured claim, which has fully matured and is now due in full, the monthly payment would be ($2,232.81). If one assumes ($200) a month for property insurance and ($500) for property taxes, fully amortized monthly payments for the two claims would be ($4,008) a month. This is in excess of the total projected disposable income on Schedule J before any amounts necessary to pay the other creditors and Trustee fees in a Chapter 13 Plan.

On the Statement of Financial Affairs, Debtor shows having no wage income for 2021, 2020, and 2019. Dckt. 1 at 34-35. The only income for Debtor are his Social Security Benefits of approximately $41,000 a year (averaging $3,416.66 a month, which is greater than the $2,739 stated on Schedule I).

RULING

While the core of the two creditors' objection - that they not be forced to take adequate protection payments - may not carry the day, there are deficiencies in the Ensminger Provisions and feasibility issues for what would be required for a confirmable plan.

At this juncture there appear to be two likely options. Debtor make the necessary Ensminger Provision amendments, Debtor diligently proceed with the two loan modification requests, the Plan as amended be confirmed, these two objecting creditors with secured claims receive reasonable adequate protection payments, and the modification chips fall where they may.

Alternatively, the court does not confirm the Plan and continue the objection to confirmation hearings to allow for the diligent prosecution of the loan modifications. The court then grant the two objecting creditor's wishes and not have any adequate protection payments made to them, but have the Trustee hold all of the monthly plan payments for future disbursements. Looking at the proofs of claim filed, there is one general unsecured claim for ($2,888.10) filed by Capital One Bank (USA), N.A. (POC 1-1) and a secured claim by the California Department of Tax and Fee Administration for ($4,625.90) (POC 3-1). It may be given the *de minimis* amount of these two claims, the Parties might stipulate to the Trustee paying them immediately from the monies received pending confirmation (in part of save accruing interest) and then have only the "real" parties in interest to slug it out over the loan modifications.

At the hearing, **xxxxxxx**

ADDENDUM ENSMINGER

7.02 [Creditor Name] Secured Claim.

Creditor: [Creditor Name]'s claim ("Secured Claim") secured by a [priority] deed of trust recorded against the real property commonly known as [address of property] ("Collateral").

Notwithstanding the $xxxxxxx pre-petition arrearage and $**xxxxx** monthly contract installment set forth in Class 1, supra, the actual treatment for the [Creditor Name] secured claim shall be as set forth in these Additional Provisions for this Chapter 13 Plan.

7.02.1 Secured Claim Treatment

Confirmation of this plan provides for adequate protection of [Creditor Name]'s interest in the Collateral pending either the consensual modification of the Secured Claim or termination of the automatic stay and surrender of the Collateral as provided in this Section 7.02. Confirmation of the Plan **does not** modify the secured claim of [Creditor Name].

Upon the denial of a loan modification and Debtor's failure to timely file and serve a proposed modified plan and motion to confirm as provided in this Section 7.02, the treatment of [Creditor Name]'s secured claim is:

A. [Creditor Name]'s secured claim is a Class 3 Claim, with the added requirement that an order modifying the automatic stay must be obtained (which order documents that the denial of loan modification condition subsequent has occurred);

B. The Chapter 13 Trustee shall continue to make the adequate protection payments to Secured Creditor from the regular monthly plan payments made by Debtor under this Plan until terminated by:

1. Debtor filing and serving a modified plan and motion to confirm which provides for other treatment of [Creditor Name] secured claim,

2. the court enters an order modifying the automatic stay as provided in this Section 7.02, or

3. other further order of the court.

7.02.2 Adequate Protection Payment

The Debtor has in process a HAMP Application for modification of the loan upon which the [Creditor Name] secured claim. The application requests that the pre-petition arrearage, to the extent not waived, be included in a new principal amount to be amortized over the life of the loan as modified. During loan

modification application process [Creditor Name] shall be paid $xxxxxxxx a month as an adequate protection payment for its secured claim, pending determination on the loan modification. The monthly adequate protection payment shall be applied first to the post-petition interest accruing on this claim and then principal, or as specified in an agreed to loan modification.

This Chapter 13 Plan **does not** modify the rights of [Creditor Name] for this secured claim, but provides adequate protection payments during the loan modification process.

7.02.3 Loan Modification

1. Upon completion of a loan modification agreement, if any, the Debtor shall provide a copy of the agreement to the Chapter 13 Trustee and file a motion for approval of the loan modification within fourteen (14) days of the agreement being signed by the Debtor and [Creditor Name]. The Debtor shall not commence making payments under the terms of the loan modification until it has been approved or the payments authorized by order of The court.

2. For a loan modification which does not provide for any pre-petition arrearage cure payments to be made during the life of the Plan, the claim shall be paid by the Debtor as a Class 4 Claim under this Plan pursuant to the terms of the loan modification, with no modification of this Plan required so long as the monthly plan payments to the Chapter 13 Trustee are reduced only by the monthly Class 4 payment in an amount not greater than the adequate protection payment.

3. For a loan modification which requires arrearage cure payments to be made during the term of this plan, the Claim shall be paid as a Class 1 claim with the current monthly payment and the arrearage cure being paid through the Plan. If the Class 1 payment can be made without altering the treatment provided for creditors holding general unsecured claims, no modification of the plan shall be required, with the court order approving the modification documenting the agreed treatment of the Class 1 claim.

7.02.4 Denial of Loan Modification

If [Creditor Name] determines that a loan modification is not approved, it shall communicate the denial of a modification in writing to the Debtors and counsel for the Debtors by USPS First Class Mail, postage prepaid. In the event of a denial, the Debtors shall have fourteen (14) days from the mailing of the denial of the modification to file a modified plan and motion to confirm the modified plan to provide for payment of the [Creditor Name].

7.02.5 Events of Default, Failure to Modify Plan Upon Rejection of Modification, Failure to Prosecution Loan Modification

The Debtor shall be in default under the terms of this Plan, and [Creditor Name] entitled to exercise its rights to conduct a nonjudicial foreclosure sale, as described in the modification of the automatic stay in this Paragraph 7.02, of the Property in the event of any of the following defaults.

1. Default in timely adequate protection payment.

2. Default in the payment terms in a court approved loan modification agreement (if not a Class 4 claim for which the Plan terminates the automatic stay).

3. Failure to file and serve a modified plan and motion to confirm modified plan within fourteen (14) days of the mailing of a denial of the proposed loan modification.

4. Post-Petition non-monetary default under the Deed of Trust, including, without limitation, the failure to timely pay post-petition property taxes or property insurance.

5. Failure to diligently prosecute the loan modification application. For purposes of these Additional Provisions, the failure to diligently prosecute the loan modification application shall be documented by [Creditor Name] that forms, documents, records, or other information relating to the requested loan modification were requested in writing from the Debtor, and not provided by the Debtor within 30 days of the written request having been mailed to or delivered personally, by facsimile, or email to the Debtor or designated representative of the Debtor.

7.02.6 Modification of the Automatic Stay.

If [Creditor Name] denies in writing Debtor's loan modification request and Debtor does not file a Modified Plan and Motion to Confirm Modified Plan within 14 days of the mailing of that denial, served on the Debtor [and Debtor's bankruptcy counsel], or other grounds for modification exist under the terms of these Additional Provisions for the [Creditor Name] secured claim, [Creditor Name] may serve and file an *ex parte* motion for relief from the automatic stay to allow it to conduct a non-judicial foreclosure sale of the property and lodge a proposed order with the court. The *ex parte* motion shall be limited to the grounds set forth in these Additional Provisions. Any opposition to the *ex parte* motion shall be in writing, filed with the court within 14 days of the mailing of the *ex parte* motion to the Debtor [and Debtor's counsel], and limited to disputing the grounds arising under these Additional Provisions. The Debtor shall set a hearing on its opposition to the *ex parte* motion for the first available regular Chapter 13 motion for relief from automatic stay calendar for this court that is more than 21 days after the date the *ex parte* motion was mailed to the Debtor.

The grounds specified herein for modification of the automatic stay and *ex parte* motion procedure are without prejudice to [Creditor Name] filing a motion for relief from the automatic stay on any other grounds and setting the motion for hearing pursuant to the Federal Rule of Bankruptcy Procedure and Local Bankruptcy Rule.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is **XXXXXXX**

3. **21-24018-E-13 DWE-1** **RONALD AHLERS** **Gabriel Liberman** **OBJECTION TO CONFIRMATION OF PLAN BY CITIZENS BANK, NATIONAL ASSOCIATION** **1-13-22 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 13, 2022. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Citizens Bank, National Association ("Creditor"), as serviced by NewRez LLC dba Shellpoint Mortgage Servicing holding a secured claim opposes confirmation of the Plan on the basis that:

A. Creditor's rights are protected from modification under 11 U.S.C. § 1322(b)(2) because its Claim is secured by Debtor's principal residence. Creditor represents that it is entitled to full and immediate payment of the outstanding loan balance.

B. Creditor's claim matured on October 25, 2021. Thus, 11 U.S.C. § 1322(b)(5) is inapplicable because that section of the Code requires for

the allowance of curing of any default and maintenance of payments on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due.

C. As the Creditor's claim matured on October 25, 2021, Debtor must pay the entire claim of over the life of the Plan as provided by 11 U.S.C. § 1322(c)(2) and 1325(a)(5).

D. The Plan's success relies on a successful loan modification agreement which has yet to be approved. Thus, Creditor submits that the Plan is *prima facie* infeasible.

DISCUSSION

The court addresses this Objection in the Ruling on the Trustee's Objection to Confirmation (DCN: DPC-1), providing the Parties with one unified ruling.

XXXXXXX

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

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

The Objection to the Chapter 13 Plan filed by Citizens Bank, National Association ("Creditor"), as serviced by NewRez LLC dba Shellpoint Mortgage Servicing holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is **XXXXXXX**.

4. **21-24018-E-13 EAT-1** **RONALD AHLERS** **Gabriel Liberman** **OBJECTION TO CONFIRMATION OF PLAN BY NEW RESIDENTIAL MORTGAGE LOAN TRUST 2017-2 1-13-22 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 13, 2022. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

New Residential Mortgage Loan Trust 2017-2 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan has inconsistencies with respect to Creditor's claim. The claim is provided for in Class 1 for $65,000.00 in pre-petition arrears and ongoing mortgage payment of $1,300.00 (which is short several dollars, actual payment is $1,303.97). The Plan further states that the Creditor is being paid "only" an ongoing mortgage payment as an adequate protection payment while the Debtor applies for a loan modification application with the Creditor's servicing agent. The treatment of the claim pending the outcome of the loan modification application is

unclear.

B. The Ensminger Provisions are given no effect as the checkbox stating there are provisions was not checked on Section 1.2, page 1.

C. The Ensminger Provisions make no sense under Section 7.03.

D. The Plan provides for inconsistent treatment of Creditor's claim in classes 1 and 4.

E. The Plan may not be feasible due to a junior lien creditor that holds a fully matured note which would need to be paid in full.

F. The Debtors have filed multiple unsuccessful Chapter 13 bankruptcies.

DISCUSSION

The court addresses this Objection in the Ruling on the Trustee's Objection to Confirmation (DCN: DPC-1), providing the Parties with one unified ruling.

XXXXXXX

Inconsistencies of Claim

It is unclear to the court how Debtor will treat Secured Creditor. Under Section 3.07, Creditor is treated as a Class 1 Creditor with the amount of arrears of $65,000.00, interest rate on arrears of 0.00%, and a post-petition monthly payment of $1,300.00. For the arrearage dividend, the Plan advises to "see additional provisions." Under the additional provisions of Section 7, Debtor only addresses the arrearages as if the loan modification was approved. This "hypothetical" is not the current reality of Debtor. As such, it does not appear the Plan cures those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages

Ensminger Provisions

Pursuant to Section 1.2 of the Plan, the court requires "If there are nonstandard provisions this box must be checked Here, they did not check the box, however, it appears Debtor wants to incorporate nonstandard provisions as seen on page 7-8 of the proposed Plan, Sections 7.01-7.05. Therefore, the Plan does not comply with 11 U.S.C. § 1325(a) and cannot be confirmed.

Section 7.03 - Nonstandard Provisions

Section 7.03 of Debtor's Proposed Plan provides:

7.03 Loan Modification

1. Upon completion of a loan modification agreement with creditor Mr. Cooper, if any, the Debtor shall provide a copy of the agreement to the Chapter 13 Trustee and file a Motion for Approval of the Loan Modification within fourteen (14) days of the agreement being signed by the Debtor and Mr. Cooper and Shellpoint Mortgage Servicing.

2. For a loan modification which does not provide for any pre-petition arrearage cure payments to be made during the life of the Plan, the claim shall be paid by the Debtor as a Class 4 Claim under this Plan pursuant to the terms of the loan modification, with no modification of this Plan required so long as the monthly plan payments to the Chapter 13 Trustee are reduced only by the monthly Class 4 payment in an amount not greater than the adequate protection payment.

3. For a loan modification which requires arrearage cure payments to be made during the term of this plan, the Claim shall be paid as a Class 1 claim with the current monthly payment and the arrearage cure being paid through the Plan. If the Class 1 payment can be made without altering the treatment provided for creditors holding general unsecured claims, no modification of the plan shall be required, with the court order approving the modification documenting the agreed treatment of the Class1 claim.

Creditor is concerned with the following:

> "If the loan modification agreement contains no cure of pre-petition arrears then (evidently, the treatment of Secured Creditor's claim would shift to Class 4). It is not clear how this shift occurs, and whether it is pre or post-confirmation. Secured Creditor cannot even guess as to Debtor's intent under this passage in Section 7.03 Loan Modification, page 7 of 8, in Section 7 of Nonstandard Provisions."

Creditor's objection to Section 7.03 is warranted. Debtor should clarify Creditor's concerns as it is not clear to the court from Section 7.03 how Creditor would switch to Class 4.

Inconsistent Treatment

It is not clear to the court whether Creditor is treated as a Class 1 or Class 4. Although Creditor is not listed in Class 4, it appears to the court that Creditor may "switch" to a Class 4 pending a loan modification. These "hypothetical" provide confusion as to the adequate treatment of Creditor and without the approval of the loan modification from both the Creditor and the court, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Feasibility

Creditor Citizens Bank, National Association NewRez LLC holds a junior secured claim of $467,687.67 which all came due prior to the date of filing the petition. As such, under 11 U.S.C. § 1322(b)(5), Debtor must pay the full arrearage amount of $467,687.67. The amount of arrearages that must be paid over the life of the Plan to Creditor Citizens Bank suggest that the Plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

Prior Bankruptcy Cases

Although Debtor has had prior bankruptcy cases, that is not a reason to deny confirmation. However, Debtor's failure to successfully prosecute the prior cases may go to the feasibility of the Plan.

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

and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by New Residential Mortgage Loan Trust 2017-2 ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

5.	**21-23545-E-13 DPC-1**	**FRANK/NICOLE ROGERS Catherine King**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 11-22-21 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 21, 2021. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

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

B. Debtor failed to provide payment advices and Federal Income Tax Return.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Continued Meeting of Creditors was held on December 9, 2021, and Trustee's Report indicates Debtor appeared. Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this Objection.

Combined Pay Stubs &Tax Returns

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

At the hearing, the Debtor reported that all of the shortcomings have been cured, except one debtor did not have a Social Security Card.

The Trustee reported that pay advices are missing, with only one having been filed.

At the hearing, the Trustee agreed to a continuance to allow Debtor to address the shortcomings.

Trustee's Status Report

On January 25, 2022, Trustee filed a status report stating:

1. Debtors have not provided sixty (60) days of pre-petition advices.

2. Attorney appeared at the continued meeting of creditors on January 20, 2022, however, Debtor Frank Anthony Rogers has not provided verification of his social security number to the Trustee.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

6.	**21-23555-E-13** **DPC-1** **6 thru 9**	**TRACI HAMILTON** **Richard Jare**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-22-21 [30]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 22, 2021. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxxxxxxx

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

A. Debtor failed to submit Social Security Number at the Meeting of Creditors.

B. Debtor admitted at the First Meeting of Creditors that they were required to file 2019 and 2020 tax returns and has not done so.

C. Debtor's Plan relies on Motion to Value Collateral. Debtor has failed to file a Motion to Value Collateral.

D. Debtor failed to provide profit and loss statements, bank statements for all bank accounts, and proof of license and insurance.

E. First payment plan will be due on November 25. 2021

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exists. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2019 and 2020 tax years has not been filed still. 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).

Debtor's Reliance on Motion to Value Secured Claim

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

Failure to File Documents Related to Business

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

A. Six months of profit and loss statements,
B. Six months of bank account statements,
C. Proof of license and insurance or written statement that no such documentation exists

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

The Debtor and Trustee agreed to continue the hearing, without setting a briefing schedule, to allow the Debtor to address the issues.

Debtor's Motion to Value Collateral

On January 13, 2022, Debtor filed a Motion to Value Collateral of Credit Acceptance Corporation. Dckt. 58. The Motion is set for hearing in conjunction with this continuance. This appears to resolve one of Trustee's objections.

Trustee's Status Report

On January 18, 2022, the Trustee provided a status report stating the Debtor appeared at the Meeting of Creditors, provided her social security verification, however, failed to provide the requested business documents. Additionally, Debtor is not current on plan payments and needs to pay $5,467.74 by the date of the hearing in order to be current.

The Trustee has continued the Meeting of Creditors again, to February 17, 2022 at 1:00 p.m., to give the Debtor the opportunity to file the returns and provide the requested business documents.

Trustee has requested the court take these into consideration but has not requested the court sustain or overrule the objection. At the hearing, XXXXXXXXXX

February 1, 2022 Hearing

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation is xxxxxxxxxxxx.

7. **21-23555-E-13 RJ-3** **TRACI HAMILTON** **Richard Jare** **MOTION TO VALUE COLLATERAL OF CREDIT ACCEPTANCE CORPORATION** **1-13-22 [58]**

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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 13, 2022. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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 Value Collateral and Secured Claim of Credit Acceptance Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $5,000.00.

The Motion filed by Traci Faye Hamilton ("Debtor") to value the secured claim of Credit Acceptance Corporation("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 61. Debtor is the owner of a 2009 Toyota Camry ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee's Nonopposition

The Chapter 13 Trustee filed a nonopposition on January 24, 2022 stating they are not opposed to Debtor's Motion to Value Collateral. Dckt. 69. Trustee notes Debtor is $2,745.16

delinquent in plan payments.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on December 21, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $12,278.39. Proof of Claim, No. 1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $5,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Credit Acceptance Corporation ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Credit Acceptance Corporation ("Creditor") secured by an asset described as 2009 Toyota Camry ("Vehicle") is determined to be a secured claim in the amount of $5,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

8. **21-23555-E-13 DWE-1** **TRACI HAMILTON** **Richard Jare** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL TRUST ASSOCIATION** **11-29-21 [34]**

Final Ruling: No appearance at the February 1, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on November 29, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Objection to Confirmation of Plan is overruled

U.S. Bank Trust National Association, not in its individual capacity, but solely as Trustee of LSF8 Master Participation Trust ("Secured Creditor"), as serviced by Fay Servicing, LLC, ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Secured Creditor's claim is secured by the property.

B. Pursuant to 11 U.S.C. § 1325(a)(6), the Plan appears infeasible.

C. Pursuant to 11 U.S.C. § 1322(b)(5), the Plan fails to provide for the curing default under Secured Creditor's Claim within reasonable amount of time.

Creditor is in the process of preparing its Proof of Claim and claims they will file it on or before the Proof of Claim filing deadline of December 22, 2021. However, Creditor has not filed with their objection any exhibits or otherwise evidence, i.e. a Declaration, of their secured claim.

DISCUSSION

Creditor's objections were well-taken.

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

Unreasonable Delay to Cure Arrearage of Creditor

The objecting creditor holds a secured claim secured by Debtor's residence. Creditor has not yet filed a proof of claim, yet, they assert in their motion there are pre-petition arrearages. Pursuant to Debtor's Plan, Creditor has a Class 1 claim with $49,500.00 in arrears. The first payment to pay these arrears does not commence until month fifteen (15). Dckt. 4 at 3. Creditor claims without Debtor providing an explanation for this delay, it is an unreasonable delay to cure the arrearage of Creditor, pursuant to 11 U.S.C. § 1322(b)(5). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Setting of Final Hearing

Debtor stated grounds for opposition and addressing the issues in opposition pleadings. Debtor and Creditor agreed to a briefing scheduling, identifying the factual economic issues as the main areas to be addressed.

Debtor's Response

On January 12, 2022, Debtor filed a response stating the arrearages will commence in month fifteen with a higher $3,300.00 monthly payment because of an expected twenty (20) percent increase in disposable income as the country emerges out of COVID-19. Debtor is expecting their janitorial business ("JanPro") to recover from added costs of business due to a house fire by month fifteen (15).

Creditor's Response

On January 18, 2022, U.S. Bank Trust National Association, not in its individual capacity, but solely as Trustee of LSF8 Master Participation Trust ("Creditor") as serviced by Fay Servicing, LLC filed a response to Debtor's Supplemental Evidence. Dckt. 64. Creditor states they are satisfied with Debtor's declaration and no longer objects to the month fifteen (15) start date for the pre-petition arrears.

As Creditor appears to be satisfied with the Plan, their objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by U.S. Bank Trust National Association ("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 overruled.

9.	**21-23555-E-13** **TRM-35**	**TRACI HAMILTON** **Richard Jare**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WESTGATE FLAMINGO BAY, L.L.C.** **12-2-21 [37]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 2, 2021. By the court's calculation, 12 days' notice was provided. 14 days' notice is required.

Under the facts and circumstances of this Motion, the court shortens the time to the 12 days given.

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 xxxxxxxxxxxxxxxxxxxx.

Westgate Flamingo Bay, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's Chapter 13 Plan incorrectly lists the monthly payment amount

DISCUSSION

Creditor's objections are well-taken. Debtor's Chapter 13 Plan values the monthly payments to Creditor at $250.00 per month. Dckt. 39. However, Creditor's Proof of Claim values the monthly payment at $270.04. Proof of Claim 5-1. As such, the Plan is not feasible.

At the hearing, Debtor and Creditor agreed to continue the hearing, with no briefing schedule being set by the court.

February 1, 2022 Hearing

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Westgate Flamingo Bay, 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 is xxxxxxxxxxxxxx.

10. **18-20489-E-13 DPC-5** | **DAVID SWEENEY/ STACY ADER-SWEENEY** | **CONTINUED MOTION TO DISMISS CASE**
August Bullock | **12-8-21 [98]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is xxxxxxxxxxxxxxxxx.

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

1. the debtor, David Eastman Sweeney and Stacy Dawn Ader-Sweeney ("Debtor"), is delinquent in plan payments and the plan is overextended.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 22, 2021. Dckt. 108. Debtor states the delinquency will be cured prior to the hearing date and they filed an objection to the subject priority claim on December 17, 2021. The hearing on the Objection has been set for February 1, 2022.

DISCUSSION

Delinquent

Debtor is $390.00 delinquent in plan payments, which represents multiple months of the $130.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Overextended

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee's calculations, Debtor's Plan will complete in 490 months, instead of 60 months pursuant to the confirmed plan. This is due to Debtor not estimating a priority proof of claim filed by Rose Farmer (Proof of Claim 4-1) in the amount of $53,101.70. The claim was included in Trustee's Notice of Filed Claims. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor has now filed an Objection to Proof of Claim 4-1, for which the hearing is set for February 1, 2022. In light of the modest amount of delinquency and the priority claim being the more significant issue, the hearing on this Motion to Dismiss is continued to be conducted with the Objection to Claim.

The court has sustained the Objection to the Claim of Rosemarie A. Farmer, Proof of Claim 4-1, in its entirety. This portion of the Objection has been resolved by the Debtor.

At the hearing, the Chapter 13 Trustee reported, **xxxxxxx**

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

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

11. **17-26993-E-13** **JUSTIN MCCAULEY** **MOTION TO INCUR DEBT**
SLE-1 **Steele Lanphier** **1-13-22 [21]**
11 thru 12

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

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, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 13, 2022. By the court's calculation, 19 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. At the hearing, ----------.

The Motion to Incur Debt is granted.

Justin McCauley ("Debtor") seeks permission to purchase real property commonly known as 805 Langton Court, Lincoln, California, a single family residence, with a total purchase price of $600,000.00, a down payment of $120,000.00 and monthly payments of $3,088.00 for years one (1) through eleven (11) and $2,771.00 for years twelve (12) through thirty (30) to Sierra Pacific Mortgage Company, Inc. with a 2.875% fixed interest rate. *See* Exhibit C, Loan Estimate, Dckt. 23.

Trustee's Response

Chapter 13 Trustee, David P Cusick, filed a response to Debtor's Motion for Approval to Incur Debt on January 24, 2022. Dckt. 31. Trustee raises the following concerns:

1. Debtor's ex-wife (Juli McCauley) appears to be serving as the Seller's Brokerage Firm under Clark Real Estate and real estate agent under the

name Juli Clark-McCauley. However, the Purchase Agreement fails to list the Seller's and Buyer's broker firm information and the Real Estate Broker's section is incomplete. The Trustee is unsure if Debtor obtained a real estate agent. Trustee states this causes uncertainty of the validity of the Purchase Agreement.

2. Trustee notes Debtor will have to file a new plan due to increased expenses, however, Debtor has not filed a Motion to Confirm a Modified Plan.

3. Supplemental Schedule I/J were attached as exhibits but have not been separately filed with the court.

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).

From the evidence presented, although Trustee has valid concerns regarding Debtor's ex-wife as the Seller's Brokerage Firm and real estate agent, it does not appear to the court that the Purchase Agreement lacks validity.

Debtor's current rent is $1,800.00. Debtor's new payment would be $3,088.00 for eleven years and then $2,771.00 for the remaining months. As such, for the first eleven months, and for the remainder of the Plan, there will be an increase of $1,288.00 in expenses ($3,088.00-$1,800.00). Debtor is stating their income has increased from $4,945.63 as of the petition date to $5,405.00 as of Exhibit D, Debtor's Supplemental Schedules I & J.

See below:

Debtor Financial Information	**2017 Petition Filing**	**2022 Supplemental I/J**
Monthly Income	$4,945.63	$5,405.00
Rental/Home Ownership Expenses	$1,800.00	$3,088.00
Total Monthly Expenses	$3,786.00	$5,126.00
Monthly Net Income (Monthly Expenses - Monthly Income)	**$1,159.63**	**$279.00**

As detailed in the Plan filed October 23, 2017 and confirmed on February 1, 2018, which is the only plan filed to date, Debtor is to pay $1,200.00 per month, slightly more than Debtor's 2017 Monthly Net Income. Debtor's projected monthly net income will be substantially less and the court does not see a feasible way for Debtor to make payments absent Debtor filing a new plan.

Debtor's confirmed Plan provides for a thirty (30) percent dividend to unsecured claims. So far, Trustee reports Debtor has paid roughly twenty-seven (27) percent dividend to unsecured claims. Trustee's Reply at ¶ 5, Dckt. 31.

Upon review of Trustee's Notice of Filed Claims, Dckt. 19, Debtor had approximately $195,956.98 of unsecured claims filed. Debtor has paid approximately twenty-seven (27) percent of these claims, which would total approximately $52,908.00. If Debtor were to pay the confirmed $1,200.00 plan payment for the remainder of the plan (10 months), Debtor would pay an additional $12,000.00. This would equate to an additional six (6) percent of unsecured claims, bringing the total to thirty-three (33) percent of unsecured claims paid. However, if Debtor were to pay $279.00 per month for the remaining ten (10) months of the Plan, Debtor would only pay an additional $2,790.00 to unsecured claims, which is about 1.4% of total unsecured claims. Debtor would end up only paying roughly 28.4% of unsecured claims. This, however, is not far off from the confirmed plan of $30% to unsecured Creditors. However, in order for this new payment of $279.00 to be feasible and not put Debtor in delinquency, Debtor has to file a modified plan for the remaining ten (10) months.

Additionally, Debtor should file their Supplemental Schedules I and J in order for them to properly supplement the Schedules filed on the date of petition.

At the hearing, XXXXXXXXXX

~~The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Justin McCauley ("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 xxxxxxxxxxxxxxxx.

12. **17-26993-E-13 SLE-2** **JUSTIN MCCAULEY** **Steele Lanphier** **MOTION FOR AUTHORIZATION TO OBTAIN 401(K) HARDSHIP WITHDRAWAL** **1-13-22 [26]**

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

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, Debtor's Attorney, Chapter 13 Trustee, creditors,, and Office of the United States Trustee on January 13, 2022. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion for Authorization to Obtain 401(k) Hardship Withdrawal 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 for Authorization to Obtain 401(k) Hardship Withdrawal is xxxxx.

Justin Ryan McCauley ("Debtor") seeks permission to withdraw retirement funds to purchase real property commonly known as 805 Langton Ct., Lincoln, California, with a total purchase price of $600,000.00 and monthly payments of $3,088.00 for years one (1) through eleven (11) and $2,771.00 for years twelve (12) through thirty (30) to Sierra Pacific Mortgage Company, Inc. with a 2.875% fixed interest rate. Debtor seeks to withdraw $120,000.00 from his 401(k) as a hardship withdrawal for the purpose of making a down payment on this home.

Debtor has elected exemptions pursuant to California Code of Civil Procedure. On Debtor's Schedule C, they claim under California Code of Civil Procedure § 703.140(b)(10)(E) an exemption for their $270,778.00 in 401(k) retirement savings. As such, it does not appear that Debtor needs the court's permission to withdraw the $120,000.00 from their 401(k) appears to not need the consent of the court.

The court, however, is concerned as to the prudence of withdrawing these funds. Debtor has not addressed the substantial taxes and fees that will be associated with withdrawing from Debtor's retirement funds.

Additionally, the Chapter 13 Trustee has raised valid concerns regarding the purchase of said property. As detailed in the Plan filed October 23, 2017 and confirmed on February 1, 2018 (the only plan filed to date) Debtor is to pay the Trustee $1,200.00 per month, slightly more than Debtor's 2017 Monthly Net Income. Debtor's projected monthly net income after purchase of this house will be substantially less and the court does not see a feasible way for Debtor to make payments absent Debtor filing a new plan.

Additionally, Debtor should file their Supplemental Schedules I and J in order for them to properly supplement the Schedules filed on the date of petition.

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authorization to Obtain 401(k) Hardship Withdrawal filed by Justin Ryan McCauley ("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**.

13.	**21-23898-E-13 DPC-1**	**ANGELLO/DONNA AUSTIN Michael Hays**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-11-22 [19]**

APPEARANCES OF MICHAEL HAYES, ESQ., COUNSEL FOR DEBTORS; DEBTOR ANGELLO AUSTIN; AND DEBTOR DONNA AUSTIN ARE REQUIRED FOR THE FEBRUARY 1, 2022 HEARING TELEPHONIC APPEARANCES PERMITTED

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 Debtors and Debtors' Attorney, on January 11, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor Donna Austin signed the Petition, Schedules, and Plan but admitted at the First Meeting of Creditors that she did not read the documents nor was she personally familiar with the questions and/or

statements and/or answers that were provided.

B. Debtors deposited insurance proceeds into their Bank of America bank account, however, the Trustee is unclear if the proceeds should be given to the Debtors or to the lender if the funds were to go directly to Housing and Urban Development.

C. Debtor, Angello Austin, admitted at the First Meeting of Creditors that he maintains a part-time seasonal job, however, Schedule I and Form 122C does not reflect any income for the Debtor. The Trustee is unclear is the part-time seasonal job was worked 60 days prior to the filing of this case. If so, the Debtor has failed to provide pay advices for wage income received.

The Trustee requests the Court deny confirmation of the Plan unless the matters are addressed.

Debtor's Reply

On January 27, 2021, Debtor filed a Response. Debtor asserts that the evidence support his nominal earnings as reported. He also reports that Debtor received the $258,000.00 insurance check, deposited it, and has been using it to rebuild their homes.

In his Declaration (Dckt. 24), Debtor confirms that they can afford their $74.00 a month plan payment and that the expenses are not unrealistically low.

With respect to his statement that he did not recall reading the schedules and statement of financial affairs, he directs the court to the Declaration of Donna Austin, his co-debtor, who he states is ninety-three (93) years old.

With respect to additional employment, he states that he is eighty years old and "do not do any kind of wage employment anymore on a regular basis." He will provide his W-2 for 2021 to the Chapter 13 Trustee.

An unauthenticated W-2 Statement for Angello Austin for 2021 is filed as Exhibit 1, Dckt. 25. Interestingly, Mr. Austin's Declaration, in which he states he is waiting for his 2021 W-2 to be mailed to him and "[a]s soon as I receive it I will bring it to my attorney's office." Dec., p. 2:4-7; Dckt. 24. Mr. Austin signed his Declaration providing that testimony under penalty of perjury on January 27, 2022 (the same day it was filed with the court). The court notes that the handwritten date of when it was signed, which appears to be different than Mr. Austin's handwriting, dates the declaration as being signed January 27,"2021." This clearly appears to be a "first of the year clerical error," because if it was signed in 2021, then it would have signed ten months before the bankruptcy case was filed and a case number was assigned to it.

But the Exhibit document, the 2021 W-2 that is not authenticated, was filed on January 27, 2022 by Debtor's counsel. It appears that Debtor had received the 2021 W-2 and delivered it to counsel prior to or when the Declaration was signed. Mr. Austin's testimony is clearly inaccurate, causing the court to question whether Mr. Austin read the Declaration or merely signed (or has someone sign his name for him) without bothering to read what his testimony under penalty of perjury was for this matter.

Mr. Austin directs the court to the Declaration of Co-Debtor Donna Austin. Dec, p. 2:12-13; Dckt. 24. That Declaration was signed on January 6, 2022, almost a month before Mr. Austin provided his testimony under penalty of perjury in his January 27, 2022 Declaration.

This testimony in the Declaration under penalty of perjury relates to her statements that she did not read the Petition, Schedules, and Statement of Financial Affairs that she signed under penalty of perjury. As Debtor's counsel is well aware:

A. In signing the Petition, Debtor Donna Austin made the following attestations:

> **I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct**.
>
> If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11,12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.
>
> If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).
>
> I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.
>
> **I understand making a false statement,** concealing property, or obtaining money or property by fraud in connection with a bankruptcy **case can result in fines up to $250,000, or imprisonment for up to 20 years, or both.** 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Petition; Dckt. 1, p. 6 (emphasis added).

B. In signing the Schedules, Debtor Donna Austin made the following attestations:

> If two married people are filing together, **both are equally responsible for supplying correct information**.
>
> You must file this form whenever you file bankruptcy schedules or amended schedules. **Making a false statement**, concealing property, or obtaining money or property by fraud in connection with a bankruptcy **case can result in fines up to $250,000, or imprisonment for up to 20 years, or both**. 18 U.S.C. §§ 152, 1341, 1519, and 3571.
>
> **Under penalty of perjury**, I declare that **I have read the summary and schedules** filed with this declaration **and that they are true and correct.**

Dec. About Individual Debtor's Schedules; Dckt. 12 at 22 (emphasis added).

C. Is signing the Statement of Financial Affairs, Debtor Donna Austin made the following attestations:

> Be as complete and accurate as possible. If **two married people are filing together, both are equally responsible for supplying correct information**. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.
>
> I **have read the answers on this Statement of Financial Affairs** and any attachments, and **I declare under penalty of perjury that the answers are true and correct**. I understand that **making a false statement**, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case **can result in fines up to $250,000, or imprisonment for up to 20 years, or both**. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Statement of Financial Affairs; *Id*. at 23, (emphasis added).

D. In signing the Chapter 13 Statement of Current Income, Debtor Donna Austin made the following attestations:

> Be as complete and accurate as possible. **If two married people are filing together, both are equally responsible for being accurate**. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).
>
> By signing here, **under penalty of perjury I declare that the information on this statement** and in any attachments **is true and correct**.

Chapter 13 Statement of Current Monthly Income; *Id*. at 30, 33.

In her January 6, 2022 Declaration, Donna Austin provides the following testimony under penalty of perjury concerning her above statements that she has read the documents, that having read the documents she attests that they are true and correct, and that by making any false statement therein she is subjecting herself to possible fines of up to $250,000 and imprisonment for up to twenty (20) years –

A. That she "did not take the time" to read and review "all of the documents," (she does not testify as to what she did read. Dec, p. 2:5-9; Dckt. 18.

B. That she is "coherent and competent" to read the documents; *Id*. at 2:9-10; but chose not to take the time to read them

C. That she did not take the time to read them because she relies "on my younger husband to be on top of the details of any transaction we enter into." *Id*. at 2:10-11.

D. Though she didn't take the time to read the Petition, Schedules, and Statement of Financial Affairs, "I did personally sign all fo the pages requiring my signature on 11/15/21 because my husband informed me that both signatures were required." *Id*. at 2:12-14.

Debtor Donna Austin clearly documents that she just signed whatever was put in front of her, without reading it. She chose to make all those statements under penalty of perjury knowing that she had no knowledge of what was stated in their. She did so because her husband told her to do so, apparently so they could "win" by stopping a foreclosure sale. Debtor Donna Austin that she did commit perjury in signing the Petition, Schedules, and Statement of Financial Affairs, falsely under penalty of perjury that she had read the documents, and upon reading she could swear under penalty of perjury that the information stated therein (which she had not read and had no idea of what was stated therein) was true and correct.

This is not a situation where there are two, least sophisticated consumer debtors who are stumbling through bankruptcy in *pro se*. They are represented by an experienced bankruptcy counsel. That counsel is well aware of the requirements for signing documents under penalty of perjury and had in place procedure for making sure his clients read and confirm that information is correct before signing document under penalty of perjury.

That Debtor Donna Austin now purports to testify that she has now, caught in her misrepresentations under penalty of perjury, that she has now, finally, read the bankruptcy documents (though it appears that she cannot specify what she actually read). At this point, she says that the only "correction" that needs to be made is that Debtor received a $258,000.00 insurance check that they deposited in their checking account that was not previously disclosed.

Unfortunately, Debtor Donna Austin and Debtor Angello Austin both admit to making inaccurate statements under penalty of perjury, as well as Debtor Donna Austin just signing under penalty of perjury whatever was put in front of her, without reading it so long as she thought it would be to her advantage.

Debtor Donna Austin and Debtor Angello Austin have established that they cannot present credible testimony.

The Plan also does not provide for payment of the HUD Secured Claim. It inaccurately states that insurance proceeds of $258,000.00 were paid to HUD. Now, both debtors clearly state that they did not pay the money to HUD, but deposited in into their own bank account and have been unilaterally using it to rebuild their home. While under applicable law a person may have the right to use insurance proceeds to rebuild a home for which the existing lender will retain its lien, the person doesn't get to do that secretly, keep the money, and misrepresent that it was paid to the creditor.

Trustee's objections are well-taken. The Plan does not comply with the provisions of 11 U.S.C. § 1325 and § 1322, Debtor has established that they are not prosecuting this bankruptcy case in good faith and it appears did not file this case in good faith. The Objection is sustained and the Plan is not confirmed.

With respect to the perjury committed, that will be addressed in separate proceedings, as will

be whether this bankruptcy case should be dismissed with prejudice.

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

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

FINAL RULINGS

14.	**21-24047-E-13** **DPC-1**	**LAWRENCE/GENEVA IRBY** **Candace Brooks**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-11-22 [37]**

Final Ruling: No appearance at the February 1, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtors' Attorney on January 11, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on February 15, 2022, to be conducted in conjunction with the continued hearing on the Motions to Value Secured Claims.

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

A. Debtors cannot afford to make the payments or comply with the Plan pursuant to 11 U.S.C.§ 1325(a)(6) as Debtors' Plan relies on five (5) motions to value collateral which if not approved will not allow for the Debtors to pay these claims in full.

DISCUSSION

The five motions to value collateral Debtor relies on include Comenity Bank – Bankruptcy Dept.; Synchrony Bank – Becks; Synchrony Bank – Evans Furniture; Honda Financial Services; and Safe Credit Union. This is evidenced by Debtor's Plan (Dckt. 3) where all creditors are listed as Class 2(B), claims reduced based on value of collateral. To date, Debtor has filed Motions to Value Collateral

for three of these creditors: Synchrony Bank – Evans Furniture, Synchrony Bank – Becks, and Comenity Bank – Bankruptcy Dept. These matters were set to be heard on January 25, 2022. However, due to improper notice, they were continued to February 15, 2022.

The other two creditors, Honda Financial Services and Safe Credit Union, have not been for a hearing to determine the value of the collateral. These must be heard and granted in order for the Plan to be confirmed. The following interests in the collateral are listed in the Proof of Claims and Debtor's Plan:

Creditor	Collateral	Secured Amount Claimed in Proof of Claim	Secured Amount Plan States Creditor Claims	Amount Debtor States the Value of Creditor's Interest in its Collateral
Honda Financial Services	2018 Honda Accord Sport	$18,583.04 (Proof of Claim 13-1)	$18,575.00 (inconsistent with Proof of Claim 13-1)	$18,435.00
Safe Credit Union	2014 Cadillac SRX Prem Ed.	$20,098.05 (Proof of Claim 25-1)	$20,053.00 (inconsistent with Proof of Claim 25-1)	$19,225.00

Therefore, even if Debtor's other three Motions to value collateral are granted, Debtor still must file Motions to Value Collateral for Creditors Honda Financial Services and Safe Credit Union. Absent of such motions, Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The court having continued the hearing on the Motions to Value to allow for noticing of those hearing, the court continues the hearing on this Objection which relates to those Motions to Value.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of Plan is continued to **2:00 p.m. on February 15, 2022**, to be conducted in conjunction with the continued hearing on the Motions to Value Secured Claims.

15. 21-23160-E-13 TLA-2 — REGINALD/NICHELLE NICHOLS — MOTION TO MODIFY PLAN
15 thru 16 — Thomas Amberg — 12-22-21 [36]

Final Ruling: No appearance at the February 1, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 22, 2022. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Reginald Nichols and Nichelle Nichols ("Debtors") seek confirmation of the Modified Plan because Debtors have completed a trial loan modification period and now wish to modify the Plan to reflect that. Additionally, they further seek to adjust their withholdings to avoid owing taxes. Declaration, Dckt. 38. The Modified Plan provides $7,060.00 from October 2021 through November 2021, followed by$2,910.00 for the remainder of their plan. Modified Plan, Dckt. 40. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 18, 2022. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

A. Debtors' Supplemental Schedules I and J filed December 22, 2021 were not filed as amended or supplemental schedules of expenses, potentially making it difficult for parties to find the documents on file with the Court. Moreover, FRB 1009(a) requires notice of the amended schedules

to the Trustee and any entity affected; where Debtors include it only as an exhibit and does not use the Amendment Cover Sheet EDC 2-015, Debtors may not have given sufficient notice.

B. Debtors continue to make voluntary retirement contributions in the combined amount of $769.00 and supporting an adult child while proposing to reduce their plan payment by $620.00 and the percentage to unsecured creditors by 27%.

DEBTOR'S RESPONSE

Debtor filed a response on January 24, 2021 stating Debtor is preparing a new plan that will account for the change in circumstances and will also address all objections raised by the Trustee. Dckt. 56.

Given Debtor's response, the court will deny confirmation of the Plan.

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

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

16.	**21-23160-E-13 TLA-3**	**REGINALD/NICHELLE NICHOLS Thomas Amberg**	**MOTION TO APPROVE LOAN MODIFICATION 12-22-21 [42]**

Final Ruling: No appearance at the February 1, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 22, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Reginald Nichols and Nichelle Nichols ("Debtors") seeks court approval for Debtors to incur post-petition credit. Penny Mac Loan Services, LLC ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will continue Debtor's mortgage payment of $2,128.23 per month. The Debtors were participating in a trial loan modification program when the current case was initiated and have since been offered the modified loan on a permanent basis which they desire to take advantage of.

Chapter 13 Trustee's Nonopposition

The Chapter 13 Trustee, David Cusick, filed a nonopposition on January 18, 2022. Dckt. 54.

Discussion

The Motion is supported by the Declaration of Reginald Nichols and Nichelle Nichols. Dckt. 44. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms. The modification will allows Debtor to become current under the mortgage.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtors' ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties

in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Reginald Nichols and Nichelle Nichols ("Debtors") 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 court authorizes Reginald Nichols and Nichelle Nichols to amend the terms of the loan with Penny Mac Loan Services, LLC ("Creditor"), which is secured by the real property commonly known as 9963 Autumn Sage Way, Elk Grove, California 95757, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 45).

17. 19-21467-E-13 LORI/JOSHUA WHITE
PSB-1 Paul Bains

MOTION TO EMPLOY REALTY ONE GROUP COMPLETE AS BROKER(S)
1-18-22 [37]

Final Ruling: No appearance at the February 1, 2022 hearing is required.

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 Debtors, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 18, 2022. By the court's calculation, 45 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Employ is granted.

Lori Susan White and Joshua Michael White ("Debtor") seeks to employ Realty One Group Complete ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to assist Debtors in establishing the fair market value of real property commonly known as 2677 Red Clover Way, Lincoln, CA 95648 ("Property"), to market, and sell the Property.

Debtor argues that Broker's appointment and retention is necessary to establish the fair market value of the Property, to market, and to sell the Property. Broker has listed the real property commonly known as 2677 Red Clover Way, Lincoln, CA 95648 for an amount of $459,000.00. The listing period began on January 5, 2022 and will end on April 30, 2022 at 11:59 p.m. Broker will procure and submit to Debtors all purchase offers. In consideration for these services, the Broker will receive, upon consummation of any sale, a real estate broker's commission equal to five percent (5.0%) of the purchase price.

Ashley J. Mitchell, a licensed real estate salesperson of Realty One Group Complete, testifies that she will market, list, and sell property commonly known as 2677 Red Clover Way, Lincoln, CA 95648. Ashley J. Mitchell testifies she and the company do not represent or hold any interest adverse to

Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Realty One Group Complete as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 40. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

TRUSTEE'S NON-OPPOSITION

On January 25, 2022, David Cusick, Chapter 13 Trustee, filed a Non-Opposition to Debtors' Motion to Employ Realty One Group Complete. Dckt. 42. Trustee does not oppose the sale of the Property and the terms stipulated in the Listing Agreement. However, Trustee does point out that Debtors have no filed a Motion to Sell, to date.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Lori Susan White and Joshua Michael White ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Realty One Group Complete as Broker for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 40.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

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

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

18.	**18-20489-E-13 AB-1**	**DAVID SWEENEY/ STACY ADER-SWEENEY** **August Bullock**	**OBJECTION TO CLAIM OF ROSEMARIE A. FARMER, CLAIM NUMBER 4-1 AND/OR MOTION TO HAVE DEBTOR'S CHILD SUPPORT OBLIGATIONS BE PAID OUTSIDE OF PLAN, AND FOR ALTERNATIVE RELIEF** **12-17-21 [103]**

Final Ruling: No appearance at the February 1, 2022 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtors, Chapter 13 Trustee, and Office of the United States Trustee on December 17, 2021. By the court's calculation, 46 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 4-1 of Rosemarie A. Farmer is sustained, and the claim is disallowed in its entirety.

David Eastman Sweeney and Stacy Dawn Ader-Sweeney, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Rosemarie A. Farmer ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority unsecured claim in the amount of $53,101.70. Objector asserts that Claim 4-1 fails to comply with the requirements of 11 U.S.C. § 3001(b) & (c) for many reasons, including the following:

A. No child support order is attached.

B. A print out from Ocean County is attached, but Debtor David Eastman Sweeney's ("Mr. Sweeney") name does not appear on the document.

C. No identifying number for Mr. Sweeney is listed in Section 6.

D. Creditor may not be the real party in interest, since the funds were being collected by Ocean County Child Support.

E. The claims states that $53,101.70 is owed, but it does not explain how much of this is arrearages or how this amount was calculated.

If the court does not sustain Objector's objection, Objector has requested for alternative relief under 11 U.S.C. § 1322(a)(4) or dismissal as to Mr. Sweeney only under 11 U.S.C. § 1307(b).

The First Request for Alternative Reliefs asks for Mr. Sweeney to pay child support obligations outside the plan and not disbursed by the Trustee in accordance with 11 U.S.C. § 1322(a)(4). Additionally, Mr. Sweeney understands he may not receive a discharge at the end of this Chapter 13, but believes Debtor Stacey Dawn Ader-Sweeney ("Ms. Sweeney") should.

The Second Request for Alternative Relief asks for Mr. Sweeney to be dismissed without prejudiced. Both Debtors request Ms. Sweeney be allowed to continue in the Chapter 13 case without Mr. Sweeney. Since title to the vehicle is held solely by Ms. Sweeney, this should resolve their issues regarding the high interest vehicle loan.

TRUSTEE'S NONOPPOSITION

Trustee has filed a non-opposition to Objector's Objection and agrees with their reasoning and requests for alternative relief, if necessary. Dckt. 114.

APPLICABLE LAW

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.

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.

Federal Rules of Bankruptcy Procedure § 3001(c) states supporting information that must be filed to evidence the claim:

> "[W]hen a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim."

Federal Rule of Bankruptcy Procedure section 3001(c)(2) requires that creditor include or attach certain documents with their proof of claim in order to substantiate their claim. Specifically, Federal Rules of Bankruptcy Procedure Rule 3001(c)(2)(A) requires a creditor to provide "an itemized statement of the interest, fees, expenses, or charges." Additionally, pursuant to Federal Rules of Bankruptcy Procedure 3001(c)(2)(B) requires a creditor to provide "a statement of the amount necessary to cure any default as of the date of the petition."

DISCUSSION

Objectors argue Proof of Claim 4-1, the unsecured claim for child support from Creditor, should be disallowed in its entirety because it fails to comply with Federal Rules of Bankruptcy Procedure Rule 3001(b) & (c). Objectors reason by stating (1) no child support order is attached to the Proof of Claim; (2) Mr. Sweeney's name does not appear on the Ocean County document; (3) Mr. Sweeney does not have an identifying number; (4) Creditor is not the real party in interest; and (5) the claim does not explain how much of the $53,101.70 owed is arrearages or how the amount was calculated.

Upon review of Creditor's Claim, it appears to the court that the documents attached to Creditor's Proof of Claim do not satisfy the requirements of Federal Rule of Bankruptcy Procedure section 3001(c)(2)(A).

The first page of evidence filed for Proof of Claim 4-1 include a balance sheet showing the type of debt owed, current balance due, arrears payback amount, frequency, and effective, and obligation amount, frequency, effective date, and charge date.

The second page of evidence filed for Proof of Claim 4-1 include what appears to be a scan from "New Jersey Child Support's" online case portal, which shows a Member ID, total monthly support obligation, and total paid for the current month.

Here, the Claim relies on a court order granting child support. However, Creditor has not submitted a copy of this order. Additionally, the "evidence" fails to even state Creditor or Mr. Sweeney's name. There is no plausible way for the court to discern from the evidence provided that it is for a debt owed by Mr. Sweeney to Creditor.

Additionally, Creditor has failed to provide an itemized statement indicating all missed payments to evidence Mr. Sweeney's arrears in child support payments. Although there is reference to an arrears on the "evidence," with a current balance due of $53,101.71, there is no itemized statement of the interest, fees, expenses, or charges.

Furthermore, Objectors argue that Rosemarie A. Farmer is not the "actual creditor" because the funds are being collected by Ocean County Child Support. However, Federal Rules of Bankruptcy Procedure § 3001(b) states a proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005. United States Bankruptcy Code § 507(a)(1)(A) states:

> "allowed unsecured claims for domestic support obligations, as of the date of the filing of the petition, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person is filed by a governmental unit on behalf of such person."

Ocean County Child Support in New Jersey (where Ms. Farmer is located) is listed as a creditor under Schedule E at $0.00. Dckt. 12. Ocean County Child Support has not filed a claim. Given the language of §507(a)(1)(A), it would be acceptable for Creditor to file a proof of claim for child support because she is a Mr. Sweeney's former spouse and presumptively parent of the child.

Creditor has failed to provide evidence of the claim as required by Federal Rules of Bankruptcy Procedure 3001. Thus, pursuant to Federal Rules of Bankruptcy Procedure 3001(c)(2)(D)(i), Creditor's failure to present evidence is grounds to disallow the claim.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety The Objection to the Proof of Claim is sustained.

Objector made several requests for alternative relief if the Objection was not sustained. The Objection having been sustained, the alternative requests for relief are denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Rosemarie A. Farmer ("Creditor"), filed in this case by David Eastman Sweeney and Stacy Dawn Ader-Sweeney, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 4-1 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> **IT IS FURTHER ORDERED** that the Objection having been sustained, all requests for alternative relief are denied without prejudice.
>
> Attorney's fees and costs, if any, shall be requested as provided by

Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.