UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 11, 2025 at 2:00 p.m.

1.	**23-24403-E-13** **MET-1**	**ERIC SILVA** **Mary Ellen Terranella**	**MOTION TO MODIFY PLAN** **12-22-24 [23]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 22, 2024. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Eric Patrick Silva ("Debtor") seeks confirmation of the Modified Plan to provide for post-petition tax liabilities. Declaration 2:4-9, Docket 27. The Modified Plan provides $870.00 per month for 12 months with a step up to $1,220.00 per month for 48 months with a 0% dividend to general unsecured creditors. Modified Plan, Docket 25. 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 28, 2025. Docket 34. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent $5,570.00 under the terms of the proposed modified plan, where $11,660.00 has come due through January 2025, and Debtor has paid to date a total of $6,090.00. *Id.* at 1:26-28.

B. Debtor claims to owe the IRS $13,972.00 for the 2023 tax year; however, neither the FTB or the IRS (or the Debtor) has filed a proof of claim for the 2023 tax liability, so Trustee cannot comply with the Plan. *Id.* at 1:11-22.

DISCUSSION
Delinquency

The Chapter 13 Trustee asserts that Debtor is $5,570.00 delinquent in plan payments, which represents multiple months of the $1,220 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

No Proof of Claim

Without a proof of claim on file for the IRS or FTB for the 2023 tax liability, Trustee cannot make payments to those creditors. As of February 3, 2025. Neither Debtor, the IRS, or the FTB have filed a proof of claim for the 2023 tax liability. At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Eric Patrick Silva ("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.

2. 24-22625-E-13 DNL-1 | **JAMES WALTHOFF** Peter Macaluso | **CONTINUED OBJECTION TO HOMESTEAD EXEMPTION 8-26-24 [20]**

Item 2 thru 3

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

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

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

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

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

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

The Objection to Exemptions is xxxxxxx.

February 11, 2025 Hearing

The court continued the hearing on this Motion as the Parties reported they were crafting a stipulation that resolves the Creditor's Objection to Claim of Exemptions, which would allow the Debtor to proceed to confirm his Plan in this Case. A review of the Docket on February 3, 2025 revealed no such Stipulation is on file.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

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

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

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

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

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

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

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

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

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

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

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

> Disclaimer: This report: (i) is **not an insured product or service or an abstract, legal opinion or a representation of the condition of title to real property**, and (ii) is issued exclusively for the benefit of First American Data Tree LLC (Data Tree) customers and may not be used or relied upon by any other person. Estimated property values are: (i) based on available data; (ii) are not guaranteed or warranted; (iii) do not constitute an appraisal; and (iv) should not be relied upon in lieu of an appraisal. Data Tree does not represent or warrant that the information is complete or free from error, and expressly disclaims any liability to any person or entity for loss or damage caused by errors or omissions in the report. If the "verified" logo {(3t-") is displayed, or a record is designated "verified; Data Tree's algorithm matched fields from two or more data sources to confirm source data.

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

DEBTOR'S OPPOSITION

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

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

DISCUSSION

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

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

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

(b) Objecting to a Claim of Exemptions.

> (1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after

any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Computation of Deadline For Filing Objection to Exemption

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

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

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

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

Rule 9006. Computing and Extending Time; Time for Motion Papers [Effective until December 1, 2024]

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period stated in days or a longer unit. When the period is stated in days or a longer unit of time:

(A) **exclude the day of the event that triggers the period**;

(B) **count every day**, including intermediate Saturdays, Sundays, and legal holidays; and

(C) **include the last day of the period**, **but if the last day is a Saturday, Sunday**, or legal holiday, **the period continues to run until the end of the next day** that is not a Saturday, Sunday, or legal holiday.

. . .

(4) "Last day" defined. Unless a different time is set by a statute, local rule, or order in the case, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

> (5) "Next day" defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
> . . . .

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

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

ISSUES OUTSTANDING

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

Possible Transfers of Property

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

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

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

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

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

In response to paragraph 18 of the Statement of Financial Affairs Debtor states under penalty of perjury that within two years before the filing of this Bankruptcy Case the Debtor did not "sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs." Dckt. 13 at 25. The is not consistent with the allegations of Creditor that in May 2023 title to the Property was transferred to MRDC, LLC.

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

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

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

October 8, 2024 Hearing

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

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

December 10, 2024 Hearing

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

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

> 1. As already discussed, in accordance with well-settled law, the Debtor is limited to the exemptions he was entitled to claim on the petition date. Supp. Pleading 2:1-2, Docket 37.
>
> 2. Regarding the transfers to and from MRDC, LLC, the Debtor—having gone through trial with the assistance of counsel and waiting on entry of the judgment— voluntarily chose to transfer his interest to the LLC. It appears that the transfer had the clear intent to hinder, delay, or defraud the Judgment Creditor in the aftermath of the bench trial that ultimately resulted in the Judgment. The Debtor then waited a year before promptly transferring the Subject Property back from MRDC, LLC, once he had the "cover" of bankruptcy. *Id.* at 2:7-12.

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

Debtor's Supplemental Pleadings

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

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

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

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

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

DISCUSSION

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

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

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

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

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

§ 11930. Transfer by inter vivos gift or by death

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

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

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

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

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

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

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

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

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

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

> (c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment

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

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

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

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

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

> § 43:26. Equitable interests
>
> Equitable interests in property may be homesteaded. A party may homestead "any interest in real property."[1] An equitable title that supports a right of occupancy is sufficient to enable the owner to claim a homestead of the premises.[2]
> Vendee under installment contract of sale. A vendee in possession of property pursuant to a contract of sale under which the vendor retains legal title can declare

a homestead upon his or her equitable interest in the property.[3] This interest is subordinate to the rights of the vendor, but superior to any third-party claim to the property that accrues after the declarant records the declaration of homestead.[4]

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

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

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

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

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

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

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

Case Example:

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

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

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

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

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

Comment:

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

11
Civ. Proc. Code, § 704.710.

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

12

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

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

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

In its findings, filed on August 12, 1952, the [trial] court found . . .that on April 9, 1951, Robert Smith conveyed all his right, title and interest in this property to Stanley

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

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

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

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

> Had the appellants filed a homestead before this conveyance was made the respondents would have had no enforceable claim against this property. The judgment in this action did not establish such a claim, and nothing in the findings therein establishes the right to sell the property. The principles involved in the cases setting forth the general rules are not favorable to the only attack here made upon these homesteads. (*Montgomery v. Bullock*, 11 Cal.2d 58 [77 P.2d 846]; *Prudential Ins. Co. v. Beck*, 39 Cal. App.2d 355 [103 P.2d 241].) A homestead was filed shortly after this suit was brought and another one was filed before the judgment became a lien. (*Yager v. Yager*, 7 Cal.2d 213 [60 P.2d 422, 106 A.L.R. 664].) The question of the validity or invalidity of the homestead was not raised or decided at the trial of the action. (*Duhart v. O'Rourke*, 99 Cal.App.2d 277 [221 P.2d 767].)

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

Id., at 66.

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

> Courts "adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor." *(Amin v. Khazindar*, *supra*, 112 Cal.App.4th at p. 588.) . . .
>
> . . .
>
> Several California cases recognize that judgment debtors who continuously reside in their dwellings retain a sufficient equitable interest in the property to claim a homestead exemption even when they have conveyed title to another. (*Breeden v. Smith* (1953) 120 Cal.App.2d 62, 66; *Putnam Sand & Gravel Co. v. Albers* (1971) 14 Cal.App.3d 722, 726; *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 81.) Such a result is consistent with the purpose of California's homestead exemption to protect one's dwelling against creditors. (*Amin v. Khazindar, supra*, 112 Cal.App.4th at p. 588; *accord, Wells Fargo Financial Leasing, Inc. v. D & M Cabinets*, *supra*, 177 Cal.App.4th at p. 67.)
>
> . . .
>
> (5) Broadway does not dispute that the property was Tarlesson's principal residence when it acquired its judgment lien. Nor does it dispute that she has continuously resided in the home since 1984, and there is no evidence that rebuts Tarlesson's claim that, "At all times I retained the beneficial interest in my home, which was acknowledged by Peola [Lane]." In the circumstances, Tarlesson's continuous occupancy of her home qualifies it as her "homestead" under section 704.710, subdivision (c). We will not also read a requirement into section 703.020 or 704.710 that Tarlesson must have held continuous title to her home to claim the homestead exemption. [6]

6 In its reply brief, Broadway refers to a separate statutory definition of a "declared homestead owner" in section 704.910, subdivision (b)(1). But this case deals solely with an automatic homestead exemption claim rather than a declared homestead. We will not further address an argument raised for the first time in a reply brief.

(Reed v. Mutual Service Corp. (2003) 106 Cal.App.4th 1359, 1372, fn. 11 [131 Cal. Rptr. 2d 524].)

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

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

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

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

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

At the hearing, the parties requested a continuance . The hearing on the Objection to Claimed Exemptions is continued to 2:00 p.m. on January 28, 2025.

January 28, 2025 Hearing

At the hearing, the Parties that they are crafting a stipulation that resolves the Creditor's Objection to Claim of Exemptions, which would allow the Debtor to proceed to confirm his Plan in this Case. The Parties requested a continuance of the hearing.

The hearing is continued to 2:00 p.m. on February 11, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by Crystal Rista ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Exemptions is **XXXXXXX**.

3. 24-22625-E-13 JAMES WALTHOFF
Peter Macaluso

CONTINUED MOTION TO DISMISS CASE
11-22-24 [41]

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

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

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

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

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

The Motion to Dismiss is xxxxxxx.

February 11, 2025 Hearing

The court continued the hearing on this Motion as the Parties reported they were crafting a stipulation that resolves the Creditor's Objection to Claim of Exemptions, which would allow the Debtor to proceed to confirm his Plan in this Case. A review of the Docket on February 3, 2025 revealed no such Stipulation is on file.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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

At the hearing, the Parties that they are crafting a stipulation that resolves the Creditor's Objection to Claim of Exemptions, which would allow the Debtor to proceed to confirm his Plan in this Case. The Parties requested a continuance of the hearing.

The hearing is continued to 2:00 p.m. on February 11, 2025.

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

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

4.	**24-24730-E-13 BLG-5**	**LIZBETH/DANIEL ALARCON Chad Johnson**	**OBJECTION TO CLAIM OF ROSA FRANCO, CLAIM NUMBER 16 1-9-25 [45]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on January 9, 2025. By the court's calculation, 33 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 16-1 of Rosa Franco is overruled.

Lizbeth Navar Alarcon and Daniel Alarcon, Chapter 13 Debtor, ("Objector," "Debtor") requests that the court disallow the claim of Rosa Franco ("Creditor"), Proof of Claim No. 16-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $50,000 but with $15,000 claimed as priority under 11 U.S.C. § 507(a)(4).

Objector asserts that, pursuant to Fed. R. Bankr. P. 3001(c), the Claim should be disallowed as Creditor has not filed the writing on which the Claim is based.

Moreover, Objector asserts that the priority claim should be disallowed as it the claim does not fit within the statutory framework of priority claims under 11 U.S.C. § 507(a)(4). Specifically, Debtor states the wages were earned beyond the 180-0day period prescribed in that statute, so they cannot be priority.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on January 20, 2025. Creditor states that the wages in question should be deemed earned when Debtor acknowledged a debt on July 18, 2024. Opp'n 3:8-10, Docket 61. Debtor also asks the court find the wages were earned as an employee, not an independent contractor. *Id.* at 2:4-7.

The court would note that Creditor improperly filed the Opposition and exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

DEBTOR'S RESPONSE

Debtor filed a Response to the Opposition on February 4, 2025. Docket 66. Debtor states that Creditor was an independent contractor, not an employee, and that the wages were earned beyond the 180-day period, so the Claim cannot be priority.

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.

Fed. R. Bankr. P. 3001(c) states:

> (c) Supporting Information.
>
> > (1) Claim Based on a Writing. Except for a claim governed by paragraph (3) of this subdivision, when 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.
> >
> > (2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:

> (A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.
>
> (B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.
>
> (C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.
>
> (D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:
>
> > (i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
> >
> > (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Collier's Treatise on Bankruptcy states regarding this Rule:

> Before the 2011 amendments to Rule 3001, there was a controversy about the effect of a failure to attach to a proof of claim the documents called for by Rule 3001 and former Official Form 10. The rule as revised in 2011 establishes what the penalties are for failure to comply with the rule in the case of an individual debtor. **Notably, those penalties do not provide for automatic disallowance of a proof of claim for failure to attach documents**. . .

(emphasis added).

11 U.S.C. § 507(a)(4) states:

> (a) The following expenses and claims have priority in the following order:
>
> > (4) Fourth, allowed unsecured claims, but only to the extent of $10,000 [2] for each individual or corporation, as the case may be, earned within 180 days

> before the date of the filing of the petition **or the date of the cessation of the debtor's business, whichever occurs first**, for—
>
> > (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
> >
> > (B) **sales commissions earned by an individual** or by a corporation with only 1 employee, **acting as an independent contractor** in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(emphasis added).

DISCUSSION

The court first considers Debtor's argument that the Claim is not entitled to priority status because the commission earned was before the 180-day period prior to filing the petition. The court disagrees. The plain language of the statute provides for one of two dates in determining priority status under 11 U.S.C. § 507(a)(4): either within 180 days prior to filing, or earned within 180 days before the date of the cessation of the business.

In this case, the record shows Creditor was hired by Debtor on December 7, 2020. Opp'n 1:25, Docket 61. Creditor worked all the way through the next year earning commissions, through December of 2021. *Id.* at 2:22. It appears that same month, December of 2021, Debtor ceased business operations. *Id.*

Therefore, it may be the case that these wages were earned in the 180 days prior to the cassation of the Debtor's business. The court must adopt the earlier date according to the statute, which is the date prior to the cessation fo the business in December of 2021.

With that said, there is not clear evidence on the record when exactly the wages were earned, so the court cannot determine whether the wages were earned within 180 days prior to the cessation of the business.

At the hearing, **xxxxxxx**

The court notes it need not determine whether the wages earned were in an employment context or an independent contractor context. The statute provides for either to be treated with priority status. 11 U.S.C. § 507(a)(4)(A) & (B).

Finally, it appears this is the type of Claim based on a writing. The writing here is the settlement Agreement, which the Creditor has included as an Exhibit to their Opposition. Ex. 2, Docket 61. That writing should be included in the proof of claim. The court does not intend to limit Creditor's right to amend the Claim at this time.

Moreover, Collier's makes clear that sanctions for failing to include the writing do not warrant disallowance of the Claim. The sanctions are focused and somewhat limited under the text of Fed. R. Bankr. P. 3001(c)(2)(D). The court declines to award sanctions under Rule 3001(c)(2)(D) at this time.

Based on the evidence before the court, the 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 Claim of Rosa Franco ("Creditor"), filed in this case by Lizbeth Navar Alarcon and Daniel Alarcon, Chapter 13 Debtor, ("Objector," "Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 16-1 of Creditor is overruled.

5. 25-20130-E-13 MET-1 — MICHELLE BOHANON — Mary Ellen Terranella — MOTION TO IMPOSE AUTOMATIC STAY — 1-18-25 [8]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 18, 2025. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Impose 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 Impose the Automatic Stay is granted.

Michelle Yvonne Bohanon ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 24-23674 and 24-24697) were dismissed on August 30, 2024, and October 29, 2024, respectively. *See* Order, Bankr. E.D. Cal. No. 24-23674, Dckt. 10, August 30, 2024; Order, Bankr. E.D. Cal. No. 24-24697, Dckt. 10, October 29, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because she was unable to prosecute the case and navigate the bankruptcy system in *pro se.* This case has been filed in compliance with the Bankruptcy Code and Local Rules, Debtor now represented by competent bankruptcy counsel.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions

or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
>
> (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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.

DISCUSSION

Debtor's prior cases were dismissed after Debtor failed to timely file the required documents in her previous cases. Debtor has now corrected that mistake in the current filing and appears ready to diligently prosecute a bankruptcy case.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by Michelle Yvonne Bohanon ("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 imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

6. 24-24334-E-13 KENNETH WILKINSON
Pro Se

MOTION TO VACATE DISMISSAL OF CASE
1-29-25 [77]

DEBTOR DISMISSED: 01/24/25
Item 6 thru 8

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and creditors on January 28, 2025. By the court's calculation, 14 days' notice was provided. 28 days' notice is required. Movant is 14 days late of the required notice period because Movant attempted to notice this Motion pursuant to Local Bankruptcy Rule 9014-1f(1); however, had the Motion been noticed pursuant to Local Bankruptcy Rule 9014-1(f)(2), notice would have been sufficient. There are other problems with the notice here.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

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

At the hearing, **xxxxxxx**

The Motion to Vacate is xxxxxxx.

NO DOCKET CONTROL NUMBER

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

THE MOTION

Kenneth Gene Wilkinson ("Debtor") filed the instant case on September 27, 2024. Docket 1. No Plan has been confirmed in the case.

On November 15, 2024, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to delinquency, use of incorrect plan form, not providing required documents, and it appearing Debtor not prosecuting this case in good faith. Docket 36.

On January 22, 2025, a hearing on the Motion to Dismiss was held, and the Motion was granted. Docket 62. The ruling was final because Debtor, although filing written opposition, did not appear at the hearing and argue his case.

On January 29, 2025, Debtor filed this instant Motion to Vacate, claiming there is excusable neglect justifying this court vacating its order dismissing. Debtor states he was unaware of the date of the hearing on the Motion to Dismiss, thinking the date was February 11, 2025, so the court should vacate its order dismissing.

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

APPLICABLE LAW

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

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

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

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

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

DISCUSSION

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

In this case, the court notes that Debtor is still delinquent in one filing fee payments. Debtor has paid the $78 filing fee for November 26, 2024, December 26, 2024, and January 27, 2025. However, Debtor has not paid the $79 fee for October 28, 2024.

At the hearing, **xxxxxxx**

~~Therefore, in light of the foregoing, the Motion is granted, and the order dismissing the case (Docket 62) is vacated.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Kenneth Gene Wilkinson ("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 order dismissing the case (Docket 62) is vacated.~~

7. 24-24334-E-13 KENNETH WILKINSON MOTION TO CONFIRM PLAN
Pro Se 1-8-25 [50]
DEBTOR DISMISSED: 01/24/25

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and creditors on January 8, 2025. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). Movant is one day late of the required notice period. Moreover, the same issues exist with the notice failing to comply with Local Bankruptcy Rule 9014-1(f)(1) and the Certificate as addressed in the Motion to Vacate. There is also no Docket Control Number. At the hearing, **xxxxxxx**

The Motion to Confirm the Amended Plan is xxxxx.

The debtor, Kenneth Gene Wilkinson ("Debtor"), seeks confirmation of the Amended Plan. The Motion simply states: "The Amended Plan complies with all applicable provisions of 11 U.S.C. § 1325(a)." The Amended Plan proposes 60 monthly payments of $20. Docket 51.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court.

Moreover, there is no evidence in support of the Motion. The court is unable to determine if the Plan complies with 11 U.S.C. §§ 1322 and 1325.

At the hearing, **XXXXXXX**

DISCUSSION

The Amended Plan cannot be confirmed as proposed. The only creditors listed are PHH Mortgage and El Dorado Irrigation District, and they are placed in Class 2(C). Class 2(C) only deals in claims reduced to 0$ based on the value of the collateral. Such a determination requires a Motion to Value being filed and granted, the court issuing an order that the collateral securing those creditors' claims is valued at 0$. No such Motion has been filed in this case.

Debtor, attempting to prosecute this case in *pro se*, has not been able to it in compliance with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules. This Plan does not appear to reorganize debts as required by the Bankruptcy Code (which is part of the good faith requirement for confirmation), but rather to act as a delay tactic in disputing the validity of claims based on some speculative and what appear to be misguided theories about negotiable instruments and banking practices. It is the Debtor's right to dispute such claims; however, Debtor is not pursuing relief through the appropriate channels. There have been no Motions to Value, no Objections to Claim, or any other legitimate efforts to make a determination of creditors' claims on file.

At the hearing, **XXXXXXX**

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

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

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

8. 24-24334-E-13 DPC-2 KENNETH WILKINSON Pro Se OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 1-13-25 [53]

DEBTOR DISMISSED: 01/24/25

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 (*pro se*) and Office of the United States Trustee on January 13, 2025. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions ~~is sustained, and the exemptions are disallowed in their entirety.~~

The Chapter 13 Trustee, David Cusick ("Trustee"), objects to Kenneth Gene Wilkinson's ("Debtor") claimed exemptions under California law because Debtor has attempted to claim exemptions of 100% of fair market value and without citing any specific law or authority for the claimed exemptions.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 29, 2025. Opp'n, Docket 74. Debtor states:

1. The Constitution protects his right to secure shelter. Opp'n 2:3-7, Docket 74.

2. The Fourth and Fifth Amendment of the Constitution protects against "unreasonable seizures and deprivation of property without due process." Opp'n 2:8-11, Docket 74.

3. The property is necessary for his fundamental rights. Opp'n 2:12-15, Docket 74.

4. 11 U.S.C. § 522 protects him from destitution. Opp'n 3:1-5, Docket 74.

5. The property is protected under Constitutional rights, which were established though his "labor and inheritance." Opp'n 4:5-11, Docket 74.

6. The Commerce Clause ensures that exemptions are protected throughout the states. Opp'n 4:12-18, Docket 74.

7. Section 522(d)(5) protects his house because it is "intrinsic to [Debtor's] private life." Opp'n 5:15-18, Docket 74.

8. State law protects his house because it is a burial plot where his late wife's ashes were spread. Opp'n 5:19-20, Docket 74.

9. The property is protected under First Amendment rights to Freely Exercise his religion. Opp'n 5:21-23, Docket 74.

10. Congress intended exemption laws to provide basic necessities in life. Opp'n 7:3-10, Docket 74.

11. Creditor, under section 1635(b), failed to return the original promissory note to Debtor and failed to take possession of the property within 20-days after tender by the Debtor's successor. Opp'n 8:8-13, Docket 74.

12. Creditors are committing fraud by "mischaracterizing the debtor's principal dwelling as commercial property." Opp'n 10:4-6, Docket 74.

13. The Bank loan was inequitable as it was "a form of financial manipulation." Opp'n 11:11-13, Docket 74.

14. He maintains the right to rescind a transaction (it is unclear on what transaction Debtor is referring to) under Federal Consumer Protection Laws despite statute of limitations because Creditor allegedly committed fraud. Opp'n 12:8-15, Docket 74.

15. Creditor failed to return the promissary note or its value under the Federal Consumer Protection Laws. Opp'n 13:1-4, Docket 74.

DISCUSSION

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

California Code of Civil Procedure § 703.140(b)(1)–(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed. Am. Schedule C, Docket 20. Moreover, Debtor has not cited to any exemptions in attempting to claim property as exempt.

Debtor offers many arguments in the Opposition supposedly showing why the Debtor is entitled to retain the residence in question, or to claim a homestead exemption. The court generally agrees that Debtor may claim a homestead exemption. However, as we are operating under Title 11 of the United States Code, as passed by Congress in 1978, the exemptions must be claimed in accordance with the requirements and procedures of Title 11. The exemptions have not been properly claimed here, Debtor not citing to any specific amount of exemption claimed as well as not citing to any statutory authority to authorize claiming exemptions. *See generally* 11 U.S.C. § 522; Cal. Code. Civ. P. § 703.140.

The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemptions for Debtor's primary residence and Family Property as stated in Amended Schedule at page 10, Docket 20, are disallowed in their entirety.

9. 24-25153-E-13 DPC-2 | **CLAUDINE BINGHAM** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK**
Teresa Hung-Nguyen | **1-8-25 [61]**

Item 9 thru 10

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 8, 2025. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Court considers this Objection with the Debtor's Motion to Confirm the Chapter 13 Plan and the Trustee's Opposition thereto.

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

1. Debtor Claudine Marine Bingham ("Debtor") failed to appear and be examined at the First Meeting of Creditors held on January 2, 2025. Obj. 2:1-3.

2. Debtor is delinquent $500.00 in Plan payments to the Trustee. The next scheduled payment of $1,100.00 is due on January 25, 2025. *Id.* at 2:4-6.

3. The Plan as proposed is overextended. Debtor would need to increase the Plan payments to approximately $2,077.46 from the proposed $1,100.00 to complete the Plan within the allowed timeframe.

4. Debtor's attorney may have accepted too high of a retainer, opting for the no-look fee provision but taking a 33% retainer. *Id.* at 2:20-3:3.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 63.

DISCUSSION
Failure to Appear at 341 Meeting

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

Delinquency

Debtor is $500 delinquent in plan payments, which represents roughly half of the $1,100 plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Overextended Plan

According to the Trustee's calculations, the Plan will not complete within the statutory time frame of 60 months. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

Attorney's Fees: Retainer

When opting into the no-look fee provisions of Rule 2016-1(c), "an attorney shall not seek, nor accept, a retainer greater than the sum of (A) 25% of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7); and (B) the amount of costs in subdivision (c)(2), as increased by subdivision (c)(7)." Local Bankruptcy Rule 2016-1(c)(3). The fee specified in subdivision (c)(1) for a non-business case is $8,500, but can be less if the debtor and attorney so choose. Trustee contends that, because Debtor's attorney has opted for a lesser amount, the attorney should only be able to accept a retainer in the amount of 25% of the lesser amount. Debtor's attorney here is opting to accept a retainer of 33%. At the hearing, **XXXXXXX**

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

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

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

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

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

10. 24-25153-E-13 THN-1 — CLAUDINE BINGHAM — Teresa Hung-Nguyen — CONTINUED MOTION TO CONFIRM PLAN — 11-27-24 [19]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, attorneys of record, parties requesting special notice, and Office of the United States Trustee on November 30, 2024. By the court's calculation, 73 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Claudine Marine Bingham ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides 60 monthly payments of $1,100 with a 100% dividend to general unsecured creditors. Plan, Dckt. 21. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 23, 2024. Dckt. 47. Trustee opposes confirmation of the Plan on the basis that:

A. The 341 Meeting has not yet been held, and as Debtor has not been examined, Trustee cannot recommend confirmation. *Id.* at 1:22-26.

B. There are problems with Debtor's Notice of hearing setting incorrect dates for filing objections to confirmation of Debtor's Plan. *Id.* at 1:27-2:9.

DISCUSSION

Trustee's Oppositions hinged upon the fact that the 341 Meeting, which was to be held on January 2, 2025, had not yet occurred, and that parties in interest had seven days after the 341 Meeting concluded to file Objections to the Plan. Local Bankruptcy Rule 3015-1(c)(4). Debtor renoticed the hearing on this Motion to February 11, 2025, in order to provide those interested parties with sufficient time to object.

The Trustee's Docket Entry Report made on February 5, 2025, states that the Debtor did not appear at the Continued 341 Meeting, but that counsel for Debtor appeared.

At the hearing, **xxxxxxx**

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

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

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

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

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

11. 24-25453-E-13 DPC-1 | **SUSAN HANRAHAN** / **Eric Schwab** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** / **1-15-25 [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, Debtor's Attorney, and Office of the United States Trustee on January 15, 2025. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Susan Mary Hanrahan ("Debtor") failed to appear and be examined at the First Meeting of Creditors held at 11:00 a.m., on January 9, 2025. Obj. 2:3-4.

2. There appears to be a clerical error regarding Debtor's social security number as reported in her Petition. *Id.* at 2:9-20.

    a. This issue was corrected on January 6, 2025, when Debtor filed an Amended Statement of Social Security Numbers. Docket 13.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 16.

DISCUSSION
Failure to Appear at 341 Meeting

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

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.

12. 24-25456-E-13 DPC-1 — BENJAMIN/BRANDEE AHLSON — Catherine King — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK — 1-14-25 [12]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 14, 2025. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

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

1. Debtor Benjamin Arthur Ahlson and Brandee Renae Ahlson's ("Debtor") proposed Plan relies on Debtor filing Motions to Value the collateral of creditors Exeter finance, LLC ("Exeter") and Members 1st Credit Union ("Members"). Debtor has not filed the Motions. Obj. 1:2-3.

    a. However, Trustee notes that the Plan would still work without these Motions being filed and granted. *Id.* at 2:14-16.

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

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

Exeter filed a Claim, POC 1-1, on December 10, 2024. Exeter states its collateral is valued at $11,700. Debtor's Plan has Exeter's collateral valued at a higher amount, $14,871. Plan, Docket 3.

Members filed its Claim, POC 2-2, on January 16, 2025. Members claims the collateral is valued at $21,329 while Debtor has scheduled the collateral to be valued at $19,965 in their Plan. Plan, Docket 3.

Debtor has not filed Motions to Value for either claim, even though Exeter has states its collateral is worth a lesser amount than Debtor has scheduled in the Plan. According to Trustee, the Plan works without Motions to Value being filed.

At the hearing, **xxxxxxx**

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

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

13. 24-25160-E-13 DPC-1 | **ERIC GEIGER, Candace Brooks** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK, 1-7-25 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 7, 2025. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Eric James Geiger ("Debtor") has not filed all applicable tax returns for the four years prior to filing or provided the Trustee with a copy of the last filed federal tax return. Obj. 1:25-2:2.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 16.

DISCUSSION
Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2022 and 2023 tax years have not been filed. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

14. 24-25164-E-13 DPC-1 | **ELIZABETH ANDRADE** **Eric Schwab** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** **1-8-25 [22]**

Item 14 thru 15

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 8, 2025. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Elizabeth Ann Andrade ("Debtor") is delinquent $7,087 in plan payments. Obj. 1:25-28.

2. The Plan states it will complete in 40 months to pay general unsecured creditors a 100% dividend, but by Trustee's calculations, the Plan will complete in 60 months. *Id.* at 2:4-11.

3. The Internal Revenue Service has filed a Proof of Claim which shows the Debtor owes a secured claim of $430.00 for 2014 tax year which is not provided for in the plan, and priority taxes of $82,538.26 for 2022 – 2024 tax years and unsecured taxes of $13,017.10 for 2009-2010 tax years. *Id.* at 2:12-16.

4. The Franchise Tax Board filed a Proof of Claim which shows a priority taxes of $22,380.49 for 2021 – 2023 tax years and unsecured taxes of $2.794.61 for 2021 – 2023 tax years. The Trustee calculates that the Debtors owes combined taxes of $430.00 in secured taxes, $104,918.75 for priority taxes, and $15,811.71 for unsecured taxes. *Id.* at 2:17-21.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 24.

DISCUSSION

Delinquency

Debtor is $7,087 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Plan Length

According to the Trustee, there exists a discrepancy regarding the length of the Plan. Debtor estimates it will complete in 40 months, but by Trustee's calculations, it will complete in 60 months.

At the hearing, **xxxxxxx**

Priority and Secured Tax Obligations

The Plan is omitting the secured and priority obligations of the FTB and IRS. Without accounting for these creditors, the Plan is in violation of 11 U.S.C. § 1322(a)(2).

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.

15. 24-25164-E-13 RMP-1 — ELIZABETH ANDRADE, Eric Schwab — OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS, INC. 1-9-25 [17]

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 9, 2025. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

Real Time Resolutions, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor is not adequately protected.

Creditor submits the Declaration of Veronica Gutierrez to authenticate the facts alleged in the Objection. Decl., Docket 19.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statement made by Movant is:

A. Creditor is not adequately protected.

That "ground" is merely a conclusion of law by Movant. Presumably, Movant believed that the court would make those conclusions, but the "grounds" cannot merely state the anticipated conclusions.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are found in the concurrently filed Memorandum of Points and Authorities and supporting Declaration.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents, even though they may be filed as one document when not exceeding six pages. *See* Local Bankruptcy Rule 9014-(d)(4). The court has not waived that Local Rule for Movant.

Failure to Provide for a Secured Claim

Creditor asserts a claim of $1,807.42 in this case. POC 4-1. Debtor's Plan does not provide for Creditor, nor does Debtor Schedule Creditor's claim.

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

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

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

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

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

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

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

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

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

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 Real Time Resolutions, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled without prejudice.

16. 24-25466-E-13 DPC-1 | **ANDREW KNIERIEM** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 1-17-25 [22]**

Item 16 thru 17

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 17, 2025. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Objection was filed at 7:38 a.m. and then again at 7:42 a.m., so the court only considers the later filed Objection here.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Andrew Knieriem ("Debtor") has used the wrong form of the plan. Obj. 1:27.

2. Debtor has not provided Trustee with proof of social security or photo identification. Debtor has also failed to provide proof of income or last filed federal tax return. *Id.* at 2:3-9.

3. The Plan payments do not work mathematically and are not sufficient to pay claims. The Plan call for payments of $250.00, per month for 36 months. The Plan payment does not provide enough money to pay Class 1 creditor,

Mr. Cooper, with post-petition payments of $1,800.00 per month, and pre-petition arrears of $64,800.00. *Id.* at 2:13-17.

4. The plan is not proposed in good faith nor are the Debtor's actions in filing the petition in good faith. The Plan clearly does not work mathematically. The schedules and other documents include clear issues such as inaccurate, omitted, or incorrect information. *Id.* at 2:23-25.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 28.

DISCUSSION

Wrong Plan Form

Trustee asserts that the Plan is based upon an incorrect plan form. The Plan is based on a previous form this District used in the past; however, the plan must be submitted under the current form EDC 003-080. An incorrect plan form is a violation of Federal Rule of Bankruptcy Procedure 3015-1(a).

Failure to Authenticate Identification Prior to Meeting of Creditors

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

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

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

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

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

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause for dismissal.

Failure to Provide Tax Returns

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

Failure to File Form 122C-2

Form 122C-2 is required to be filed when a debtor is above median income, as is the case here. Failure to file the form results in unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Inaccurate or Missing Information

Debtor's Schedules I and J, Statement of financial Affairs, and Forms 122C-1 and 122C-2 contain omitted or inaccurate information. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Bad Faith

Trustee alleges that the Plan has been proposed in bad faith. The following factors are considered in a bad faith analysis:

> (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner,
>
> (2) the debtor's history of filings and dismissals,
>
> (3) whether the debtor only intended to defeat state court litigation,
>
> (4) whether egregious behavior is present.

Leavitt, 171 F.3d at 1224 (internal citations omitted).

The court finds in this case, the Plan and related documents have not been filed in good faith. Debtor has simply not filled in all relevant information in the Schedules and has proposed a Plan that clearly does not mathematically work. Moreover, Debtor has filed the Schedules that contain blatantly conflicting information, such as whether Debtor has dependants or not. The record shows the Plan has been proposed in bad faith and this is cause to deny confirmation.

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

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

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

17. 24-25466-E-13 DWE-1 | **ANDREW KNIERIEM** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY** **1-16-25 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (**pro se**), Chapter 13 Trustee, and Office of the United States Trustee on January 16, 2025. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-9 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Andrew Knieriem's ("Debtor") Plan is insufficiently funded to pay creditor's claim.

DISCUSSION
Improper Treatment of Creditor's Secured Claim

Creditor has filed a Proof of Claim (POC 1-1) where it asserts a secured claim in the amount of $988,266.51 with an arrearage of $698,206.67. According to this District's standard Plan Form, EDC 003-080, "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Plan Form EDC 003-080, § 3.02.

Debtor has not complied with this language, instead providing for Creditor's arrearage in the amount of $64,800 and not providing any dividend whatsoever to cure that arrearage. Plan § 2.08, Docket 11. Such treatment is impermissible without there being a Motion to Value or Objection to Claim granted by the court.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company, as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-9 ("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.

18. 24-24173-E-13 PGM-1 JESUS/ALISHA GUTIERREZ Peter Macaluso CONTINUED MOTION TO CONFIRM PLAN 11-13-24 [24]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors and parties in interest, and Office of the United States Trustee on November 11, 2024. By the court's calculation, 64 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx.

February 11, 2025 Hearing

The Parties requested that the court continue the hearing as Debtor was slightly delinquent in plan payments and Trustee's issues had not been resolved, but Debtor's counsel continued vying for confirmation. A review of the Docket on February 4, 2025 reveals nothing new has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

The debtor, Jesus Figueroa Gutierrez and Alisha Marie Gutierrez ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid $4,900 through October of 2024, one payment of $4,000 in November of 2024, and then 58 monthly payments of $4,400 commencing thereafter. Amended Plan, Docket 26. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 23, 2024. Docket 53. Trustee opposes on the grounds that the IRS filed a claim on November 27, 2024, and to properly account for this claim, Debtor would need to increase their monthly payments to $4,841 per month for 60 months.

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

DISCUSSION

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

At the hearing, counsel for the Trustee reported that the opposition issues have not been resolved. Additionally, the Debtor is in default in Plan payments (a partial payment amount). Debtor's counsel reported that the plan payments can be increased for the IRS payment.

The Parties requested that the court continue the hearing.

The hearing for the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on February 11, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor Jesus Figueroa Gutierrez and Alisha Marie Gutierrez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is **XXXXXXX**.

19. 23-24387-E-13 NLH-5 | **JERRY HARDEMAN** Nancy Haley | **CONTINUED MOTION TO CONFIRM PLAN** 10-18-24 [137]

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

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

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

At the hearing, counsel reported that it was not filed due to a clerical error and that will be corrected.

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

The Motion to Confirm the Amended Plan is xxxxxxx.

February 11, 2025 Hearing

The court continued the hearing on this Motion to allow the delinquency to be cured, proper notice to be effectuated, and the full Plan, and any proposed amendments, to be filed with the court. Debtor was to file these documents by February 6, 2025. Order, Docket 163. A review of the Docket on February 7, 2025 reveals that nothing new has been filed in the case.

At the hearing, xxxxxxx

REVIEW OF THE MOTION

The debtor, Jerry Glenn Hardeman ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid $1,800 in September of 2024, $2,070 for October and November of 2024, and then monthly payments of $1,980 commencing thereafter for 58 months. Amended Plan, Docket 143. There is also detailed treatment of PHH Mortgage Service's claim where Debtor is ultimately seeking a refinance and what happens in the event no refinance is achievable. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 3, 2024. Docket 157. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan is missing page 3 of 7 and page 4 of 7, so it fails to identify the treatment of Class 1, Class 2, Class 3, and Class 4 Creditors. Obj. 1:26-28.

B. The Plan shows that the Debtor's attorney charged, and was paid, $350.00 and $0.00 is owed, (Page 2, §3.05). This section also shows that neither box was checked, so, as a result, the Debtor's attorney will be seeking the Court's approval for attorney fees. *Id.* at 2:7-11.

C. Debtor is slightly delinquent in the amount of $130, but $5,810 has been paid into the Plan to date. *Id.* at 2:12-18.

Debtor's Attorney's Declaration in Response

Ms. Haley, Debtor's attorney, filed a Declaration in response on December 11, 2024. Docket 160. Ms. Haley states:

1. She will not be requesting or accepting any further fees in the case beyond her $350 payment.

2. Debtor has a slight delinquency due to Ms. Haley accidentally informing her client the incorrect amount of plan payment, but that delinquency will be cured with December's payment.

3. She has presented Trustee with the missing pages and is unsure why the Plan was missing pages.

4. Ms. Haley requests time to cure the service defect and to allow Mr. Hardeman to cure the delinquency.

DISCUSSION

In amending the Order confirming the Plan, with such modest fees being requested in the case, the court can specify it approves fees of $350 to solve this issue. $350 is a typical hourly fee and it is clear to the court more than one hour of attorney time has gone into the case, so the court finds the fee of $350 to be reasonable.

Debtor must upload a copy of the Plan with all pages included. The verison of the Plan at Docket 143 is missing page 3 of 7 and page 4 of 7, which omits material information important to confirmation.

The court continues the hearing to 2:00 p.m. on February 11, 2025, to allow the delinquency to be cured, proper notice to be effectuated, and the full Plan, and any proposed amendments, to be filed with the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Jerry Glenn Hardeman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is **XXXXXXX**.

20. 24-25191-E-13 DPC-1 | **DORINDA MILLER** **James Keenan** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-8-25 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 8, 2025. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Dorinda Marie Miller ("Debtor") may not be proposing the Plan with her best efforts. Official Form 122C-2, Question #45 shows the Debtor has disposable income of $165.37 per month, or $9,922.20 over 60 months. The Trustee is concerned that with the Plan only paying 7% to unsecured creditors, which is estimated to be approximately $4,633.79 of the scheduled $66,197.00 in unsecured claims, that unsecured creditors should be receiving a higher percentage, or no less than $9,922.20. In reviewing the Debtor's Schedule I and J budget, it appears that she could increase her plan payment slightly to meet this requirement. Obj. 2:1-7.

2. NewRez, LLC has filed an objection to confirmation, although creditor has failed to file a Notice of Hearing, Declaration in Support, or Certificate of Service; however, they are asserting a secured claim against real property located at 2524 Ethan Way, Sacramento, CA 95821, in the amount of

> $119,015.53, with arrears of $6,667.98. Schedule D shows the Debtor listed Shellpoint Mortgage for $117,000.00; although, the Debtor did not provide for this debt, or the arrears, in the Plan.

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

DISCUSSION
Not Best Effort

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

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

Trustee is concerned that with the Plan only paying 7% to unsecured creditors, which is estimated to be approximately $4,633.79 of the scheduled $66,197.00 in unsecured claims, that unsecured creditors should be receiving a higher percentage, or no less than $9,922.20, based on Debtor's income. In reviewing the Debtor's Schedule I and J budget, it appears that she could increase her plan payment slightly to meet this requirement.

At the hearing, **xxxxxxx**

Improper Treatment of Creditor's Secured Claim

Creditor NewRez, LLC has filed a Proof of Claim (POC 15-1) where it asserts a secured claim in the amount of $118,955.53 with an arrearage of $6,607.96. According to this District's standard Plan Form, EDC 003-080, "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Plan Form EDC 003-080, § 3.02. Debtor has not complied with this language, not providing for Creditor's arrearage in the proposed Plan. Plan, Docket 3. Such treatment is impermissible without there being a Motion to Value or Objection to Claim granted by the court.

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

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

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

The Objection to the Chapter 13 Plan filed by 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.

21. 24-25394-E-13 DPC-1 | **CLAYTON DELAUGHDER** **Joshua Sternberg** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** **1-14-25 [12]**

Item 21 thru 22

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 14, 2025. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

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

1. Debtor Clayton Daniel Delaughder's ("Debtor") Plan relies on a Motion to Value Collateral of Santander Consumer USA ("Creditor"), but no such Motion is on file. Trustee notes that the Plan would still work even if the Motion is not filed and granted. Obj. 1:25-23:3.

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

DISCUSSION

Improper Treatment of Creditor's Secured Claim

Creditor has filed a Proof of Claim (POC 1-1) where it asserts a secured claim in the amount of $5,066.28. According to this District's standard Plan Form, EDC 003-080, "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Plan Form EDC 003-080, § 3.02. Debtor has not complied with this language, instead providing for Creditor's secured claim in the amount of $2,2513. Plan § 3.08, Docket 2. Such treatment is impermissible without there being a Motion to Value or Objection to Claim granted by the court.

However, Trustee notes the Plan is still feasible even using the Creditor's value of the secured claim.

At the hearing, **XXXXXXX**

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

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

22. 24-25394-E-13 KMM-1 | **CLAYTON DELAUGHDER** **Joshua Sternberg** | **OBJECTION TO CONFIRMATION OF PLAN BY GLOBAL LENDING SERVICES LLC** **1-16-25 [16]**

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 16, 2025. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Global Lending Services LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Clayton Daniel Delaughder's ("Debtor") Plan impermissibly changes the interest rate on Creditor's class 2 claim to 0%. Obj. 2:7-18.

DISCUSSION

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 0%. Creditor's claim is secured by a 2017 Ford Explorer. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official*

Comm. of Unsecured Creditors (In re American Homepatient, Inc.), 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8%, plus a 1.25% risk adjustment, for a 9.25% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

23. 24-25298-E-13 AP-1 | **PATRICK/CORINNE FAY** | **OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**
Matthew DeCaminada | **1-16-25 [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, Debtor's Attorney, and Office of the United States Trustee on January 16, 2025. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

JPMorgan Chase Bank, National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Patrick Joseph Fay and Corinne Elena Fay ("Debtor") may have failed to properly classify Creditor. Creditor is in Class 4 of the Plan, but when Debtor filed Bankruptcy in November of 2024, Debtor was late one monthly payment for November in the amount of $1,885.36. Obj. 3:23-28.

2. Creditor is not opposed to this Loan remaining as a Class 4 claim given the size of the arrears, with the consent of the Trustee. Creditor requests that this consent, if given, be noted in the Order Confirming Plan. *Id.* at 2:7-9.

DISCUSSION
Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $1,885.36 in pre-petition arrearage. POC 15-1. The Plan does not propose to cure that arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

However, Creditor has indicated it is fine with remaining in Class 4 if Trustee consents, based on the low amount of arrears.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by JPMorgan Chase Bank, 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 the Plan is **xxxxxxx**.

24. 24-22599-E-13 CYB-2 | **JAMES JOHNSON** Candace Brooks | **MOTION TO MODIFY PLAN** 12-11-24 [53]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2024. By the court's calculation, 62 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 granted.

The debtor, James Roy Johnson ("Debtor") seeks confirmation of the Modified Plan as Debtor has experienced some medical issues and other ongoing life issues resulting in Debtor selling his residence, 216 Haviture Way, Vallejo, Ca 94589, through the Modified Plan. Decl. 2:6-11, Docket 57. The Modified Plan provides for Debtor having paid $2,760 into his Plan through December of 2024 with payments of $3,189.87 to commence for the next five months until Debtor's residence is sold. Modified Plan, Docket 55. After Debtor's residence is sold, there will be a final lump sum payment of approximately $162,105 to pay off the Chapter 13 Plan 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 28, 2025. Docket 77. Trustee opposes confirmation of the Plan on the basis that:

1. The Plan relies on Debtor's Motion to Sell. Opp'n 1:25-2:3.

    a. The court would note this issue has been resolved, the court granting the Motion to Sell at the hearing held on January 28, 2025. Docket 83.

2. Debtor is delinquent $2,729.87 under the terms of the proposed modified plan. Opp'n 2:6-7.

3. The confirmed Plan at Docket 43 calls for Debtor's attorney to be paid through the close of escrow. The proposed Modified Plan omits that language. If the proposed Modified Plan is confirmed, the court requests the language permitting Debtor's attorney to be paid through escrow be added to the Order. *Id.* at 2:14-25.

DISCUSSION
Delinquency

Debtor is $2,729.87 delinquent in plan payments, which represents less than a month of the $3,189.87 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **XXXXXXX**

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

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

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

IT IS ORDERED that the Motion is ~~granted, and Debtor's Modified Chapter 13 Plan filed on December 11, 2024, is confirmed as amended to permit Debtor's attorney, Candace Brooks, to be paid her fees through the close of escrow of the sale of Debtor's residence. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

FINAL RULINGS

25. 24-20705-E-13 MJD-1 | **HELEN ZADA** | **Matthew DeCaminada** | **MOTION TO MODIFY PLAN** | **1-7-25 [45]**

Final Ruling: No appearance at the February 11, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 7, 2025. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Helen McQueen Zada ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 48; Ex., Docket 47. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on January 28, 2025. Docket 55. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Helen McQueen Zada ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 7, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

26. 24-24436-E-13 DPC-2 | **CORINNE RIDEAU** **Julius Cherry** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **1-8-25 [28]**

Final Ruling: No appearance at the February 11, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 8, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Corinne Nicole Rideau's ("Debtor") claimed exemptions under California law. Debtor claimed as exempt under California homestead exemption, Cal. Code Civ. P. § 704.730, her rental deposit. Am Schedule C at 3, Docket 21. Trustee objects to this claim of exemption as a rental deposit is security for the landlord, not otherwise subject to any claim of homestead exemption.

Debtor did not file a Response or Opposition.

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re*

Davis, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Here, Trustee has presented argument as to why the claimed exemption should be disallowed; namely, a rental deposit does not fit within the purview of Cal. Code Civ. P. § 704.730. The Chapter 13 Trustee's Objection is sustained, and the claimed exemption is disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by The Chapter xx 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 Objection is sustained, and the claimed exemption for a Security Deposit with Landlord under California Code of Civil Procedure § 704.730 is disallowed in its entirety.

27. 24-25484-E-13 DPC-1 | **KRISTIN VRABLICK** / **Michael Hays** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **1-17-25 [30]**

Final Ruling: No appearance at the February 11, 2025 hearing is required.

Debtor having stated they have solved their issues and no longer desire to stay in bankruptcy, and moving this court *ex parte* to dismiss the case, the Objection is overruled as moot without prejudice.

The Chapter 13 Bankruptcy case is dismissed.

The Objection to Confirmation is overruled as moot without prejudice, the court dismissing this case at the Debtor's request.

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 Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot without prejudice.

IT IS FURTHER ORDERED that Debtor having filed an *ex parte* Motion to Dismiss this case, Docket 35, the case is dismissed.