

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 13, 2024 at 2:00 p.m.

1. [23-24443-E-13](#)
[DPC-1](#)

EMILY HALEY
Peter Macaluso

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
1-17-24 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 17, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained

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

1. Debtor has a current yearly income of \$111,264.00. Docket 15 p. 2:3-4.
2. Debtor's monthly disposable income is \$883.39. *Id.* at 2:5-8.
3. Debtor proposes to pay \$200.00 a month for 36 months. *Id.* at 2:1.
4. Because of this level of disposable income, Debtor is required to be in a 60 month plan paying that amount every month, or pay all unsecured claims within the 36 months. *Id.* at 2:7-10.
5. Debtor's plan currently pays 0% of unsecured claims. *Id.* at 2:1-2. This debt is estimated to be \$270,332.60, with the amount subject to increase as the deadline for non-governmental creditors is 2/20/2024. *Id.* at 2:12-16.
6. The California Department of Tax and Fee Administration has filed a priority claim in the amount of \$54,010.81. *Id.* at 2:25-28.
7. Trustee calculates that the plan will take approximately 324 months to pay off this priority claim, which exceeds the maximum length of 60 months. *Id.* at 2:20-23.
8. The Debtor has failed to include a retirement deduction and a deduction marked "ARAG GROUP" on Schedule I. *Id.* at 2:4-8. The trustee is concerned that Schedules I and J do not accurately reflect the Debtor's income and expenses and do not give a clear picture of the Debtor's financial situation. *Id.* at 2:8-11.

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

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Disposable Income / Not Best Effort

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

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

The Plan proposes to pay a zero percent dividend to unsecured claims, which total \$270,332.60, though Debtor's projected disposable monthly income under 11 U.S.C. § 1325(b)(2) totals \$883.39. Thus, the court may not approve the Plan.

Debtor claims to have \$200.00 in disposable monthly income. Schedule J, Docket 1 ¶ 23(c). Debtor arrives at this number by providing calculations of \$6,936.18 monthly income, and \$6,736.18 in monthly expenses. *Id.*

Debtor calculates her monthly income on Schedule I by combining gross wages of \$8,562.00 with a pension or retirement income of \$710.00 for a total of \$9,272.00. Debtor then deducts \$1,168.15 for tax, Medicare, and Social Security deductions and \$1,167.67 for insurance for a result of \$6,936.18. Schedule I, Docket 1 ¶ 5.

Trustee calculates Debtor's monthly income from Form 122C-1, combining gross wages of \$8,562.00 with a pension or retirement income of \$710.00 for a total of \$9,272.00.

The difference in disposable income as stated by Debtor and as stated by Trustee arises in the expenses section. Because Debtor's gross yearly income of \$111,264.00 as calculated on Form 122C-1 line 20(b) is greater than the median family income as calculated on Form 122C-1 line 20(c), Debtor must, unless otherwise directed by the court, check box 4 on the top of page 1 of this form, acknowledging that the commitment period is five years.

Debtor calculates her monthly expenses on Schedule J while Trustee calculates Debtor's monthly expenses on Form 122C-2. The discrepancies arise because Schedule J is an "estimate of your ongoing monthly expenses," while Form 122C-2 requires use of the IRS National/Local Standards as calculated by the U.S. Trustee program. Form 122C-2, line 138 is a combination of all of the expenses allowed under the IRS expense allowances (\$7,363.59), all of the additional expense deductions (\$578.00), and the deductions for debt payment (\$447.02), resulting in \$8,388.61. Removing the payroll deductions would result in expenses of \$6,052.00. Schedule J is a combination of all estimated expenses, and results in estimated expenses of \$6,736.18. The difference here is \$683.39. When added to the claimed disposable income of \$200.00, we arrive at the \$883.39 advanced by Trustee.

A Debtor's "applicable commitment period," if her gross monthly income combined when multiplied by 12 is not less than the highest median family income in the area, must be five years if all unsecured creditors are not paid in full. 11 U.S.C. § 1325(b)(4).

The Supreme Court has held that there is a different standard for Debtors above or below the median-family-income line. *Hamilton v. Lanning*, 560 U.S. 505 (2010). "For a debtor whose income is below the median for his or her State, the phrase includes the full amount needed for 'maintenance or support,' see § 1325(b)(2)(A)(I), but for a debtor with income that exceeds the state median, only certain specified expenses are included." *Id.* at 510.

Because Debtor's gross monthly income combined when multiplied by 12 is not less than the highest median family income in the area, Debtor must use her disposable income as calculated by Form 122C-2, rather than Schedule J. Therefore, her disposable income is not correctly calculated.

Failure to Provide for a Priority Claim

Trustee asserts that the Franchise Tax Board has a claim for \$54,040.81 in priority unsecured debt with a 0% interest. Proof of Claim 8-1. Debtor's voluntary petition filed December 12, 2023 asserts that all priority claims total \$1.00. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Overextended Plan

Accounting for the priority claim of California Department of Tax and Fee Administration, the Plan will take 324 months to complete. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

Inaccurate or Missing Information

Debtor's Schedules I and J do not contain reference to the retirement deduction or the deduction marked "ARAG GROUP." 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).

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.

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 January 9, 2024. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is XXXXXXX.</p>
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The debtors, David and Donna Windmiller (“Debtor”) seeks confirmation of the Modified Plan because of an unexpected change in finances: Donna Windmiller has lost her overtime income, and the Debtor can no longer rely on relatives to cover the difference. Declaration, Docket 59 ¶ 3. The Modified Plan provides \$42,750.00 to be paid through 30 payments of \$1425.00 for 30 months, and a 0 percent dividend to unsecured claims totaling \$64,522.67. Modified Plan, Dckt. 60. 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”), holding a secured claim filed an Opposition on January 30, 2024. Dckt. 65. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan will not be complete within the 60 months proposed. The Debtor proposes to pay a total of \$42,750.00 over the remaining 30 months of the plan. This amount less estimated Trustee’s fees of \$3,524.67, plus the current balance on hand of \$258.84, leaves \$38,966.49 available to pay

creditors, but \$40,213.02 is required. Debtor would need to increase the plan payment from the proposed \$1,425.00 to \$1,430.26 to be feasible with 25.28% to unsecured creditors that Trustee has already disbursed under the original plan.

- B. No supplemental Schedule I & J have been filed to support this motion. The most recently filed Schedules I and J are from July of 2021. Trustee does not have evidence of Debtor's current budget.
- C. Section 3.05 proposes attorney fees in the amount \$5,020.00 to be paid through the plan. However, under the confirmed plan attorney's fees are \$4,000.00 (\$172.00 paid prior to filing the petition and \$3,828.00 paid through the plan). To date the Trustee has disbursed \$1,658.80 in attorney's fees with \$2,169.20 remaining to be paid.
- D. The motion does not cite an applicable code such as 11 U.S.C. § 1329. However, Trustee does not recommend denying the confirmation of the plan on these grounds.

DEBTOR'S REPLY

On February 7, 2024 Debtor submitted a Reply to Trustee's Opposition. Docket 69. In their Reply, Debtor states:

- A. Debtor agrees to pay the plan payment of \$1,430.26. The proposed order confirming plan adopts this payment, attached as exhibit A.
- B. Supplemental Schedules I & J were filed 02/07/2024. Docket 68.
- C. Regarding attorney's fees, the extra \$1,020.00 is included in anticipation of an upcoming fee application after confirmation of the plan.

DISCUSSION

Overextended Plan

Debtor has submitted to the plan payment increase, resolving this issue.

Inaccurate or Missing Information

Debtor has filed the required Supplemental Schedules I & J, also resolving this issue.

Attorney's Fees

The Plan cannot be confirmed without the discrepancy in attorney's fees resolved. Furthermore, Local Bankruptcy Rule 2016-1(c)(4)(B) states, "[a]fter confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received."

Here, Debtor's attorney appears to seek an additional amount of \$1,020.00 in fees through the remaining 30 months of the plan, having received \$172.00 prior to filing. In contrast, Trustee states that to date they have disbursed \$1,658.80, with \$2,169.20 remaining to be paid. Debtor's counsel explains that the increase in fees is in anticipation for an upcoming fee application.

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 David Windmiller and Donna Windmiller ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is **XXXXXXX**.

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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, parties requesting special notice, and Office of the United States Trustee on January 17, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

1. The Plan fails to include material information regarding a potential adversary proceeding that Debtor intends to file.
2. The nonstandard provisions in the Plan to pay attorney's fees does not comply with Local Rule 2016-1 (4)(B).
3. Cayce DaRosa and Manuel DaRosa ("Debtor") filed an outdated version of the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys form.

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

DISCUSSION

Trustee's objections are well-taken.

Insufficient Information

Debtor states in the nonstandard provisions of the Plan that “[w]e will be filing an Adversary Proceeding to determine the validity of the Deed of Trust, which the Debtor's believe should have been satisfied in 2005.” Plan, Docket 3 § 7. The Plan does not indicate what property the adversary proceeding will be filed against, who the proceeding will be brought against, whether there are multiple deeds of trust owing against the property, or whether all of the liens on the property are provided for in the Plan. Without more information, it is unclear what affect this adversary proceeding may have on the Plan. Additional information needs to be provided so that the impact of this adversary proceeding on the Plan will be clearly understood.

Attorney's Fees

Debtor states in the nonstandard provisions of the Plan that “[a]ll attorney fees shall be paid prior to general unsecured creditors.” *Id.* Local Rule 2016-1 (4)(B) states that counsel shall be paid in equal monthly installments over the term of the Plan. Therefore, the language Debtor uses in the Plan does not comply with Local Rule 2016-1 (4)(B). The Plan needs to provide payment to Debtor's attorney in equal monthly instalments over the term of the Plan.

Rights and Responsibilities

Debtor filed an outdated version of the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys form. Debtor filed EDC. 003-096 with a revision date of May 1, 2012. However, this form was revised on August 29, 2023 and became mandatory for use on November 1, 2023. Debtor needs to re-file this form using the current version of EDC. 003-096.

The Objection to Confirmation is sustained, and the proposed Chapter 13 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.

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, parties requesting special notice, and Office of the United States Trustee on January 18, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

1. On or about September 24, 2005, Debtors entered into a Home Equity Line of Credit loan agreement with Countrywide Home Loans, Inc. ("Lender") for a promise to pay Lender for a line of credit with a limit of \$64,000.00 (the "Note"). Docket 22, p. 2:1-3.
2. Creditor is in possession of this Note. *Id.* at 2:3.
3. The Note is secured by the property commonly known as 8439 Ahrentzen Ct, Citrus Heights, California 95610 ("Property"), under a Deed of Trust

executed by the Debtors, Cayce DaRosa and Manuel DaRosa as Husband and Wife as Joint Tenants, and recorded in the Office of the Sacramento County Recorder on or about September 30, 2005. *Id.* at 2:6-8.

4. Creditor is the Assignee and/or successor in interest under the Assignment of Deed of Trust recorded in the Office of the Sacramento County Recorder on or about December 29, 2022. *Id.* at 2:11-12.
5. Debtor lists Select Portfolio Servicing, Inc. as the holder of a lien senior to Creditor. *Id.* at 1:18-19. The Senior Lienholder has not yet filed a proof of claim. *Id.* at 2:20-21.
6. Creditor's lien is fully secured. *Id.* at 2:22. On the date of filing Creditor was owed a total claim of approximately \$181,538.96 and \$151,860.48 in pre-petition arrears; the monthly post-petition installment payment amount is \$1,147.83. *Id.* at 2:23.
7. Debtor proposes to pay \$640.00 per month for 60 months into the plan. *Id.* at 3:4.
8. Debtor asserts they will be filing an Adversary Proceeding to determine the validity of the Deed of Trust, which the Debtor believes should have been satisfied in 2005. *Id.* at 3:4-6.
9. Debtor's Plan proposed to not tender any pre-petition cure or monthly post-petition installment payments to creditor. *Id.* at 3:9-10.

Real Time Resolutions ("Creditor") submits Exhibits A, B, and C in support, but does not submit a Declaration to authenticate the facts alleged in the Objection or Exhibits. Docket 21.

DISCUSSION

Creditor's counsel filed an objection making several factual assertions. However, no declaration of the Creditor or other evidence was filed to support those assertions.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

At the hearing, **XXXXXXX**

Lack of Adequate Protection Under the Plan

The objecting Creditor, who holds a security interest in personal property, alleges that the Plan violates 11 U.S.C. § 1325(a)(5)(B)(ii) because Creditor's claim is allowed. Creditor objects to the Plan

pursuant to 11 U.S.C. § 1325(a)(1), 1322(b)(3) and §1322(b)(5) as the Plan fails to provide for the curing of the default and payment of the required maintenance payments on Creditor's secured claim for which final payment is due after the proposed final payment under the Plan. Creditor further objects to the Plan as it fails to satisfy the full value requirement of 11 U.S.C. §1325(a)(5)(B)(ii) as the Plan fails to cure arrears associated with Creditor's wholly secured claim.

Creditor is correct in that the Plan fails to disburse any funds to Creditor at all. The court shall confirm a plan if, with respect to each allowed secured claim provided for by the Plan, the Plan provides that the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim. 11 U.S.C. §1325(a)(5)(B)(ii). Yet, this Plan fails to account for Creditor's claim entirely.

Furthermore, the amount of the periodic payments it proposes to pay Creditor are insufficient to provide it with adequate protection during the period of the Plan. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.* proposes that adequate protection is intended to protect creditors from depreciation in value of their collateral during the bankruptcy case. *See* 484 U.S. 365, 377 (1988); *see also First Fed. Bank v. Weinstein (In re Weinstein)*, 227 B.R. 284, 296 (B.A.P. 9th Cir. 1998).

Timbers interprets the meaning of the phrase "adequate protection" for purposes of 11 U.S.C. § 362, however. 484 U.S. at 369–70. 11 U.S.C. § 361 provides that:

[w]hen adequate protection is required under section 362, 363, or 364 . . . of this title of an interest of an entity in property, such adequate protection may be provided by (1) requiring the trustee to make a cash payment or periodic cash payments, to the extent that the stay under section 362 of this title . . . results in a decrease in the value of such entity's interest in such property.

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See, e.g., Diaz v. Davis (In re Digimarc Corp. Derivative Litigation)*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("Accordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act.").

Upon the court's research, the court found neither the Ninth Circuit nor any of its sister circuits has directly considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325 (perhaps unsurprisingly because the phrase was only added to the section by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). Several bankruptcy courts that have considered the issue, however, have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. *See, e.g., In re Sanchez*, 384 B.R. 574, 576 (Bankr. D. Or. 2008); *Royals v. Massey (In re Denton)*, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

Thus, while Creditor has failed to allege that its collateral declines in value, the Plan provides no payment at all. At the hearing **XXXXXXX**.

Insufficient Plan Payments

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Creditor alleges the monthly post-petition installment is \$1,147.83 in their Objection to Confirmation of Plan. Docket 22, p. 2:25. In their proof of claim it appears to be \$1,122.19. Claim 3-1, Mortgage Proof of Claim Attachment p. 1.

First, the proposed payments of \$640.00 are insufficient to pay even the \$1,147.83 monthly contract installment on the Class 1 claim. Second, the proposed \$640.00 monthly payments for the balance of the plan term are insufficient to pay Trustee's fee, administrative fees, the Class 1 monthly contract installment, the Class 1 dividend, and the Class 2 dividends. Thus, the Plan may not be confirmed.

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$181,538.96 in this case. POC 301. Debtor's Schedule D estimates the amount of Creditor's claim as \$142,462.53 and indicates that it is secured by a deed of trust on Debtor's residence. The Plan does not provide for this Creditor at all.

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

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

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

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

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

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

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

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

Incomplete Information

Debtor states in their plan that "[w]e will be filing an Adversary Proceeding to determine the validity of the Deed of Trust, which the Debtor's believe should have been satisfied in 2005." Plan, Docket 3, § 7. This does not provide sufficient information about the property in question or the impact that the litigation will have on the estate. Furthermore, it does not state who the opposing party will be. To date, the court has received no updated information about this adversary proceeding.

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 Real Time Resolutions ("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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on November 22, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

February 13, 2024 Hearing

Reviewing the Docket for this Case, the court notes nothing further has been filed by the Parties. The Trustee's Amended February 8, 2024 Docket Entry Report for the continued 341 Meeting states that Debtor and Debtor's counsel appeared, and it was continued to 2:00 p.m. on April 11, 2024.

At the hearing, XXXXXXX

REVIEW OF THE OBJECTION

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

1. Trustee was unable to conduct the First Meeting of Creditors because Debtor never uploaded verification of both his Social Security number and his identification.
2. All tax returns may not have been filed, including for the years 2019, 2020, 2021, and 2022.

DISCUSSION

Trustee's objections are well-taken.

Inability to Conduct the 341 Meeting

Debtor did not submit the necessary documents to enable Trustee to conduct the Meeting of Creditors pursuant to 11 U.S.C. § 341. This meeting 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 meeting has been continued to January 4, 2023.

Failure to File Tax Returns

Trustee reports he was informed by the IRS and California FTB that the federal income tax returns for the 2019, 2020, 2021, and 2022 tax years have not been filed. Filing of these returns 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).

December 12, 2023 Hearing

At the hearing, the Trustee reported that the information has been provided, and the First Meeting of Creditors has been continued to January 4, 2024. However, the Trustee states that the November payment has not been made. Additionally, there is not confirmation of the tax returns having been filed.

The Parties agreed to continue the hearing.

January 23, 2024 Hearing

A review of the Docket on January 17, 2024 reveals that no new documents have been uploaded with the court under this Docket Control Number (DPC-1). Rather, the court heard Trustee's Motion to Dismiss on January 17, 2024 (DPC-2). Dckt. 50. The court continued that matter to be heard in conjunction with this Objection.

At the hearing, counsel for the Trustee reported that the Debtor did not attend the continued 341 Meeting, though his counsel did. Counsel for the Debtor reported that the Debtor will attend the further continued 341 Meeting on February 8, 2024.

Counsel for the Chapter 13 Trustee did not oppose the Debtor's request for a further continuance so he can attend the continued meeting and provide the copies of the tax returns.

The hearing on the Objection to Confirmation was continued to 2:00 p.m. on February 13, 2024.

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

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

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

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

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

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

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, parties requesting special notice, and Office of the United States Trustee on January 17, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

1. Debtor failed to appear at the First Meeting of Creditors.
2. Debtor's Plan may fail the Liquidation Analysis under 11 U.S.C. §1325(a)(4).
3. The Plan does not specify how and what Debtor's Attorney is to be paid.
4. The Trustee is unclear if the Debtor can make the payments called for under the Plan.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 20.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's Schedule A/B shows that she co-owns a home with her son which is located at 5331 Dunsmuir Avenue, Dunsmuir, CA. Schedule A/B, Docket 1 p. 11. Schedule C on the Debtor's petition shows that Debtor is not claiming as exempt any equity in this property. Schedule C at ps. 16-17. Debtor's Schedule D shows there may be \$160,318 in equity in that property. Schedule D at p. 19. 11 U.S.C. § 1325(a)(4) requires that the value of the property to be distributed under the Plan not be less than the amount that would be paid to each unsecured claim if the estate were liquidated under Chapter 7.

At the hearing, **XXXXXXX**

Attorney's Fees

The Plan cannot be confirmed without the discrepancy in attorney's fees resolved. Debtor did not check either box in §3.05 of the Plan. Plan, Docket 3. Therefore, it is unclear if Debtor's Attorney chose to comply with Local Bankruptcy Rule 2016-1(c) or will seek the Court's approval by a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. 2002, 2016 and 2017.

Debtor also states that Debtor's Attorney received \$1,637.00 prior to filing, and that \$3,313.00 will be paid through the Plan. *Id.* However, §3.05 of the Plan states that the monthly administrative expenses under the Plan will be \$0.00. *Id.* Therefore, the Plan does not inform the Trustee as to what Debtor's Attorney expects to be paid or how he expects to be paid.

Furthermore, Local Bankruptcy Rule 2016-1(c)(4)(B) states, "[a]fter confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received." Where the Plan proposes to pay \$250 per month, the Plan violates this rule because it will front load plan payments, thereby not paying attorney's fees in equal monthly installments over the term of the most recently confirmed Plan.

At the hearing, **XXXXXXX**

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's current monthly income is \$3,942.15. Schedule I, Docket 1 p. 27. Debtor currently receives Supplemental Benefits in the amount of \$816.98 a month, but this benefit will end in August 2024. *Id.* Additionally, Debtor receives \$965.17 a month from an Annuity, which will end on October 20, 2025. *Id.* It is unclear how the Debtor will continue to make plan payments without these sources of income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, **XXXXXXX**

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

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

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

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

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

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, parties requesting special notice, and Office of the United States Trustee on January 17, 2024. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

1. Debtor and Debtor’s attorney failed to appear and be examined at the First Meeting of Creditors held on January 11, 2024. Docket 13, p. 1:25-27.
2. The 341 meeting has been continued to February 22, 2024, at 2:00 pm. *Id.* at 2:1-3.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Declaration., Docket 15, p. 2:3-5.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 54 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 XXXXXXX.

The debtor, Rizzalina Mikaela Todd (“Debtor”) seeks confirmation of the Amended Chapter 13 Plan. The Plan provides monthly payments of \$610.00 for 5 months, then \$740.00 for 43 months. Amended Plan, Dckt. 50 § 77. Unsecured nonpriority claims total \$73,518.00 and will receive no less than a 0% dividend. *Id.* at ¶ 3.14. The value of priority claims is set at \$0.00. *Id.* at ¶ 3.12. Attorney’s fees include \$1,000.00 paid prior to the filing of the case, and \$3,000.00 paid through the plan. *Id.* at ¶ 3.05. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on January 29, 2024. Dckt. 53. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor underestimates the amounts of claims to be paid. The Internal Revenue Service has filed a Proof of Claim, which show a priority amount of \$4,741.45, (POC 9-1), where the Plan identifies \$0.00. Harley Davidson has also filed a Proof of Claim, which shows a secured amount of \$17,400.00, (POC 13-1), where the Plan identifies the creditor in Class 2

with secured claim amount of \$15,965.00, (Amended Plan, Dckt. 50 § 3.08(d)).

- B. The Plan does not work mathematically. According to the Trustee's calculation it will take 58 months to complete the Plan to address the correct amounts of claims, as opposed to the 48 months proposed by the Plan.
- C. The Debtor is \$200.00 delinquent in Plan payments to the Trustee. The next scheduled payment of \$740.00 is due on February 25, 2024.

Trustee submits the declaration of Teryl Wegemer to authenticate the claims made. Declaration, Docket 54.

DEBTOR'S REPLY

The Debtor filed a Reply on February 5, 2024. Docket 56. Debtor replies that:

- A. The Debtor made a manual payment for \$200.00 through TFS on January 29, 2024.
- B. The proof of claim filed by the Internal Revenue Service showed an estimated priority claim in the amount of \$4,741.45 for the 2022 tax year. The debtor did file her 2022 tax returns, which show no liability owed to the Internal Revenue Service. A copy of the 2022 Federal return was provided to Ms. Daria Brown, who prepared the proof of claim for the Internal Revenue Service, on February 5, 2024. Debtor expects the Internal Revenue Service will promptly amend its proof of claim to show a \$0 priority claim for 2022.
- C. The debtor, through her counsel, entered into a Stipulation Re: Objection to Confirmation of Chapter 13 Plan with counsel for Harley Davidson on September 7, 2023, docket number 38, stipulating to the value of the vehicle at \$15,965.00, with interest at 8.25%.

Debtor has not filed any evidence in support of her Reply.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$200.00 delinquent in plan payments, which represents less than a third of the \$610.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor asserts that she has paid the delinquent amount. At the hearing, **XXXXXXX** .

Failure to Provide for Priority Claim

The Chapter 13 Trustee asserts that the Internal Revenue Service has a claim for \$4,741.45 in priority unsecured debt. Proof of Claim 9-1, filed on August 7, 2023. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Debtor claims that her 2022 tax returns show no liability owed to the Internal Revenue Service, and that a copy of Debtor's 2022 Federal return was provided to Ms. Daria Brown, who prepared the proof of claim for the Internal Revenue Service.

Debtor says they expect that the Internal Revenue Service will promptly amend its proof of claim to show a \$0.00 priority claim for 2022. However, the Internal Revenue Service has not updated its claim.

Thus, there is still a priority claim that is not provided for by the Plan. This is grounds to deny the plan.

At the hearing, **XXXXXXX**

Failure to Provide for Unsecured Claim in Full

The Chapter 13 Trustee asserts that Debtor fails to provide for the full value of creditor Harley Davidson's claim. The proof of claim filed by Harley Davidson is in the amount of \$17,400.00. The Debtor claims the value as \$15,965.00.

Debtor points to the stipulation between Debtor and Creditor Harley Davidson. Stipulation, Docket 38. The form of this agreement states that "[t]he parties agree that Secured Creditor's claim will be provided for in the plan in the amount of \$15,965.00 at an interest rate of 8.25%. *Id.* at 2:1-2.

This stipulation was acknowledged in the resolution of the Objection to Confirmation of Plan. The order from the hearing states "IT IS ORDERED that the Objection to Confirmation of the Plan is dismissed without prejudice, the parties having filed a Stipulation resolving the Objection." Order, Docket 45.

Thus, while the proof of claim remains at \$17,400.00, the parties have agreed that Harley Davidson's claim will be provided for in the amount of \$15,965.00 at an interest rate of 8.25%.

Plan Duration

Trustee argues that the Plan will take longer than calculated to complete, specifically, that it will take 58 months to pay out in full, not 48 months as proposed. Declaration, Docket 54, p. 2:3-5. Debtor has already paid \$3,590.00 into the plan. *Id.* at 2:15-16.

However, Trustee did not calculate the Harley Davidson debt at the appropriate amount. Correcting the amount would reduce the number of months the Plan would take to pay out in full. At the hearing **XXXXXXXXXX**.

The Motion to Confirm the Amended Chapter 13 Plan is **XXXXXXX**

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

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

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

IT IS ORDERED that the Motion is **XXXXXXX**, and Debtor’s Amended Chapter 13 Plan filed on December 21, 2023, as amended to provide **XXXXXXX**, is confirmed. ~~Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the above amendment, 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.~~

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 11, 2024. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXXXXX.
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Toyota Motor Credit Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor has a claim in the amount of \$24,830.88. Creditor's claim is secured by the personal property commonly described as: 2020 HONDA CIVIC , vehicle identification number: 2HGFC1E58LH702158 ("Vehicle").
2. The value of the property to be distributed to Creditor is less than the allowed amount of their claim.
3. Joseph DiFede and Cheryl DiFede ("Debtor") plans to pay 7.% interest, while they should pay the "Prime Rate" of 11.50%

Creditor submits Exhibits in support (Docket 16), but fails to provide a declaration to authenticate the facts alleged in the Objection or the Exhibits.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

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 7%. Creditor's claim is secured by the Vehicle. 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. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.50%, plus a 1.25% risk adjustment, for a 9.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Toyota Motor Credit Corporation (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**, and Debtor's Chapter 13 Plan filed on November 30, 2023, as amended to provide **XXXXXXX**, ~~is/is not~~ confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, ~~which states the above amendment~~, 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

10. [23-24410-E-13](#)
[DPC-1](#)

JAMES VAN PATTEN
Andrew Moher

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
1-18-24 [[19](#)]

DEBTOR DISMISSED: 01/23/24

Final Ruling: No appearance at the February 13, 2024 Hearing is required.

The case having previously been dismissed on January 23, 2024, the Objection is overruled without prejudice as moot.

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 of Plan 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 without prejudice as moot, the case having been dismissed on January 23, 2024, Docket 24.

11 thru 12

Final Ruling: No appearance at the February 13, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, other parties in interest, parties requesting special notice, and Office of the United States Trustee on January 11, 2024. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

The hearing on the Motion to Value Collateral and Secured Claim of Placerville Investment Group, LLC (“Creditor”) is continued to 2:00 p.m. on February 27, 2024 to be heard in conjunction with Creditor’s Motion for Relief from Automatic Stay, Debtor’s Motion to Confirm Amended Chapter 13 Plan, and Creditor’s Motion to Dismiss or Convert this Case which are being continued to that time and date.

The Motion filed by Satinder Singh (“Debtor”) to value the secured claim of Placerville Investment Group, LLC (“Creditor”) is accompanied by the declaration’s of Debtor and John Toney, professional appraiser. Declaration, Dckts. 130, 133. Debtor is the owner of a business called Wheatland 99 Cent & Liquor Store (“Business”). Creditor has a perfected secured interest in the inventory, good will, furniture, fixtures, and equipment (“Collateral”) of the Business. Debtor seeks to value the Collateral at a replacement value of \$166,000 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Collateral secures two separate loans, one incurred in April of 2022, and one incurred in November 2022. The court notes Debtor states the debt owed is actually \$245,000 (Mtn.,

Docket 127 ¶ 3); however, Creditor asserts the Claim could be in the amount of \$304,310.34. Proof of Claim, No. 6-2.

Debtor's Declarations and Exhibits

Debtor submits his own Declaration (Docket 130) and the Declaration of his appraiser, John W. Toney (Docket 133), in support of this Motion. Debtor testifies:

1. The testimony is rationally based on my own perception, is helpful to a determination of a fact in issue, and is not based on scientific, technical, or other specialized knowledge within the scope of federal Rule of Evidence 703. Decl., Docket 130 ¶ 3.
2. In 2022, Debtor entered into allegedly legal and enforceable loans with Creditor. *Id.* at ¶ 4.
3. As of the petition date the fair market value of the Collateral was \$166,000. *Id.* at ¶ 5.

Mr. Toney testifies:

1. He is an Accredited Senior Appraiser as designated by the American Society of Appraisers since 2007. Decl., Docket 133 ¶ 1.
2. The Appraisal analyses, opinions, and conclusions are limited only by the reported assumptions and limited conditions, and are his personal, unbiased professional analyses, opinions, and conclusions. *Id.* at ¶ 12.
3. As of August 6, 2023, the appraised value of the Business is \$256,000. This valuation includes:
 - a. Inventory: \$59,644
 - b. Liquor License: \$90,000
 - c. Furniture, Fixtures, and Equipment: \$5,000
 - d. Goodwill: \$101,356.

Id. at ¶ 19.

4. The valuation is based upon the Business's current physical condition, market conditions, inventory, goodwill, and other market factors. *Id.* at ¶ 20.

Debtor also filed with the court the Collateral Appraisal Report and Analysis ("Report"). Exhibit 1, Docket 132.

CREDITOR'S OPPOSITION

On January 30, 2024 Creditor filed an Opposition to the Motion. Docket 137. In its Opposition, Creditor states:

1. This is Debtor's second Motion to Value, the first being denied on October 5, 2023.
2. Debtor led Creditor to believe the co-borrower on the note, Sonia Madaan, was Debtor's wife; however, it was later uncovered that they were divorced but still cohabitate and share expenses.
3. Debtor has not provided the court with reliable evidence to establish the value of the Collateral. Debtor has engaged in under the table transactions, meaning the value is higher than reported.
4. Debtor's own testimony as to value is not sufficient to establish the value of the Collateral.
5. Debtor's expert, John W. Toney of Wallace & Toney Valuation Advisors, Inc., does not provide a reliable valuation because Debtor's expert valued the Collateral based on second-hand data provided by Debtor.

Creditor submits the Declaration of Dalip Gupta in support of its Opposition. Docket 138. In his Declaration, Mr. Gupta recites the history of the loan transactions between Creditor and Debtor, and that Creditor has recently retained an appraiser to value the Collateral. *Id.* at ¶ 11.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee"), submitted an Opposition on January 30, 2024. Docket 145. In his Opposition, Trustee states:

1. Trustee opposes the Motion to Value because Debtor has no Plan pending.
2. Debtor's Declaration in support of his Motion to Value may not be Debtor's own opinion based on personal knowledge.
3. There is a typographical error on the Notice of Hearing.

DISCUSSION

Here, Debtor's opinion can be admissible reliable evidence the court will consider in valuing collateral. But the court is not impressed by Debtor's legal knowledge. The court is unsure whether or not the Declaration is indeed Debtor's opinion, at the hearing,

Creditor argues that Mr. Toney has not relied on proper information in forming his professional opinion of the Business's valuation in the Report. The court disagrees. Creditor states,

[T]he Appraisal Report does not clearly evidence that the Appraiser reviewed source documents to determine the Store's revenues and expenses. Rather than, for example,

identify annual tax returns that were reviewed (reference is made to a tax return schedule, but no statement is included that the schedule or the relevant returns were examined) and rather than evidence a review of contemporaneous sales reports (such as "register rolls") and basic records of business expenses, the Appraisal Report refers includes a single-page summary of "Historical Income Statements," the origin of which is unclear.

Opposition, Docket 137 ps. 4:26-28–5:1-4. However, the Report explicitly details what information Mr. Toney relied on, stating,

The [Business's] historical income statements are shown in Exhibit A for the past six full operating years and the six-month period ended June 30, 2023. The data for 2017-2021 has been taken from Schedule C of Mr. Singh's personal income tax returns. The data for 2022 is based upon the compiled profit and loss statement prepared by IBS Tax Services and the data for the six-month period ended June 30, 2023, is based upon an internal profit and loss statement.

Exhibit 1, Docket 132 p. 3. Copies of the Exhibits Mr. Toney relied on are included in the Report.

Creditor focuses the court's attention on the "Assumptions and Limiting Conditions" section of the Report, suggesting the Report should not be accepted because the information Debtor submitted to Mr. Toney that founded the basis of the report has not been independently verified. Opposition, Docket 137 p. 5:5-20. However, Creditor has not filed its own valuation with the court or offered any of its own evidence to suggest why Mr. Toney's Report should be discredited.

Creditor argues that the information Debtor provided Mr. Toney is irreconcilable with the information Debtor and Ms. Madaan provided in their bankruptcy Schedules. *Id.* at p. 5:21-25. Yet Creditor acknowledges that information in the Schedules "is not precisely on the same topics as included in the Debtor's appraisal." *Id.* Creditor has provided the court with much argument but little evidence to consider its position.

However, Creditor has informed the court that it has retained an appraiser to value the Collateral.

CONTINUANCE OF THE FEBRUARY 13, 2024 HEARING

The February 13, 2024 scheduled hearing is not being conducted by the judge to whom this case is assigned and has personal knowledge of the prior proceedings in this case. The court notes that there appear not only to be substantial deficiencies with respect to the Motion to Value and Motion to Confirm, but also with Creditor who cannot state a value for its collateral in its Original and Amended Proof of 6-2.

With Debtor having stated on Schedule A/B only a 50% valuation for his Sole Proprietorship, it appears that the Debtor's assets may be substantially higher.

As addressed above, it appears that there are substantial "challenges" facing the Debtor in this case, possibly greater value for assets, possible fraudulent conveyances, and possible contributions from a joint venturer.

Given the substantial history of this case, as well as the Motion to Value (DCN: RCW-9), Motion to Confirm (DCN: RCW-89), Motion to Dismiss or Convert (DCN: RLL-3), and the Motion for Relief From the Stay (DCN: RLL-2), the court continues the hearings on all of these Contested Matters to 2:00 p.m. on February 28, 2024, so the judge to whom this case is assigned can hear all such matters.

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

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

The Motion to Value Collateral and Secured Claim filed by Satinder Singh (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion Value Collateral and Secured Claim of Placerville Investment Group, LLC is continued **to 2:00 p.m. on February 27, 2024.**

12. 23-22540 -E-13 RLL-3	SATINDER SINGH Ryan Wood	MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 1-11-24 [121]
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Final Ruling: No appearance at the February 13, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors that have filed claims, persons having filed a Request for Notice, and Office of the United States Trustee on January 11, 2024. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

The hearing on the Motion to Dismiss or Convert is continued to 2:00 p.m. on February 27, 2024 to be heard in conjunction with Debtor’s Motion to Value of Claim, Debtor’s Motion to Confirm Amended Chapter 13 Plan, and Creditor’s Motion for Relief from Automatic Stay which are being continued to that time and date.

Placerville Investment Group, LLC (“Creditor”), seeks dismissal of the case on the basis that:

1. The debtor, Satinder Singh (“Debtor”), has not been diligent in prosecuting this bankruptcy case, resulting in creditor not being paid and suffering economic loss.
2. Debtor’s case was filed in bad faith in a coordinated effort with Sonia Madaan to frustrate Creditor’s recovery attempts.

Motion, Docket 5. Creditor submits the Declaration of Dalip Gupta to authenticate the facts alleged in the Motion. Decl., Docket 123.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 30, 2024. Docket 126. In his Opposition, Debtor states:

1. Cause does not exist to dismiss or convert this case. Debtor has been diligent in prosecuting the case. Any delay is due to Creditor not cooperating in obtaining a valuation of its secured collateral.

Debtor submits his own Declaration (Docket 159) and his counsel’s Declaration (Docket 160) in support of his Opposition. In his Declaration, Debtor states:

1. The only issue in the case is the value of his business. Debtor has obtained an appraisal of the business and has tried to work with Creditor in good faith to reach an agreed value. Decl., Docket 159 ¶ 3.
2. Debtor has done everything he is supposed to do to prosecute his case. *Id.* at ¶ 5.
3. The case has been filed in good faith, including by providing the Chapter 13 Trustee with all necessary documents. *Id.* at ¶¶ 7, 8.
4. Debtor is not trying to hinder collection efforts in any way. *Id.* at ¶ 22.

Debtor’s counsel, Mr. Wood, testifies that:

1. This case is all about the value of Satinder Singh’s business and we have tried in good faith to reach an agreement as to the value of Satinder Singh’s business with Placerville Investment Group, LLC. Decl., Docket 160 ¶ 1.
2. I/we are trying to not increase expenses in this case and that is the sole and only reason any party in this case can argue “delay.” Which is supposed to be an ethical obligation of attorneys. *Id.* at ¶ 2.
3. Instead of continuing to operate in good faith, Placerville Investment Group, LLC, on January 11, 2024, communicated we are filing a motion to dismiss and motion for relief from stay. *Id.* at ¶ 6.

4. All Placerville Investment Group, LLC accomplished is unnecessarily increasing the expense of administration to arrive at a secured value of the Satinder Singh's business. *Id.* at ¶ 7.
5. I told this Court I would try to work this out in good faith informally to save money. That is the truth and up until January 11, 2024, I thought both parties were working together to accomplish this. I believe I should have been told long ago that would never happen because we can see now that is the truth. *Id.* at ¶ 8.
6. We wanted to file one more amended plan, file one more motion to confirm a plan that includes acceptable terms to all parties. That was possible with cooperation. *Id.* at ¶ 9.
7. To try and be efficient our goal was to value Placerville's secured value then file motions to value regarding the other two secured creditors, secured by the Debtors business as well. *Id.* at ¶ 19.
8. There is no cause for relief from stay or to dismiss or convert Satinder Singh's case. Satinder Singh is not the cause of delay in this case and only sought to not increase the cost of administration; it has obviously failed. *Id.* at ¶ 22.

CREDITOR'S REPLY

On February 6, 2024 Creditor filed a Reply (Docket 162), stating:

1. Debtor is responsible for filing an Amended Plan and Motion to Value, not Creditor.
2. Debtor says nothing about the orchestrated bad faith filing of Debtor and Ms. Madaan.
3. Creditor is not to blame for the delay in prosecuting this case.

DISCUSSION

Failure to Prosecute the Case / Bad Faith

11 U.S.C. § 1307(c) provides:

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including –

(1)unreasonable delay by the debtor that is prejudicial to creditors.

..

Unreasonable delay includes “delay in the filing of necessary modifications of a plan, in obtaining necessary acceptances from the holders of allowed secured claims or in taking actions required under the plan are other examples of delays warranting conversion or dismissal under this paragraph.” 8 COLLIER ON BANKRUPTCY ¶ 1307.04 [1]. Further, “[a] debtor’s unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1).” *In re Ellsworth*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011).

The statutory list of enumerated reasons to dismiss a case in 11 U.S.C. § 1307(c) does not include a case being filed or prosecuted in bad faith, but courts have decided bad faith is a valid reason to warrant dismissal or conversion. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) (“Although not specifically listed, bad faith is a ‘cause’ for dismissal under § 1307(c).”); *See also In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) (“A Chapter 13 petition filed in bad faith may be dismissed ‘for cause’ pursuant to 11 U.S.C. § 1307(c).”). When deciding whether a petition has been filed in bad faith, “courts are guided by the standards used to evaluate whether a plan has been proposed in bad faith.” *Id.*

Failure to Prosecute the Case

The court does not find that the facts of this case support a finding that Debtor has engaged in unreasonable delay that results in prejudice to creditors. Debtor has complied with the court’s extensions in filing its documents. Debtor has also cooperated with the Trustee in providing the required documents. Moreover, the record shows Debtor and Creditor originally were working together in trying to accomplish a valuation of the business, with the case taking a less agreeable disposition only in January, 2024, further explaining some of the delay. Debtor has a Plan on file as well with a Motion to Confirm, showing that Debtor may be attempting to prosecute this case..

Bad Faith

Creditor argues that this case may be filed in bad faith because Debtor allegedly misled Creditor about the status of his marriage with Ms. Madaan. Then, Creditor asserts Debtor and Ms. Madaan “leveraged their superficial divorce proceeding into two separate bankruptcy cases, filed months apart, so as to maximize the delay to Creditor.” Motion, Docket 121 p. 6:7-8.

Again, this argument relies on the premise that Debtor is engaging in unreasonable delay, albeit by acting in concert with Ms. Madaan to delay recovery. The record shows this may not be the case. Debtor has been making plan payments with the Trustee who is currently holding a balance on hand of \$19,970. Debtor has filed a Motion to Value Creditor’s secured claim, alongside an Amended Plan and Motion to Confirm, so the case can move forward.

CONTINUANCE OF THE FEBRUARY 13, 2024 HEARING

The February 13, 2024 scheduled hearing is not being conducted by the judge to whom this case is assigned and has personal knowledge of the prior proceedings in this case. The court notes that there appear not only to be substantial deficiencies with respect to the Motion to Value and Motion to Confirm, but also with Creditor who cannot state a value for its collateral in its Original and Amended Proof of 6-2.

With Debtor having stated on Schedule A/B only a 50% valuation for his Sole Proprietorship, it appears that the Debtor's assets may be substantially higher.

As addressed above, it appears that there are substantial "challenges" facing the Debtor in this case, possibly greater value for assets, possible fraudulent conveyances, and possible contributions from a joint venturer.

Given the substantial history of this case, as well as the Motion to Value (DCN: RCW-9), Motion to Confirm (DCN: RCW-89), Motion to Dismiss or Convert (DCN: RLL-3), and the Motion for Relief From the Stay (DCN: RLL-2), the court continues the hearings on all of these Contested Matters to 2:00 p.m. on February 28, 2024, so the judge to whom this case is assigned can hear all such matters.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, Placerville Investment Group, LLC ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss or Convert is continued to **2:00 p.m. on February 27, 2024.**

Final Ruling: No appearance at the February 13, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 15, 2024. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Mariner Finance, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$4,609.00.

The Motion filed by Melanie Pruitt (“Debtor”) to value the secured claim of Mariner Finance, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 10. Debtor is the owner of a 2017 Hyundai Veloster Coupe 3D (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$4,609.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle’s title secures a security interest incurred on or about July 10, 2023, to secure a debt owed to Creditor with a balance of approximately \$12,801.00. Motion, Dckt. 8. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$4,609.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Melanie Pruitt (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Mariner Finance, LLC (“Creditor”) secured by an asset described as 2017 Hyundai Veloster Coupe 3D (“Vehicle”) is determined to be a secured claim in the amount of \$4,609.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$4,609.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the February 13, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2024. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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 Hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on February 27, 2024.

On or before February 22, 2024, if such items have been determined, Debtor may file a Statement of Proposed Amendments and Issues Not in Dispute. This short continuance will afford the parties time to diligently determine which issues have been resolved and which remain for this court to adjudicate.

The debtor, Bryan Gary Gallinger (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for 36 monthly payments in the amount of \$2,250.00. Amended Plan, Dckt. 58, § 7. Debtor states in the Amended Plan that he intends to sell real property on or before June 2024, and to contribute an amount sufficient to end the Amended Plan at 100% to all creditors. *Id.* The court assumes that Debtor is referring to real property located at 9421 Fair Oaks Blvd, Fair Oaks, CA (“Property”) since this is the only real property that belongs to the bankruptcy estate. Debtor does not specify the address of the real property he intends to sell in the provisions of the Amended Plan.

Levick Family Trust, which is a Class 2 creditor, holds a secured claim in the Property that Debtor intends the sell. The Amended Plan provides that Levick Family Trust is to receive a monthly dividend in the amount of \$1,380.00 for 6 months, or until the sale of the Property is completed. *Id.* However, the amount claimed by Levick Family Trust is disputed by the Debtor and is the subject of a

pending arbitration. Debtor states in the Amended Plan that should arbitration not be successful, Debtor will file an objection to the claim. *Id.* The Amended Plan provides that the disputed amount of the claim shall be held in trust until there is a resolution. *Id.* 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on January 29, 2024. Dckt. 68. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor needs to provide more details regarding the sale of real property because the provisions listed in the Amended Plan are vague. The Amended Plan does not provide an address for the property that will be sold, does not estimate the amount to be contributed to the Amended Plan, nor does it describe any effort required to sell the property. Opposition, Docket 68, p. 2:1-10.
- B. Debtor’s treatment of Class 2 creditor, Levick Family Trust, is ambiguous. The Amended Plan fails to provide any treatment to Levick Family Trust if the sale of the Property is not complete, or what the creditor will receive if the sale is completed. Opposition, Docket 68, p. 2:11-15.
- C. Debtor has failed to provide proof that there is a pending arbitration with Levick Family Trust or what the claim is that is being disputed. Opposition, Docket 68, p. 2:16-20.
- D. The Trustee is not clear if the Debtor will follow through and file an objection to claim. Debtor states in the Amended Plan “Should arbitration not be successful, Debtor to file an objection to the claim with in 60 days of the claim being filed”. Amended Plan, Dckt. 58, § 7. Debtor has not filed an objection to proof of claim to date, and 60 days for the Debtor to object would have been December 3, 2023 because Levick Family Trust filed its proof of claim on October 4, 2023. Opposition, Docket 68, p. 2:21-26.
- E. Debtor has not provided any evidence that the Property has been insured. Opposition, Docket 68, p. 2:27-28. Trustee is concerned that Debtor has failed to obtain insurance for the Property and is failing to provide evidence in order to conceal this fact.
- F. Trustee is unable to determine if the Debtor’s income is sufficient to sustain the Amended Plan payments. Opposition, Docket 68, p. 3:3-7. Debtor’s Schedule I shows \$1,200.00 in income from “Room Rental”. Petition, Docket 14, p. 17:8h. Debtor has failed to provide adequate evidence of the amount received and the reliability of collecting this rent. Opposition, Docket 68, p. 3:3-7.

- G. Debtor has failed to amend any Schedules, and the current Schedules contain missing and/or inaccurate information. Opposition, Docket 68, p. 3:8-22. Debtor admitted to the Trustee at the First Meeting of Creditors that he owns Bitcoin, but has failed to amend Schedule A/B to add this asset. *Id.* On Debtor's Schedule I, it shows income from a "Room Rental" for 1,200.00 per month, and \$100.00 per month from "Dog Care Services". Petition, Docket 14, p. 17:8h. Trustee states that at the First Meeting of Creditors, Debtor admitted that he receives \$1,800.00 per month for the "Rom Rental" and that he does not have "Dog Care Services" income. Opposition, Docket 68, p. 3:8-22. Trustee is concerned about the accuracy of the Debtor's income.

The Chapter 13 Trustee, David Cusick ("Trustee"), submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 69.

CREDITOR'S OPPOSITION

Douglas Levick, Melba Levick and Ron Levick ("Creditor") holding a secured claim filed an Opposition on January 29, 2024. Dckt. 71. Creditor opposes confirmation of the Plan on the basis that:

- A. There are no creditors in Classes 1, 3, 4, 5, or 6. Class 7 includes one creditor claim in the amount of \$11,748.89 to the State of California Franchise Tax Board. Otherwise, Creditor along with the County of Sacramento are the only Class 2 creditors. Opposition, Docket 71, p. 2:3-6.
- B. Creditors believe that Debtor has filed this Chapter 13 Case to frustrate foreclosure of a first-priority deed of trust securing a promissory note given by Debtor to Secured Creditors in the purchase and sale of the real property identified above. Opposition, Docket 71, p. 2:1-3.
- C. Debtor has failed to pay the 2023-2024 real property taxes owed to the County of Sacramento. His Class 2 debt to the County has increased from \$16,970.46 by an additional \$7,415.77 for a new debt amount of \$24,386.23. The First Amended Plan does not disclose this fact. *Id.* at 2:7-9.
- D. Debtor's Amended Plan proposes to reduce the monthly payments to Secured Creditors by \$500.00 to a new monthly payment of \$1,380.00.
- E. Debtor has failed to pay his 2023-2024 real property taxes. *Id.* at 4:18.
- F. Debtor asserts that Class 2 secured claims will be paid in full through the plan, but full payment is not possible without a sale of property. *Id.* at 5:4-5.
- G. In order for Debtor to distribute property of sufficient value to pay the Claim through the First Amended Plan - for illustration, using only the matured principal amount, \$425,000.00 - Debtor would be required to make monthly payments for the benefit of Secured Creditors in the amount of

\$11,805.55 (\$425,000.00 ÷ 36 months = \$11,805.55). The Schedules and Statements reveal Debtor cannot pay this amount: He cannot repay Secured Creditors the amount of the Claim through the Plan. *Id.* at 5:15-19.

- H. Debtor's income is insufficient to pay the plan. Debtor filed tax returns showing income of \$16,812.00 for the year 2021, and \$8,259.00 for the tax year 2022. *Id.* at 6:27-28. Therefore, the only way Debtor can pay Secured Creditors is to sell the property.
- I. There is no pending arbitration; Debtor has testified and admitted he had not filed any civil action against Secured Creditors and had not filed any petition to compel arbitration. Debtor has not filed any civil action or petition to compel arbitration at any time after the first meeting. *Id.* at 7:16-20.
- J. The claim is not disputed. No meet and confer has taken place to identify what counter claim may be asserted against Secured Creditors. Debtor has had three years to bring any action or proceeding against Secured Creditors, but has not done so. *Id.* at 8:1-7.
- K. Debtor intends to delay and avoid payment of the debt he owes to Secured Creditors. *Id.* at 8:8-11.
- L. Debtor has failed to submit any evidence of payment of rents by tenants he claims to have at the Property. *Id.* at 10:5-6.
- M. Debtor has not shown proof that he will be able to receive income as a Pool Manager through the winter. *Id.* at 10:7-10.

Creditor submits the Declaration of Terence Kilpatrick to authenticate the facts alleged in the Opposition regarding Debtor's actions or proceedings against Creditor. Declaration, Docket 72. Creditor further incorporates by reference Docket entries 25 and 26.

Creditor does not support the other claims with any authenticated evidence.

DEBTOR'S REPLY

Debtor filed a reply on February 6, 2024. Dckt. 80. Debtor responded as followed:

- A. Debtor acknowledges that the Property Taxes are due through 2024, and the amount due through 2023 is \$16,836.46. Reply, Docket 80, p. 2:3-5. Debtor also acknowledges that Levick Family Trust Proof of Claim is \$453,675.57. *Id.* at 2:6-7.
- B. Debtor states that the Property has been insured through 2023, and is presently insured until November 2024. Reply, Docket 80, p. 2:9-11. Debtor submitted proof that the Property is insured through November 16, 2024. Exhibit, Docket 84.

- C. Debtor has filed an application to hire a real estate agent to list the Property, and will include the MLS listing for the hearing on February 27, 2024. Reply, Docket 80, p. 2:12-15.
- D. Debtor intends to sell the Property within the next 90 days, subject to offers received. Reply, Docket 80, p. 2:16-20. Debtor believes that all offers received will close by June 2024. *Id.*
- E. The proposed real estate broker has performed an analysis of the fair market value for the Property and believes that its value is \$550,000.00. Decl., Docket 77, p. 2:9-11.
- F. Debtor intends that the Levick Family Trust receive a monthly dividend of \$1,380.00 during the period prior to the sale of the Property. Reply, Docket 80, p. 3:1-3.
- G. Debtor requests that the Trustee hold any amounts in dispute between Debtor and Levick Family Trust, pending resolution through arbitration. Reply, Docket 80, p. 3:4-7.
- H. Debtor has amended Schedule B to add the Bitcoin asset. Reply, Docket 80, p. 3:8-9.
- I. Debtor is receiving “Room Rental” income of \$1,800.00. Reply, Docket 80, p. 3:10-11.
- J. Debtor is no longer receiving income for “Dog Care Services”. Reply, Docket 80, p. 3:12-13.
- K. Debtor has paid \$9,000.00 through January 25, 2024, and the Amended Plan requires 5 more payments of \$2,250.00 for a total of \$11,250.00, before payoff from the sale of the Property. Reply, Docket 80, p. 3:14-17.
- L. In this case, there are no unsecured claims, only claims subject to the Property. Reply, Docket 80, p. 3:19-26. Debtor is moving quickly to sell the Property, and is current on the \$2,250.00 monthly Amended Plan payments. *Id.* at 4:1-8. Debtor is waiting for the hearing to employ a broker to sell the Property. *Id.* After the sale of the Property, Debtor expects that there will be a profit of \$39,487.97. *Id.* at 3:23-26.
- M. Debtor request that this Motion to Confirm Amended Plan be continued approximately 60 days. Reply, Docket 80, p. 4:1-8.

DISCUSSION

Terms Regarding Sale of Property

Trustee objects on the grounds that the Debtor does not estimate the amount to be contributed to the Amended Plan, nor does the Amended Plan describe any effort required to sell the Property prior to June 2024. Trustee requests more details regarding the sale, including at a minimum an intended listing price, an estimate of the amount of payment, when the Debtor will file a motion to employ a broker, and when the Debtor will start to market the property. Debtor's reply states that the property has been valued at \$550,000.00. Reply, Docket 80, p. 2:21-24. Debtor supplies Declaration of Broker, Docket 77, in support. Debtor proposes that the Property be sold by a real estate broker, and Debtor's motion to employ a broker was filed on January 31, 2024.

The terms of the sale have been refined with greater clarity, but still miss some critical details, such as what will happen if the Property is not sold, and what amount the real estate broker will receive from the sale. .

Ambiguous Treatment of Class 2 Creditors

Trustee objects on the grounds that the Creditor will only receive monthly dividends of \$1,380.00 per month for 6 months, or until sale is completed. Trustee argues that Debtor fails to provide any treatment to Creditor if the sale does not complete, or what the creditor will receive at the end of 6 months, in June 2024. In response, Debtor states that the Secured Creditor will receive a monthly dividend of \$1,380.00 per month during the period prior to the sale, i.e. through June of 2024. Reply, Docket 80, p. 3:1-3. Debtor later states that "with the subject property selling for \$550,000.00 . . . less \$453,675.57 Secured Creditors' claim, allows for a profit of \$39,487.97." Thus, Debtor appears to infer that Creditor will receive the full value of their claim at some time after the sale. However, the Plan does not state specifically when this disbursement to Secured Creditors must take place.

Also, Debtor does not appear to have a contingency in place if the sale does not complete. Highlighting the need for this contingency is Debtor's own words, "Debtor intends to sell the Subject Property within the next (90) days **subject to** offers received." *Id.* at 2:16-20 (emphasis added). Debtor has set an Application to hire a Real Estate Agent hearing for February 27, 2024. Debtor expects that all proper offers would be received by May of 2024. This leaves slightly over three months to receive offers.

Objection to Claim and Arbitration

Debtor requests that the Chapter 13 Trustee hold any amounts "in dispute between the Secured Creditors, and the Debtor pending resolution of the disputed amount due by way of Arbitration of Objection to Claim." Docket 80, p. 3:5-7. Debtor provides no evidence that there is arbitration of objection to claim. In fact, Debtor's calculates the Creditor's claim of \$453,675.57 into their profits from the sale of the property. *Id.* at 3:25. Debtor's estimation of Creditor's claim is the same as the proof of claim. It is not clear to the court how, why, or on what grounds Debtor objects to Creditor's claim.

Evidence of Insurance

Creditor objects on the grounds that Debtor has failed to insure the Property. However, Debtor has provided an unauthenticated quote from an insurance company for coverage at the address. Exhibit B, Docket 84, American Modern Dwelling Basic Quote.

Insufficient Income

Trustee and Creditor object to confirmation of the Amended Plan because they are not certain that Debtor's income is sufficient to fund the Amended Plan. Debtor's Schedule I shows \$1,200.00 in monthly income from "Room Rental". Petition, Docket 14, p. 17:8h. However, in Debtor's reply, it states that he receiving "Room Rental" income of \$1,800.00 per month. Reply, Docket 80, p. 3:10-11. No evidence has been provided that verifies the amount the Debtor receives per month for the "Rental Room", nor has there been any evidence presented to show the Trustee that this income will be reliable for the life of the Amended Plan. Debtor states in his Declaration, he "intend[s] to make \$2,250.00 per month through June 2024, while [he] prepare[s] to sell the home." Docket 83 ¶ 2. Debtor does not testify as to how he can earn this income.

Amended Schedules

Trustee objects to confirmation of the Amended Plan because during the First Meeting of Creditors, Debtor admitted that he owned Bitcoin, but has failed to amend Schedule A/B to include this asset. Opposition, Docket 68, p. 3:8-22. Debtor states in his reply that he has amended Schedule B to add the Bitcoin asset. Reply, Docket 80, p. 3:8-9. Additionally, Trustee objects because on Debtor's Schedule I, it shows income from a "Room Rental" for \$1,200.00 per month, and \$100.00 per month from "Dog Care Services." Petition, Docket 14, p. 17:8h. Debtor has stated that he is actually receiving \$1,800.00 from the "Room Rental" and is no longer receiving income from "Dog Care Services". Reply, Docket 80, p. 3:10-13. Upon the court's review of the Docket, no amended Schedule has been filed with the court that corrects either of these discrepancies.

Property Taxes

Creditor states that Debtor actually owes the County of Sacramento \$24,386.23, and that Debtor is failing to disclose this fact. Opposition, Docket 71, p. 2:7-9. In Debtor's reply, it states that while property taxes are due through 2024, the amount due through 2023 is \$16,836.46. Reply, Docket 80, p. 2:3-5.

FEBRUARY 13, 2024 HEARING

As the Parties may be aware, the judge hearing this court's Department E Calendar on February 13, 2024, is not the judge to whom this Case is assigned. It appears that in considering this Motion, a knowledge of the history of the case is of great benefit.

Additionally, it appears that the Debtor may be able to address some of these oppositions and can file a Statement of Amendments to Plan for this court to consider in determining how this matter can go forward and how Creditor's interests are adequately protected.

The court continues the hearing to 2:00 p.m. on February 27, 2024, at which the judge to whom this case is assigned will be conducting the hearing.

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, Bryan Gary Gallinger (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm the Amended Plan is continued to **2:00 p.m. on February 27, 2024**.

On or before February 22, 2024, if such items have been determined, Debtor may file a Statement of Proposed Amendments and Issues Not in Dispute. This short continuance will afford the parties to diligently determine which issues have been resolved and which remain for this court to adjudicate.

15. [23-24053-E-13](#)
[DPC-2](#)

VIRGINIA MARTINEZ
Peter Macaluso

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
1-10-24 [30]

Final Ruling: No appearance at the February 13, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 10, 2024. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, (“Objector”) objects to Virginia Martinez’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a statement of non-opposition on January 30, 2024. Docket 43.

Debtor filed a Chapter 7 bankruptcy case on July 2, 2020. Case No. 20-23329. Debtor received a discharge on October 19, 2020. Case No. 20-23329. Declaration, Docket 32, p. 2:1-3.

The instant case was filed under Chapter 13 on November 13, 2023.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on October 19, 2020, which is less than four years preceding the date of the filing of the instant case. Case No. 23-24053. Declaration, Docket 32, p. 2:4-5. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 23-24053), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge filed by the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 23-24053, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the February 13, 2024 hearing is required.

Local Rule 9014-1(f)(1) Motion.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 2, 2024. By the court's calculation, 42 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).

The Motion to Confirm the Amended Plan is denied.

The debtor, Philip La Tona ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 5 payments in the amount of \$3,345.00, 54 payments in the amount of \$925.00, and 1 payment in the amount of \$100,000.00 from a non-exempt mutual fund on or before May 25, 2024. Amended Plan, Dckt. 60, § 7. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 30, 2024. Dckt. 65. Trustee opposes confirmation of the Plan on the basis that:

- A. The plan payments in the Amended Plan only accounts for 59 months.
- B. The Trustee calculates that the Amended Plan will take approximately 65 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C §1322 (d).
- C. The Amended Plan fails to comply with Section 5.02(a) of the mandatory form plan.

DEBTOR'S REPLY

On February 6, 2024 Debtor filed a Reply to Trustee's Opposition. Docket 68. Debtor states he agrees that the Plan is not ready for confirmation at this time.

DISCUSSION

Inconsistent Information

There are discrepancies between the terms listed in the Amended Plan and those listed in the Motion to Confirm Debtor's First Amended Plan. The Motion to Confirm Debtor's First Amended Plan states that "Debtor proposes to remit plan payments of \$3,345.00 for 6 months and then remitting \$925.00 starting January 25, 2024 for 54 months to complete the Plan". Motion, Docket 56, p. 1:25-26. These payments would account for 60 months. However, in the Amended Plan, Debtor states that the plan payments will be \$3,345.00 for 5 months, and \$925.00 for 54 months. Amended Plan, Docket 60, § 7. The payments listed in the Amended Plan only accounts for 59 months. Therefore, there is an inconsistency among the documents that Debtor has filed and the Amended Plan does not account for 60 months of payments.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Amended Plan because the Amended Plan will complete in more than the permitted 60 months. According to the Trustee, the Amended Plan will complete in 65 months due to the fact that claims were filed higher than were scheduled in the Amended Plan. The Sacramento County Tax Collector filed a claim in the amount of \$33,300.91. However, Debtor's Amended Plan scheduled this claim for only \$24,389.89. Amended Plan, Docket 60, § 3.08. Therefore, it will take Debtor longer than 60 months to complete the Amended Plan in order to pay the full amount claimed by the Sacramento County Tax Collector. The Plan exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d).

Insufficient Plan Payments

Trustee alleges that the Amended Plan is not feasible. 11 U.S.C. § 1325(a)(6). § 5.02 (a) of the Amended Plan states "At a minimum, each monthly plan payment must be sufficient to pay in full: (I) Trustee's fees; (ii) post-petition monthly payments due on Class 1 claims; (iii) the monthly dividend specified in section 3.06 for administrative expenses; and (iv) the monthly dividends payable on account of Class 1 arrearage claims, Class 2 claims, and executory contract and unexpired lease arrearage claims". Plan, Docket 60, § 5.02. Trustee claims the proposed \$925.00 monthly plan payment is insufficient to pay the trustee's fees, the monthly payment for administrative expenses, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. Thus, the Amended Plan may not be confirmed.

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, Philip La Tona (“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.