

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 15, 2022 at 2:00 p.m.

1.	<u>21-24102</u> -E-13 <u>KMM-1</u>	NICOLE EVERETT George Burke	OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR TOYOTA MOTOR CREDIT CORPORATION 1-14-22 <u>[13]</u>
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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, and Office of the United States Trustee on January 14, 2022. By the court's calculation, 32 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 -----

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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:

- A. Debtor has not valued the collateral of Creditor’s secured claim to determine the secured portion of Creditor’s claim is anything less than the full amount of \$29,371.22. However, the Plan values the collateral at \$27,500.00.
- B. Debtor has proposed an unreasonably low interest rate of 4.0%.
- C. Debtor will not be able to afford plan payments because they do not have enough net income to afford the plan payment once Creditor’s claim is fully provided for, at an additional \$1,871.22.

DEBTOR’S RESPONSE

On January 24, 2022, Debtor filed a response stating that (1) the Trustee has not objected to the plan; and (2) Debtor will agree to pay the full allowed claim at a five (5) percent interest. Additionally, Debtor requests the following terms in an order confirming:

IT IS FURTHER ORDERED that in months 1 – 6 of the plan Debtor shall pay a plan payment of \$1,900.00 a month and then in months 7 – 60 of the plan Debtor shall pay a plan payment of \$2,005.00 a month.

IT IS FURTHER ORDERED that Debtor shall pay a monthly dividend of \$554.27 on the Class 2(B) claim held by Toyota Motor Credit Corporation based on 5% interest and \$29,371.22 collateral value.

TRUSTEE’S RESPONSE

Trustee filed a reply on February 7, 2022. Dckt. 21. Trustee states they are not opposed to Debtor paying what is proposed in their response. Additionally, Trustee requested the proposed Order Confirming Plan, attached to Debtor’s response. Trustee asks the Court overrule the Creditor’s objection and confirm Debtor’s Plan if Creditor agrees to this resolution.

Debtor’s proposal appears to resolve Creditor’s concerns. At the hearing, **XXXXXXXXXXXX**

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 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 Objection is ~~overruled, and Nicole Danielle Everett's ("Debtor") Chapter 13 Plan filed on December 8, 2021, is confirmed.~~ Counsel for Debtor shall ~~prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

IT IS FURTHER ORDERED that the terms of the Plan are modified, with the modifications stated in the order confirming the Plan, as follows

1. For months 1 – 6 of the plan Debtor shall pay a plan payment of \$1,900.00 a month and then in months 7 – 60 of the plan Debtor shall pay a plan payment of \$2,005.00 a month; and
2. Debtor shall pay a monthly dividend of \$554.27 on the Class 2(B) claim held by Toyota Motor Credit Corporation based on 5% interest and \$29,371.22 collateral value.

DEBTOR DISMISSED: 03/26/2018

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

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

Sufficient Notice Not Provided. The Proof of Service does not indicate the date the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee. ~~At the hearing, Debtor's Attorney stated service was executed on xxxx, 202x. By the court's calculation, xx days' notice was provided. 28 days' notice is required.~~

~~----- The Motion for Sanctions for Violation of the Automatic Stay 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.~~

<p>The Motion for Sanctions for Violation of the Automatic Stay is xxxxxx.</p>
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The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Byllie Dee ("Movant"). The claims are asserted against BDM Mortgage Services ("Respondent").

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Sternberg v.*

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *In re Lehtinen*, 564 F.3d at 1058.

Attorneys' fees may be recovered for work involved in bringing about an end to the stay violation and for pursuing an award of damages. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151–52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191–92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

REVIEW OF MOTION

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

- A. Debtor filed a Chapter 13 on August 15, 2017 which was dismissed without a discharge on March 26, 2018 (in Debtor's Motion, there is a clerical error stating March 26, 2017).
- B. Creditor was listed on Debtor's Schedule D.
- C. Debtor asserts owning a 33 1/3% interest in Saints' Rest Missionary Baptist Church, Inc., which is stated to be owner of the real properties to which the asserted violations of the stay relate.
- C. On November 1, 2017, Creditor posted a notice of foreclosure sale at 5600 International Blvd Oakland, CA 94621.
- D. Debtor tried to contact Creditor regarding the pending bankruptcy case.
- E. On November 22, 2017, the debtor received a phone call from Stanley

Lieber, an attorney, advising 7 that his firm represented BDM Mortgage Services, Inc. and receipt of bankruptcy case number 17-825403.

- F. On November 22, 2017, Creditor foreclosed on the property.
- G. Creditor on at least three occasions violated the automatic stay by causing locks to be changed without giving any notice.
- H. On November 29, 2017, the Trustee's Deed (Foreclosure) was recorded, listing BDM Mortgage Services, Inc. as seller and Buyer.
- I. On December 1, 2017, Creditor re-recorded the Trustee Sales deed listing a new buyer and Creditor as seller.
- J. The buyers, Christopher M. And Pamela Hermann are listed as private investors of Creditor.
- K. On January 10, 2018, Creditor posted a THREE DAYS NOTICE TO QUIT DUE TO FORECLOSURE on the property, initiating eviction.
- L. On January 23, 2018, BDM Mortgage Services, Inc. filed an eviction proceeding in Alameda County Superior Court. Case No. RG18890361.

Movant has provided the Declaration of himself in support of the Motion. Dckt. 223. The Declaration purports the same information as in the Motion.

Movant has also provided seventy-eight (78) pages worth of exhibits attached to his Declaration. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Movant is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on February 1, 2022. Dckt. 225. Respondent opposes the Motion on the following grounds:

- A. The Real Property in question was owned by a corporation - Saints' Rest Missionary Baptist Church, Inc., not Debtor individually. Therefore, the property was not part of Debtor's bankruptcy estate. The foreclosure did

not violate the automatic stay.

- B. Respondent informed Debtor that they were not aware of who Debtor was, but gave him the opportunity to show a transfer of ownership in the property to Debtor. Debtor did not provide such evidence.
- C. Even if there was a violation, it was not willful because Respondent was not aware the property was part of Debtor's bankruptcy estate.
- D. Debtor has not established any recoverable damages.
- E. Debtor has not established an award of emotional distress damages.

The court notes Debtor commenced an adversary proceeding for declaratory relief on September 28, 2021 for violation of the automatic stay against Respondent and relevant parties. Adversary Proceeding No. 21-02070, Dckt. 1. It appears to the court that the relief requested in the Adversary Proceeding is almost identical to that in this Motion.

Actions for violation of the automatic stay being in the nature of contempt (of the legislative injunction), such are properly addressed in contested matter practice. However, the parties may elect to proceed by an adversary proceeding, which is what has been done between these parties. The court has issued a Scheduling Order for Discovery and Dispositive Motions in the Adversary Proceeding. 21-2070; Scheduling Order, Dckt. 57. The Pretrial Conference is set for October 12, 2022.

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 for Sanctions for Violation of the Automatic Stay by Byllie Dee, Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX** .

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 26, 2022. 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. At the hearing -----
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The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Feasibility - Debtor may be unable to make plan payments.
- B. Plan Relies on Pending Motion - Debtor's Plan relies on Motion to Avoid Lien of Capital One Bank.

DISCUSSION

Trustee's objections are well-taken

Infeasible Plan

Trustee alleges that the Plan may not be feasible. 11 U.S.C. § 1325(a)(6). Debtor's Statement of Financial Affairs indicates Debtor does not have a business. However, at the Meeting of Creditors and Schedule I, Debtor indicates he has been self employed. However, the total gross income appears to be speculative. Debtor admitted he did not receive any gross income in January 2022. Without a stable income, it does not appear Debtor can be able to afford plan payments. Thus, the Plan may not be confirmed.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court granting Debtor's Motion to Avoid Lien of Capital One Bank. Given this Motion has been granted, Docket Control No. RK-1, this objection is moot.

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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 22, 2022. By the court’s calculation, 24 days’ notice was provided. 14 days’ notice is required.

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

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA) (“Creditor”) against property of the debtor, Michael Hugh Bennett and Shanon Bennett (“Debtor”) commonly known as 235 Maine Street Gridley, California (“Property”).

Trustee’s Nonopposition

Chapter 13 Trustee filed a nonopposition on February 7, 2022. Dckt. 26.

Discussion

A judgment was entered against Debtor in favor of Creditor in the amount of \$9,325.32. Exhibit A, Dckt. 18. An abstract of judgment was recorded with Butte County on August 14, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of

\$200,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$80,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. However, pursuant to Proof of Claim 2-1, consensual liens total \$99,990.78.

Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$115,175.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Michael Hugh Bennett and Shanon Bennett ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Capital One Bank (USA), California Superior Court for Butte County Case No. 18CV01117, recorded on August 14, 2018, with the Butte County Recorder, against the real property commonly known as 235 Maine St Gridley, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 8, 2021. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled, and the Plan as amended to provide for the claim of the Internal Revenue Service as set forth in the Stipulation (Dckt. 46) is confirmed.

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

- A. The Plan does not appear feasible because it is underfunded, Debtor's funds are unclear, Debtor failed to provide a Declaration of support, and the plan does not provide for mortgage payments.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide for a Priority Claim

Trustee asserts that the Internal Revenue Service has a claim for \$29,915.41 in priority unsecured debt. Claim 10-1. IRS' total claim is for \$33,126.70. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The non-filing spouse's Schedule J shows Debtor's separate monthly expenses as \$4,830.00, with \$1,600.00 as the mortgage expense. Debtor's net total income, however, is \$2,243.00. The Plan does not provide for the ongoing mortgage payments even though Schedule D shows Chase Mortgage has a secured claim for real property.

Additionally, Debtor has failed to provide Declaration or other evidence from the non-filing spouse as proof he can and will contribute \$380.00 to the Debtor over the duration of the Plan.

At the hearing the Trustee concurred with a continuance of the hearing for Debtor to seek out the Internal Revenue Service's consent to the treatment in the Plan. There is a parallel Chapter 13 case by Debtor's separated Spouse which provide for payment of the priority tax claim in full. Additionally, Debtor will provide documentation of the significant other's ability to contribute to the plan payment.

STIPULATION

On January 25, 2022, a Stipulation in regards to Trustee's Objection to Confirmation of Plan was filed with the court. Dckt. 46. The Stipulation states the Debtor and Internal Revenue Service ("IRS") have agreed to the treatment of IRS's claim(s) in the currently filed Plan or in any future Plan filed, as follows:

For any Class 5 Priority Debt or Class 2 Secured Debt, the IRS agrees that is Claims are not in default and shall not be due in full during Debtor's Plan. The IRS agrees that it shall receive during Debtor's case a total of \$1,250.00, which shall be paid pursuant to Class 5 of Debtor's current or future Chapter 13 Plan in this case. Any debt remaining unpaid on the IRS's priority or secured claims after the completion of Debtor's Plan shall survive Debtor's discharge and remain enforceable against Debtor.

TRUSTEE'S STATUS REPORT

On February 1, 2022, Chapter 13 Trustee, David Cusick filed a Status Report in regards to Trustee's Objection to Confirmation of Plan. Dckt. 47. The Status Report states that the Debtor is current in Plan payments to the Trustee, having paid \$1,200.00 into the Plan. Further, the outstanding issues have been resolved as follows:

- A. A Stipulation with the IRS regarding Plan Treatment, signed by the Debtor and Jeffrey Lodge of the IRS has been filed with the court. Dckt. 46. The Stipulation provides \$1,250.00 will be paid to priority and that neither secured nor priority will be discharged, with the debt not due in

full during the Plan (where a spouse's case is pending with a longer Plan), and thus not subject to discharge. The Debtor has submitted to the Trustee a proposed Order Confirming Plan that amends the Plan so the general unsecured claim of the IRS shall remain in Class 7 claim under the Plan.

- B. Debtor filed an Amended Schedule I and J. Dckt. 34.
- C. Debtor filed a Declaration in Support of Plan Confirmation. Dckt. 35..
- D. That the court overrule the Objection for the Plan as amended pursuant to the Stipulation.

February 15, 2022 Hearing

At the hearing **XXXXXXXXXX**

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

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

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

IT IS ORDERED that the Objection to Confirmation of Plan is overruled, the Plan amended to provide:

1. For any Class 5 Priority Debt or Class 2 Secured Debt, the IRS agrees that its Claims are not in default and shall not be due in full during Debtor's Plan. The IRS agrees that it shall receive during Debtor's case a total of \$1,250.00, which shall be paid pursuant to Class 5 of Debtor's current or future Chapter 13 Plan in this case. Any debt remaining unpaid on the IRS's priority or secured claims after the completion of Debtor's Plan shall survive Debtor's discharge and remain enforceable against Debtor.

Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, stating the above amendment in the order confirming the Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on December 20, 2021. By the court's calculation, 57 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Objection to Proof of Claim Number 2 and 5 of SMUD is sustained, and Claim 5 is only allowed as an amended claim of Claim 2.

David P. Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of SMUD ("Creditor"), Proof of Claim No. 2 and Proof of Claim No. 5 ("Claims"), Official Registry of Claims in this case. Trustee states the latter claim appears to be an amended claim for the same debt and only one claim should be allowed.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's

proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Upon the court's review of the Exhibits, Proof of Claim 5-1 appears to be an identical duplicate of 2-1. As such, Creditor's Proof of Claim 5-1 is disallowed in its entirety.

Additionally, Exhibit A, Proof of Claim 2-1, supports a claim allowed of no more than \$202.02.

The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of SMUD ("Creditor"), filed in this case David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 2-1 of Creditor is sustained, and the said claim is disallowed, Creditor having filed Proof of Claim 5-1 as a duplicate proof of claim.

IT IS FURTHER ORDERED that the Objection to Proof of Claim Number 5-1 of Creditor is sustained, and the claim is disallowed in any amount over \$202.02.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 22, 2021. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection was dismissed without prejudice, and the matter is removed from the calendar.

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

- A. The Debtor failed to appear at the First Meeting of Creditors on December 16, 2021. Instead, Debtor's son did appear on behalf of the Debtor and showed proof of Power of Attorney. However, Debtor's son was able to provide the Trustee with Debtor's identification and social security verification at the hearing. The Trustee is unclear if Power of Attorney is proper in this case and if the Court would allow the Power of Attorney document to authorize Mr. Germany, Debtor's son, to file a bankruptcy case on behalf of his mother.
- B. The Debtor cannot make payments under the Plan because Schedule G was not completely filled out and is missing information. The Debtor has failed to state what the contract or lease is for in regards to Creditor

American Honda Finance. Further, American Honda Finance is not listed in the Plan in Class 2 or in Section 4.

- C. The Debtor's first Plan payment of \$315.00 will be due on December 25, 2021 and a second payment of \$315.00 will be due on the day of the hearing, January 25, 2022. The Debtor will need to pay a total of \$630.00, by the hearing date to be current in Plan payments to the Trustee.

Trustee's Status Report

On January 18, 2022, Trustee filed a Status Report stating Debtor is current on plan payments and Debtor has amended Schedule G to include lease details for American Honda Finance. Dckt. 24. Trustee states the only remaining issues is for Debtor to appear at the Continued Meeting of Creditors on January 20, 2022 and for the Court to determine if the Power of Attorney is proper.

Trustee requests if Debtor appears at continued Meeting of Creditors and the Power of Attorney is allowed, the Debtor's Plan be confirmed.

At the hearing, Trustee reported Debtor did appear at the Meeting of Creditors and provided driver's license information, but could not provide Social Security Number confirmation. Dckt. 26. Trustee requests that the hearing be further continued until after the February 10, 2022 continued First Meeting of Creditor.

Power of Attorney / 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).

Federal Rules of Bankruptcy Procedure § 9010 governs representation, appearances, and power of attorneys in bankruptcy proceedings. Although on the face § 9010 is not abundantly clear, Collier on Bankruptcy 9010.02 (16th edition 2021) details who can appear on behalf of a party:

A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act in the entity's own behalf, (2) appear in a case under the Code through an attorney authorized to practice in the court, (3) appear in a case under the Code through an authorized agent or attorney in fact, who may perform any act not constituting the practice of law, or (4) appear in a case under the Code by proxy.

10 Collier on Bankruptcy P 9010.02 (16th 2021). Under § 9010(c), any agent shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form and acknowledged before one of the officers enumerated in 28 U.S.C. §§ 459 or 953 or Federal Rules of Bankruptcy Procedure 9012.

Here, Exhibit A provides Debtor's Power of Attorney, appointing John Richard Germany to

act in Debtor's place. Dckt. 18. The document is clear, it gives Mr. Germany the power to act in Debtor's place on behalf of her debts, assets, creditors, or any other financial related items.

With respect to bankruptcy, it authorizes John Richard Germany to exercise the powers in "Managing and prosecuting a bankruptcy chapter 7 in the Eastern District of California, in any way necessary to serve my best interests to address my debts, asset, creditors, or any other financial related items." Power of Attorney, ¶ 2; Exhibit A, Dckt. 18.

Mr. Germany filed this bankruptcy case for Linda Germany, exercising his powers under the Power of Attorney. Mr. Germany is the real party in interest who must now not only prosecute the interests of Linda Germany, but fulfill the fiduciary duties to the bankruptcy estate in exercising the rights and powers of a trustee by a Chapter 13 debtor. 11 U.S.C. § 1303, § 1304(b).

As such, Debtor's Power of Attorney appears to conform with the requirements set forth in Federal Rules of Bankruptcy Procedure § 9010, and John Richard Germany is authorized to act as the agent for Debtor in commencing and prosecuting this bankruptcy case in the place of Linda Curnow Germany.

Trustee's Status Report

On February 11, 2022, Trustee filed a status report stating they no longer seek to pursue the objection to confirmation.

David P. Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection was dismissed without prejudice, and the matter is removed from the calendar.**

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 ~~was not~~ Provided. The court's docket reflects the Debtor failed to file a Certificate/Proof of Service with the Debtor's Motion to Substitute. Further, Debtor did not attach a Certificate/Proof of Service to the Motion, Notice, or Declaration in relation to the Motion. The court cannot obtain an accurate picture of who was served without a Certificate/Proof of Service being lodged with the court.

However, the court notes that the Chapter 13 Trustee has responded to the Motion.

At the hearing, Counsel for Debtor **XXXXXXX**

~~The Motion to Substitute 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 respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.~~

The Motion to Substitute is **XXXXX.**

Joint Debtor, Thomas Scott Harland, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Robin Arlene Harland. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 7025.

Debtor filed for relief under Chapter 13 on September 2, 2020. On July 12, 2021, Debtor's Chapter 13 Plan was confirmed. Dckt. 77. On September 14, 2021, Debtor Robin Arlene Harland passed away. Joint Debtor asserts that he is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Suggestion of Death was filed on October 5, 2021. Dckt. 86. Joint Debtor is the Husband of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that he will continue to prosecute this case in a timely and reasonable manner.

Trustee's Non-Opposition

On February 1, 2022, Chapter 13 Trustee, David Cusick, filed a Non-Opposition to Debtor's Motion to Substitute Party. Dckt. 106. Trustee states he does not oppose Debtor's Motion to Substitute.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for

substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004

(emphasis added); *see also Hawkins v. Eads, supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor’s 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Thomas Scott Harland has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 86. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Thomas Scott Harland, as the Husband of the deceased party and as the successor’s heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Robin Arlene Harland. The court grants the Motion to Substitute Party.

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

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

The Motion for Substitute After Death filed by Debtor having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Thomas Scott Harland is substituted as the successor-in-interest to Robin Arlene Harland and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

~~IT IS FURTHER ORDERED~~ that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor Robin Arlene Harland is **~~denied~~**.

[illegible]

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—Opposition Filed.

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

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

The Motion to Dismiss is XXXXX.

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

1. The debtors, Robin Arlene and Thomas Scott Harland (“Debtor”), are delinquent in plan payments under the confirmed plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 5, 2021. Dckt. 87. Debtor Robin Arlene Harland died on or about Tuesday, September 23, 2021. Dckt. 86. Debtor, Thomas Harland, is determining survivor's

benefits for himself, and requests a 90 day continuance. Debtor intends to remain current while determining if a modification or other plan is appropriate.

DISCUSSION

Delinquent

Debtor is \$8,448.00 delinquent in plan payments, which represents multiple months of the \$3,582.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$12,030.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee agreed to a continuance to allow the surviving debtor to obtain the appointment of a representative for the late debtor and continue in the prosecution of this joint case.

Debtor's Supplemental Opposition

On December 21, 2021, Debtor Thomas Scott Harland filed a Supplemental Opposition to Motion to Dismiss. Dckt. 91. Debtor informs the court that after consulting with the Trustee's office, he decided to draft a new Chapter 13 Plan. Debtor will not be able to confer with their counsel until January 3, 2022. They will hope to have a new plan or motion for hardship discharge filed before January 5, 2022. Dckt. 91.

January 5, 2022 Hearing

At the hearing, counsel for the Debtor reported that the Plan was filed on January 4, 2022, and a motion to confirm has been filed, and a motion to substituted . The Trustee concurred with the request for a continuance.

February 15, 2022 Hearing

At the hearing **xxxxxxxxxxxx**

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

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

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

IT IS ORDERED that the Motion to Dismiss is **xxxxxx**.

10 thru 13

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

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

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

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

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

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

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

DISCUSSION

The five motions to value collateral Debtor relies on include Comenity Bank – Bankruptcy Dept.; Synchrony Bank – Becks; Synchrony Bank – Evans Furniture; Honda Financial Services; and Safe Credit Union. This is evidenced by Debtor's Plan (Dckt. 3) where all creditors are listed as Class 2(B), claims reduced based on value of collateral. To date, Debtor has filed Motions to Value Collateral for three of these creditors: Synchrony Bank – Evans Furniture, Synchrony Bank – Becks, and Comenity Bank – Bankruptcy Dept. These matters were set to be heard on January 25, 2022. However, due to improper notice, they were continued to February 15, 2022.

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

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

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

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

February 15, 2022 Hearing

The court having granted the Motions to Value Secured Claims, that portion of the opposition has been resolved. However, Motions to Value Secured Claims of Honda Financial Services and Safe Credit Union have still not been set for calendar.

At the hearing, Debtor's Counsel reported that **XXXXXXX**

~~The proposed Chapter 13 Plan complies with 11 U.S.C. § 1322 and § 1325; the Objection is overruled, and the Plan is confirmed.~~

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

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

~~The Objection to the Chapter 13 Plan filed by 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 is overruled, and Debtor's Chapter 13 Plan filed on December 1, 2021, is confirmed. Debtor's Counsel shall prepare~~

~~an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

11. [21-24047-E-13](#) **LAWRENCE/GENEVA IRBY** **CONTINUED MOTION TO VALUE**
[CYB-1](#) **Candace Brooks** **COLLATERAL OF SYNCHRONY BANK**
1-6-22 [\[15\]](#)

Final Ruling: No appearance at the February 15, 2022 Hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 6, 2022. By the court's calculation, 19 days' notice was provided. 28 days' notice is required for this Motion noticed for hearing as provided in the Federal Rule of Bankruptcy Procedure 9014-1(f)(1).

At the hearing, counsel for Movant agreed to a continuance to allow for noticing a continued hearing for a time period that complies with Local Bankruptcy Rule 9014-1(f)(1).

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.

<p>The Motion to Value Collateral and Secured Claim of Synchrony Bank ("Creditor") is granted.</p>

The Motion filed by Lawrence David Irby and Geneva Fae Irby ("Debtor") to value the secured claim of Synchrony Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 18. Debtor is the owner of a living room set - couch, loveseat, and recliner ("Property"). Debtor seeks to value the Property at a replacement value of \$400.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also*

Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee's Nonopposition

Chapter 13 Trustee filed a nonopposition to Debtor's Motion on January 11, 2022. Dckt. 35. The Trustee states Creditor has not filed a claim to date.

February 15, 2022 Hearing

The court continued the hearing to allow for the filing of written opposition. No opposition has been filed.

Discussion

The lien on the Property secures a purchase-money loan incurred on or about February 2018, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$1,162.00. Schedule D, Exhibit B, Dckt. 17. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of \$400.00, 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 Motion is granted **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 Value Collateral and Secured Claim filed by Lawrence David Irby and Geneva Fae Irby ("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 Synchrony Bank ("Creditor") secured by an asset described as living room set - couch, loveseat, and recliner ("Property") is determined to be a secured claim in the amount of \$400.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$400.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the February 15, 2022 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 6, 2022. By the court's calculation, 19 days' notice was provided. 28 days' notice is required.

At the hearing, counsel for Movant agreed to a continuance to allow for noticing a continued hearing for a time period that complies with Local Bankruptcy Rule 9014-1(f)(1).

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 Synchrony Bank ("Creditor") is granted.

The Motion filed by Lawrence David Irby and Geneva Fae Irby ("Debtor") to value the secured claim of Synchrony Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 23. Debtor is the owner of a Bedroom Set - one bed and two dressers ("Property"). Debtor seeks to value the Property at a replacement value of \$ 400.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee's Nonopposition

Chapter 13 Trustee filed a nonopposition to Debtor's Motion on January 11, 2022. Dckt. 31.

The Trustee states Creditor has not filed a claim to date.

February 15, 2022 Hearing

The hearing was continued to allow for the filing of written opposition. No written opposition has been filed.

Discussion

The lien on the Property secures a purchase-money loan incurred in August of 2019, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$1,162.00. Schedule D, Dckt. 1. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of \$400.00, 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 Lawrence David Irby and Geneva Fae Irby ("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 Synchrony Bank ("Creditor") secured by an asset described as Bedroom Set - one bed and two dressers ("Property") is determined to be a secured claim in the amount of \$400.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$400.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the February 15, 2022 Hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, excluding Synchrony Bank, and Office of the United States Trustee on January 6, 2022. By the court's calculation, 19 days' notice was provided. 28 days' notice is required.

At the hearing, counsel for Movant agreed to a continuance to allow for noticing a continued hearing for a time period that complies with Local Bankruptcy Rule 9014-1(f)(1).

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 Comenity Bank
("Creditor") is granted.**

The Motion filed by Lawrence David Irby and Geneva Fae Irby ("Debtor") to value the secured claim of Comenity Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 28. Debtor is the owner of a ring ("Property"). Debtor seeks to value the Property at a replacement value of \$300.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee's Nonopposition

Chapter 13 Trustee filed a nonopposition to Debtor's Motion on January 11, 2022. Dckt. 33. Trustee notes there is a typographical error in the value of the asset. Pages 3-4 lines 4-5 of the Motion

state the value to be \$400.00, where the rest of the Motion and supported pleadings, including Debtor's Schedules state the value to be \$300.00. The court reads the \$400.00 as a typographical error. Additionally, Trustee states Creditor has not filed a claim to date.

February 15, 2022 Hearing

The court continued the hearing to allow for the filing of written opposition. No opposition has been filed.

Discussion

The lien on the Property secures a purchase-money loan incurred on or about March 3, 2020, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$1,262.00. Schedule D, Dckt. 1. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of \$300.00, 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 Lawrence David Irby and Geneva Fae Irby ("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 Comenity ("Creditor") secured by an asset described as a ring ("Property") determined to be a secured claim in the amount of \$300.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$300.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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 31, 2021. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is XXXXXXX.

The debtor, Douglas Matthew Lutes and Valerie Lynn Lutes ("Debtor") seeks confirmation of the Modified Plan because Debtor is delinquent \$50,282.48, \$282.48 in Plan payments and the \$50,000.00 lump sum that should have been paid in September 2021. Declaration, Dckt. 91. The Modified Plan provides payments of \$4,696.00 for 51 months, plus a lump-sum payment of \$130,000.00 from the Estate of Joseph Urge on or before January 25, 2022, or an amount necessary to complete the plan in full. Modified Plan, Dckt. 93. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 1, 2022. Dckt. 100. Trustee opposes confirmation of the Plan on the basis that:

- A. No current Schedules of I and J have been filed to support this motion so the Court may find Debtors have not proved they can afford the payments.

DISCUSSION

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 has not filed current Schedules I & J. The most recent filed Schedules I & j are dated March 24, 2021. Dckt. 33. Schedule I, (Dckt. 1 at 32), reflects monthly income of \$4,520 from a probate case, where the declaration of the executor, (Dckt. 91), does not specifically support this. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, **XXXXXXX**

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

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

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

~~————— The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Douglas Matthew Lutes and Valerie Lynn Lutes ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on December 31, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

15 thru 16

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

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, on September 21, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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.

<p>The hearing on the Motion for Relief from the Automatic Stay is XXXXX.</p>

Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to Kenneth Kip Scammon's ("Debtor") real property commonly known as 22484 Lake Helen Pl, Cottonwood, California ("Property"). Movant has provided the Declaration of Mary Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made nine post-petition payments, with a total of \$11,525.97 in post-petition payments past due and a total of \$12,763.97 in post-petition delinquencies. Declaration, Dckt. 39. The additional costs include attorneys fees and th bankruptcy filing fee. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed an Response on October 12, 2021. Dckt. 43. Trustee asserts that Debtor is current under the confirmed plan. Movant is classified as a Class 1 creditor. Trustee has disbursed \$25,368.78 towards the Debtor's ongoing mortgage and \$8,181.38 in arrears. Additionally, Trustee confirms two payments of \$1,284.87 to Movant for July and August

payments.

Trustee asserts this would put Debtor only six payments behind instead of nine. However, only two payments would put Debtor seven payments behind, not six.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 14, 2021. Dckt. 46. Debtor asserts they had a six month forbearance, of which Debtor was not notified of until March 2021. Debtor further asserts that a loan modification request to move three missed post-petition payments to the end of the loan period, and Debtor claims they will file a declaration itemizing payments made to date.

DEBTOR'S DECLARATION

Debtor filed a Declaration on October 26, 2021. Debtor states they have made every Chapter 13 Plan Payment from July 2021 through October 2021. Nationstar sent Debtor a loan modification to place arrears at the end of the loan. Exhibit 2, Dckt. 50. Debtor disagrees they are six months delinquent. Debtor requests the court continue the Motion for Relief for an appropriate date to obtain Court Approval for a loan modification.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$178,796.76 (Declaration, Dckt. 39), while the value of the Property is determined to be \$210,000.00 as stated in Schedules A/B and D filed by Debtor.

At the hearing, counsel for Debtor requested a 30 day continuance, with adequate protection payments made as a Class 1 Claim. Counsel for Movant concurred. This is to allow for the documentation of the loan modification.

DECEMBER 7, 2021 HEARING

At the hearing, counsel for the Debtor reported that the Loan Modification is in underwriting, but the terms have not been finalized. Movant agreed to a further continuance of about 45 days.

January 25, 2022 Hearing

On January 6, 2022, Debtor filed a Motion for Approval of a Trial Loan Modification (DCN: MWB-2, Dckt. 55). The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on February 15, 2022 (Specially Set Time), to be heard in conjunction with Debtor's Motion to Approve a Trial Loan Modification.

February 15, 2022 Hearing

At the hearing **XXXXXXXXXXXXX**

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

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

The Motion for Relief from the Automatic Stay filed by Nationstar Mortgage LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion for Relief from the Automatic Stay is **xxxxxx**.

16. [19-23558-E-13](#) **KENNETH SCAMMON** **MOTION TO APPROVE LOAN**
[MWB -2](#) **Mark Briden** **MODIFICATION**
1-6-22 [[55](#)]

Final Ruling: No appearance at the February 15, 2022 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, creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2022. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 Approve Loan Modification is granted.
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The Motion to Approve Loan Modification filed by Kenneth Kip Scammon (“Debtor”) seeks court approval for Debtor to incur post-petition credit. Mr. Cooper (“Creditor”), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$1,284.87 per month to \$1,206.71 per month. The modification will allow Debtor to make payments of \$1,206.71 directly to creditor, Mr. Cooper, beginning February 1, 2022 through April

1, 2022.

Trustee's Nonopposition

The Trustee, David Cusick, filed a nonopposition on February 1, 2022. Dckt. 62.

Discussion

The Motion is supported by the Declaration of Kenneth Scammon. Dckt. 57. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue 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 Approve Loan Modification filed by Kenneth Kip Scammon ("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 court authorizes Kenneth Kip Scammon to amend the terms of the loan with Mr. Cooper ("Creditor"), which is secured by the real property commonly known as 22484 Lake Helen Place, Cottonwood, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion (Dckt. 58).

17 thru 18

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

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 29, 2021. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Randell Dee Comstock and Maria Elvira Comstock ("Debtor") seeks confirmation of the Modified Plan to cure their delinquent Plan payments. Dckt. 91. The Modified Plan provides to make one payment of \$61,983.75 as of December 29, 2021 and make thirty-three (33) payments of \$2,682.36 each beginning January 25, 2022. Modified Plan, Dckt. 95. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

COURT'S ORDER FOR SUPPLEMENTAL PLEADING

On January 10, 2022, the court submitted an Order (Dckt. 102) for Debtor to file Supplemental Pleadings to the Motion to Confirm (Dckt. 91) because the original Motion did not state sufficient grounds with particularity to confirm the Modified Plan.

DEBTOR'S SUPPLEMENTAL PLEADING

On January 21, 2022, Debtor filed Supplemental Pleading to the Motion to Confirm Modified Plan. Dckt. 103. Debtor states:

- A. Debtors can make the payments that will become due under the modified Plan.
- B. Debtors filed their bankruptcy in good faith and this amended plan is also filed in good faith.
- C. Debtor has paid all fees that are required to be paid before their Plan can be confirmed.
- D. Creditors will receive as much or more under the proposed Plan as they would receive if Debtors were liquidated under Chapter 7 of the bankruptcy code.
- E. Secured creditors will retain their lien on their collateral until the creditor is paid or the Plan is completed.
- F. Debtor does not have any support obligations and has filed all tax returns.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 1, 2022. Dckt. 106. Trustee opposes confirmation of the Plan on the basis that:

- A. The Motion to Confirm Debtor's Chapter 13 Plan may not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013.
- B. The Declaration does not comply with 28 U.S.C. 1746(2) where it relies on Debtor's personal knowledge (Dckt. 93; p. 1, line 18) and does not subscribe to be true and correct under penalty of perjury (p. 2, lines 14-15).
- C. Section 7 proposes Plan payments of one payment as of December 29, 2021, in the amount of \$61,983.75, then thirty-three (33) payments of \$2,682.36 beginning January 25, 2022. This language could be interpreted as proposing a thirty-four (34) month plan rather than a sixty (60) month Plan pursuant to Section 2.03. The Trustee would request the order confirming include language stating the Plan payment is \$61,983.75 total paid through month twenty-seven (27), then \$2,682.36 for thirty-three (33) months beginning January 25, 2022.
- D. Debtor may not have provide sufficient notice because Debtor's Schedules I & J filed December 29, 2021, are filed as an Exhibit only (Dckt. 94) and are otherwise not identified on the court's docket as an amended or supplemental schedule of expenses, potentially making it

difficult for parties to find the Debtor's most recent budget on file with the court.

- E. Trustee questions the ability of Debtor to make Plan payments because Debtor did not notify Trustee of any change of employment. Further, Schedule J reflects an increase in expenses from \$1,718.38 to \$2,646.00, and a number of adjustments up and down, without explanation, that do not appear unreasonable.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

On February 8, 2022, Debtor filed a Reply to Trustee's Opposition. Dckt. 109. In the Reply Debtor states:

- A. Debtor is at a loss to what additional grounds need to be included in order to address the particularity issue.
- B. Debtor has filed an additional declaration that contains the language required by 28 U.S.C. § 1746(2).
- C. Debtor's Plan is for sixty (60) months and used language recommended by the Trustee in prior cases, but sees the possible misinterpretation. Debtor stipulates to the change in language that is being recommended by the Trustee.
- D. Debtor is filing amended Schedules I & J with the court using an Amendment Cover Sheet.
- E. Debtor apologizes for not informing Trustee of their change in employment. Debtor was concentrating on making a living and saving their house and did not recall they needed to inform the Trustee of change in employment. Debtor will make sure the Trustee is informed of any future changes.

DISCUSSION

Insufficient Motion

Upon further review of Debtor's Supplemental Pleading (Dckt. 103), Debtor has stated sufficient grounds for particularity. Though Debtor does not directly state the required law for the Motion to be granted, Debtor provides adequate facts that meet the elements of 11 U.S.C. § 1325(a). The adequate facts being:

- A. Debtors can make the payments that will become due under the modified Plan.
- B. Debtors filed their bankruptcy in good faith and this amended plan is also filed in good faith.

- C. Debtor has paid all fees that are required to be paid before their Plan can be confirmed.
- D. Creditors will receive as much or more under the proposed Plan as they would receive if Debtors were liquidated under Chapter 7 of the bankruptcy code.
- E. Secured creditors will retain their lien on their collateral until the creditor is paid or the Plan is completed.
- F. Debtor does not have any support obligations and has filed all tax returns.

Providing adequate facts that meet the elements under § 1325(a) is sufficient grounds with particularity under Federal of Bankruptcy Procedure 9013.

Insufficient Declaration

Upon further review of Debtor's Supplemental Declaration (Dckt. 104), Debtor states, "I declare under penalty of perjury under the laws of the United States of America." 28 U.S.C. § 1746(2) states:

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)"

Here, Debtor fails to provide the language of "that the foregoing is true and correct." However, Debtor filed another Declaration on February 8, 2002, Dckt. 110, that contains much of the same information as the Docket No. 104, with the addition of a few new paragraphs. This second Declaration (Dckt. 110) corrects the clerical (but very substantial) error of not stating "that the foregoing is true and correct."

Plan Payment

Trustee's concerns are noted about the language of the Section 7 non-standard provisions and Debtor's non-opposition to Trustee's recommended language. Upon confirmation the language will read, "the plan payment is \$61,983.75 total paid in through month twenty-seven (27), then \$2,682.36 for thirty-three (33) months beginning January 25, 2022.

Insufficient Notice

Federal Rule of Bankruptcy Procedure 1009(a) requires "the debtor give notice of the amendment to the trustee and to any entity affected thereby." Upon further review of the court's docket Debtor filed Supplemental Schedules I & J with an Amendment Cover Sheet on February 8, 2022. Dckt. 112. Thus rectifying the Trustee's concern of improper notice to the Trustee and any entity affected.

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). Trustee questions the ability of Debtor to make Plan payments because Debtor did not notify Trustee of any change of employment. Further, Schedule J reflects an increase in expenses from \$1,718.38 to \$2,646.00, and a number of adjustments up and down, without explanation, that do not appear unreasonable. However, Trustee indicates that this issue is minor and would like explanation for the adjustments to expenses.

At the hearing, **XXXXXXX**

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

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

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

~~————— The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Randell Dee Comstock and Maria Elvira Comstock ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on December 29, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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—No Opposition Filed.

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

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

The Motion to Dismiss is XXXXX.

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

1. the debtor, Randell Dee Comstock and Maria Elvira Comstock (“Debtor”), is delinquent on plan payments.

DISCUSSION

Delinquent

Debtor is \$5,206.20 delinquent in plan payments, which represents multiple months of the \$2,603.10 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court had posted a final ruling granting this Motion, Debtor having not filed an

opposition. The Chapter 13 Trustee requested the court consider the matter, advising the court that a modified plan and motion to confirm had been filed.

Based on the Trustee's communication of that information, the court continues the hearing.

February 15, 2022 Hearing

At the hearing xxxxxxxxxx

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is xxxxx.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 26, 2022. 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. 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:

- A. The plan proposes to pay no less than a 0% dividend to unsecured creditors in 60 months and may fail the Chapter 7 liquidation analysis under 11 U.S.C. §1325(a)(4).
- B. Debtors are exempting 100% of amounts claimed in each financial account under California Code of Civil Procedure § 704.070 when the maximum allowed under this exemption is 75% if traceable to wage income.
- C. The trustee is uncertain of when certain transactions involving ownership of LLC's occurred and the value of the stock when the

transfers were made, and, if any exchange of funds were received for the transactions.

- D. Debtors have failed to provide the documents required by 11 U.S.C. § 521(e)(2)(A); Federal Rules of Bankruptcy Procedure 4002(b)(3) as well as the documents requested in the Business Questionnaire and at the First Meeting of Creditors.
- E. Debtor's plan provides for \$5,000.00 in attorney's fees when only \$4,000.00 are allowed under Local Bankruptcy Rule 2016-1(c) for an individual case.
- F. Debtor is delinquent on their first plan payment; however, it may be cured prior to the hearing.

DISCUSSION

The court reviews the Trustee's Objections as follows.

Debtor Fails Liquidation Analysis

Trustee states Debtor's plan *may* fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). However, Trustee does not state why. All Trustee states is that Debtor's Plan proposes to pay no less than zero (0) percent dividend to unsecured creditors in sixty (60) months. This does not provide the court with any information on how the Plan fails the liquidation test.

Trustee not being able to state grounds for a belief, that possible, for some reason my fail the liquidation test, that ground of the Objection is overruled.

Non-Exempt Equity/Assets

Debtor is exempting 100% of amounts claimed in each financial account under California Code of Civil Procedure § 704.070. Pursuant to California Code of Civil Procedure § 706.050, twenty-five percent of a judgment debtor's disposable earnings can be withheld. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a zero percent dividend when there may be upward of twenty-five percent of Debtor's earnings in non-exempt equity/assets.

The Trustee is correct and this ground for objection to confirmation is sustained.

Transfer of LLCs

Trustee is concerned about the inconsistent statements at Debtor's First Meeting of Creditors, Statement of Financial Affairs, and Schedule B. Trustee is uncertain when the transfer occurred and if any exchange of funds were received. The court is not certain, however, what objection Trustee is raising with this concern.

In the Objection, the Trustee states that Debtor informed the Trustee at the First Meeting of

Creditors that they did not actually own a “50%” for Q Street Dogs, Chitas Taqueria, LLC, with an ownership value of \$2,500.00 and 8.75% for Chitas Taqueria, LLC, with an ownership value of \$1,750.00, as stated under penalty of perjury, but they had transferred those interests to Debtor’s sister. Debtor then amended Schedule A/B to state having only a 10% interest in Q Street Dogs and an ownership value of \$2,000 for Chitas Taqueria, LLC.

A review of Bankruptcy Petition discloses that Debtor states, under penalty of perjury:

1. Debtor formerly did business as “Chitas Taqueria, LLC (it is unclear how an individual could do business representing the individual to be a limited liability company, as such a “fictitious name” violates California law).
Petition, ¶ 4.
2. Debtor then states under penalty of perjury that Debtor is a sole proprietor of a business.

Pay Stubs & Tax Returns

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Documents Related to Business

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

- A. Questionnaire,
- B. Two years of tax returns;
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.
- F. Six months of financial statements for Sutton Bank accounts ending in 1757 & 1281; Fidelity account ending in 4375; and crypto account for Voyager and Coinbase

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

Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Attorneys' Fees

In this case, Debtor owns a separate legal entities that do business corporation that does business - Q Street Dogs, Chitas Taqueria, LLC and Chitas Taqueria, LLC - lease location negative net \$60k; debtor works as employee, FMV \$20k liquidation value.” Dckt. 1 at 16. Debtor further states under penalty of perjury:

- A. Debtor does not own or have an equitable interest in any business-related property. Schedule A/B, ¶ 37; Dckt. 1. .

On Schedule I, Debtor states under penalty of perjury that Debtor has no income from the operation of a business or rental property. *Id.* at 36.

On the Amended Disclosure of Compensation of Attorney, Attorney has agreed to be paid \$4,000 as set forth on the Attorney Disclosure Statement, which states:

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S) - AMENDED

1. Pursuant to 11 U.S.C. § 329(a) and Fed. Bankr. P. 2016(b), I certify that I am the attorney for the above named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept _____	\$	<u>4,000.00</u>
Prior to the filing of this statement I have received _____	\$	<u>2,500.00</u>
Balance Due _____	\$	<u>1,500.00</u>

The Plan incorrectly provide for payment of \$5,000 in attorney’s fees for Debtor’s counsel.

Delinquency

Debtor may be \$850.00 delinquent in plan payments. However, Trustee indicates there was a pending payment of \$850.00 on TFS. The court is not sure whether Debtor is delinquent.

Interesting Financial Information Disclosed in Schedules and Statement of Financial Affairs.

In reviewing the Schedules and Statement of Financial Affairs, the court stumbled across some “interesting” financial information from Debtor under penalty of perjury. On Schedule I, debtor Ronald Custodio states having \$7,949.50 in monthly gross wage income from his employment at AT&T. Debtor Angela Custodio states under penalty of perjury having \$4,831.67 in gross wage income from working as the manager of Chitas’s Taqueria. Schedule I, Dckt. 1 at 35. This totals \$12,781 a month, for a combine wage income of \$153,372 a year.

Debtor lists having (\$3,866.67) a month for income and Social Security deduction, for a total of \$46400.04 a year. Schedule I, ¶¶ 5a, 5g; *Id.*

On Schedule J Debtor lists having two adult children who are dependants, for a family unit of four adults. *Id.* at 37. However, in looking at Schedule I, these adult children provide for economic contribution to their family unit.

Looking at Schedule J, Debtor lists having significant monthly expenses for the family unit of four adults. After those expenses, Debtor can generate only \$850 a month in projected disposable income. *Id.* at 38.

On the Statement of Financial Affairs, Debtor states under penalty of perjury that Debtor's pre-petition income has been:

2021 January - November

2021 January - November (First 11 months of the year)	Ronald Custodio	Angela Custodio	11 Month Total	Annual Total Wage Income (with Projected Additional Income of \$14,482 for December 2021)
Wages 11 months	\$110,000	\$49,300	\$159,300	\$173,782
Retirement Draw	\$13,000			
2020				
Wages	\$102,400	\$63,400		\$165,800
Retirement Draw	\$12,000			
Tax Refund	\$11,787	\$4,793		
2019				
Wages	\$99,800	\$56,400		\$156,200
Retirement Draw	\$10,000			
Tax Refund	\$5,239	\$2,330		

Stmnt Fin. Affairs, ¶¶ 5, 6; Dckt. 1.

Using Debtor's historic financial income, it appears that Debtor has substantially more projected disposable income (even without considering the lack of contribution from dependant adult children) with Debtor having substantial income tax withholding, thereby generating substantial tax refunds.

Debtor's proposed Plan is able to scrape together a 0.00% dividend for creditors having general unsecured claims, notwithstanding their projected \$178,000+ projected annual wage income. Plan, ¶ 3.14; Dckt. 3. The economic information provided by Debtor under penalty of perjury is not

consistent with the Plan, appearing to grossly understated Debtor's projected disposable income.

This raises serious concerns with respect to the good faith of Debtor in filing this bankruptcy case (or a future bankruptcy case) and credibility (possibly dooming any plan in the current case or a future case).

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"), ("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 and Debtor's Attorney on January 26, 2022. 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. 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:

- A. The Debtor may not be eligible for Chapter 13 for the unsecured debt limit under 11 U.S.C. §109(e). Debtor listed 87 creditors with no indication as to why they are listed. The Debtor has now Amended Schedule E/F, (DN 18), which replaces the existing Schedule E/F, and now shows no creditors only one creditor is listed, Ca Labor and Workforce Dev. Agency as a "Notice only" creditor.
- B. Plan may be underfunded as Debtor lists most creditors as \$0 or \$1 on Schedule F without an adequate description so the court can determine on what basis the creditor may claim a debt. Trustee estimates that if two creditors claiming labor code violations file Proofs of Claim then

the plan will take approximately 175 months to complete, which exceeds the 60 months allowed.

- C. The court may require more evidence to show why Debtor can afford to make the plan payments under 11 U.S.C. § 1325(a)(6).
1. Debtor admitted at First Meeting of Creditors he has shutdown a prior business and formed a new one, but the main client has not agreed to sign on with the new LLC.
 2. Schedules B shows that the Debtor, under penalty of perjury, values both Sacto Logistics, Inc. and RIA Courtier, Inc. are valued at \$1.00. However, RIA Couriers, Inc. Bank statement had a December 17, 2021 daily ending balance of \$281,994.68.
 3. Schedule C is exempting \$8,000.00 for wage income, but Debtor is a “Business Owner.”
 4. Schedule F was amended to only reflect one Creditor. Trustee is uncertain if Debtor has 94 Priority and Unsecured creditors or just one creditor.
 5. Schedule I, Question #8a, identifies that the Debtor’s income, of \$10,175.00, is from rental property or operating a business. However Debtor has failed to attach Business Income and Expenses statement so Trustee is not clear as to the source of Debtor’s income.
 6. Trustee is unclear from Debtor’s Statement of Financial Affairs if the Debtor receives any income as “Business Owner” and/or sole proprietor.
 7. Debtor is above median income, and after conducting the means test, Line #45 shows the Debtor as negative \$124.87. Schedule I shows the Debtor receives \$10,175.00 net business and rental income, which is significantly more than the gross income the Debtor is stating in the means test form.
- D. Unsecured creditors may not be receiving what they would receive in the event of a hypothetical Chapter 7 liquidation pursuant to 11 U.S.C. §1325(a)(4).
- E. Debtor has failed to provide financial information requested by the Trustee pursuant to 11 U.S.C. §§1302(b)(1), 704(a)(4) and 11 U.S.C.

DISCUSSION

Trustee's objections are well-taken.

Section for 109 Amount of Debt Compliance

Debtor may not qualify for Chapter 13 treatment because the unsecured debt limit in 11 U.S.C. § 109(e) may be exceeded. However, Trustee has not provided evidence as to whether Debtor is, or is not, eligible for the court to deny confirmation based on this.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). For reasons stated in Trustee's objection (see above), there is not an accurate picture of debtor's financial reality. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor Fails Liquidation Analysis

Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that unsecured claims may not be receiving what they would receive in the event of a hypothetical Chapter 7 liquidation. 11 U.S.C. § 1325(a)(4). The trustee has concerns with respect to Sacto Logistics, Inc. and RIA Courier, Inc. which are both valued at \$1.00. However, on the date of the filing of the Petition, the bank statement for RIA Courtiers, Inc. listed an ending balance of \$281,994.68. The trustee is uncertain where the valuation came from and what happened to the funds in the account.

Failure to File Documents Related to Business

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

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

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

The court notes that based on Amended Schedules E/F (Dckts. 17, 18), Debtor has no creditors with unsecured claims. On Schedule D, Debtor states under penalty of perjury has only one creditor with a (\$936,204) secured claim, for which real property with a value of \$1,300,000 is collateral. Dckt. 1 at 23.

Looking at Debtor's Chapter 13 Plan which must be filed in good faith and subject to the certifications by Debtor and Debtor's counsel arising pursuant to Federal Rule of Bankruptcy Procedure 9011, the Plan provides for paying nothing to any creditors. Plan, Dckt. 8. The Plan requires a monthly plan payment of \$600 for a period of 60 months. Plan, ¶¶ 2.01, 2.02; *Id.*

Debtor's counsel is to be paid \$3,500 under the Plan. *Id.*, ¶ 3.05. \$500 of the \$600 a month of the Plan payments are dedicated to paying monthly administrative expenses. *Id.*, ¶ 3.06. It is unclear what \$500 a month in administrative expenses of \$30,000 of administrative expenses could exist.

The Plan provides for no Class 1, Class 2, or Class 3 secured claims. Debtor is to pay \$4,309.89 a month directly to the creditor for the mortgage on Debtor's real property. This is outside the Plan, demonstrating that Debtor has no bankruptcy reason for addressing this one debt that Debtor states under penalty of perjury that he owes. *Id.*, ¶¶ 3.073.08, 3.09, 3.10

Debtor has no Class 5 priority unsecured claims (listing \$2.00, while none are listed on Schedule E/F), no Class 6 special treatment unsecured claims are provided for, and only \$1,515 in general unsecured claims (though on Schedule F Debtor states there are \$0 in unsecured claims) to be provided for through a five year plan. *Id.*, ¶¶ 3.12, 3.13, 3.14.

On January 25, 2022, Debtor filed an Amended Master Address List, which was filed with the Amended Schedule E/F. Dckt. 18. Debtor lists only the "Ca Labor and Workforce Dev Agency" to be provided notices in this bankruptcy case.

On the original Master Mailing List (Dckt. 4) Debtor listed 16 pages of persons to be provided notice of the bankruptcy case, having listed reams of persons on original Schedule F, but now Debtor has stated under penalty of perjury that he has no such creditors (even ones asserting disputed claims against Debtor).

In looking at Schedule A/B, Debtor states under penalty of perjury of having substantial liquid assets. He lists having \$40,000 in credit union/bank accounts (Sch. A/B ¶ 18), \$126,076 in "coinbase" assets (Sch A/B ¶ 18), and Robinhood stock investments of \$126,075 (Sch. A/B ¶18). Dckt. 1. Additionally, Debtor has two IRA accounts totaling \$230,000. Sch. A/B ¶ 21; *Id.*

Thus, taking Debtor's statement under penalty of perjury of having no creditors (even no claims made by third-parties that are disputed), other than one creditor with a secured claim for which there is are no defaults, he has hundreds and hundreds of thousands of dollars in liquid or easily liquidated assets (such as stock and Bitcoin type of investments).

The court cannot divine any good faith reason for Debtor and Debtor's counsel having filed this bankruptcy case. When there is not a good faith reason, then it would appear that the "faith" of Debtor in filing of this bankruptcy case is the opposite of good. Using the Merriam-Webster Thesaurus, antonyms of "good," include "bad, dishonest, dishonorable, evil, evil-minded, immoral, indecent, sinful, unethical, unrighteous, wicked, wrong" and "groundless, illogical, invalid, irrational, nonrational, nonsensical, nonvalid, unfounded, uninformed, unjustified, unreasonable, unreasoned, or unsound." ^{FN1.}

FN. 1. <https://www.merriam-webster.com/thesaurus/good>

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 motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2022. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Withdraw as Attorney is granted.</p>
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Peter G. Macaluso ("Movant"), counsel of record for Yvonne Rose Richards ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 3-700(C)(1).
- B. Counsel cannot effectively represent Debtor due to inconsistency of and lack of communication.

Motion, Dckt. 121.

Trustee's Nonopposition

On February 7, 2022, the Trustee filed a nonopposition. Dckt. 128.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Debtor has not communicated with them. Movant states in his declaration:

“Since filing, it has become apparent that Debtor is not confident of my ability to represent her in this matter. Communication has broken down and Debtor is unwilling to follow my legal advice going forward in this case, which hampers my ability to effectively serve as her attorney.”

Declaration, Dckt. 123.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. Neither the Chapter 13 Trustee, Debtor, nor any other relevant party has filed an opposition to this Motion, however, which was filed according to Local Bankruptcy Rule 9014-1(f)(1).

Furthermore, under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor's conduct, such as the lack of response to correspondence from the Movant is hindering Movant's ability to carry out their employment and duties effectively. Those are sufficient reasons for permissive withdrawal.

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 Withdraw as Attorney filed by Peter G. Macaluso (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for Yvonne Rose Richards (“Debtor”).

22 thru 23

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

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 on December 8, 2021. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXX.

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

- A. Debtor failed to appear at the First Meeting of Creditors.
- B. Debtor only gave fifteen (15) days' notice to parties in interest of the Amended Plan.
- C. Debtor is delinquent \$11,420.00 in Plan payments.
- D. 521 Documents of Debtor's pay advices and tax returns have not been provided.

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 the Chapter 13 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).

Inadequate Notice

Motions to Confirm Amended Plans are 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). 35 days' notice is required. Fed. R. Bankr. P. 2002(a)(9); Local Bankr. R. 3015-1(d)(1). Debtor only provided 16 days notice for the originally set December 14, 2021 hearing on the Motion to Confirm.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$11,420.00 delinquent in plan payments, which represents multiple months of the \$5,710.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Pay Stubs & Tax Returns

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

At the hearing, the Trustee reported that Debtor has made significant progress in prosecuting this case. However, Debtor is still delinquent and the tax return shows income different than in the Schedules.

The Trustee and Debtor agreed to continue the hearing.

Trustee's Status Report

On January 28, 2022, Chapter 13 Trustee, David Cusick, filed a Status Report regarding Trustee's Objection to Confirmation of Plan. Dckt. 51. The Status Report states Debtor is delinquent \$11,559.68 in Plan payments to Trustee.

Additionally, Debtor has only made one payment of \$5,710.00 on December 14, 2021. Debtor has an "Upcoming Transaction" on January 31, 2022, in the amount of \$5,710.00. The

Trustee expects TFS confirm the funds and transfer the payment to the Trustee's account five to 7 business days after January 31, 2022.

Further, after receipt of the pending payment, Debtor will still be delinquent \$5,859.68 for the Plan payment due in January 2022. Debtor's Plan payment increased to \$5,849.68 on January 25, 2022.

Lastly, Debtor has provided the Trustee with their 2020 Tax returns.

February 15, 2022 Hearing

At the hearing **XXXXXXXXXXXXXX**

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 hearing on the Objection to Confirmation of Plan is **XXXXXX**.

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).

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 November 29, 2021. By the court's calculation, 15 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

Under the facts and circumstances of this Motion, the court shortens the time to the 15 days given.

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, Angela Renee Beasley-Baker ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for a \$5,710.00 plan payment for 60 months. Plan, Dckt. 24. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S STATUS REPORT

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Status Report on January 7, 2022. Dckt. 43. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.

B. Debtor has failed to provide a tax return for the year 2020.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$5,710.00 delinquent in plan payments, which represents one month of the \$5,710.00 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. Trustee represents that an electronic payment is scheduled to start January 7, 2022 and is expected to clear by January 14, 2022. The plan payment increased to \$5,849.68 due to a Notice of Mortgage Payment change filed with the Court on November 16, 2021. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Tax Returns

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the 2020 tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

December 14, 2021 Hearing

The Trustee appeared at the hearing and notified the court that the Parties agreed to continue the hearing to allow the Parties to address issues relating to confirmation.

January 11, 2022 Hearing

At the January 11, 2022 hearing, the matter was continued to February 15, 2022.

February 15, 2022 Hearing

On January 28, 2022, Chapter 13 Trustee, David Cusick, filed a Status Report regarding Trustee's Objection to Confirmation of Plan. Dckt. 51. The Status Report states Debtor is delinquent \$11,559.68 in Plan payments to Trustee.

Additionally, Debtor has only made one payment of \$5,710.00 on December 14, 2021. Debtor has an "Upcoming Transaction" on January 31, 2022, in the amount of \$5,710.00. The Trustee expects TFS confirm the funds and transfer the payment to the Trustee's account five to 7 business days after January 31, 2022.

Further, after receipt of the pending payment, Debtor will still be delinquent \$5,859.68 for the Plan payment due in January 2022. Debtor's Plan payment increased to \$5,849.68 on January 25, 2022.

Lastly, Debtor has provided the Trustee with their 2020 Tax returns.

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

~~The Motion to Confirm the Chapter 13 Plan filed by the debtor, Angela Renee Beasley-Baker (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

24.	<u>21-24084</u> -E-13 <u>DPC</u> -1	GREGORY/CHO FRENCH Bruce Dwiggins	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-26-22 <u>16</u>
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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 and Debtor's Attorney on January 26, 2022. 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. At the hearing -----

The Objection to Confirmation of Plan is sustained.

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

- A. Trustee asserts that the secured claim of Freedom Mortgage has been properly classified in the Plan, Debtor stating at the First Meeting of Creditors that there are pre-petition defaults owing on this claim.

On February 7, 2022, (after the filing of the Trustee’s Objection) Freedom Mortgage filed Proof of Claim 16-1. On Proof of Claim 16-1 Freedom Mortgage asserts that there is a pre-petition default of \$41,386.22. POC 16-1, ¶ 9. Spreading that arrearage over 60 months would require an increase of in the monthly plan payment of \$770 (including the Chapter 13 Trustee fees relating thereto).

- B. Debtor is delinquent in plan payments.

DISCUSSION

Trustee’s objections are well-taken.

Freedom Mortgage

Trustee believes Freedom Mortgage, Class 4 Claim, may be in default. If payments are in default, Debtor improperly classified Freedom Mortgage as a Class 4 Claim.

At the hearing, **XXXXXXXXXX**

Delinquency

Debtor is \$3,000.00 delinquent in plan payments, which represents one month of the \$3,000.00 plan payment. According to Trustee, the Plan in § 2.01 calls for payments to be received by 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).

It is surprising that Debtor would be in default, Debtor having \$12,116 a month in take-home income (Schedule I, ¶ 12), (\$7,770) in monthly expenses (Schedule J, ¶ 22a), and \$4,345 in monthly net income (Schedule J, ¶ 23c). Dckt. 1.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee,

David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

25. [19-21686-E-13](#) **DAVID/BROOKE LEITE** **MOTION TO INCUR DEBT**
[SLH-2](#) **Seth Hanson** **1-18-22 [51]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 18, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Incur Debt 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.

<p>The Motion to Incur Debt is granted.</p>
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David Franco Leite and Brooke Lee Hayward Leite (“Debtor”) seeks permission to obtain a Federal Direct Stafford loan to cover the costs of education, with a total amount to be borrowed of \$20,500.00 and an interest rate of 5.28%. The loan will not become due unless Debtor leaves school or drops below half-time enrollment, or after 6 months upon completion of the program. Debtor’s student loan payments will not be due until March 2023 (estimated completion of the program) which shall be after Debtor’s Chapter 13 plan is completed. Debtor contends that repayment of the loan will not have any effect on their completion of their Chapter 13 plan.

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

at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Trustee's Response to Debtor's Motion to Incur Debt indicates that Debtors have already been granted the Motion to Incur Debt for the exact same student loan debt. Dckt. 56. The court agrees that Debtor already filed the exact same Motion to Incur Debt and that the Motion has already been granted. Debtor's original Motion to Incur Debt for the student loan debt was filed on August 11, 2021. Dckt. 35. Trustee's Response states that Debtor was granted the Motion on November 17, 2021. Dckt. 56. The court finds that this may be a clerical error; rather, Debtor was granted the Motion on September 17, 2021. Order, Dckt. 43.

The court further notes that while the present Motion to Incur Debt is a duplicate of Debtor's previous Motion, the attached Exhibits are noticeably different. See Exhibit A, Dckt. 38 and Exhibit A, Dckt. 54. Exhibit A from Debtor's original Motion to Incur Debt provides a loan estimate of \$20,500.00 for the Federal Direct Stafford loan and corresponding fixed interest rates. Dckt. 38. Exhibit A from Debtor's present Motion to Incur Debt provides the same loan estimate for the William D. Ford Federal Direct Loan, and additionally includes: confirmation that Debtor's 2022-2023 Application for Federal Student Aid (FAFSA) form submission is complete, the date of confirmation, and a data release number. Dckt. 54. Since the debt in question are student loans which may be granted every semester or year, the court needs evidence to demonstrate how Debtor's present Motion to Incur Debt is different from Debtor's previous Motion.

At the hearing, ~~XXXXXXXXXX~~

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

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

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

~~_____ The Motion to Incur Debt filed by David Franco Leite and Brooke Lee Hayward Leite ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that the Motion is granted, and David Franco Leite and Brooke Lee Hayward Leite is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 54.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 20, 2021. By the court's calculation, 57 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 denied.</p>
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The debtor, John Robert Xovox Swensson ("Debtor") seeks confirmation of the Modified Plan because he became delinquent in his Chapter 13 Plan payments. Declaration, Dckt. 95. The Modified Plan provides that \$133,800.00 has been paid into the Chapter 13 Plan as of November 25, 2021 (month 43), then the plan payments for months 44 through 60 shall be \$3,231.00. Dckt. 94. The Modified Plan also calls for a 7% dividend to unsecured claims totaling \$73,647.00. *Id.* 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 1, 2021. Dckt. 106. Trustee opposes confirmation of the Plan on the basis that:

- A. The Debtor may not be able to make the plan payment pursuant to 11 U.S.C. §1325(a)(6):

1. The Debtor is delinquent in plan payments.
 2. The Trustee is unable to fully assess the feasibility of the plan or effectively administer the plan.
 3. Debtor's Declaration, Dckt. 95, includes testimony not based on personal knowledge but based on belief which appears contrary to 28 U.S.C. §1746.
- B. The Debtor may not be proposing the modified plan in good faith pursuant to 11 U.S.C. § 1325(a)(3).
- C. The Debtor does not clearly explain in the Motion or Declaration why he is modifying the plan.
- D. The Debtor has filed a change of address and has not indicated if he is now renting the property located at his previous address.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Trustee states that Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee does not provide the court with any other basis to understand the Trustee's position on this matter.

Debtor's Declaration in support provides Debtor's testimony with regard to Debtor's assets and exemptions (Dckt. 95 at 5), income and expenses (Dckt. 95 at 6-8), and disposable income (Dckt. 95 at 8). Debtor has also filed an amended Summary of Schedules of Assets and Liabilities which provide further details of Debtor's employment, income, payroll deductions, expenses, etc. See Dckt. 97.

Debtor has filed Supplemental Schedules I and J, stating updated financial information by Debtor for the period December 16, 2021 going forward. Dckt. 97 at 4-7. From Debtor's gross income of \$11,825, he states that he has \$7,112 in monthly take-home income. *Id.* at 5.

On Supplemental Schedule J Debtor lists having monthly expenses of (\$3,881.41) and (projected) monthly net income of \$3,231. *Id.* at 6-7. The proposed Modified Plan requires monthly plan payments of \$3,231 for months 44 through 60 of the Modified Plan.

From the court's look at the Supplemental Schedules I and J, the court cannot identify the basis for the Trustee's legal and factual conclusion that Debtor cannot afford to make the plan payments.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$2,562.00 delinquent in plan payments, which represents less than one month of the \$3,231.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by 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).

Post-Petition Arrears

Trustee states the previously confirmed plan and the Modified Plan provide for treatment of Flagstar Bank in Class 1. Dckt. 106. However, due to the failure of the debtor to make plan payments timely, Trustee lacked sufficient funds to pay the post-petition contract installments to Flagstar Bank in the amount of \$2,456.65 for the month of October 2021. *Id.* The Modified Plan does not indicate which months were missed. *Id.* The court is not clear why the Trustee needs the modified plan to indicate which months were missed.

Declaration

Trustee states that Debtor's Declaration (Dckt. 95) includes testimony not based on personal knowledge but based on belief which runs contrary to 28 U.S.C. § 1746. Dckt. 106. Trustee cites a few examples from Debtor's Declaration, such as how Debtor works in IT security and may not necessarily have personal knowledge about what non-exempt equity they may have. *Id.*

The court previously noted that the Debtor's Declaration in support of Debtor's Motion states *some* personal knowledge testimony in support of the Motion to Confirm. Dckt. 104. Following a continuance of this hearing, the court permitted Debtor to correct his evidentiary shortcoming and file an amended declaration by January 19, 2022 which provides only actual personal knowledge testimony. *Id.*

In the Civil Minutes for the hearing on the Motion to Dismiss this case due to Debtor's defaults, the court stated:

From the court's preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 95) states some personal knowledge testimony in support of the Motion to Confirm.

Unfortunately, the Declaration states that some information therein is "stated under penalty of perjury" because Debtor is only informed (possible a repeated hearsay statement) and believes (possibly "believing it" because such belief is necessary if Debtor is going to win the day. Merely repeating what someone else says and basing relief on what a person believes (as opposed to personally knows).

With the court continuing the hearing, Debtor can correct this evidentiary shortcoming and file an amended declaration which provides only actual personal knowledge testimony. The amended declaration shall be filed on or before January 19, 2022.

Civil Minutes, Dckt. 104.

In his Declaration, Debtor provides a long recitation of various documents and pleadings filed in this case – much as an attorney would outline in a points and authorities. Dec. ¶¶ 2-12, 14-19, and 26 (Debtor providing his legal opinion that the proposed Modified Plan does not violate or is

prohibited by any provision of law – with the Declaration not providing the court with Debtor’s education and knowledge as to how he could provide such a comprehensive legal opinion).

Though afforded the opportunity to correct the inadequate testimony, Debtor has chosen not to file a supplemental declaration providing personal knowledge testimony that complies with the requirements of Federal Rules of Evidence 601 and 602 enacted by the U.S. Supreme Court.

Inadequacy of Witness Information and Belief Testimony

The court has been presented with a declaration in which the witness provides testimony based on “information and belief.” That declaration is the testimony of a witness presented in writing in lieu of the witness being put on the stand. Non-expert witness testimony must be based on the personal knowledge of the witness. FED. R. EVID. 602. As discussed in Weinstein's Federal Evidence § 602.02:

A witness may testify only about matters on which he or she has first-hand knowledge. Because most knowledge is inferential, personal knowledge includes opinions and inferences grounded in observations or other first-hand experiences. The witness’s testimony must be based on events perceived by the witness through one of the five senses.

Recently, the Ninth Circuit Court of Appeal addressed this personal knowledge requirement for any non-expert witness, stating:

Under Rule 602, “[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” FED. R. EVID. 602. Rule 602 requires any witness to have sufficient memory of the events such that she is not forced to ‘fill[] the gaps in her memory with hearsay or speculation.’ 27 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE Evidence § 6023 (2d ed. 2007). Witnesses are not ‘permitted to speculate, guess, or voice suspicions.’ *Id.* § 6026. However, ‘[p]ersonal knowledge includes opinions and inferences grounded in observations and experience.’ *Great Am. Assurance Co. v. Liberty Surplus Ins. Co.*, 669 F. Supp. 2d 1084, 1089 (N.D. Cal. 2009) (citing *United States v. Joy*, 192 F.3d 761, 767 (7th Cir. 1999)). Lay witnesses may testify about inferences pursuant to Rule 701:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

FED. R. EVID. 701.

United States v. Whittemore, 776 F.3d 1074, 1082 (9th Cir. 2015).

As discussed in Moore’s Federal Practice, Civil § 8.04, the use of “information and belief” is

a pleading device for the use in a complaint (or motion) to allow a plaintiff (movant) to fill in the gaps of alleging a claim pending discovery.

[4] Allegations Supporting Claims for Relief May Be Made on Information and Belief

Rule 8 does not expressly permit statements supporting claims for relief to be made on information and belief (see § 8.06[5]). However, Rule 11 permits a pleader, after reasonable inquiry, to set forth allegations that “will likely have evidentiary support after a reasonable opportunity for further investigation or discovery” (see Ch. 11, Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions). Courts have read the policy underlying Rule 8, together with Rule 11, to permit claimants to aver facts that they believe to be true, but that lack evidentiary support at the time of pleading. Generally, however, such averments are allowed only when the facts that would support the allegations are solely within the defendant’s knowledge or control.

Nothing in the *Twombly* plausibility standard (see [1], above) prevents a plaintiff from pleading on information and belief. A pleading is sufficient if the pleading as a whole, including any allegations on information and belief, states a plausible claim. On the other hand, if the pleading fails to permit a plausible inference of wrongdoing, or if the allegations are nothing more than legal conclusions, the pleading will not survive a motion to dismiss.

This is incorporated to Federal Rule of Bankruptcy Procedure 9011, which repeats the provisions of Federal Rule of Civil Procedure 11(b), stating:

(b) Representations to the court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[.]—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information

or belief.

Though allowed as a pleading device, the certification required by 28 U.S.C. § 1746 does not allow testimony in declaration to be provided under penalty of perjury being true because the witness merely “is informed and believes (or desires because likely it would mean the witness party would prevail) it is true.”

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: “I declare (or certify, verify, or state) **under penalty of perjury** under the laws of the United States of America **that the foregoing is true and correct**. Executed on (date).

(Signature).”

(2) If executed within the United States, its territories, possessions, or commonwealths: “**I declare** (or certify, verify, or state) **under penalty of perjury** that the **foregoing is true and correct**. Executed on (date).

(Signature).”

28 U.S.C. § 1746 (emphasis added).

Good Faith and Basis for Modification

Trustee states that Debtor may not be proposing the modified plan in good faith as required by 11 U.S.C. § 1325(a)(3). Dckt. 106. Trustee states this is because the Debtor does not clearly explain in his Motion or Declaration in support why Debtor is modifying the Plan. Dckt. 106. Trustee notes that both the Motion and Declaration indicate the Modified Plan is being filed because Debtor became delinquent in his Chapter 13 Plan payments. *Id.* Trustee asserts that in failing to explain why Debtor became delinquent in the first place, the court cannot make a determination on whether the Modified Plan was filed in good faith under § 1325(a)(3) as discussed above. *Id.*

The court finds that Debtor’s Motion and Declaration in support indeed fails to provide a reason for Modification. Debtor provides a reason in a additional separate Declaration which had been filed concurrently with the relevant briefs for Debtor’s Motion but instead addresses the Trustee’s Motion to Dismiss. See Dckt. 102. In Debtor’s Declaration in Support of Opposition to Chapter 13

Trustee's Motion to Dismiss Case, Debtor explains that he became delinquent as a result of unexpected taxes, payment of his son's bail, and extra vehicle expenses. *Id.* Debtor further states that he does not expect these problems going forward, and that he was unaware of his large delinquency. *Id.* Debtor contends he was under the impression he was only a few payments behind, and was attempting to become current in his plan payments. *Id.* Debtor finally states that he realized he would not be able to bring his plan current once he received Trustee's Motion to Dismiss, and hence Debtor filed his Motion to Confirm the First Modified Chapter 13 Plan. *Id.*

If filed in connection with this Contested Matter, the Motion to Confirm, the court could find that the aforementioned explanations are sufficient to demonstrate that Debtor acted in good faith in trying to bring his plan current despite his unexpected expenses, and that Debtor acted in good faith in filing a Modified Plan in an attempt to pay off his debt. If Debtor's Declaration in support of the Motion to Confirm did not have extensive "points and authorities" sounding language, as opposed to lay-person party testimony, the court could reach out to consider the declaration in a separate contested matter. But given Debtor's decision not to correct his "testimony" in this Contested Matter, the court declines to create such testimony for the Debtor in this Contested Matter.

Insufficient Information

Trustee states that the confirmed and proposed Plan details Debtor's property as 7241 State Hwy. 193, Georgetown, CA. Dckt. 106. Trustee notes that Debtor filed a Change of Address on December 20, 2021 (See Dckt. 96) which reflects the Georgetown, CA address as the 'Old Address' and 1115 Marigold Drive, Cambridge, MN as the 'New Address'. Dckt. 106 (note Trustee's Opposition has a typographical error where Debtor's new address is stated as "115 Marigold Drive" rather than "1115 Marigold Drive").

Debtor's Declaration indicates that Debtor is renting a home near his work and paying \$1,400.00 in rent as well as \$60.00 for rental insurance per month. Dckt. 95. Debtor does not specifically state that he is renting at the New Address, although this may be inferred. Both Trustee and Debtor's Declaration indicate that Debtor's home maintenance expenses have been reduced from \$250.00 previously to \$100.00 now. Dckts. 95 and 106. While Debtor doesn't specifically explain this reduction in his Declaration, the court may also infer that it is likely the result of renting, which tends to culminate in less monthly home maintenance expenses than home ownership does.

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

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, John Robert Xovox Swensson ("Debtor") having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

27.	18-22696 -E-13 DPC-2	JOHN ROBERT SWENSSON David Foyil	CONTINUED MOTION TO DISMISS CASE 12-8-21 [88]
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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.

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, and Office of the United States Trustee on December 8, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is XXXXX.

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

1. the debtor, JOHN ROBERT XOVOX SWENSSON (“Debtor”), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 16, 2021. Dckt. 101. Debtor states filed concurrently is Debtor's Motion to Confirm the First Modified Chapter 13 Plan. Additionally, Debtor states they are current on Chapter 13 plan payments.

DISCUSSION

Delinquent

Debtor is \$7,620.32 delinquent in plan payments, which represents multiple months of the \$3,515.41 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Plan and Motion to Confirm Filed

Debtor has filed a Modified Plan (Dckt. 94) and Motion to Confirm (Dckt. 92) to address the defaults. From the court's preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 95) states some personal knowledge testimony in support of the Motion to Confirm.

Unfortunately, the Declaration states that some information therein is "stated under penalty of perjury" because Debtor is only informed (possible a repeated hearsay statement) and believes (possibly "believing it" because such belief is necessary if Debtor is going to win the day. Merely repeating what someone else says and basing relief on what a person believes (as opposed to personally knows).

With the court continuing the hearing, Debtor can correct this evidentiary shortcoming and file an amended declaration which provides only actual personal knowledge testimony. The amended declaration shall be filed on or before January 19, 2022.

February 15, 2022 Hearing

At the hearing **xxxxxxxxxxxx**

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

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

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

IT IS ORDERED that the Motion to Dismiss is **xxxxxx**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2022. By the court's calculation, 11 days' notice was provided. 14 days' notice is required.

On February 4, 2022, Debtor filed a Motion to Shorten Time for the instant Motion to Extend Automatic Stay. Dckt. 10. The court granted Debtor's Motion the same day. Dckt. 15.

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

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

Bethany Elaine Johnson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-25324) was dismissed on October 26, 2021, after Debtor failed to make minimum payments with respect to the terms of their confirmed plan. *See* Order, Bankr. E.D. Cal. No. 19-25324, Dckt. 121, October 26, 2021. The court notes there appears to be a typographical error in the Motion where Debtor references the prior bankruptcy case as 19-25354. The correct case number is 19-25324. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because they failed to make minimum payments with respect to their confirmed plan.

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

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor states that their circumstances have change since the previous bankruptcy case was dismissed. Debtor states that they have maintained steady employment, adjusted their household finances, and obtained a new child care provider which affords Debtor the ability to maintain employment and financial stability. Dckt. 13.

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

The court shall issue 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 Extend the Automatic Stay filed by Bethany Elaine

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

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

FINAL RULINGS

29. [21-20109-E-13](#) LARRY/DEBRA JACKSON CONTINUED OBJECTION TO CLAIM
[RPH-3](#) Robert Huckaby OF INTERNAL REVENUE SERVICE,
 CLAIM NUMBER 9-1
 8-18-21 [[90](#)]

Final Ruling: No appearance at the February 15, 2022 Hearing is required.

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 18, 2021. By the court's calculation, 55 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The court having entered an Order (Dckt. 121) resolving all issues for this Objection to Proof of Claim Number 9-1, **the Matter is removed from the Calendar.**

Final Ruling: No appearance at the February 15, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2022. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

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

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

<p>The Motion to Approve Loan Modification is granted.</p>

The Motion to Approve Loan Modification filed by Dean Eric Jones (“Debtor”) seeks court approval for Debtor to incur post-petition credit. LoanCare (“Creditor”), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$2,771.73 per month to \$2,154.57 per month. The modification will retroactively approve trial payments of three monthly mortgage payments that have been allowed by Creditor for the months of December 2021, January and February 2022. Once payments are completed a motion to approve a final mortgage loan modification will be lodged with the court.

Trustee’s Nonopposition

On February 8, 2022, Trustee filed a nonopposition stating they will oppose any final loan modification unless the Loan Modification Agreement is filed. Dckt. 44.

The Trustee then closes the Non-Opposition affirmatively stating:

WHEREFORE, the Trustee does not oppose this Motion.

Non-Opposition, p. 2:11; Dckt. 44. The court accepts this affirmative statement of non-opposition as the Trustee not opposing the Motion.

Discussion

A copy of the proposed payment is attached as Exhibit A. Dckt. 41. Pursuant to the terms of the agreement, the deferred payments will be added to the maturity date of the mortgage, interest will not be charged on the deferred amount, and the payment deferral will not change any other terms of the mortgage. The Debtor will not be receiving any funds from the proposed forbearance.

The Motion is supported by the Declaration of Dean Eric Jones. Dckt. 40. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue 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 Approve Loan Modification filed by Dean Eric Jones ("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 court authorizes Dean Eric Jones to amend the terms of the loan with LoanCare ("Creditor"), which is secured by the real property commonly known as 271 Serrano Drive, Fairfield, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 41).

Final Ruling: No appearance at the February 15, 2022 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and creditor, Chapter 13 Trustee as stated on the Certificate of Service on January 14, 2022. The court computes that 32 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$26.00 due on December 18, 2021.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the February 15, 2022 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, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2021. By the court's calculation, 56 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 Rule 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Amended Plan is granted.</p>
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Thomas Winton Johnson and Whitney Eriksmoen Johnson ("Debtor"), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on February 1, 2022. Dckt. 56. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on December 21, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

33. [20-24945-E-13](#) **JOSHUA DRAVIS** **MOTION TO REFINANCE**
[SLH-1](#) **Seth Hanson** **1-11-22 [32]**

Final Ruling: No appearance at the February 15, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 11, 2022. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Refinance 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 Refinance is granted.

Joshua James Davis ("Debtor") seeks permission to refinance the real property commonly known as 872 Calico Drive, Rocklin, California, with a total purchase price of \$625,726.00 and monthly payments of \$3,877.03 for years 1 through 11 and \$3,470.94 for years 12 through 30, with a 2.99% fixed interest rate, and paid to Caliber Home Loans .

Trustee's Non-Opposition

On February 1, 2022, Chapter 13 Trustee, David Cusick, filed a Non-Opposition to Debtor's Motion to Refinance. Dckt. 29. The Trustee does not oppose the Motion.

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

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

The court shall issue 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 Refinance filed by Joshua James Davis (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Joshua James Davis is authorized to refinance pursuant to the terms of the agreement, Exhibit A, Dckt. 35.

Final Ruling: No appearance at the February 15, 2022 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, creditors, parties requesting special notice, and Office of the United States Trustee on December 30, 2021. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, David Matthew Windmiller and Donna Laura Windmiller (“Debtor”), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on February 1, 2022. Dckt. 36. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, David Matthew Windmiller and Donna Laura 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 the Motion is granted, and Debtor's Chapter 13 Plan filed on December 30, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. [21-22161](#)-E-13 **NADINE/STEVEN MUENCH** **MOTION TO CONFIRM PLAN**
[PLC-2](#) **Peter Cianchetta** **12-22-21 [59]**

Final Ruling: No appearance at the February 15, 2022 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, creditors, parties requesting special notice, and Office of the United States Trustee on December 22, 2021. By the court's calculation, 55 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 Rule 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Nadine Ann Muench and Steven Edwin Muench ("Debtor"), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on January 26, 2022. Dckt. 75. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

36.	<u>19-27862</u> -E-13 <u>RJ-5</u>	SHAVINA/DONALD THOMAS Richard Jare	OBJECTION TO CLAIM OF SOLANO DCSS, CLAIM NUMBER 11 12-23-21 [<u>146</u>]
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Local Rule 3007-1 Objection to Claim—No Opposition Filed.

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

February 15, 2022 at 2:00 p.m.
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Shavina Denise Thomas and Donald Wayne Thomas, Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of Solano DCCS (“Creditor”), Proof of Claim No. 11-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be priority unsecured in the amount of \$14,545.51. Objector asserts that the Claim has not been timely filed. The deadline for filing proofs of claim in this case is June 17, 2020. Dckt. 18. The deadline for governmental entities to file claims in this case was June 17, 2020. This claim was filed on October 19, 2020.

Trustee’s Non-Opposition

On February 1, 2022, Chapter 13 Trustee, David Cusick, filed a Non-Opposition to Debtor’s Objection to Claim. Dckt. 157. The Trustee does not oppose the Debtor’s objection. However, the Trustee currently has a Motion to Dismiss pending set for March 9, 2022, as the Plan exceeds 60 months and Debtor is delinquent in Plan payments. Dckt. 141. Lastly, Trustee has paid no funds to date to the claim.

DISCUSSION

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

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Federal Rule of Bankruptcy Procedure 3002(c)(1) states:

a proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308, is timely filed if it is filed not later than 180 days after the date of the order for relief.

Debtor’s bankruptcy petition was filed on December 20, 2019, 180 days after this date is June 17, 2020. Creditor’s proof of claim was filed on October 19, 2020. Therefore, under Federal Rule of Bankruptcy Procedure 3002(c)(1), Creditor’s claim is late.

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

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

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

hearing.

The Objection to Claim of Solano DCCS (“Creditor”), filed in this case by Shavina Denise Thomas and Donald Wayne Thomas, Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 11-1 of Creditor is sustained, and the claim is disallowed in its entirety

Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

Final Ruling: No appearance at the February 15, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on December 20, 2021. By the court’s calculation, 57 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

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

The Objection to Proof of Claim Number 1-1 of Pinnacle Credit Services, LLC is sustained, and the claim is disallowed in its entirety.

Anabel Edillo Pascua, Chapter 13 Debtor (“Objector”) requests that the court disallow the claim of Pinnacle Credit Services, LLC (“Creditor”), Proof of Claim No. 1-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$967.81. Objector asserts that the Claim violates the statute of limitations and is disallowed and unenforceable against Debtor or Debtor’s property.

Trustee’s Non-Opposition

On February 1, 2022, Chapter 13 Trustee, David Cusick, filed a Non-Opposition to Debtor’s Objection to Claim. Dckt. 28. The Trustee does not oppose Debtor’s objection and has paid no funds to date to the claim.

DISCUSSION

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

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

California Code of Civil Procedure § 337(a) states, “within four years: an action upon any contract, obligation or liability founded upon an instrument in writing, except as provided in Section 336(a)...” Here, the Proof of Claim is for \$967.81 of retail debt. Proof of Claim 1-1, P. 2. The last payment made by the Debtor on this debt came on March 12, 2007, constituting a breach of contract by the Debtor. Thus, Creditor had from March 12, 2007 to March 12, 2011, to bring suit against Debtor. Debtor filed this case September 16, 2021 and Creditor filed the Proof of Claim on September 22, 2021. Therefore, the four year statute of limitations period has long expired and Creditor cannot file a Proof of Claim for the \$967.81 debt.

Additionally, United States Bankruptcy Code § 502(b)(1) states:

“Except as provide in subsection (e)(2), (f), (g), (h) and (I) of this section, if such objection to a claim is made, the court, after notice and a hearings, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that - such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.”

Creditor's claim is unenforceable because the statute of limitations period has run pursuant to California Code of Civil Procedure § 337(a). Therefore, Creditor's claim is disallowed in its entirety and the Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of Pinnacle Credit Services, LLC (“Creditor”), filed in this case by Anabel Edillo Pascua, Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence,

arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 1-1 of Creditor is sustained, and the claim is disallowed in its entirety.

38. [21-24068](#)-E-13 CATHERINE TEEL
[DPC-1](#) Pro Se
38 thru 39

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
1-25-22 [\[32\]](#)**

Final Ruling: No appearance at the February 15, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) and parties requesting special notice on January 25, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

**The Court having ordered this Bankruptcy Case dismissed (Order, Dckt. 43), the
Objection to Confirmation of Plan is dismissed without prejudice as moot.**

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 dismissed without prejudice as moot, this bankruptcy case having been dismissed by

prior Order of the court (Dckt. 43).

39.

[21-24068](#)-E-13
[ETW](#)-2

CATHERINE TEEL
Pro Se

**OBJECTION TO CONFIRMATION OF
PLAN BY JOHN GRUE
1-11-22 [\[28\]](#)**

Final Ruling: No appearance at the February 15, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on January 11, 2022. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

**The Court having ordered this Bankruptcy Case dismissed (Order, Dckt. 43), the
Objection to Confirmation of Plan is dismissed without prejudice as moot.**

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 John Grue ("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 dismissed without prejudice as moot, this bankruptcy case having been dismissed by prior Order of the court (Dckt. 43).

Final Ruling: No appearance at the February 15, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2021. By the court’s calculation, 53 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).

<p>The Motion to Confirm the Amended Plan is granted.</p>
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The debtor, Cindy Ann Forgrave (“Debtor”) seeks confirmation of the Amended Plan. The Amended Plan provides a plan payment of \$200.00 for December 2021, then increasing to \$1,930.00 starting January 2022 for fifty-two (52) months to complete the Plan. Amended Plan, Dckt. 143. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 28, 2021. Dckt. 147. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not shown their ability to make payments.
- B. Debtor is not paying unsecured creditors in full and may not be Debtor’s best effort as if Debtor was receiving income since the case was filed,

Debtor could have paid \$1,930.00 per month for the first eight (8) months.

- C. Debtor has not proposed the plan in good faith because they originally proposed \$200.00 per month for thirty-six (36) months, and now can pay \$1,930.00 per month. The good faith of the Debtor is in question where suddenly Debtor can pay \$77,000.00 more.

DEBTOR'S REPLY

Debtor's counsel filed a reply on January 4, 2022. Dckt. 150. Debtor states:

- A. Door Dash income started October 2021, and that this income will continue because of the market.
- B. Social Security was approved on November 18, 2021 and will start January 12, 2022.
- C. Significant other will provide assistance starting January 2022.
- D. Property taxes have increased because they were delayed due to COVID-19.
- E. Debtor's receipt of social security and changing of jobs shows Best Effort and Good Faith.

This is supported by Debtor's Declaration. Dckt. 15.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not provided their start date for working with Door Dash, nor evidence to support that Door Dash will provide \$715.00 per month. Debtor has not provided information as to when they started to receive Social Security and why it was not projected on the original Schedule I. Debtor has provide no information as to their income from Peter and whether he is willing to commit to the sixty (60) months. Debtor has failed to provide information as to the increase in Debtor's property taxes. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Disposable Income / Not Best Effort

The Chapter 13 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 \$378,860.16. During Debtor's first eight (8) months, Debtor paid \$200.00 per month. However, it is unclear whether Debtor was receiving the amount of his current income during the first eight (8) months. If he was, Debtor would have been able to pay \$13,840.00 more than proposed. Therefore, Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) may have totaled much more in the first eight (8) months of the plan.

At the hearing, Debtor's counsel reported that the Door Dash Income can be documented, as well as Debtor now receiving Social Security.

Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy code;**
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief;**
and

11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

The Trustee concurred with Debtor's request for a continuance to allow the Debtor to file supplemental pleadings to address the Trustee's Opposition.

Debtor's Supplemental Declaration

On January 24, 2022, Debtor, Cindy Ann Forgrave, filed a Supplemental Declaration. Dckt. 155. Debtor declares the Door Dash income started October 2021, and that income will continue because the market supports deliver of food products. Also, she is averaging \$1,070.00 after gas. Further, she mainly does the Door Dash driving on her lunches and Door Dash has replaced her cleaning services.

Additionally, her social security was approved on November 18, 2021, and she received her first two checks on January 4, 2022 for \$170.10 and \$2,107.00 on January 12, 2022. This money will be disbursed each month hereafter.

Debtor's significant other, Peter Baga, has agreed to help with the payments for an amount of \$715.00, and has the ability to help further if Debtor's Door Dash ends, or deceases.

The property taxes are based on \$7,500.00, which is approximately \$625.00 per month, and is no longer deferred with the county due to COVID-19. She intends to open a segregated account and put these funds there for disbursement as needed, with Provident Credit Union.

Declaration of Peter Baga

On January 24, 2022, Debtor filed a Declaration of Peter Baga in support of her Motion to Confirm. Dckt. 156. The Declaration states Mr. Baga receives a retirement plan payout of \$3,500.00 per month and social security in the amount of \$2,500.00 per month. He resides with Cindy at the property and has about \$2,000.00 in personal expenses. This allows him to contribute \$1,500.00 per month when needed.

Trustee's Reply

On February 7, 2022, Chapter 13 Trustee, David Cusick, filed a Reply to Debtor's Supplemental Declaration. Dckt. 158. Trustee states Debtor is current in Plan payments due to the Trustee, having paid \$3,530.00. Additionally, Debtor has provided the Trustee with various documents to confirm Debtor's income, including December and January Provident account statements and a bank account statement identifying an account for taxes. The account statements show a significant income from Door Dash for November 2021, (\$1,469.48), but less in December 2021, (\$368.89).

Further, the Trustee is satisfied with the Debtor's explanations provided in the Supplemental Declaration of Cindy Forgrave, (Dckt. 155), Declaration of Peter Baga, (Dckt. 156), and the additional documentation that has been provided. Lastly, Debtor projects \$1,070.00 per month, Debtor appears able to make that amount.

February 15, 2022 Hearing

The Trustee has stated that all of the opposition grounds have been addressed by Debtor and Trustee recommends the Plan be confirmed.

The proposed Chapter 13 Plan complies with 11 U.S.C. § 1322 and § 1325; the Motion is granted and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on November 19, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

41.	<u>21-24076</u> -E-13 <u>DPC-1</u>	DANIELLE CREWS Michael Hays	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-26-22 <u>26</u>
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Final Ruling: No appearance at the February 15, 2022 hearing is required.

David P. Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection was dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the February 15, 2022 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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 11, 2022. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion to Refinance 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.

<p>The Motion to Refinance is granted.</p>

Dennis Lee Melum and Penny Teague Melum (“Debtor”) seek permission to refinance the real property commonly known as 530 Main Street, Etna, California, with a total loan amount of \$240,000.00 and monthly payments of \$1,330.76 to Primary Residential Mortgage, Inc. over 30 years with a 3.75% fixed interest rate.

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

CHAPTER 13 TRUSTEE’S RESPONSE

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on February 1, 2022. Dckt. 65. Trustee conditionally opposes the motion to refinance on the basis that:

- A. There is inadequate evidence in support of the motion as the motion does not have an electronic or handwritten signature so it may lack

evidentiary value. Dckt. 63 at 2.

- B. Debtor did not file an amended Schedule I/J with the Motion to provide an updated budget from September 3, 2017. Dckt. 1 at 35-38.
- C. The loan may exceed the amount needed as Debtor is due to receive approximately \$44,956.00 in proceeds, Dckt. 59 at 1:18-26, while the estimate for work totals \$17,665.00 for health and safety remodeling. Dckt, 61 at 2. However, due to the unpredictability of the cost of building materials, contractors are not able to provide hard cost for the other repairs until Debtor can commit to the work with a start date. Dckt. 61 at 1. Trustee suggests that the court may want to have the Debtor advise the Trustee as to the final costs of the repairs..

Trustee additionally notes that the refinance otherwise appears reasonable and proceeds retained by Debtor appears likely necessary. Dckt. 61 at 2:21-22. Trustee concludes that they would not oppose the refinance so long as the above matters are addressed. Dckt. 61 at 2:23.

CHAPTER 13 TRUSTEE'S ATTORNEY'S DECLARATION

The Chapter 13 Trustee's Attorney, Neil Enmark ("Trustee's Attorney"), also filed a Declaration in Support of Trustee's Response to Debtor's Motion to Approve Refinance of Residence. See Dckt. 66.

In addition to the same bases discussed in Trustee's Response, Trustee's Attorney asserts that Debtor is delinquent under their confirmed plan in the amount of \$679.00, having paid \$76,759.00 to date with the last payment of \$738.00 made on January 28, 2022. *Id.*

DISCUSSION

According to Trustee's Supplemental Response to Debtor's Motion to Approve Refinance of Residence, Trustee's Attorney and Patricia Johnson ("Debtor's Attorney") have spoken and Trustee now maintains no opposition to Debtor's Motion. Dckt. 68. Below details Trustee's prior concerns as outlined in their initial Response, Dckt. 65, and discusses how each matter has been cured according to Debtor's Attorney's Declaration, Dckt. 70.

Inadequate Evidence

Trustee stated that Debtor's Declaration in support of their Motion to Refinance may lack evidentiary value as it does not have an electronic or handwritten signature. Dckt. 65. Debtor lives in a small rural area and could not provide a sufficient signature on their Declaration (Dckt. 63) as they live a ways out from their Attorney's office and do not have access to a fax machine. Dckt. 70. Debtor has worked with their realtor and filed a copy of their Declaration with their signature to cure this defect. See Support Document, Dckt. 71.

Proof Debtor Can Pay New Loan

Trustee stated that Debtor did not file an amended Schedule I/J with their Motion to Refinance. Dckt. 65. Trustee notes that Debtor's mortgage was Class 4 and is going down by \$423.41. *Id.* Debtor's Attorney asserts that they have spoken with Trustee's Attorney and both agree that Debtor can make the new payment as Debtor's new loan payments will be lower than their previous loan payments. Dckt. 70. Thus this defect has also been cured and Debtor contends that there should be no need to file an amended Schedule I/J. *Id.*

Loan May Exceed Amount Needed

Trustee stated that Debtors are due to receive approximately \$44,956.00 in proceeds. Dckt. 65. Trustee additionally stated that Debtor provided an estimate of about \$17,665.00 for health and safety remodeling, but that Debtor's contractors could not provide the final costs of repairs due to the unpredictability of building materials. *Id.* Debtor responded that Debtor has now received an estimate for the final costs of repairs from their contractor, Scott Valley Construction. Dckt. 70. The estimate appears to be around \$36,650.00. See Support Document, Dckt. 72.

Reasonableness

Trustee stated that aside from their initial concerns as detailed above, Debtor's Motion to Refinance otherwise appears reasonable and proceeds retained by Debtor appears likely necessary. Dckt. 65.

Delinquency

Trustee's Attorney stated that Debtor is delinquent under their confirmed plan in the amount of \$679.00. Dckt. 66. Debtor asserts that their payments are automatically paid twice a month and that they are not delinquent. Dckt. 70. Trustee acknowledges the alleged delinquency was in error as they overlooked Debtor's electronic payment of \$738.00. Dckt. 68.

Considering all of Trustee's stated concerns have been cured, and Debtor's alleged delinquency was in error, the court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The Motion is granted.

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

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

The Motion to Refinance filed by Dennis Lee Melum and Penny Teague Melum ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Dennis Lee Melum and Penny Teague Melum are authorized to incur debt pursuant to the terms of the agreement, Support Document, Dckt. 62.

Final Ruling: No appearance at the February 15, 2022 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, creditors, parties requesting special notice, and Office of the United States Trustee on December 30, 2021. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Confirm the Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Kenneth Lee Smithour (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on February 1, 2022. Dckt. 44. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Chapter 13 Plan filed on December 30, 2021, is confirmed. Debtor’s Counsel shall prepare

an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.