UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 27, 2024 at 2:00 p.m.

1.	18-25851-E-13 PGM-5	ROBERT HUNTER Peter Macaluso	MOTION TO ENTER INTO REVERSE MORTGAGE AND/OR MOTION TO WAIVE RULE 6004(H) 2-13-24 [200]

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, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on February 13, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Enter into Reverse Mortgage and Waive Rule 6004h(h) 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 Enter into Reverse Mortgage and Waive Rule 6004(h) is granted.

The Motion to Enter into Reverse Mortgage and Waive Rule 6004h(h) filed by Robert Hunter ("Debtor") seeks court approval for Debtor to incur post-petition credit by entering into a reverse mortgage with Finance of America Reverse LLC. Debtor owns real property located at 12021 Gold Pointe Lane, Gold River, CA 95670 ("Property"). The estimated loan amount is $108,334.02. Exhibit A, Docket 202. Cash available at closing would be $109,586.66. Exhibit B, Docket 202. Debtor has been in this Chapter 13 case for 64 months. Debtor would be able to pay off the Plan in full with these funds.

The Motion is supported by the Declaration of debtor, Robert Hunter. Dckt. 203. The Declaration affirms Debtor's desire to obtain the post-confirmation financing, and Debtor explains he is an older gentleman and otherwise will not be able to bring in much income. *Id.* at ¶ 5. This reverse mortgage would allow him some breathing room in life. *Id.* at ¶ 6.

This post-confirmation financing in the form of a reverse mortgage 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 Enter into Reverse Mortgage and Waive Rule 6004h(h) is granted.

Federal Rule of Bankruptcy Procedure 6004(h)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order authorizing the use, sale, or lease of property for fourteen days after the order is entered, unless the court orders otherwise. Debtor requests that the court grant relief from the Rule as adopted by the United States Supreme Court so he can access the funds from the reverse mortgage immediately.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

Disbursement of the Reverse Mortgage Fund

From the Reverse Mortgage Escrow the funds will be used to pay the existing obligation secured by the Deed of Trust on the Property, and any property taxes then due.

Additionally, the balance of the Revers Mortgage funds will be disbursed **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 Enter into Reverse Mortgage and Waive Rule 6004h(h) filed by Robert Hunter ("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 Robert Hunter to enter into a reverse mortgage with Finance of America Reverse LLC in accordance with such

terms as stated in the proposed Reverse Mortgage Loan Agreement, filed as Exhibits A and B in support of the Motion (Dckt. 202).

IT IS FURTHER ORDERED that **xxxxxxx**

2.	23-24065-E-13 DPC-1	**MICHAEL MASTROMATTEO** **Helga White**	**CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **12-20-23 [21]**

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

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, parties requesting special notice, and Office of the United States Trustee on December 20, 2023. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is overruled.

February 27, 2024 Hearing

A review of the Docket on February 23, 2024, revealed that two declarations have been filed. First is the declaration of Michael Mastromatteo. Dckt. 35. His testimony includes:

1. While they have filed for divorce, Debtor is still married to Susan Kingsburg and she continued to reside in the house at 1109 Southbridge Circle, Lincoln, California. Additionally, they continue to hold title in both their names. Dec., p. 1:22; Dckt. 35.

Second, the Declaration of Paul Cass in opposition to the Trustee's Objection to Exemption. He is the Debtor's attorney in the dissolution proceedings in Placer County. He testifies that the Debtor and Ms. Kingsburg are not yet divorced. Dec.; Dckt. 36.

No testimony is provided as to Debtor's absence from the premises and whether Debtor being located in Chico caring for his mother is a temporary absence. Additionally, no testimony is provided about the Debtor's two daughters continuing to reside in the Property at this time.

Second is the declaration of Paul R. Cass, attorney for Debtor, corroborating the same. Declaration, Docket 36, p. 1:22-2:2.

Additionally, a copy of a Deed of Trust listing Debtor and Debtor's spouse as joint owners of the Property is provided as an Exhibit. Deed of Trust, p. 15; Dckt. 37.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

The Chapter 13 Trustee, David P. Cusick ("Trustee") objects to Michael Mastromatteo's ("Debtor") claimed exemptions under California law. Specifically, Trustee states:

> 1. Debtor has claimed an exemption under Cal. Code Civ. P. § 704.730 in real property commonly known as 1109 Southbridge Circle, Lincoln, California ("Property"). Debtor does not reside at the Property; he resides at 1020 Adlar Court, Chico, California, where he is currently taking care of his elderly mother. Debtor otherwise listed his residence address as 1278 Margaret Avenue, South Lake Tahoe, California 96150 on his petition.
>
> 2. Debtor may not exempt this Property under Cal. Code Civ. P. § 704.730 because the Property is not his primary residence on the date the petition was filed, and it does not appear that Debtor intends to occupy the residence in the future as is required to claim a homestead exemption.
>
> 3. Debtor is self-employed as the owner of 2 Grand Productions, LLC. Debtor has a checking account ending in no. 9519 at BMO Bank with a value of $3,449.59. Debtor has claimed $2,174 as exempt in the bank account under Cal. Code Civ. P. § 704.070. Cal. Code Civ. P. § 704.070 only allows an exemption in funds that are wages paid within 30 days prior to filing, so Debtor has improperly claimed this exemption in his bank account.

Docket 21.

Debtor's Response

On January 9, 2024, Debtor filed a Response to this Objection. Docket 25. In his Response, Debtor states:

1. Cal. Code Civ. P. § 704.720(d) can be interpreted to allow a debtor to claim a homestead exemption pursuant to Cal. Code Civ. P. § 704.730 even if the debtor's non-filing spouse, and not the debtor, resides in the homestead.

APPLICABLE LAW

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

Pursuant to 11 U.S.C. § 522(b)(3)(A), Debtor has claimed the homestead exemption under Cal. Code Civ. P. § 704.730 in the Property. Cal. Code Civ. P. § 704.730 states:

> (a) The amount of the homestead exemption is the greater of the following:
>
> > (1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars ($600,000).
> >
> > (2) Three hundred thousand dollars ($300,000).
>
> (b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

Relevant to this case, Cal. Code Civ. P. § 704.720(d) states:

> If a judgment debtor is not currently residing in the homestead, but his or her separated or former spouse continues to reside in or exercise control over possession of the homestead, that judgment debtor continues to be entitled to an exemption under this article until entry of judgment or other legally enforceable agreement dividing the community property between the judgment debtor and the separated or former spouse, or until a later time period as specified by court order. Nothing in this subdivision shall entitle the judgment debtor to more than one exempt homestead. Notwithstanding subdivision (d) of Section 704.710, for purposes of this article, "spouse" may include a separated or former spouse consistent with this subdivision.

Finally, regarding Debtor's claimed exemption in wages, Cal. Code Civ. P. § 704.070 states:

> (2) "Paid earnings" means earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy. . .

. . .

> (b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are exempt in the following amounts:
>
> > (1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or an earnings assignment order for support.
> >
> > (2) Disposable earnings that would otherwise not be subject to levy under Section 706.050 that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support.

See generally 8 WITKIN, CAL. P. ENFORCEMENT OF JUDGMENT § 248 (6th ed. 2023).

DISCUSSION

Here, Debtor has presented the court with an argument, but not evidence, for the legal proposition that Debtor, while not living in the Property, can still claim the homestead exemption in the Property. California Code of Civil Procedure § 704.720(d), which appears in the California Code of Civil Procedure just before the homestead exemption of § 704.730, states that a judgment debtor may claim a homestead exemption in a home in which the judgment debtor himself does not reside. To be eligible under this section, the judgment debtor's "separated or former spouse continues to reside in or exercise control over possession of the homestead." Cal. Code Civ. P. § 704.720(d). Only when there has been an "entry of judgment or other legally enforceable agreement dividing the community property between the judgment debtor and the separated or former spouse, or until a later time period as specified by court order," may the judgment debtor no longer claim an exemption in the homestead. *Id.*

Additionally, the homestead exemption can be claimed in a residence which the owner has temporarily vacated. As discussed in *Bhangoo v. Engs Commer. Fin. Co. (In re Bhangoo)*, 634 B.R. 80, 86 (B.A.P. 9th Cir. 2021):

> In 1983, CCP § 704.710(c) was amended to delete the word "actually," which appeared before "resided," to create a temporary absence doctrine designed to accommodate such situations as a vacation or hospital stay and prevent the loss of a homestead exemption. *See* 17 Cal.L.Rev. Comm. Reports 854 (1983). Courts applying the amended statute have found that a debtor who did not physically occupy a property on the petition date is not precluded from claiming the automatic homestead exemption on that basis alone. See e.g., In re Diaz, 547 B.R. at 334; *McBeth v. Karr (In re Karr)*, BAP No. CC-06-1079-KMoSn, 2006 Bankr. LEXIS 4801, 2006 WL 6810996, at *4 (9th Cir. BAP Oct. 2, 2006), aff'd, 278 F. App'x 741 (9th Cir. 2008); *In re Pham*, 177 B.R. 914, 918 (Bankr. C.D. Cal. 1994); *In re Bruton*, 167 B.R. 923, 926 (Bankr. S.D. Cal. 1994); *In re Dodge*, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992); *In re Yau*, 115 B.R. 245, 249 (Bankr. C.D. Cal. 1990)*; Cal. Coastal Comm'n v. Allen*, 167 Cal. App. 4th 322, 330-31, 83 Cal. Rptr. 3d 906

> (2008). And prior to the creation of the automatic homestead exemption in 1975, California courts had long held that a lack of physical occupancy does not preclude a party from establishing actual residency and claiming the homestead, if the claimant intends to return. *See In re Diaz*, 547 B.R. at 335-36 (discussing pre-1975 cases involving a declared homestead).
>
> Thus, a debtor temporarily absent from his or her principal dwelling can claim a homestead exemption if the debtor can establish an intent to return to the principal dwelling after the absence. *Id.*; *In re Karr*, 2006 Bankr. LEXIS 4801, 2006 WL 6810996, at *4-5; *In re Pham*, 177 B.R. at 918-19; *In re Bruton*, 167 B.R. at 926; *In re Dodge*, 138 B.R. at 607; *In re Yau*, 115 B.R. at 249. Inherent in that analysis is, did the debtor intend to maintain the property as the debtor's principal dwelling continuously throughout the absence? *See In re Elliott*, 523 B.R. at 196-97.

There is no evidence that Debtor in this case and his spouse have been subject to any judgment or other legally enforceable agreement dividing the community Property, nor is there evidence showing Debtor's separated or former spouse no longer resides in the Property.

However, there is no evidence (such as a declaration by Debtor and a declaration by the non-debtor Spouse, utility and tax bills, and the like) that the property is being resided in and qualifies for the homestead exemption.

Counsel for the Trustee reported that they have been communicating with Debtor's counsel and requested that the hearing be continued.

Counsel for the Debtor and counsel for the Chapter 13 Trustee agreed to continue the hearing to allow Debtor the opportunity to address these issues and file an Amended Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David P. 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 Exemptions is overruled.

3.	23-24448-E-13 DPC-1	LACEY DEROCK Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-29-24 [29]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, and Office of the United States Trustee on January 29, 2024. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor failed to appear and be examined at the First Meeting of Creditors held on January 25, 2024. Objection, Docket 29, ¶ 1.

2. Debtor failed to provide Trustee with 60 days of employer payment advices received prior to the filing of the petition. *Id.* at ¶ 2.

3. Debtor has failed to provide Trustee with a tax transcript or a copy of her Federal Income Tax Return for the most recent pre-petition tax year. *Id.*

4. Debtor has failed to submit proof of her social security number. *Id.* at ¶ 3.

5. Debtor is $116.97 delinquent in plan payments. Debtor will need to pay $233.94 to bring the Plan current by the hearing date. *Id.* at ¶ 4.

The Chapter 13 Trustee, David Cusick ("Trustee"), submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 31.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

The Continued Meeting of Creditors is being held on April 4, 2024.

At the hearing, **XXXXXXX**

Combined Pay Stubs &Tax Returns

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

Failure to Provide Verification of Social Security Number

Debtor is required under Federal Rule of Bankruptcy Procedure 4002(b)(1)(B) to provide evidence of their social security number to the Trustee before the First Meeting of Creditors. In this case, Debtor failed to provide the Trustee with evidence that verifies their social security number prior to the First Meeting of Creditors. The meeting has been continued to April 4, 2024 to give the Debtor sufficient time to provide this information to the Trustee. As of February 20, 2024, no evidence has been given to the court that shows the Debtor has provided the Trustee with verification of their social security number.

Delinquency

Debtor is $116.97 delinquent in plan payments, which represents one month of the $116.97 plan payment. Before the hearing, another plan payment will be due. The Trustee cites to the Plan in § 2.01, which 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).

In this case, Debtor has paid $0.00 into the Plan and has not provided the court with any evidence that the delinquency will be cured. At the hearing, **xxxxxxx**

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

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

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

4. **23-21125-E-13** **CRG-1**

CHARLES KRYSZEWSKI
Carl Gustafson

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LINCOLN LAW FOR CARL R. GUSTAFSON, DEBTORS ATTORNEY(S)
1-17-24 [47]

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 and creditors that have filed claims on January 17, 2024. By the court's calculation, 41 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

However, Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held to move the Court for an Order Granting Application for Additional Attorney Fees, and the hearing will be based upon submitted pleadings. The Notice of Motion states that it is incumbent on any objecting party to file an objection, and that a failure to file and serve a timely written opposition may result in the motion being resolved with oral argument and the striking of the untimely written opposition. Based upon language that there may be submissions at the hearing, and the inclusion of a directive to file opposition 14 days prior to the hearing date, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(1). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

The Motion for Allowance of Professional Fees was properly 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). 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). At the hearing, **xxxxxxx**.

The Motion for Allowance of Professional Fees is denied.

Carl R. Gustafson, the Attorney ("Applicant") for Charles Dana Kryszewski, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested, though the period for which the request is sought is not particularly identified. Applicant states that he has served as attorney for Client since March 16, 2023. Decl., Docket 49 at 1:21. Applicant's authenticated exhibit attached to Applicant's Motion includes billing receipts from March 15, 2023 through January 8, 2024. Exhibit, Docket 51, pp. 3, 11. Applicant requests fees in the amount of $8,374.00 and costs in the amount of $255.00.

AUTHORIZATION FOR EMPLOYMENT OF COUNSEL AND FEES AND COSTS ALLOWED FOR A CHAPTER 13 DEBTOR COUNSEL

The Order Confirming the Chapter 13 Plan in this Bankruptcy Case provides that Fees for counsel are allowed in the amount of $4,000. Dckt. 39. Counsel was paid a retainer of $2,751.00 prior to the commencement of this Case and are applied to the $4,000.00 fees allowed for Counsel. *Id.*; p. 2.

This Bankruptcy Case was filed on April 7, 2023. At that time, the Local Bankruptcy Rules provided that the maximum amount of "fixed fee" for a Chapter 13 debtors counsel could received was $4,000, which was allowed in the order confirming the Chapter 13 plan and no further application or authorization of the court required. However, such Debtor counsel could request the allowance of additional fees for substantial and unexpected services. Local Bankruptcy Rule 2016-1, effective until August 8, 2023, provided, in pertinent part:

> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> 1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
> . . .
> 3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all pre confirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Chapter 13 Plan in this Case was filed on April 7, 2023, when the prior version of Local Bankruptcy Rule 2016-1 was in effect capping the fixed fee at $4,000, but allowing debtor counsel to seek additional fees substantial and unanticipated fees.

The fixed fee amount is not required to be taken by a Chapter 13 debtor's counsel, but both under prior Local Bankruptcy Rule 2016-1 and the current Rule 2016-1 a debtor's counsel could elect to file fee applications and be allowed fees, without a cap, as provided in 11 U.S.C. § 330 and § 331. Local Bankruptcy Rule 2016-1, in effect when this case was filed and applicable to Debtor's Counsel's fees states:

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party in interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c) [fixed fee]. When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.

The Order confirming the Chapter 13 Plan was signed by the court on August 14, 2024. Dckt. 29. This Order authorizing the payment of the $4,000 in fees that were provided for as stated in the Plan, which was based on prior Local Bankruptcy Rule 2016-1.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on February 12, 2024. Dckt. 53. Trustee opposes confirmation of the Plan on the basis that:

A. Applicant opted into being paid his fees in connection with plan confirmation and in accordance with Local Bankruptcy Rule 2016-1(c). Opposition, Docket 53, p. 1:25-27.

B. Applicant agreed to a total flat fee of $4,000.00. *Id.* at 1:28-2:2. $2,751.00 was paid prior to filing the case and the balance of $1,249.00 was paid by the Trustee through the Plan disbursements. *Id.* at 2:1-2.

C. The Disclosure of Compensation of Attorney for Debtor(s) also states that Applicant agreed to accept an attorney fee of $4,000.00, with $2,751.00 paid prior to filing and the balance due is $1,249.00. Question #7 is silent as to any additional fees the Client agreed to pay, that is not included as part of Applicant's service. *Id.* at 2:3-7.

D. Client and Applicant both signed, and filed, Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, pursuant to Local Bankruptcy Rule 2016-1(c). *Id.* at 2:9-11.

E. Applicant's submitted Exhibit shows a billing statement broken into five sections, identified as "PREPARATION AND FILING OF CASE"; "PREPARATION FOR 341"; "RESOLVE TRUSTEE'S OBJECTION TO CONFIRMATION"; "CLAIMS AUDIT AND OBJECTIONS"; and "FEE APPLICATION." *Id.* at 2:13-17.

F. It appears that all of the work performed, was in the normal course of work to be performed in an ordinary Chapter 13 case in accordance with Local Bankruptcy Rule 2016-1(c). *Id.* at 2:23-25.

G. The Trustee has serious concerns that the Applicant is seeking additional attorney fees and costs in the ordinary course of executing this case from the initial contact, preconfirmation work and post-petition monitoring of the case. *Id.* at 3:5-7.

H. Even more troubling to the Trustee is that the Applicant is asking for an astonishing amount of additional attorney fees for prosecuting an objection to confirmation over an issue that seems fairly basic and is otherwise the standard practice in this district. *Id.* at 3:7-10.

I. Applicant prepared schedules with the lack of information that did not initially include community assets, creditors, expenses, additional income, and any explanation or inclusion of large tax refunds. Not only is this pre-confirmation work that would not be entitled to reimbursement in a fee application, but this also does not seem like something that should have been "unanticipated" at the time of filing as Applicant was aware that the Client was married and that the spouse was not joining in the case with the Client. *Id.* at 3:10-16.

J. Applicant is now seeking an extraordinary amount of additional fees because of additional work that his office had to undertake, however, if the bankruptcy documents had been properly prepared or timely amended, some, if not all of these "additional" fees could have been avoided. *Id.* at 3:16-19.

K. Applicant is not eligible for additional fees in connection with pre-confirmation services or routine case administration. *Id.* at 3:19-21.

L. The bulk of the fees being charged are due to the Trustee's objection to confirmation, which stemmed from the schedules not being completed accurately to include Client's community assets, debts, income, and expenses, along with tax refunds identified as potential additional disposable income to be included in the Plan; this is all pre-confirmation work and would not be entitled to additional fees. *Id.* at 3:24-28.

M. The post-petition attorney's fees that Applicant is seeking to be paid by this application also all appear to be routine case administration such as reviewing the claims and discussing them with the Client. *Id.* at 3:28-4:2.

N. These post-confirmation items are also specifically itemized in the Local Bankruptcy Rules as tasks that are included in the flat fee. *Id.* at 4:2-3.

O. The remaining amount claimed in the fee application is for the preparation and prosecution of this fee application. Where these fees would normally be allowed in this type of situation, the Trustee also objects to these fees because, pursuant to the Local Rules, this application should have never been filed in the first place so Applicant should not be entitled to fees for filing it. *Id.* at 4:3-7.

P. Where the Applicant chose to be paid in accordance with the Local Bankruptcy Rules, most of the fees requested are for pre-confirmation work, and the post-petition work appears to be that which is specifically included in the flat fee, and where there is no indication that the work was "unanticipated" or due to Client's bad faith in preparing the documents, the Trustee objects to any payment of additional fees and costs. *Id.* at 4:8-12.

The facts alleged in Trustee's opposition are authenticated by the declaration of Teryl Wegemer. Declaration, Docket 54.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
>
> (ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

“No-Look” Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. As addressed above, Local Bankruptcy Rule 2016-1 in effect when this case was filed and upon which the attorney’s fees were agreed to limited the fixed fees to $4,000, but allowed additional fees for a debtor’s counsel, but only for substantial and unanticipated fees.

For such fees, it is Debtor’s Counsel who has the burden of proof to establish not only were the additional fees necessary and reasonable, but that they were UNANTICIPATED and SUBSTANTIAL.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested by motion. The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

<u>Fees</u>

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Preparation and Filing of Case: Applicant spent 9.9 hours in this category. Applicant reviewed financial documents, communicated with client, performed data entry, drafted and reviewed plan, and filed plan.

Preparation for 341: Applicant spent 3.7 hours in this category. Applicant reviewed court documents, communicated with client, prepared and sent documents, and attended the 341 meeting.

Resolution of Trustee's Objection to Confirmation: Applicant spent 23.4 hours in this category. Applicant reviewed creditor list, communicated with client, prepared, reviewed, and implemented amendments, responded to Trustee's Objection to Confirmation, drafted automatic stay letters, filed documents, performed service of amended documents and prepared and filed certificates of service, and attended the hearing on the motion to confirm.

Claims Audit and Objections: Applicant spent 1.6 hours in this category. Applicant performed an audit, reviewed claims, communicated with client, and reviewed government proof of claims.

Fee Application: Applicant spent 1 hour in this category. Applicant reviewed time records and drafted the fee application narrative, and prepared the fee application pleadings.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Carl R. Gustafson and Richard W. Suh, Attorneys	13	$525.00	$6,825.00
Katherine Arias, Leanne Rodriguez, Karen Alvarez, Paralegals	20	$215.00	$4,300.00
Total			$11,125.00
Less previously paid			($2,751.00)
Total Fees for Period of Application			$8,374.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $255.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Mailing cost for Notice of Chapter 13 Bankruptcy Case Meeting of Creditors and Chapter 13 Plan		$25.00
Mailing cost for Amended Sch J, amended Form 122C-1 and amended Form 122C-2		$160.00
Estimated mailing cost for Fee Application		$70.00
Total Costs Requested in Application		$255.00

DISCUSSION OF APPLICANT'S MOTION

Client's confirmed plan states that "Debtor's attorney will seek the court's approval by [X]: complying with Local Bankruptcy Rule 2016-1(c). Plan, Docket 3, ¶ 3.05. This plan was signed on April 6, 2023 by Client and Applicant. *Id.* at p.6. This plan does not include any nonstandard provisions under Section 7 of the Plan. *Id.* at ¶ 7. This plan was confirmed on August 15, 2023. Order, Docket 39.

Applicant's Motion states that Applicant undertook actual, reasonable, and necessary work in the zealous representation of Client. Application, Docket 47, p. 1:19-22. Applicant states in his declaration that Exhibit A covers all services rendered to Client in connection with the Chapter 13 case, including but not limited to general correspondences, emails, telephone calls and file reviews. Decl., Docket 49, p. 1:24-27. Applicant states that the fees paid prior to filing are insufficient to fully compensate his office for legal services rendered. *Id.* at 2:23-25.

The court considers each of the fees and costs request to determine whether they were substantial and unanticipated for the filing of a nonbusiness Chapter 13 Case. It also needs to be remembered that if Counsel believed that this was not a proper fixes fee case, Counsel could have opted out of the fixed fee and submitted interim and final fee application as provided in 11 U.S.C. § 331, 330.

The Application begins with the statement that Counsel is to be paid actual fees that are "[r]reasonable, and necessary for work undertaken by Applicant in the zealous representation of the Debtor in this Chapter 13 Case." Motion, p. 1:19-22; Dckt. 47. In the Motion, Applicant address the allowance of fees for all reasonable and necessary services, but fails to address that Applicant has elected to accept the no-look fixed fee. Applicant states that the "reasonable and necessary" legal services including addressing the Trustee points that Debtor must list all community debts, including those of his non-filing spouse.

The Motion does not state that Applicant is seeking additional fees and expenses for SUBSTANTIAL and UNANTICIPATED legal services in this case where Applicant accepted the fixed fee.

Counsel provides his Declaration (Dckt. 49) in support of the Fee Application. His testimony includes the following:

A. Applicant is requesting "additional attorney fees in the amount of $8,629.00 pursuant to Bankruptcy Code Section 330 and Bankruptcy Rule 2016(a). Declaration, ¶ 3; Dckt. 49.

In the Declaration, Counsel does not address the election to tax the no-look fixed fee pursuant to Local Bankruptcy Rule 2016-1. While Federal Rule of Bankruptcy Procedure 2016 provides the general procedural rule seeking the allowance of reasonable professional fees, it does not supplant Local Bankruptcy Rule 2016-1 for a Chapter 13 debtor's counsel fees when the no-look, fixed fee is elected by such counsel.

B. That Applicant has a contractual hourly rate of $525.00 for attorneys and $215.00 for paralegals. *Id.*; ¶ 7.

The Declaration does not address what unaticipated and substantial legal services were provided for a debtor's counsel who elects to accept the no-look, fixed fee.

Thus, Applicant does not has not sought unanticipated legal fees and costs for providing legal services to the Debtor when Applicant has elected the no-look, fixed fee for compensation.

Review of Additional Fees Requested

The court provides a review of the additional fees requested by Applicant and the court's conclusion as to whether the fees would be substantial unanticipated fees.

Though the Application is not one requesting fees for Unanticipated and Substantial legal services, the court has reviewed the Motion and Evidence in support thereof.

A. Preparation and Filing of Case: Applicant spent 9.9 hours in this category. Applicant reviewed financial documents, communicated with client, performed data entry, drafted and reviewed plan, and filed plan.

Preparation and filing of the Bankruptcy Case, including reviewing documents, communicating with clients, and drafting and then filing a plan are included in the no-look, fixed fee requested by Applicant as provided in Local Bankruptcy Rule 2016-1.

B. Preparation for 341: Applicant spent 3.7 hours in this category. Applicant reviewed court documents, communicated with client, prepared and sent documents, and attended the 341 meeting.

Again, preparing for and appearing at the 341 Meeting of Creditors is basic representation included in the no-look, fixed fee elected by Applicant as provided in Local Bankruptcy Rule 2016-1 .

C. Resolution of Trustee's Objection to Confirmation: Applicant spent 23.4 hours in this category. Applicant reviewed creditor list, communicated with client, prepared, reviewed, and implemented amendments, responded to Trustee's Objection to Confirmation, drafted automatic stay letters, filed documents, performed service of

amended documents and prepared and filed certificates of service, and attended the hearing on the motion to confirm.

There has been no showing that addressing the objections by the Trustee and then correcting the Schedule so that they accurately and truthfully list the assets and liabilities of the Debtor are not included in the basic representation of a Chapter 13 debtor when Counsel has elected to receive the no-look, fixed fee as provided in Local Bankruptcy Rule 2016-1.

D. Claims Audit and Objections: Applicant spent 1.6 hours in this category. Applicant performed an audit, reviewed claims, communicated with client, and reviewed government proof of claims.

The basic review of claims filed and communicating with the debtor client about such is included in the no-look, fixed fee elected by Counsel as provided in Local Bankruptcy Rule 2016-1.

E. Fee Application: Applicant spent 1 hour in this category. Applicant reviewed time records and drafted the fee application narrative, and prepared the fee application pleadings.

The preparation of a fees and costs application, when Counsel has elected the no-look, fixed fee compensation as provided in Local Bankruptcy Rule 2016-1, is not proper. As stated above, Counsel is not seeking the allowance of unanticipated and substantial legal services in addition to the no-look, fixed fees.

In reviewing the above, the court does not make any findings of fact and conclusions of law as to whether this could be Unanticipated and Substantial legal services for when an attorney who elects to received the no-look, fixed fee.

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant are limited to mailing costs. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be charged in addition to the professional fees requested as compensation. The court disallows all of the requested costs.

Applicant's request to convert his set fee agreement into an hourly agreement for all services is not proper.

The Motion is denied.

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

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

The Motion for Allowance of Fees and Expenses filed by Carl R. Gustafson ("Applicant"), Attorney 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 for Allowance of Professional Fees is denied. This denial is without prejudice to Applicant seeking an allowance of fees for Unanticipated and Substantial legal services for Applicant who has elected to receive the no-look, fixed fee as provided in Local Bankruptcy Rule 2016-1.

5. 23-23827-E-13 DPC-1 | **ERNEST JACKSON** Mary Ellen Terranella | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-6-23 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on December 6, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

At the hearing, Debtor's counsel requested a continuance to afford the Debtor additional time to address the tax return filings. They have been delayed due to Debtor's health issues.

The Objection to Confirmation of Plan is sustained and the Chapter 13 Plan is not confirmed.

February 27, 2024 Hearing

As of the court's review of the docket on February 22, 2024, the tax returns have not been filed. The Trustee Report at the 341 Meeting was filed on January 18, 2024. Additionally, on January 15, 2024, the Court generated a Notice of Intent to Close Chapter 13 Case Without Entry of Discharge Due to Failure to File Financial Management Course Certificate. This Notice was mailed on January 18, 2024. No further documents have been filed in this case.

The Trustee reports that Debtor did not appear at the continued 341 Meeting on February 22, 2024, but Debtor's counsel appeared. The 341 Meeting has been further continued to April 4, 2024. Trustee's February 22, 2024 Docket Entry Report.

No updated Status Report has been provided by Debtor as the ability to prosecute this case since the prior hearing on January 9, 2024.

REVIEW OF THE MOTION

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

1. Debtor has not filed all tax returns.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2020, 2021, and 2022 tax years have not been filed still. Filing of the returns is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). Declaration of Teryl Wegemer, ¶ 5; Dckt. 16.

January 9, 2024 Hearing

At the hearing, the Chapter 13 Trustee's counsel concurred with the request by Debtor's counsel for a continuance due to health issues facing the Debtor. The Trustee's counsel concurred with the request for a continuance.

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 sustained and the Chapter 13 Plan is not confirmed..

6.	23-24529-E-13 DPC-1	ROCHELL MINOR Arete Kostopoulos	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-22-24 [14]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 22, 2024. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. The Debtor failed to appear and was not examined at the First Meeting of Creditors held on January 18, 2024. Objection, Docket 14, p.1:25-27.

2. Trustee does not have sufficient information to determine if the Plan is suitable for confirmation under 11 U.S.C. §1325. *Id.* at 1:28-2:1.

3. Therefore, the meeting has been continued to March 7, 2024 at 2:00 pm.

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

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

Review of Schedules I and J

On Schedule I, Debtor lists the monthly wage income for Debtor and the Non-Debtor Spouse total $6,184.56. Dckt. 1 at 31. After deducting all of the withholding, Debtor reports having Net Monthly Income of $5,268.56.

On Schedule J, Debtor lists having two dependents, teenage children, having a family unit of two adults and two children. *Id*. at 33. After deducting the monthly expenses on Schedule J, Debtor computes having monthly net income of $1,776.78, which she uses to fund the proposed Plan monthly.

Review of Plan

The proposed Chapter 13 Plan provides for Debtor to fund it with the projected monthly disposable income of $1,776.78. Plan, § 2.01; Dckt. 3.

The Class One Secured Claims in a Chapter 13 Plan are:

> 3.07. Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

Plan, § 3.07; *Id*. at 2. However, the two creditors listed in § 3.07(c) of the Plan are:

1. Charlotte Belk based on a "Rental Lease Agreement Month to Month, for which there is no arrearage to cure and no monthly post-petition payment.

2. Modoc Storage based on a "Storage Rental Agreement" for which there is ($2,344) amount past due and for which there are no post-petition monthly payments to be made to this creditor.

These do not appear to be secured claims that mature after completion of the Plan month to month rental payments, for which one there is a default (and presumably the storage company has a lien on the contents in the storage unit, which are as of now unknown). That possibly may be a Class 2 Claim in a Chapter 13 Plan in the Eastern District of California.

The Class 2 Secured claims " includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed." *Id*.; § 3.08. The Class 2 secured claims to be paid during the term of the Plan are:

1. Capital One Auto Finance with a ($32,000) claim secured by a 2019 Dodge Ram (78,201 miles) with a value of only $22,396 stated by Debtor.

2. Community First CU with a ($34,708.00) claim secured by a 2021 Subaru CrossTrek with a value of only $19,197.

Id.; § 3.08(d).

Class 3 of the Plan (§ 3.09) provides that there is no collateral being abandoned for secured claims and Class 4 of the Plan (§ 3.10) provides that there are no secured claims to be paid outside the Plan.

In § 4.02 of the Plan the Debtor provides that the Charlotte Belk and Modoc Storage leases are not rejected. *Id*.

FEBRUARY 27, 2024 HEARING

It appears that there may need to be substantive changes to the Plan and the claims provided in Class 1 of the Plan now proposed. Debtor and Debtor's Counsel may need to go back to the drawing board.

At the hearing, Counsel for Debtor address the treatment of the Class 1 Claims, **XXXXXXX** .

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

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

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

7. 20-21032-E-13 **MARJORIE ALCANTARA** **MOTION TO MODIFY PLAN**
RLJ-5 **Richard Jare** **1-9-24 [142]**

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 January 10, 2024. 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 granted~~.

The debtor, Marjorie Alcantara ("Debtor") seeks confirmation of the Modified Plan to help her cure her delinquency. Declaration, Docket 144. The Modified Plan provides $16,800 to be paid through 14 payments of $1,200.00 for 14 months, and a 100% percent dividend to unsecured claims totaling $17,790.00. Modified Plan, Docket 145. 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 6, 2024. Dckt. 155. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has not filed updated Schedules I & J. The most recently filed schedules I and J were wiled 7-20-2023. Opposition, Docket 155 p.1:24-28.

B. Without this information, the Court may find that Debtor has not proven they can afford the payments.

C. The trustee therefore cannot assess the feasibility of debtor's plan or whether the plan has been proposed in good faith without evidence of his current budget.

Trustee submits the declaration of Angelina Fernandez to authenticate the facts advanced in the opposition. Declaration, Docket 156.

DISCUSSION

Unsubstantiated Change in Incomes

Debtor's prior plan was approved by the court on October 4, 2023. Order, Docket 134. Debtor's prior plan payment was $900.00 per month. Modified Plan, Docket 120 ¶ 2.01. Trustee filed a Motion to Dismiss on January 17, 2024 because Debtor had become delinquent. Decl., Docket 137.

Debtor asserts that the cause of her delinquency was cash-flow problems in a business she tried to start. Decl., Docket 142 ¶ 2. Debtor states that she will comply with the plan and remit the payments specified. *Id.* at ¶ 8. Furthermore, Debtor states that the payments are the most that she will be able to pay. *Id.*

However, Debtor's assertions rely on financial data that has not been filed with the court. Absent this, the Debtor has not proven that she can afford the payments.

Under the proposed Modified Plan, Debtor's monthly Plan payments for the remaining eighteen (18) months of the Plan are to be $1,200 a month. Mod. Plan, § 2.01 and Section 7, Nonstandard Provisions. Mod. Plan.; Dckt. 145. In the prior Second Modified Chapter 13 Plan that has been confirmed, and for which the Debtor has defaulted, required monthly payments of only $900 a month. 2nd Mod. Plan, § 2.01; Dckt. 120. Supplemental Schedules I and J filed with the 2nd Modified Plan states that Debtor's monthly net income is only $900 a month. Dckt. 121.

Second Supplemental Schedules I and J

On February 12, 2024, the Debtor filed Second Supplemental Schedules I and J (after the Trustee's Opposition was filed) . Dckt. 158. Debtor now computes her monthly net income to be $1,200. Second Supplemental Schedule J; *Id*. at 8.

At the hearing, **XXXXXXX**

~~The Modified Plan does comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and the 2nd Modified Chapter 13 Plan 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, Marjorie Alcantara ("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 2nd Modified Plan is ~~granted, and the proposed Chapter 13 Plan filed on January 9, 2024 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.~~

8. 21-23639-E-13 DCN-2 **CORY/STACY GUTHRIE Patricia Wilson** **MOTION TO MODIFY PLAN 1-15-24 [42]**

8 thru 9

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on January 15, 2024. By the court's calculation, 43 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, Cory Blake Guthrie and Stacy Denise Guthrie ("Debtor") seek confirmation of the Modified Plan due to a change in circumstances surrounding Mr. Guthrie's employment and, accordingly, Debtor's ability to make plan payments. Declaration, Dckt. 44 ¶¶ 13-16. The Modified Plan, picking up on

month 27 of this case, provides Debtor will pay $420 a month for 34 months. Modified Plan, Dckt. 46 § 7. Debtor has already paid $75,340 into the previous Plan, beginning in November, 2021 through December, 2023. *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 13, 2024. Dckt. 53. Trustee opposes confirmation of the Plan on the basis that:

A. Trustee is having trouble calculating the percentage limit for unsecured claims within certain time frames of different months. If the percent to unsecured creditors is 36%, Trustee does not oppose this number being corrected in the order confirming.

B. There are some procedural issues with the Motion. The Amended Coversheet at Docket 47 states Schedules E and F were amended and filed, but debtor only uploaded Amended Schedules I and J. Furthermore, Schedule I and J were not listed on Debtor's Proof of Service, so Trustee does not know if they were served. Amended Schedules I and J should be served along with a Motion to Modify. Finally, there is confusion around with Docket Control Number Debtor is bringing this current Motion.

DISCUSSION

Debtor has filed evidence in support of confirmation of the Modified Plan. *See* Declaration, Docket 44; Exhibits, Docket 45. Trustee does not oppose confirmation, so long as the procedural errors are addressed. Debtor should explain the discrepancy between filing Amended Schedules I and J, not Schedules E and F as indicated in Docket 42, and whether these Amended Schedules were properly served. 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, Cory Blake Guthrie and Stacy Denise Guthrie ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on January 15, 2024, 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.~~

9. 21-23639-E-13 DPC-1 | **CORY/STACY GUTHRIE Patricia Wilson** | **CONTINUED MOTION TO DISMISS CASE 10-26-23 [32]**

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, persons having filed a Request for Notice, and Office of the United States Trustee on October 26, 2023. By the court's calculation, 34 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 xxxxxxx .

February 27, 2024 Hearing

The court continued this hearing to 2:00 p.m. on February 27, 2024, (Specially Set Day and Time) to be conducted in conjunction with the hearing on the Motion to Confirm Modified Plan. As of February 22, 2204 no new documents have been filed with the court under this Docket Control Number. However, after conducting the hearing on the Motion to Confirm the Modified Plan, at the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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

1. The debtor, Cory and Stacie Guthrie ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 14, 2023. Dckt. 36. Debtor filed a Declaration in support of its Opposition. Declaration, Dckt. 38.

The Opposition recounts that the existing Chapter 13 Plan has been funded with $75,340.00 to date, of which ($26,642.72) has been disbursed to pay in full the claim secured by Debtor's vehicle and ($41,107) has been paid to creditors holding general unsecured claims.

Though Debtor's "plan" was to stay employed by Redding Electric Utility through the life of the Chapter 13 Plan, his earning being sufficient to fund the Plan. However, in September of 2022, Debtor was presented with the opportunity for private sector employment, so Debtor elected to retire, collect both the PERS and PARS funded pensions, and then work in the private sector. Unfortunately, the private sector work slowed and then in August 2023, the employment was terminated.

This resulted in the loss of income that led to the defaults.

In October 2023, Debtor has been re-employed by the Redding Electric Utility as a retired annuitant who can work up to 960 hours a year (which averages 20 hours a week). Because Debtor did not receive the retired annuitant income until mid-October 2023, the September and October 2023 monthly plan payments could not be made in full.

Debtor Cory Blake Guthrie provides his Declaration to go with the Opposition. Dec.; Dckt. 38. He recounts his income journey, the opportunity for the higher private sector income, election to retire, and then the loss of the private sector income.

In his Declaration, Debtor states he is delinquent because he was unexpectedly laid off from a contract position. Debtor informs the court he will file a new modified plan to cure the delinquency.

Request to Continue the Hearing

In the Opposition, Debtor requests that the hearing on this Motion be continued to January 9, 2024, based upon the anticipated prosecution of a motion to confirm a modified plan.

DISCUSSION

Delinquent

Debtor is $14,348.00 delinquent in plan payments, which represents multiple months of the $3,737.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). However, Debtor informs the court he will be filing a modified plan to address the delinquency. A review of the Docket on November 27, 2023 reveals no such plan has yet been filed.

Though as of November 27, 2023, no proposed Modified Plan and Motion to Confirm have been filed, thereby precluding having a properly noticed confirmation hearing by the end of 2023, the court believes that the facts and circumstances of this Case warrant a continuance. Debtor has a reliable income source (publicly funded pensions). Additionally, the Plan in this Case has been substantially funded, showing that the Debtor has been able to move this Case substantially forward.

The court continues the hearing, affording Debtor's counsel and Debtor to continue to concentrate on getting the modified plan and motion to confirm on file and set for hearing.

January 17, 2024 Hearing

A review of the Docket reveals that there is still no Modified Plan on file. However, Creditor Provident Funding Associates, L.P. filed a Notice of Mortgage Payment Change on January 9, 2024. Docket 9. The new monthly mortgage payment, effective February 1, 2024, is $2,117.36.

At the hearing, counsel for the Trustee reported that no payment has been received since October 2024.

However, on January 15, 2024, the Debtor filed an Amended Plan, Motion to Confirm, and supporting documents. The Trustee requested that the court continue the hearing on the Motion to Dismiss to the same date and time as Debtor's Motion to Confirm the Amended Plan.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on February 27, 2024, (Specially Set Day and Time) to be conducted in conjunction with the hearing on the Motion to Confirm Modified Plan.

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 **xxxxxxx**.

10. 23-23834-E-13 DNL-2 | **ANTONETTE TIN** / **Peter Macaluso** | **MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7** / **1-23-24 [30]**

10 thru 12

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

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, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on January 23, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is xxxxxxx.

This Motion to Convert the Chapter 13 bankruptcy case of Antonette Tin ("Debtor") has been filed by Nikki Farris ("Movant"), the Chapter 7 Trustee assigned to a related bankruptcy case involving Debtor's business, the Retreat at Royal Green, LLC ("Business Case"). *See* Case no. 23-23523. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. On October 5, 2023, Debtor in this case commenced the Business Case, filing bankruptcy on behalf of the Retreat at Royal Green, LLC. Mtn., Docket 30 ¶ 2.

B. On October 27, 2023, Debtor filed this instant case. *Id.* at ¶ 3.

C. Both cases were filed to frustrate the enforcement of a state court judgement awarded in favor of Alexander Fabros and Carlota Serama, creditors in this case ("Creditor"). *See* POC 3-3.

D. Movant asserts Debtor has an interest in the following pieces of real property:

1. 8983 Richborough Way, Elk Grove, CA 95624;
2. 8865 Haflinger Way, Elk Grove, CA 95757;
3. 779 Skylake Way, Sacramento, CA 95831;
4. 865 Royal Green Avenue (City/town and zip code not provided);
5. 986 Greenhurst Way (City/town and zip code not provided); and
6. 9706 Nature Trail Way (City/town and zip code not provided) (collectively "Subject Properties").

Decl., Docket 33 ¶ 17. Debtor, in her Amended Schedule A/B, only claims an interest in the 8983 Richborough Way, Elk Grove, CA 95624; 8865 Haflinger Way, Elk Grove, CA 95757; 779 Skylake Way, Sacramento, CA 95831properties. Amended Schedule A/B, Docket 21 ps. 4-6. (Debtor adds an additional foreign property in her Amended Schedule that Movant does not mention: 15th Floor, Two E-com Center, Diokno Blvd. Cor. Harbor Dr., Mall of Asia Complex, Pasay City, Phillippines 13000.)

E. Movant also alleges that Debtor and her mother, Erlinda Lynch ("Lynch") are co-trustees of a trust ("EBL Family Trust"), and Debtor is the sole trustee of a different trust established by her father ("RAC Trust"). Decl., Docket 33 ¶¶ 15-16. Some of the Subject Properties are held in either of these two trusts. *Id.* at ¶ 17.

F. Lynch is a creditor in this case (POC 24-1) alleging she is owed $174,938.29 for money she loaned Debtor and Debtor's failure to pay rent.

G. Movant has removed an adversary proceeding (Case no. 23-02098) from state court to the United States Bankruptcy Court for the Eastern District of California, Sacramento Division, to be heard by Judge Clement. *See* Notice of Removal, Docket 1, Case no. 23-02098. This adversary proceeding involves allegations that Debtor has transferred Subject Properties out of her name and into the EBL Family Trust or RAC Trust in order to frustrate collection. *Id.* at p. 8:17-9:2.

H. Movant asserts the Business Case has an avoidance action against Debtor in the amount of $156,000. Decl., Docket 33 ¶ 14.

I. As the grounds for relief, Movant asserts this case was filed in bad faith. Specifically, Movant states the Debtor filed her plan in an inequitable manner and unfairly manipulated the Bankruptcy Code by proposing a plan that ignores substantial asset equity and cash flow access. Motion, Docket 30 p. 7:1-4.

J. Movant also asserts that Debtor's history of bankruptcy filings supports bad faith. *Id.* at p. 7:5-10.

K. Bad faith is evident as Debtor filed only to defeat state court litigation. *Id.* at p. 7:11-20.

L. Finally, Debtor's egregious behavior is evidence of bad faith. Using the bankruptcy system to avoid payment of a judgment is egregious. *Id.* at p. 7:21-25.

In Movant's supporting Declaration, she begins much of her testimony with qualifiers such as "I believe," or "it is my understanding." However, "[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. Movant also fails to clearly and expressly authenticate the attached exhibits. *See* FED. R. EVID. 901(a). However, as the copies of checks submitted are reportedly from bank accounts Movant has control over in the business case, the court will deem them properly authenticated for purposes of this Motion.

CHAPTER 13 TRUSTEE'S NONOPPOSITION

Chapter 13 Trustee filed a nonopposition on February 13, 2024. Dckt. 59. Chapter 13 Trustee states the following reasons for nonopposition:

1. This case was filed on 10-27-2023 and has no confirmed plan.

2. Debtors plan payments under the proposed Plan filed 10-30-2023 (Docket 10) are $1,400.00 for 60 months. Debtors are current per the terms of their plan.

3. The Trustee does not believe the original or first amended plans can be confirmed as set out in his Objection.

4. The Trustee does not believe the Debtor can confirm a plan unless or until such time as the Debtor resolves the significant claims of the movant.

5. Trustee believes conversion to a chapter 7 will more readily allow such claims to be resolved. For the following reasons:

   A. A claim for $174,938.29 was filed asserting failure to pay lease payments, by Debtor's mother Erlinda B. Lynch. Claim 24-1.

   B. Erlinda B. Lynch shows as a co-debtor on Debtor's voluntary petition. Docket 1, Schedule E/F, line 4.16.

   C. Co-debtor was scheduled to receive $1.00, and the EBL Family Trust was also schedule for $1.00. *Id.* at 4.16, 4.24.

Chapter 13 Trustee does not file a declaration in support of this nonopposition, but cites documents filed by Debtor and Debtor's mother.

DEBTOR'S OPPOSITION TO MOTION

Debtor filed an Opposition on February 13, 2024. Dckt. 61. Debtor states the following reasons for opposition:

1. Debtor seeks to continue to operate her "Hospice" care home (s). *Id.* at 1:22-24.

2. Debtor disputes the "aggregate values" asserted by the Chapter 7 Trustee ; they are unsupported by any evidence, disputed by Debtors Schedules, and credited for the Debtor's Homestead Exemption. *Id.* at 1:26-2:4.

3. Debtor has filed to stop a garnishment which cannot be sustained. *Id.* at 2:6-7.

4. Debtor is not acting in bad faith but intending to operate her "hospice" homes and avoid being put out of business. *Id.* at 2:13-15.

5. Debtor is not ignoring any assets nor it's value.

6. Debtor's bankruptcy History provides a successful filing.

7. Debtor's intent is to stay in business, not defeat state court litigation.

8. Debtor is not "avoiding" payment but asserting that the "Actual Damages" is dwarfed by the unreasonable attorney fees owed.

9. Conversion is not in the best interests of the clients, the creditor's, nor the debtor as conversion closes the hospice centers, and provides no income to satisfy any judgment.

Debtor has not filed a Declaration in support of this Response. The above are merely unsupported arguments of counsel stated in the Opposition.

CREDITOR'S RESPONSE TO MOTION

Creditor filed a Response indicating its support to the Motion on February 13, 2024. Dckt. 69. Creditor states the following in support of the Motion:

1. Creditors Fabros and Serame received a default judgment in their case filed against Debtor for Unpaid Wages, penalties, interest, and other relief on December 2, 2022. *Id.* at 2:5-10.

2. Debtor blocked Creditor's second motion for award of post judgment collection fees with this Chapter 13 case, and Creditors filed a Motion for Relief from Stay. *Id.* at 2:11-13.

3. Chapter 13 Trustee filed an Objection to the Chapter 13 plan. *Id.* at 17.

4. Chapter 7 Trustee filed a Motion to Convert. *Id.* at 2:20-22.

5. Debtor's mother, Lynch, has filed a claim seeking "a fantastically large sum of money" from Debtor with supporting documents that "appear facially doctored." *Id.* at 24-28. This claim arose after the 341, when Debtor was questioned about the property and a number of $5,000.00 payments over years from the daughter or Debtor's LLC to Debtor's mother. *Id.* at 2:27-3:1.

6. These payments look like payments to a silent partner which would make the mother jointly and severally liable for Creditor's claim. *Id.* at 3:2-3.

7. Creditor believes Debtors have hidden their assets and hidden money and properties in "bogus trusts." *Id.* at 11-14.

8. Creditor is concerned that if this case is left as a Chapter 13 with debtor in possession, she will "continue to siphon off rent money as she has done nonstop for years (upwards of $1.0 million so far, according to Creditors' calculations, supported by the Chapter 7 Trustee), to hide it, and to otherwise actively block and stifle lawful collection activities." *Id.* at 3:15-18.

8. Debtor's attorney for the state court case did not file a California Code of Civil Procedure § 447 motion to undo or slow down the default judgments but failed to do so; Debtors may have a claim against this attorney and conversion to Chapter 7 would allow evaluation of their claim. *Id.* at 3:18-24.

9. Immediate conversion to Chapter 7 will most likely lead to efficient and fair payments to all creditors. *Id.* at 3:27-28.

10. Immediate conversion would prevent further harm to Debtor, Debtor's family, Creditors, and this Court. *Id.* at 4: 9-11.

Creditor provides the declaration of Michael J. Harrington to authenticate the facts of this response. Declaration, Docket 70.

CHAPTER 7 TRUSTEE'S REPLY

Chapter 7 Trustee filed a Reply on February 14, 2024. Dckt. 72. Chapter 7 Trustee states the following:

1. Debtor's mother's proof of claim had attached to it a "phony rental agreement" dated April 1, 2016 that provided a $5,000.00 monthly rental agreement for 865 Royal Green Avenue. *Id.* at 1:24-28.

2. This April lease is made up after the fact because (a) that document (which provides for $5,000 monthly rent payments) is not amongst the leases provided by Debtor LLC to State regulators; and (b) the monthly rent

payments reported by Debtor LLC to the State was $2,200 in 2016 and $1,100 in 2017. *Id.* at 2:1-4.

3. Rather than acknowledge the rent was increased after the Fabros/Serame lawsuit, Debtor and Debtor's mother fabricated and back dated the April 2016 lease.

4. Debtor should not be trusted to provide accurate information needed to evaluate her desire to stay in Chapter 13. Nor can she be counted on to even propose, let alone confirm and carry out, a fair and equitable reorganization plan. *Id.* at 1:21-24

5. Because each of Debtor's businesses are held by separate legal entities (limited liability companies and a corporation), conversion will not per se require they be shut down.

Chapter 7 Trustee provides the declaration of Nikki Farris to authenticate the facts of this response. Declaration, Docket 73. Chapter 7 Trustee also includes exhibits authenticated by the declaration.

APPLICABLE LAW

Constitutional Standing

A basic principal of American Jurisprudence is that the law does not condone the "officious intermeddler." One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of standing.

> Article III of the Constitution confines federal courts to decisions of "Cases" or "Controversies." Standing to sue or defend is an aspect of the case-or-controversy requirement. To qualify as a party with standing to litigate, a person must show, first and foremost, "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent." (Citations omitted.). . . Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess "a direct state in the outcome." (Citations omitted.)

Arizonans for Official English v. Arizona, 520 U.S. 43, 64 (1997).

Though neither party has identified the issue of standing, the court may raise it *sua sponte*, Rule 12(h)(3), Federal Rules of Civil Procedure. A person must have a legally protected interest, for which there is a direct stake in the outcome. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997). The Supreme Court provided a detailed explanation of the Constitutional case in controversy requirement in *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville Florida*, 508 U.S. 656, 663 (1993). The party seeking to invoke federal court jurisdiction must demonstrate (1) injury in fact, not merely conjectural or hypothetical injury, (2) a causal relationship between the injury and the challenged conduct, and (3) the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative, *Id.*

Furthermore, "the injury-in-fact requirement requires a plaintiff to allege an injury that is both concrete and particularized." *Spokeo, Inc. V. Robins*, 578 U.S. 330, 334 (2016) (internal citations omitted). To be concrete, the "injury must be 'de facto '; that is, it must actually exist. . ." being "real, and not abstract." *Id.* at 340 (internal citations omitted). Regarding the particularized requirement, the injury "must affect the plaintiff in a personal and individual way." *Id.* at 339.

In determining whether the plaintiff has the requisite standing and the court has jurisdiction, the court may consider extrinsic evidence. *Roberts v. Corrothers*, 812 F.2d, 1173, 1177 (9th Cir. 1987).

Conversion or Dismissal

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

The list of enumerated reasons to dismiss a case does not include a case being filed or prosecuted in bad faith, but courts have decided bad faith is a valid reason to warrant dismissal or conversion. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) ("Although not specifically listed, bad faith is a 'cause' for dismissal under § 1307(c)."); *See also In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) ("A Chapter 13 petition filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."). The following factors are considered in a bad faith analysis:

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

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

<u>Constitutional Standing in a Motion to Convert or Dismiss</u>

The term "party in interest" is not defined in the Code for purposes of bringing a 11 U.S.C. § 1307(c) motion to convert. However, courts have held that, in cases initiated under Chapter 7, then converted to a case under Chapter 13 or 11, the Chapter 7 trustee assigned to the original case does not have standing to file a Motion to Reconvert back to a case under Chapter 7. *See In re Evans*, 344 B.R. 440, 453-455 (Bankr. W.D. Va. 2004) ("align[ing] itself with those decisions which have precluded a former Chapter 7 Trustee from later participation in the case ... once it has been converted to Chapter 13," but nevertheless finding that because the former Chapter 7 trustee was a "'party in interest' ... by reason of his status as an administrative claimant against the estate, but not by reason of his status as the former Chapter 7 [t]rustee, [he] ha[d] standing to move to convert the case and to object to confirmation."); *In re Kleber*, 81 B.R. 726, 727 (Bankr. N.D. Ga. 1987) (holding that as soon as the debtor's Chapter 7 case was converted to Chapter 11, the former Chapter 7 "[t]rustee's duties under Chapter 7 cease[d]" and the former Chapter 7 trustee had no standing to file a motion to reconvert the case to Chapter 7); 6 COLLIER ON BANKRUPTCY ¶ 706.06 ("Conversion terminates the role of the chapter 7 trustee. Thereafter, the trustee no longer has authority to act for the estate or to be compensated for further services performed.... Once the trustee is removed, he or she no longer has standing to participate in the case, e.g. by moving to convert it back to chapter 7.").

However, a creditor in a case is a party in interest. 11 U.S.C. § 101(10) defines a creditor, stating:

(10) The term "creditor" means--

> (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> (B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or
>
> (C) entity that has a community claim.

A creditor can participate as a party in interest, so long as the creditor has a right to payment, whether or not that right is disputed. *See In re de la Salle*, 461 B.R. 593, 605 (B.A.P. 9th Cir. 2011).

DISCUSSION

Standing

In this case, neither party has contested the issue of standing, but the court found the issue warranted discussion. As 11 U.S.C. § 1307(c) provides, only the United States Trustee or a party in interest may file a Motion to Convert. Movant would not have standing to file a Motion to Convert in Debtor's case just by virtue of Movant operating as the Chapter 7 Trustee in the related Business Case. Movant has not explained to the court how she qualifies as a party in interest, nor has she pointed the court's attention to her status as a creditor.

However, Movant has expressed the clear intention to file an avoidance action against Debtor in her individual capacity on behalf of the Business Case. See Decl., Docket 33 ¶ 14. As such, Movant may qualify as a party in interest, holding a claim with a right to payment, therefore being eligible to bring a Motion to Convert pursuant to 11 U.S.C. § 1307(c). Upon the court's review of the Docket, no such avoidance action has been filed to date. At the hearing, **XXXXXXX**

Conversion: Bad Faith

Movant has argued that all four factors support a finding of bad faith. As an initial matter, the court finds that Debtor's bankruptcy history does not support the present case having been filed in bad faith. Debtor's first case was a Chapter 7 filed jointly with Spouse in 2010, Case no. 10-46051, and that case was dismissed for failure to attend the 341 meeting. However, her next case, Case no. 11-35060, filed on June 17, 2011, was a Chapter 13 case that ended with a successful completion of a Chapter 13 Plan. *See* Order Granting a Discharge, Docket 202, case no. 11-35060. Debtor did not make any further filings until October of 2023. These facts do not support a finding of bad faith based on her bankruptcy history.

A decision on whether the Debtor intended to defeat state court litigation with the filing requires further briefing. Debtor alleges she filed in good faith to continue to operate her business and stop a garnishment, not to delay any collection attempts.

However, regarding factors 1 and 4, the court is persuaded Debtor may have misrepresented facts in her petition or committed egregious behavior. Debtor is the acting trustee of two trusts, with items of Subject Property having exchanged ownership and having been transferred between family members and these trusts up until the months preceding the filing. It is not clear if Debtor's equitable interests in the Subject Properties is limited to those that are disclosed in the Amended Schedule A/B, filed at Docket 21, or whether Debtor may have an interest as the trustee in the EBL Family Trust or RAC Trust. Debtor has not clearly delineated such transfers or otherwise explained under what circumstances those transfers occurred.

On the Amended Statement of Financial Affairs, ¶ 19, Debtor states having made transfers of property in self settled trusts in 2018 (one property), 2020 (three properties), 2021 (one property, two transfers) . Dckt. 68 at 56-7.

At the hearing, **XXXXXXX**

Review of Proof of Claim For Rent
Against Debtor

Moreover, Debtor's mother, Lynch, filed a Proof of Claim in this case with what is alleged by the Movant to be a doctored, backdated, lease agreement. Movant alleges that the lease agreement does not date back to 2016 because this agreement was not among the leases provided by the Debtor's business to state regulators. Decl., Docket 72 ¶ 3.

Even if the lease agreement is true and correct, the parties to the contract are stated to be Lynch and the Retreat at Royal Green LLC, not Debtor. It is unclear as to basis by which Lynch (the Debtor's mother) would be asserting a claim for the debtor of the LLC against one of its members. See, Witkin Summary of California Law, 11th Ed, Partnership § 157 Liability of [limited liability] Company, Supplement, which states:

(1) General Rule Restricting Liability. Debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, or other liabilities of the limited liability company to which the debts, obligations, or other liabilities relate. (Corp.C. 17703.04(a)(1).) They do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or the manager acting as a manager for the company. (Corp.C. 17703.04(a)(2).)

The Debtor does include Lynch as a creditor having an unsecured claim in the amount of $1.00 against Debtor. Dckt. 1 at 32. In "checking the boxes" for this claim, Debtor checked the box "other" for the type of claim, but fails to state what it is based on.

~~Therefore, cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case under Chapter 7.~~

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 Convert the Chapter 13 case filed by Nikki Farris ("Movant"), the Chapter 7 Trustee assigned to a related bankruptcy case involving Debtor's business, the Retreat at Royal Green, LLC, 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 Convert is **XXXXXXX**.

11. 23-23834-E-13 DPC-1 | **ANTONETTE TIN Peter Macaluso** | **OBJECTION TO PROFESSIONAL FEES OF PETER MACALUSO 1-19-24 [25]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, other parties in interest, parties requesting special notice, and Office of the United States Trustee on January 19, 2024. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Objection to Professional Fees is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), brings this Objection to Professional Fees of Antonette Lin's ("Debtor") counsel, Peter Macaluso. Trustee Objects on the following grounds:

1. There may be a possible conflict in the representation. Mr. Macaluso is representing Debtor's business, The Retreat at Royal Green, LLC, in its bankruptcy case (case no. 23-23523) ("Business Case"). Mr. Macaluso may not be a disinterested person who can receive compensation and represent the Debtor and her business pursuant to 11 U.S.C. §§ 328(c),101(14)(c).

2. No-look fees are not appropriate in this case. Mr. Macaluso seeks $8,000 in no-look compensation (Plan, Docket 10 § 3.05), but Debtor has already been paid sums of money of up to $6,000 during his representation of the Business Case. It is not clear to Trustee for which case Mr. Macaluso has already been paid.

Docket 25. Trustee submits the Declaration of Christina Lloyd to authenticate the facts on which the Objection is based. Decl., Docket 28.

PETER MACALUSO'S RESPONSE

On February 13, 2024, Mr. Macaluso filed a Response indicating nonopposition. Docket 63. In his Response, Mr. Macaluso states:

1. Mr. Macaluso received the $6,000 for his representation in the Business Case and related civil lawsuits. Mr. Macaluso asserts he has not received any compensation for representation in the current case.

2. "Therefore, based on the foregoing Debtor's counsel believes that any fees sought in this case should be subject to approval by motion," agreeing that no-look fees are not appropriate here. *Id.* at p. 2:20-22.

DISCUSSION

According to 11 U.S.C. § 328(c),

> Except as provided in section 327(c), 327(e), or 1107(b) of this title, the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 or 1103 of this title if, at any time during such professional person's employment under section 327 or 1103 of this title, such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.

A "disinterested person" is defined as,

> (14) The term "disinterested person" means a person that—
>
> (A) is not a creditor, an equity security holder, or an insider;
>
> (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
>
> (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

11 U.S.C. § 101(14). Counsel may not qualify as disinterested for purposes of representation when that counsel is representing two clients whose interests are, or may become, adverse to one another. *See In re B.E.T. Genetics, Inc.*, 35 B.R. 269, 271 (Bankr. E.D. Cal. 1983). Furthermore, "[t]he requirement that a professional be 'disinterested' cannot be waived or circumvented by agreement or consent among creditors and the debtor." 3 COLLIER ON BANKRUPTCY ¶ 328.05[2]. Questions surrounding whether counsel is disinterested "could be triggered in the context of multidebtor cases where a single professional represents multiple estates with potentially conflicting interests." *Id.* at ¶ 328.05[3].

In this case, Mr. Macaluso has indicated to the court that he agrees the no-look fees are not appropriate, and any fees he seeks in this case will be requested by motion and with court approval pursuant to Local Bankruptcy Rule 2016-1(b).

However, at this point the court finds it necessary for Mr. Macaluso to show how he can represent both the Debtor and the Debtor's Business Case as a disinterested person. The Chapter 7 Trustee in the Business Case, Nikki Farris, asserts that she has claims to avoid transfers made from Debtor's business to Debtor in the years preceding these filings. Motion, Docket 30 p. 3:14–5:9. Avoidance actions may put Debtor's interests and her business's interests directly adverse to one another. Under these particular circumstances, the court cannot see how Mr. Macaluso can competently represent these parties as a disinterested person. At the hearing, **XXXXXXX**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Professional Fees 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 Fees is sustained.

12. 23-23834-E-13 DPC-2

ANTONETTE TIN
Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-29-24 [40]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 29, 2024. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor has filed and Amended Plan (filed on October 30, 2023; Dckt. 10), but has not served it nor set it for hearing as required by LBR 3015-1(d)(1). Objection, Docket 40, p. 2:1-8.

2. Debtor's Amended Plan includes a secured claim of $122,736.00 with collateral worth $137,825.33, but this claim did not appear in original Plan. *Id.*

3. Both the original Plan and Amended Plan appear to be underfunded because they estimate priority to be $50,000.00, but priority claims total $81,484.59. *Id.* at p.2:9-12.

4. Debtor has not filed all of the tax returns required under 11 U.S.C. §1325(a)(9) & §1308. *Id.* at p. 2:13-17.

5. Debtor proposes to pay no less than 0% to unsecured creditors in the Amended Plan, but has not shown that unsecured creditors will receive 0% in a Chapter 7. *Id.* at p. 2:18-28.

6. Debtor has improperly classified Wells Fargo Auto Dealer Services as Class 4. *Id.* at p. 3:1-8. Class 4 is for claims that will mature after completion of the Plan, but this claim had its first payment due on March 22, 2022 and the final payment is due February 22, 2028. *Id.*

7. Claims have been filed for three of the Class 4 mortgages, which show different ongoing payments, amounts owed, and some arrears compared to what Debtor listed in their Amended Plan. *Id.* at p. 3:9-28. According to the Trustee, it appears that the Debtor is able to increase the plan payment by $677.98, and appears to have an additional $10,139.14 of non-exempt equity *Id.* at p. 4:1-11.

8. Trustee raises the issue whether Debtor's Attorney can obtain "no look' fees under LBR 2016-1(c) due to the fact that Debtor's Attorney represent's one of the Debtor's LLCs. *Id.* at p. 4:12-16.

9. Debtor's means test forms do not appear to be accurate due to inconsistences listed on Debtor's Schedules and Amended Plan regarding the amount of income they receive and Debtor's household size. *Id.* at p. 4:17-28.

10. Debtor's Schedule I and J do not appear to be accurate and no reasonable proof of income has been shown. *Id.* at p. 5:1-11.

11. Debtor may not have filed their Petition in good faith or proposed the Plan in good faith. *Id.* at p. 5:12-15. The Trustee believes that most of the factors set out in *In re Warren*, 89 B.R. 87,93 (B.A.P. 9th Cir. 1988) weigh against the Debtor. *Id.*

The Chapter 13 Trustee, David Cusick ("Trustee"), submits the Declaration of Christina Lloyd to authenticate the facts alleged in the Objection. Decl., Docket 42.

DEBTOR"S RESPONSE

Debtor filed a Response to the Trustee's Objection on February 13, 2024. Response, Docket 65. The Debtor states that a "Second Amended Plan is Required" and that Debtor "intends to file the Second Amended Plan before the March 14, 2024 Meeting of Creditor". *Id.*

DISCUSSION

Trustee's objections are well-taken and the court shares concern over many of the points the Trustee has made. The issues raised are ones that Debtor and Debtor's Attorney need to be mindful of in prosecuting this case. However, given the fact that Debtor's Response indicates that a Second Amended Plan is going to be filed, the current Trustee's Objection to Confirmation can be sustained on that basis.

In looking at Schedules I and J, Debtor states under penalty of perjury that she and her Non-Debtor Spouse $18,546 in monthly net income. Dckt. 1 at 42-43. The interesting necessary and reasonable expenses listed on Schedule J include: (1) ($1,000) a month for vehicle insurance, (2) only ($300) a month for gas/electricity, repairs, maintenance, and registration of vehicles, (3) ($1,500) a month car payment, (4) ($2,900) in monthly expenses for mortgage and maintenance on "Other real property," and (5) ($3,063.56) for a "2nd house," *Id*. at 44-45.

On Amended Schedule A/B, Debtor lists owing the following properties:

1. 8866 Haflinger Way, Elk Grove, CA.....Debtor is the sole owner of the property, but lists having an interest as a joint tenant, states that the value of Debtor's interest is $0.00, and that this sole owner, joint tenant ownership of the property is community property.

2. 8993 Richborough Way, Elk Grove, CA.....Debtor is the sole owner of the property, but lists her ownership interest as being "**CO-TRUSTEE, Equitable interest**, [emphasis in original], that this trustee interest is community property, and that the value of Debtor's interest is $430,000.

3. 799 Skylake Way, Sacramento, CA......Debtor is the sole owner of the property, but lists her ownership interest as being "**CO-TRUSTEE**, [emphasis in original], that this trustee interest is community property, and that the value of Debtor's interest is $0.00. It also includes the following information:

    Transfer by Quitclaim
    9/20/18
    The 2018 Antonette Butlig Tin Trust
    8/11/20 [emphasis in original]

4. "15th Floor, Two E-com Center, Diokno Blvd, Cor. Harbor Dr., Mall of Asia Complex, Pasay City, PI, in the Philipines [sic]"............................This is described as an Apartment in the Philippines for which the Debtor is the only owner in fee simple. The value of the Debtor's interest is stated to be $137,925.33.

Amd. Sch. A/B; Dckt. 21 at 4-6. [Fn.1.]

FN. 1. The court noted that the addresses for some of the properties are not accurate and may contain clerical errors. One example is the Debtor's residence which is stated on the Petition to be 8983 Richborough Way; but on Schedule A/B it is stated to be 8993 Richborough Way.

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.

13. 21-23539-E-13	DEREK WOLF	CONTINUED MOTION TO MODIFY PLAN
PGM-4	Peter Macaluso	7-27-23 [187]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2023. By the court's calculation, 47 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.

February 27, 2024 Hearing

On February 22, 2023, a supplemental pleadings were filed with the court under this Docket Control Number PGM-3, Creditor U.S. Bank National Association filed a Status Conference Statement on February 20, 2024. This statement alleges that in December 2023, Debtor and Creditor reached an agreement, in principle, to resolve Debtor's Objection to Notice of Payment Change and other loan servicing issues raised by Debtor. *Id.* at 1:24-28. The alleged agreement provides:

1. As of November 1, 2023, Debtor's current postpetition mortgage payment, subject to change pursuant to the terms of the Note and Deed of Trust, is $792.89, which sum includes a current escrow of $419.06 and a principal and interest payment of $373.83 at the current rate of interest of 4.125%.

2. As of November 1, 2023, the unpaid, interest-bearing principal balance of Debtor's loan is $78,096.20.

3. As of November 1, 2023, the deferred principal balance due and owing under Debtor's loan is $36,400, which sum is in addition to the outstanding principal balance above, and is non-interest bearing.

4. As of November 1, 2023, the total principal balance, including both the interest bearing and deferred non-interest bearing principal, is $114,496.20.

5. All issues regarding the application of payments made and received, have been accounted for and applied by the Creditor and resolved between Debtor and Creditor.

6. All issues regarding the receipt and application of Grant/loan monies received by or on behalf of the Debtor have been resolved.

7. Each party to bear their own attorney's fees and costs with regard to the Debtor's Objection to the Notice of Mortgage Payment Change and ancillary issues raised thereby.

Docket 266 ¶¶ 1-7.

Creditor states that as of February 20, 2024 Debtor has not provided a signed stipulation reflecting this agreement and has not requested any revisions to the proposed agreement. *Id*. at 2:18-19. Creditor states that the Court has provided multiple continuances to allow Debtor time to execute the stipulation, and Debtor still has not done so, and Debtor has not articulated any factual basis as to why he believes any funds were improperly applied. *Id.* at 3:1-4.

Pleading Filed Under Docket Control No. RHS-1
Status Conference re Creditor's Claim

On February 22, 2024, under Docket Control No. RHS-1, the Debtor filed an updated Status Report. Dckt. .270. Debtor states that he still questions the difference in the accounting between the two services used by Creditor - Rushmore and U.S. Bank. The Debtor asserts that the interest bearing balance is $27,250.76) at 4.25%, and the non-interest bearing balance is 0%. Dckt. 270 at p. 1:23-27.

Debtor than provides a long list of Non-Disputed Material Facts and then states:

> Wherefore, the Debtor prays that the Court determine that the interest bearing account should be $27,250.76 at 4.25%, and bearing account of $36,400.00, with a resulting principle and interest, and for proper application of both grants, and with the chapter 13payments.

Id.; p. 3:5-9.

There is no motion or other proceeding before the court for which the court could make such a determination. Rather, this is a Status Conference as to Creditor's claim and the inability of the Parties to either reach an agreement or commence the necessary legal proceedings. Order; Dckt. 213. The court first required in person appearances by Debtor, Creditor, and their respective counsel to address the inability to

address this issue. The First Status Conference was conducted on October 3, 2023. The court's Civil Minutes for the October 3, 2023 hearing includes:

> It appears that a substantial part of the inability to agree results from the Parties trying to focus back on multiple documents, reports, and information provided by Creditor and by Debtor. This appears to be leading to arguing over what a number means on a report, when that number may actually be irrelevant to the bigger picture and actual computation of Creditor's claim.
>
> There is also argument about Creditor recovering $8,800.00 which was returned to Cal HAFA. Creditor reports that Cal HAFF confirmed that the refund is being reversed and the $8,800.00 being returned to CAL HAFA.
>
> . . .
>
> What appears to be at the heart of Debtor's and Creditors inability to agree to the amount of the Claim is that the parties get lost in prior statements, attachments to the Proof of Claim, letters sent from Creditor's loan servicer directly to the Debtor, and a multitude of "the documents already show" and "the number on page 4 of 14 is wrong" down the rabbit hole assertions.
>
> The parties concurred that they could agree to the principle amount of the interest bearing portion of the Claim as of a date in 2019. The parties can then document the payments made, whether by the Debtor, the Cal HAFA grant(s), and payments through the Chapter 13 Trustee from that date going forward. Creditor can document - in a clear and simple statement, rather than a multi-year spread sheet showing other information and not clearly showing - the payments received, how they were applies, and what the interest bearing principle balance is at this time.
>
> As the court stated several times, the parties need to provide a straight-forward computation of the principal balance going forward from the balance as of their agreed date. Stating that the information is in some other documents and letters only adds to the confusion and delay.

Dckt. 230.

The Parties requested a two month continuance of the Status Conference so that they could address this basic economic issue. The court continued the Status Conference to December 5, 2023. Order; Dckt.; 245.

At the December 5, 2023 continued Status Conference, counsel for the Debtor reported that a final set of financial terms has been reached, and need to get documented, including an order thereof. The Parties requested a further continuance to January 23, 2024. Civ. Minutes; Dckt. 248. The court continued the Status Conference to January 23, 2024. Order; Dckt. 251.

At the January 23, 2024 continued Status Conference, the court concluded the Status Conference in light of what appeared to be the Parties actively prosecuting the continued Objection to Creditor's Claim. The Parties concurred with the conclusion of the Status Conference, stating that they were continuing to work on a Stipulation that would fully resolve that issue. Civ. Minutes; Dckt. 262.

The Objection to Creditor's Claim was filed by the Debtor on May 2, 2022. Dckt. 95. It was overruled on August 3, 2022.

The Debtor filed an Objection to Mortgage Payment Change on July 21, 2023. Dckt. 183. On August 10, 2023, the Parties Stipulated and made an ex parte Motion for the court to continue the hearing to October 3, 2023. Stip; Dckt. 200.

At the October 3, 2023 hearing, the Parties requested a continuance so the Objection to Mortgage Payment Change could be conducted in conjunction with the court's ordered Status Conference regarding prosecution and determination of Creditor's Claim. Civ. Minutes; Dckt. 231. The hearing was continued to November 7, 2023. Order; Dckt. 243.

At the December 5, 2023 continued hearing, the Parties requested a continuance so they could document their agreed financial terms, and that the monthly mortgage payment had been reduced to ($792.89) from the larger amount of ($1,274.20) which Creditor had asserted. Civ. Minutes; Dckt. 247. The hearing was continued to January 23, 2024. Order; Dckt. 250.

At the January 24, 2024 continued hearing, Debtor reported that the only outstanding issue was how the grant monies were applied to determine the outstanding principal balance. It was further reported that a proposed stipulation had been drafted. The Parties requested a further continuance of the hearing on the Objection to Mortgage Payment Change. Civ. Minutes; Dckt. 260. The court further continued the hearing to February 27, 2024, specially setting it to the 1:30 p.m. Calendar. Order; Dckt. 263.

For the continued hearing on the Objection to Mortgage Payment Change, Creditor filed an updated Status Report.

This statement reports that in December 2023, Debtor and Creditor reached an agreement, in principle, to resolve Debtor's Objection to Notice of Payment Change and other loan servicing issues raised by Debtor. *Id.* at 1:24-28. The reported terms of the agreement are stated to be:

1. As of November 1, 2023, Debtor's current post-petition mortgage payment, subject to change pursuant to the terms of the Note and Deed of Trust, is $792.89, which sum includes a current escrow of $419.06 and a principal and interest payment of $373.83 at the current rate of interest of 4.125%.

2. As of November 1, 2023, the unpaid, interest-bearing principal balance of Debtor's loan is $78,096.20.

3. As of November 1, 2023, the deferred principal balance due and owing under Debtor's loan is $36,400, which sum is in addition to the outstanding principal balance above, and is non-interest bearing.

4. As of November 1, 2023, the total principal balance, including both the interest bearing and deferred non-interest bearing principal, is $114,496.20.

5. All issues regarding the application of payments made and received, have been accounted for and applied by the Creditor and resolved between Debtor and Creditor.

6. All issues regarding the receipt and application of Grant/loan monies received by or on behalf of the Debtor have been resolved.

7. Each party to bear their own attorney's fees and costs with regard to the Debtor's Objection to the Notice of Mortgage Payment Change and ancillary issues raised thereby.

Docket 266 ¶¶ 1-7.

Creditor further states that as of February 20, 2024 Debtor has not provided a signed stipulation reflecting this agreement and has not requested any revisions to the proposed agreement. *Id*. at 2:18-19. Creditor states that the Court has provided multiple continuances to allow Debtor time to execute the stipulation, and Debtor still has not done so, and Debtor has not articulated any factual basis as to why he believes any funds were improperly applied. *Id.* at 3:1-4.

As noted above, it appears that Debtor and Debtor's counsel are asserting that there is no agreement and that Debtor intends to proceed full speed to prosecute the Objection to Notice of Mortgage Payment Change.

At this juncture, it appears that the proposed Modified Chapter 13 cannot be confirmed, there being a huge claim objection proceeding to be prosecuted diligently by Debtor and Debtor's counsel.

At the hearing, **XXXXXXX.**

REVIEW OF MOTION

The debtor, Derek L Wolf ("Debtor") seeks confirmation of the Modified Plan; however, Debtor does not provide the court a reason or evidence to support why a Modified Plan is necessary. Declaration, Dckt. 189. The Motion itself states that circumstances have changed and Debtor is no longer able to complete the Plan as originally proposed, Dckt. 187, but there is not sufficient evidence in the form of personal knowledge testimony to support these changed circumstances.

The Motion states:

1. Debtor was approved for pre- and post-petition Mortgage Relief Grants which cured their pre-petition arrears and lowered the principal amount owed and ongoing monthly payment.

2. The remaining dispute is regarding the ongoing mortgage payment, which Debtor's Counsel has filed an Objection to Mortgage Payment Change, set for hearing on August 22, 2023.

The court notes, the hearing on the Objection to Mortgage Payment Change has been continued to October 3, 2023 at 2:00 p.m.

The Modified Plan provides for a thirty-six (36) month plan, with $16,271.00 to be paid through June 2023, followed by $900 per month for sixteen (16) months. Modified Plan, Dckt. 191. 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 August 25, 2023. Dckt. 206. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent in Plan payments.

2. Debtor's Motion relies on the Objection to Notice of Mortgage Payment Change.

3. Debtor's Schedule I does not appear accurate.

Dckt. 206.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

Debtor filed its Reply to Trustee's Opposition on September 5, 2023. Dckt. 217. In its Reply, Debtor states:

1. Debtor was only delinquent because the TFS takes time to process the $900.00 monthly payment.

2. Debtor has paid a total of $18,291.00 to the Trustee and all missed payments should be forgiven.

3. Debtor will make plan payments of $900.00 monthly to begin July 21, 2023 for 40 months to complete the Plan within the maximum term allowed by law.

Dckt. 217.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $900.00 delinquent in plan payments, which represents one month of the $900.00 plan payment. Debtor requests all missed payments be forgiven, appealing to the amount paid already, but not offering any law in support of its contention. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Reliance on Objection to Notice of Mortgage Payment Change

A review of Debtor's Plan shows that it relies on the court sustaining Debtor's Objection to Notice of Mortgage Payment Change. The court has not yet ruled on the Objection. Without the court ruling on the Objection, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Inaccuracies of Schedule I

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Declaration indicates that Debtor receives rent from his daughter and friend, and earns $100 per month in odd jobs. Declaration, Dckt. 189 ¶¶ 8, 9. Debtor's Schedule I indicates business income in the amount of $2,100 and pension income in the amount of $358.00. Dckt. 193. It is unclear whether Debtor's Schedule I accurately reflects the additional monthly income in rent and odd jobs. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

CONTINUANCE OF HEARING

This case has been plagued by a continuing dispute between Debtor and U.S. Bank, N.A., as Trustee, about the Bank's claim, payments made, and application of payments. The court has set a special, in person Status Conference on October 3, 2023, concerning the U.S. Bank, N.A., as Trustee, claim. Debtor has an Objection to the U.S. Bank, N.A., as Trustee, claim and Notice of Post-Petition Mortgage Payment Change.

The court continues the hearing on this Motion to be conducted in conjunction with the Status Conference.

October 3, 2023 Hearing

At the hearing, the Parties agreed to continue this hearing, to be conducted in conjunction with the Status Conference regarding Creditor's claim, docket control number RHS-1.

November 7, 2023 Hearing

On November 2, 2023, Debtor Derek L. Wolf and Creditor Mr. Cooper filed an *Ex Parte* Motion requesting the court continue the hearing on the Objection to Notice of Mortgage Payment Change to December 5, 2023. The Motion does not state the reason for the requested continuance, but in light of the efforts of the Parties and their counsel to address the issues between the Parties, obtain documentation from predecessors in interest, their focus on these matter, the court grants the *ex parte* request.

December 5, 2023 Hearing

On December 1, 2023, a Notice of Mortgage Payment Change was filed by Creditor U.S. Bank, N.A., Trustee, stating that the Debtor's monthly payment to Creditor is $792.89. It states that the escrow payment amount is reduced to $419.06.

Attached to the Notice of Mortgage Payment Change is a letter dated November 27, 2023. It states that Debtor's monthly mortgage payment to Creditor (principal, interest, escrow) is reduced from ($1,274.20) to ($792.89). Ntc., p. 5.

At the hearing, counsel for the Debtor reported that a final set of financial terms has been reached, and need to get that documented, including an order thereof.

The Parties agreed to a further continuance as Debtor and Creditor work to get a stipulation documenting the resolution of the dispute.

The Hearing is continued to 2:00 p.m. on January 23, 2024.

January 17, 2024 Hearing

The court's review of the Docket on January 16, 2024 reveals no new documents have been uploaded, apart from a Motion to Substitute Attorney (Docket 253).

At the hearing, counsel for the Debtor reported that until the claim objection is resolved. Counsel for the Trustee reported that only the creditor whose claim is subject to the Objection to Claim. The Parties agreed to a further continuance.

The hearing on the Motion to Modify is continued to 2:00 p.m. on February 27, 2024, to allow the Parties to further analyze the Creditor's claim and the application of the grant monies.

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

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

14. 23-22540-E-13 RCW-9

14 thru 17

SATINDER SINGH
Ryan Wood

CONTINUED MOTION TO VALUE COLLATERAL OF PLACERVILLE INVESTMENT GROUP, LLC
1-11-24 [127]

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, other parties in interest, parties requesting special notice, and Office of the United States Trustee on January 11, 2024. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Placerville Investment Group, LLC ("Creditor") is xxxxxxxx.

February 27, 2024 Hearing

On February 20, 2024, Placerville Investment Group, LLC ("Creditor") submitted a status report with the court. Docket 173. In the Status Report, Creditor states:

1. On February 13, 2024 Creditor served a formal Request for Production of Documents on Satinder Singh ("Debtor") to gain information related to conducting a valuation of Debtor's business and related to objecting to confirmation of Debtor's Plan. Debtor's Response is due by March 14, 2024, under Federal Rule of Civil Procedure 34(b), made applicable by Federal Rules of Bankruptcy Procedure 7034 and 9014.

2. Creditor suggests the following time line for approximate discovery deadlines:
   a. Expert and Non-Expert Discovery Closes May 1, 2024;

b. Hearing of Discovery Motions May 14, 2024;

c. Debtor's Supplemental Pleadings May 21, 2024; Creditor's Supplemental Opposition May 28, 2024; and

d. Continued Hearing June 4, 2024 at 2:00 p.m.

3. Creditor requests this time line apply to all related matters in this case (Motion to Confirm (DCN: RCW-89), Motion to Dismiss or Convert (DCN: RLL-3), and the Motion for Relief From the Stay (DCN: RLL-2)).

Docket 173, ¶¶ 2-6.

No update has been filed by Debtor.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

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

The lien on the Collateral secures two separate loans, one incurred in April of 2022, and one incurred in November 2022. The court notes Debtor states the debt owed is actually $245,000 (Mtn., Docket 127 ¶ 3); however, Creditor asserts the Claim could be in the amount of $304,310.34. Proof of Claim, No. 6-2.

<u>Debtor's Declarations and Exhibits</u>

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

1. The testimony is rationally based on my own perception, is helpful to a determination of a fact in issue, and is not based on scientific, technical, or other specialized knowledge within the scope of federal Rule of Evidence 703. Decl., Docket 130 ¶ 3.

2. In 2022, Debtor entered into allegedly legal and enforceable loans with Creditor. *Id.* at ¶ 4.

3. As of the petition date the fair market value of the Collateral was $166,000. *Id.* at ¶ 5.

Mr. Toney testifies:

1. He is an Accredited Senior Appraiser as designated by the American Society of Appraisers since 2007. Decl., Docket 133 ¶ 1.

2. The Appraisal analyses, opinions, and conclusions are limited only by the reported assumptions and limited conditions, and are his personal, unbiased professional analyses, opinions, and conclusions. *Id.* at ¶ 12.

3. As of August 6, 2023, the appraised value of the Business is $256,000. This valuation includes:

   a. Inventory: $59,644
   b. Liquor License: $90,000
   c. Furniture, Fixtures, and Equipment: $5,000
   d. Goodwill: $101,356.

Id. at ¶ 19.

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

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

CREDITOR'S OPPOSITION

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

1. This is Debtor's second Motion to Value, the first being denied on October 5, 2023.

2. Debtor led Creditor to believe the co-borrower on the note, Sonia Madaan, was Debtor's wife; however, it was later uncovered that they were divorced but still cohabitate and share expenses.

3. Debtor has not provided the court with reliable evidence to establish the value of the Collateral. Debtor has engaged in under the table transactions, meaning the value is higher than reported.

4. Debtor's own testimony as to value is not sufficient to establish the value of the Collateral.

5. Debtor's expert, John W. Toney of Wallace & Toney Valuation Advisors, Inc., does not provide a reliable valuation because Debtor's expert valued the Collateral based on second-hand data provided by Debtor.

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

CHAPTER 13 TRUSTEE'S OPPOSITION

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

1. Trustee opposes the Motion to Value because Debtor has no Plan pending.

2. Debtor's Declaration in support of his Motion to Value may not be Debtor's own opinion based on personal knowledge.

3. There is a typographical error on the Notice of Hearing.

DISCUSSION

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

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

> [T]he Appraisal Report does not clearly evidence that the Appraiser reviewed source documents to determine the Store's revenues and expenses. Rather than, for example, identify annual tax returns that were reviewed (reference is made to a tax return schedule, but no statement is included that the schedule or the relevant returns were examined) and rather than evidence a review of contemporaneous sales reports (such as "register rolls") and basic records of business expenses, the Appraisal Report refers includes a single-page summary of "Historical Income Statements," the origin of which is unclear.

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

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

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

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

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

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

CONTINUANCE OF THE FEBRUARY 13, 2024 HEARING

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Satinder Singh ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion Value Collateral and Secured Claim of Placerville Investment Group, LLC is **XXXXXXX**.

15. 23-22540-E-13 RLL-2

PLACERVILLE INVESTMENT GROUP, LLC VS.

SATINDER SINGH
Ryan Wood

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-11-24 [114]

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 that have filed claims, parties requesting special notice, and Office of the United States Trustee on January 11, 2024. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion 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.

The Motion for Relief from the Automatic Stay is xxxxxxx.

February 27, 2024 Hearing

A review of the Docket on February 22, 2024 reveals that no new documents have been filed with the court under this Docket Control Number. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Placerville Investment Group, LLC ("Movant") seeks relief from the automatic stay with respect to collateral identified as inventory, good will, furniture, fixtures, and equipment ("Collateral") of Satinder Singh's ("Debtor") business, Wheatland 99 Cent & Liquor Store. The moving party has provided the Declaration of Dalip Gupta to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debtor. Decl., Docket 116.

Movant testifies that in April of 2022, Movant loaned Debtor $200,000. *Id.* at ¶ 4. Debtor subsequently executed a promissory note dated April 26, 2022, securing the loan in the Collateral. Exhibit

A, Docket 118. Movant testifies it loaned Debtor an additional $100,000 in November of 2022, and Debtor executed another promissory note dated November 15, 2022, securing that loan in the same Collateral. Exhibit B, Docket 118. Movant perfected its secured interests by filing UCC-1 Financing Statements filed on April 22, 2022, and November 14, 2022. Exhibit C, Docket 118.

Movant informs the court the outstanding amount owed on its claim is $304,310. 34 (POC 6-2), and Movant has not received any payment from Debtor since January, 2023. Decl., Docket 116 ¶ 12. This case was filed on July 31, 2023, meaning Debtor has not made at least six post-petition payments. Movant requests relief from the stay pursuant to 11 U.S.C. § 362(d)(1) for this non-payment.

Additionally, Movant argues that Debtor's case has been filed in bad faith, serving as another reason to grant relief from stay pursuant to 11 U.S.C. § 362(d)(1). Specifically, Movant states that Debtor and his ex-wife, Sonia Madaan, have been misleading Movant as to the status of their marriage and dissolution of marital property, complicating their respective bankruptcy cases and making it difficult to enforce the terms of the promissory notes. Mtn., Docket 114 ¶¶ B. 2-4 ("The Debtor, in coordination with Madaan, has clearly acted in concert to mislead and delay Creditor, and to drag out his chapter 13 proceeding to Creditor's disadvantage, rather than in an earnest effort to restructure his financial obligations.").

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a Response on January 30, 2024. Dckt. 142. Trustee asserts that Debtor is current under the terms of the proposed Plan and has paid $19,970 to Trustee to date, where the plan payments are $3,994 for 60 months at 7%. Response, Docket 142 ¶ 2. However, because Movant's claim is not classified as a purchase money security interest in personal property, Trustee has not made any payments to Movant. *Id.* at ¶ 11. Trustee believes the balance he holds on hand would go to Movant if the Plan were confirmed. Finally, Trustee informs the court Debtor is delinquent one payment of $3,994, and Trustee does not oppose Movant's Motion for Relief. *Id.* at ¶¶ 11, 12.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 30, 2024. Dckt. 154. Debtor filed two supporting Declarations on the same date, one from debtor's attorney (Docket 156) and one from Debtor himself (Docket 157). Debtor asserts that:

1. Debtor has done nothing wrong in this case, so there is no "cause" justifying relief pursuant to 11 U.S.C. § 362(d)(1).

2. Debtor is completely current on plan payments, and Trustee's assertion that Debtor is delinquent one payment is incorrect. Decl., Docket 156 ¶ 10.

3. Debtor has been in good faith trying to reach a deal with Movant in deciding a fair valuation of Wheatland 99 Cent & Liquor Store ("Business"). Movant filing this Motion for Relief caught Debtor's counsel off-guard. Decl., Docket 155 ¶ 8.

4. Debtor states Movant informed the court that it needed 90 days to obtain its own appraisal of the Business, which time period lapsed on December 18,

2023. Movant never offered an appraisal and instead filed this Motion for Relief, so Debtor states "[i]t is disingenuous to argue, possibly fraudulent to even allege grounds for anything as Placerville Investment Group, LLC, is making inconsistent arguments." *Id.* at ¶¶ 16, 17.

5. Debtor needs the Collateral to operate the Business, and the Business is essential to funding the Chapter 13 Plan. Decl., Docket 156 ¶ 13,

AMENDED CHAPTER 13 PLAN FILED AND MOTION TO CONFIRM

On January 30, 2024, the Debtor filed an Amended Chapter 13 Plan. Dckt. 151. The Amended Plan provides for monthly payments by Debtor of $3,994 for six months and $4,199.00 for the remaining fifty-four months the Amended Plan. This provides for $250,7100 in plan funding.

In the Amended Plan, Movant's Claim is reduced to ($166,000.00) based on the value of the collateral, which is to be paid as a Class 2 Claim, with payments of $2,767.00 a month with no interest.

The Motion to Confirm the Amended Chapter 13 Plan is scheduled to be heard on March 26, 2024. Motion to Confirm; Dckt 148. In Amended Proof of Claim 6-2, Movant does not state a value for its collateral or amount of Movant's secured and unsecured, stating that such amount is "being investigated."

In the unsigned Declaration of Debtor in support of the Motion to Confirm, Debtor provides personal knowledge testimony on a number of items. Dec., ¶¶ 1-7; Dckt. 150.

However, in paragraph 8, the Debtor provides his legal opinion, as testimony, of Federal Bankruptcy Law, testifying that his opinion is that his Plan meets the requirements of 11 U.S.C. §§ 1322(a), 1322(b), 1323(c), and 1325(a). There is no evidence or indication how the Debtor knows Federal Law and could provide such legal opinion testimony. When the court sees a declaration like this, it wonders if the declarant ever read the declaration.

The court denied without prejudice the Debtor's Motion to Value Creditor's claim. Order; Dckt 61. As shown in the Civil Minutes for the hearing on the Motion to Value, the Parties agreed to deny the Motion to Value without prejudice, with the parties to meet and confer to try and resolve, or at least reduce, their disputes. Dckt. 60.

On Scheduled D, the Debtor values the collateral securing Movant's collateral and its secured claim to be $166,000.00. Dckt. 29 at 10. Given that Movant's Amended Proof of Claim 6-2 does not state a value for its collateral, there is no portion of such proof of claim which can be *prima facie* evidence of the value of Movant's secured claim.

On January 11, 2024, Debtor filed another Motion to Value the Collateral and secured claim of Movant, again at $166,000. Docket 127. That Motion to Value is to be heard on the court's 2:00 pm calendar also on February 13, 2024. In the Opposition filed by Movant, it asserts that the same fundamental deficiencies that were found in the prior Motion to Value and its Supporting Documents.

Additionally, Movant requests that the court set a discovery schedule for this Contested Matter, scheduling order for filing further pleadings, and a final hearing.

The Chapter 13 Trustee has filed an Opposition to the Motion to Value, stating that Debtor's evidence in support suffers from the same deficiencies as the Declaration for the prior Motion to Value, with Debtor providing hearsay testimony of what he heard an appraiser state as the value of the collateral. Dckt. 145.

Looking at the Debtor's Declaration, he states that the collateral has a fair market value of $166,000, and then states that the appraised value of the collateral is $166,000. Dec., ¶¶ 5,6; Dckt. 130. Improperly attached to Debtor's Declaration are various exhibits. From Debtor's Declaration he appears to be merely parroting the prior appraisal report and not any personal knowledge testimony.

With this Second Motion to Value Movant's Secured Claim, Debtor has included the Declaration of John Toney. Dckt. 133. Recognizing the ongoing dispute between Debtor and Creditor, the court provides a summary of the Appraisal Report prepared by Mr. Toney, the court has included this summary as part of the overall review of the case. The court does not make any determinations at this time as to Mr. Toney's Report.

Mr. Toney states that he is an Accredited Senior Appraiser and employed with Wallace & Toney Valuation Advisors, Inc. (For which he is a shareholder and Manager of that Firm's business valuation department). In the first 10 paragraphs of his Declaration, Mr. Toney states background of his experience in appraising, prior employment, education, and community activity. *Id.*

Mr. Toney authenticates his written Appraisal Report in support of the Motion to Value Secured Claim. (Generally, experts such as appraisers do not write appraisal in support of a party's judicial proceeding, but write an independent report, without regard to having it support that party's proceeding.) *Id.*, ¶ 11. In paragraphs 14 and 15 Mr. Toney states that he has no bias toward any of the parties and that he has no interest with respect to the parties involved in the proceeding, and that his compensation was not dependent on his opinion in supporting predetermined results. *Id.*, ¶ 17.

In paragraph 19 of the Declaration Mr. Toney provides the actual information of an expert to assist the court in making findings of fact. *See*, Federal Rule of Evidence. 702:

> Rule 702. Testimony by Expert Witnesses
>
> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:
>
>> (a) **the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue**;
>>
>> (b) the testimony is based on sufficient facts or data;
>>
>> (c) the testimony is the product of reliable principles and methods; and
>>
>> (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

In paragraph 19 of the Declaration Mr. Toney's testimony is:

> 19. As of August 6, 2023, the appraised value of the Wheatland Store is $256,000.00. An itemization of categories is below and also included in the Appraisal.
>
> | **Value** | |
> |---|---|
> | Inventory | $59,644 |
> | Liquor License | $90,000 |
> | FF&E | $5,000 |
> | Goodwill | $11,356 |
> | | |
> | Total Operating Value | $256,000 |

Id.

Mr. Toney's appraisal report is provided as Exhibit 1 to his Declaration. Exhibit 1; Dckt. 132. The Appraisal Report is in the form of a letter to Debtor's counsel. This Report includes, but is not limited to the following information provided to the court.

With respect to the business' income for the period of 2017 - 2021, Mr. Toney's Report states that it is based on the information the Schedule C included as part of the Debtor's personal income tax return. *Id.*, p. 3.

Mr. Toney's Report includes the information on Debtor's Schedule C payment of a management fee to Sonia Madaan, who is identified as the Debtor's ex-spouse, and that as a sole proprietorship the Debtor does not take a salary. *Id.*

Included with the Report is detailed financial information used by Mr. Toney. Id., p. 9-19.

Mr. Toney's Report provides the court with information concerning the different appraisal methodologies and his valuation process to reach his conclusion of a $256,000 value.

The last section of Exhibit 1 (p. 20-23) is a statement of Assumption and Limiting Conditions. Mr. Toney did not conduct an independent audit of the financial records of the Debtor's business. The inventory of the business assets was conducted by California Inventory Specialists and Mr. Toney also has discussed this valuation with Daniel Garfias with California Liquor License Specialists.

Mr. Toney interviewed the owner of this sole proprietorship and researched the industry.

ASSETS OF THE BANKRUPTCY ESTATE

As the court has previously addressed with the Parties and their counsel, on Schedule A/B Debtor states under penalty of perjury that he does business as "Wheatl and 99 Cents & Liquor State" but that he only owns 50% of the business that he says is his sole proprietorship. Sch A/B; Dckt. 29 at 5. On original Schedule I debtor states that he is the "Self-Employed/Owner" of the business identified as "Wheatland 99 Cents & Liquor." Dckt. 29 at 23.

On Amended Schedule I filed January 30, 2024, Debtor again states under penalty of perjury that his is the Self-Employed/Owner of Wheatland 99 Cents & Liquor. Dckt. 153.

On the Statement of Financial Affairs the Debtor states under penalty of perjury that the business Wheatland 99 Cents & Liquor Store is his sole proprietorship. Stmt Fin. Affairs, ¶ 27; Dckt. 28. No other interest by any other person in the Debtor's Sole Proprietorship.

MOTION TO DISMISS OR CONVERT THE CASE

On January 11, 2024, Movant filed a Motion to Dismiss or Convert this Chapter 13 Case. Dckt. 121. The hearing on the Motion to Dismiss or Convert is set for February 13, 2024. The grounds stated by Movant include alleged misrepresentation of ownership of Debtor's Sole Proprietorship and Debtor's failure to prosecute this Case.

With respect to who owns the Sole Proprietorship, Movant asserts that Debtor and Sonia Madaan ("Madaan"), who were represented as being married, Debtor and Madaan had entered into an agreed Judgment of Dissolution, which predated Movant making its loans. *Id*. at 5:18-24. Such judgment purported to equally divide the represented Sole Proprietorship between Debtor and Madaan. This is asserted to have been done in 2018 - only five years before the filing of this bankruptcy case. (11 U.S.C. § 544(a) giving a bankruptcy trustee or Fiduciary Chapter 13 debtor exercising the powers of a trustee over the bankruptcy estate and its assets, to avoid transfers using the Bankruptcy Code or applicable state law.)

It may well be that Debtor's alleged former spouse may have received a fraudulent conveyance (transfers in a dissolution not being exempt to laws such as avoiding fraudulent conveyances) or has become a joint venturer with Debtor and jointly liable for the debts relating to the "Sole Proprietorship."

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset could be determined to be $304,310.34 (POC 6-2), while the value of the Property is determined to be $166,000 as stated in Schedules A/B and D filed by Debtor. Docket 29, p. 5. However, the Debtor has a Motion to Value for this claim for which hearing is set for February 13, 2024.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Commencing or prosecuting a case in bad faith can constitute a basis for relief under 11 U.S.C. § 362(d)(1). According to Collier on Bankruptcy,

> In some cases, a finding that the bankruptcy case was not commenced in good faith has been used as a basis for vacating or annulling the automatic stay. "Good faith is an amorphous notion, largely defined by factual inquiry," and based on the totality of the circumstances.99 Although particular cases are of little precedential value, a broad review reveals certain patterns and conduct that have in specific cases been characterized as bad faith. These include:
>
> (1)a perceived improper impact on nonbankruptcy rights;
>
> (2)a recent transfer of assets, i.e., the "new debtor syndrome" cases;
>
> (3)an inability to reorganize; and
>
> (4)unnecessary delay, i.e., serial filings.

3 COLLIER ON BANKRUPTCY ¶ 362.07[7][a].

Here, the court does not find that Debtor has been prosecuting this case in bad faith. Debtor is current in plan payments and has an Amended Plan on file, having paid $19,970 to the Trustee to date. The record shows that, although Movant and Debtor have not reached an amicable agreement valuing the Business or the Collateral, an absence of agreement is not for lack of trying. Valuing the Collateral has been the major hang up of this case, and Debtor has now got a Motion to Value on the record. For these reasons, the court finds Debtor has not commenced nor prosecuted this case in bad faith.

The court further finds that cause does not exist for terminating the automatic stay due to lack of post-petition payments. Trustee informs the court he has $19,970 on hand waiting to be dispersed to Movant. Debtor has been making his monthly plan payments, so the only reason Movant has not been paid is because Trustee is yet to disburse the money.

In the Motion, Movant asserts that grounds for relief from the stay are based on alleged bad faith representations as to the ownership of this business. As discussed above, while the Debtors states that the business is his SOLE PROPRIETORSHIP, he owns ONLY 50% OF HIS SOLE PROPRIETORSHIP.

CONTINUANCE OF THE FEBRUARY 13, 2024 HEARING

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Placerville Investment Group, 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** the Motion for Relief from Automatic Stay is **xxxxxxx**.

16. 23-22540-E-13 RLL-3 | SATINDER SINGH Ryan Wood | CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 1-11-24 [121]

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, Chapter 13 Trustee, creditors that have filed claims, persons having filed a Request for Notice, and Office of the United States Trustee on January 11, 2024. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss or Convert is xxxxxxx.

February 27, 2024 Hearing

A review of the Docket on February 22, 2024 reveals that no new documents have been filed with the court under this Docket Control Number. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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

1. The debtor, Satinder Singh ("Debtor"), has not been diligent in prosecuting this bankruptcy case, resulting in creditor not being paid and suffering economic loss.

2. Debtor's case was filed in bad faith in a coordinated effort with Sonia Madaan to frustrate Creditor's recovery attempts.

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

DEBTOR'S OPPOSITION

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

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

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

1. The only issue in the case is the value of his business. Debtor has obtained an appraisal of the business and has tried to work with Creditor in good faith to reach an agreed value. Decl., Docket 159 ¶ 3.

2. Debtor has done everything he is supposed to do to prosecute his case. *Id.* at ¶ 5.

3. The case has been filed in good faith, including by providing the Chapter 13 Trustee with all necessary documents. *Id.* at ¶¶ 7, 8.

4. Debtor is not trying to hinder collection efforts in any way. *Id.* at ¶ 22.

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

1. This case is all about the value of Satinder Singh's business and we have tried in good faith to reach an agreement as to the value of Satinder Singh's business with Placerville Investment Group, LLC. Decl., Docket 160 ¶ 1.

2. I/we are trying to not increase expenses in this case and that is the sole and only reason any party in this case can argue "delay." Which is supposed to be an ethical obligation of attorneys. *Id.* at ¶ 2.

3. Instead of continuing to operate in good faith, Placerville Investment Group, LLC, on January 11, 2024, communicated we are filing a motion to dismiss and motion for relief from stay. *Id.* at ¶ 6.

4. All Placerville Investment Group, LLC accomplished is unnecessarily increasing the expense of administration to arrive at a secured value of the Satinder Singh's business. *Id.* at ¶ 7.

5. I told this Court I would try to work this out in good faith informally to save money. That is the truth and up until January 11, 2024, I thought both parties were working together to accomplish this. I believe I should have been told long ago that would never happen because we can see now that is the truth. *Id.* at ¶ 8.

6. We wanted to file one more amended plan, file one more motion to confirm a plan that includes acceptable terms to all parties. That was possible with cooperation. *Id.* at ¶ 9.

7. To try and be efficient our goal was to value Placerville's secured value then file motions to value regarding the other two secured creditors, secured by the Debtors business as well. *Id.* at ¶ 19.

8. There is no cause for relief from stay or to dismiss or convert Satinder Singh's case. Satinder Singh is not the cause of delay in this case and only sought to not increase the cost of administration; it has obviously failed. *Id.* at ¶ 22.

CREDITOR'S REPLY

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

1. Debtor is responsible for filing an Amended Plan and Motion to Value, not Creditor.

2. Debtor says nothing about the orchestrated bad faith filing of Debtor and Ms. Madaan.

3. Creditor is not to blame for the delay in prosecuting this case.

DISCUSSION

Failure to Prosecute the Case / Bad Faith

11 U.S.C. § 1307(c) provides:

> Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including –
>
> (1)unreasonable delay by the debtor that is prejudicial to creditors.
> . .

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

The statutory list of enumerated reasons to dismiss a case in 11 U.S.C. § 1307(c) does not include a case being filed or prosecuted in bad faith, but courts have decided bad faith is a valid reason to warrant dismissal or conversion. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) ("Although not specifically listed, bad faith is a 'cause' for dismissal under § 1307(c)."); *See also In re Eisen*, 14 F.3d 469, 470 (9th

Cir. 1994) ("A Chapter 13 petition filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."). When deciding whether a petition has been filed in bad faith, "courts are guided by the standards used to evaluate whether a plan has been proposed in bad faith." *Id.*

Failure to Prosecute the Case

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

However, as the court notes above, the Debtor provides conflicting information about the assets of the Estate. He states that the business is his sole proprietorship, but that he owns only 50% of his sole proprietorship. Debtor fails to disclose who "owns" the other 50% of Debtor's sole proprietorship.

Bad Faith

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

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

Alternatively, this argument may be that Debtor is continuing in the misrepresentations and is trying to hide assets in this Bankruptcy Case.

CONTINUANCE OF THE FEBRUARY 13, 2024 HEARING

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

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

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

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

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

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

17. 23-22540-E-13 DPC-2	SATINDER SINGH Ryan Wood	CONTINUED MOTION TO DISMISS CASE 1-2-24 [102]

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, persons having filed a Request for Notice, and Office of the United States Trustee on January 2, 2024. By the court's calculation, 50 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 xxxxxxx.

February 27, 2024 Hearing

A review of the Docket on February 23, 2024 reveals that no new documents have been filed. At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

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

1. The debtor, Satinder Singh ("Debtor"), does not have a plan pending, resulting in prejudicial delay to creditors in this case.

Docket 102. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 104.

DEBTOR'S RESPONSE

Debtor filed a Response on February 8, 2024. Dckt. 164. Debtor states he is not engaging in unreasonable delay and that he has filed an Amended Plan (Docket 151) that will pay all creditors 100% value of his business. Debtor argues he "has received no space or breathing room" since the court sustained creditor Placerville Interment Group, LLC's ("Creditor") objection to claimed exemption. Docket 164 p. 2: 5-6. Debtor argues Trustee's numbers are wrong; there is not $214,188.12 in non-exempt equity as the value of the assets in Debtor's bankruptcy estate are over-encumbered by three secured creditors' claims. Debtor is current in plan payments. The only issue remaining is the value of the business assets encumbered by the creditors.

DISCUSSION

Debtor is current in plan payments, and the record shows Debtor has an Amended Plan and Motion to Confirm on file. Debtor is prosecuting this case.

The court is hearing Creditor's Motion for Relief (DCN: RLL-2), Debtor's Motion to Value Movant's claim (DCN: RCW-9) and Motion to Confirm Plan (RCW-89), and Creditor's separate Motion to Dismiss or Convert this Bankruptcy Case (DCN: RLL-3) at 2:00 p.m. on February 27, 2024.

The court continues the hearing on the Trustee's Motion to Dismiss to 2:00 p.m. on Feb.

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 **XXXXXXX**.

18. 21-23841-E-13 PGM-4

18 thru 19

DENNIS FRAZIER
Peter Macaluso

CONTINUED OBJECTION TO CLAIM OF FREEDOM MORTGAGE CORPORATION, CLAIM NUMBER 4
12-30-23 [141]

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 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 Chapter 13 Trustee, other parties in interest, parties requesting special notice, and Office of the United States Trustee on December 30, 2023. By the court's calculation, 59 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 Objection to Proof of Claim Number 4-1 of U.S. Bank National Association, not in its individual capacity but solely as trustee for RMTP Trust, Series 2021 Cottage-TT-V is xxxxxxx.

Dennis Frazier, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of U.S. Bank National Association, not in its individual capacity but solely as trustee for RMTP Trust, Series 2021 Cottage-TT-V("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $126,942.93. POC 4-1.

Objector asserts that creditor First Trust ("First Trust") (POC 2-1) made an advance of $37,000 to Creditor, on behalf of Debtor, to stop a foreclosure sale of Debtor's home. Debtor argues that such payment has not been fully applied to Creditor's Claim 4-1, at least not applying the amount of $6,247.67. Reply, Docket 162 p. 2:14-16.

Apart from filing Proofs of Claim 2-1 and 4-1 (Docket 143), Debtor did not file any admissible evidence in support of this Objection.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a statement indicating nonopposition on January 26, 2024. Docket 157. Trustee states it appears the $37,000 has not been applied on Creditor's Proof of Claim.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on January 30, 2024. Docket 159. Cr4editor states:

1. Creditor has applied the $37,000. *See* Exhibit 3, Docket 160 ps. 18-22; Exhibit 4, Docket 160 ps. 23-29.

2. Exhibit 3 shows $29,697.97 has been applied to the loan. Exhibit 4 shows the remaining $7,302.03 has also been applied.

DEBTOR'S REPLY

Debtor filed a Reply on February 6, 2024. Docket 162. In his Reply, Debtor states:

1. Creditor is still not accounting for $6,247.67 of the $37,000 payment. Claim 4-1 should be credited with an additional $6,247.67.

2. Debtor also prays for attorney's fees and costs as the prevailing party.

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.

In this case, Creditor has submitted unauthenticated Exhibits showing how and where the money has been applied. Debtor claims that $6,247.67 has not been properly accounted for. However, upon the court's review of Creditor's exhibits, it appears as though the $37,000 has been properly accounted for. At the hearing, **XXXXXXX**

Request for Attorneys' Fees

In the Reply, almost as if an afterthought, Debtor requests that it be allowed attorneys' fees. The Reply does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for

such fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Debtor grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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 U.S. Bank National Association, not in its individual capacity but solely as trustee for RMTP Trust, Series 2021 Cottage-TT-V ("Creditor"), filed in this case by Dennis Frazier, the Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 4-1 of Creditor is **xxxxxxx**
>
> 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.

19. 21-23841-E-13 PGM-3 | **DENNIS FRAZIER Peter Macaluso** | **CONTINUED MOTION TO CONFIRM PLAN 12-12-23 [133]**

Final Ruling

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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2023. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

February 27, 2024 Hearing

Debtor filed a Status Report on February 6, 2024, stating that the proposed Plan is not feasible and must be denied. Docket 164 p. 1:25-27.

REVIEW OF THE MOTION

The debtor, Dennis Frazier ("Debtor") seeks confirmation of the Modified Plan (Docket 132). Upon review of the Motion and supporting Declaration, the court notes Debtor does not explain why he is filing a Modified Plan after the court confirmed his First Amended Plan on January 11, 2023. Docket 115. The Modified Plan provides plan payments of $3,200.00 starting January 25, 2024 to complete the Plan within the maximum term allowed by law, 35 months. Modified Plan, Dckt. 132 ¶ 7. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

It appears all that Debtor is doing is increasing his Plan payments to be able to properly fund the Confirmed Chapter 13 Plan, and does not alter the treatment of creditor claims. Such increase in payment

amendments are commonly accomplished by a joint ex parte motion filed by the debtor and the Chapter 13 Trustee.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 8, 2024. Dckt. 145. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor's Plan appears extremely over extended, taking up to either 117 months or 126 months to complete.

2. There is confusion regarding the claim of First Trust. POC 2-1. The Debtor has scheduled this debt as a Class 2A creditor in the amount of $39,705.53; however, the creditor filed a proof of claim in the amount of $130,220.47. There was an adversary proceeding filed and potentially a BDRP was completed regarding this creditor. However, the outcome of that hearing is uncertain and there is no mention of it in the plan or the motion to confirm.

3. Debtor's Schedule I contains outdated or missing information. Schedule I does not show Debtor's current employment details.

Docket 145.

CREDITOR'S OPPOSITION

U.S. Bank National Association ("Creditor") holding a secured claim (POC 4-1) filed an Opposition on January 9, 2024. Dckt. 149. Creditor opposes confirmation of the Plan on the basis that:

1. Pursuant to 11 U.S.C. § 1325(a)(5)(A), a debtor cannot confirm its Plan if a creditor with an allowed claim does not accept the treatment of its claim. Here, because Creditor opposes the treatment of its claim (POC 4-1), the Modified Plan cannot be confirmed.

2. The Modified Plan depends on an Objection to Claim filed by Debtor (Docket 141) on December 30, 2023, that has not been granted. Creditor plans to oppose that Objection as well.

Docket 149.

DEBTOR'S RESPONSE

Debtor filed a Response to the two Oppositions on January 15, 2024. Dckt. 151. Debtor states:

1. Debtor's Modified Plan actually is not overextended as proposed because First Trust, or Carl Dexter, paid $37,000 directly to creditor Freedom Mortgage (POC 2-1) on March 17, 2020. That payment is not accounted for by Freedom Mortgage, and if it were applied, the Modified Plan would not be overextended.

2. Debtor has retired and has filed Amended schedules I and J accordingly.

3. Debtor disputes the amount of arrears regarding Creditor's Claim 4-1.

Docket 151.

DISCUSSION

Applicable Law: 11 U.S.C. § 1325(a)(5)(A)

Creditor asserts that "[p]art of § 1325 states that the court shall confirm a plan if, with respect to each allowed secured claim provided for by the plan, the holder of such claim has accepted the plan. . . the Debtor's proposed second amended chapter 13 plan ("Amended Plan") cannot be confirmed as proposed because Secured Creditor does not accept the Amended Plan with respect to the treatment of its claim." Opposition, p. 2:11-18; Docket 149. This argument is without merit and is a misinterpretation of 11 U.S.C. § 1325(a)(5)(A). 11 U.S.C. § 1325(a)(5) outlines three ways for a secured claim to be properly provided for in a Plan, stating:

> (5)with respect to each allowed secured claim provided for by the plan—
>
> (A) the holder of such claim has accepted the plan;
>
> (B)
>
> (i) the plan provides that—
>
> (I) the holder of such claim retain the lien securing such claim until the earlier of—
>
> (aa) the payment of the underlying debt determined under nonbankruptcy law; or
>
> (bb) discharge under section 1328; and
>
> (II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;
>
> (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and
>
> (iii) if—
>
> (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; **or**

(C) the debtor surrenders the property securing such claim to such holder. . .

Creditor is missing the operative conjunction in this section of the Code: "or." Nothing in the Code requires each creditor in a Chapter 13 Plan to accept the treatment of its secured claim as a requisite for plan's confirmation. Such a reading of the Code would give any secured creditor what amounts to unbridled veto power in any Chapter 13 case. Rather, either 11 U.S.C. §§ 1325(a)(5)(A), (B), or (C) are each individual proper ways to deal with a secured claim in a plan, not unilaterally requiring a Creditor's consent. Therefore, Creditor's argument that the Plan must not be confirmed because it does not accept the treatment of its secured claim is without merit.

Debtor's Reliance on Objection to Claim / Over Extension

Consistent with the Trustee and Creditor's Oppositions, a review of Debtor's Plan shows that he relies on the court modifying the secured claim of First Trust in Proof of Claim 2-1. Specifically, Debtor asserts that there was a payment of $37,000 made to cure arrears, but that payment has improperly not been applied to Claim 2-1. The court has not had a chance to rule on Debtor's Objection (to be heard on February 13, 2024, Docket 141 p. 7), but the Plan's feasibility depends on this court's ruling in that matter.

Trustee asserts that without the Objection to Claim being granted, the Plan will take 126 months to complete. But even if the Objection to Claim were to be granted, the Plan would still take 117 months to complete according to the Trustee's calculations. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

At the hearing, Debtor's counsel, Creditor's counsel, and counsel for the Chapter 13 Trustee agreed to a continuance of the hearing to 2:00 p.m. on February 27, 2024. That is the continued hearing date of the Objection to Claim, the resolution of (whether by Stipulation or order of the Court) which is a necessary precursor to whether this Plan may be 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, Dennis Frazier ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

20. 23-23242-E-13 PGM-1 | **BRYAN GALLINGER Peter Macaluso** | **CONTINUED MOTION TO CONFIRM PLAN 1-5-24 [56]**

20 thru 21

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

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

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

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

The Motion to Confirm the Amended Plan is xxxxxxx

February 27, 2024 Hearing

In compliance with this court's Order (Docket 89), the debtor, Bryan Gary Gallinger ("Debtor") filed a status report/supplemental briefing with the court on February 22, 2024. Docket 95. In his status report, the Debtor states:

1. The real property located at 9421 Fair Oaks Blvd, Fair Oaks, CA, is to be sold for an asking price of $550,000.

2. Debtor has filed a Motion to Employ a broker to sell the property.

3. Creditor Levick Family Trust, which is a Class 2 creditor, asserts a claim of $453,675.57, but Debtor disputes approximately $200,000 of that claim.

4. The Debtor is prepared to employ Matthew V. Brady, Esq., of 2339 Gold Meadow Way, Gold River, CA 95670, to prosecute either an objection to Proof of Claim 1, request B.D.R., or file a new civil suit, and expects to make a decision by 2/27/24, as recommended by Mr. Brady.

5. Debtor has valid insurance on the property.

6. The rental income stops in February of 2024 to allow for the house to be shown for sale.

7. Debtor has filed his Amended Schedules.

8. A sale of the home would result in a 100% repayment plan, and after all fees and costs, the sale would generate a profit of $39,487.97 for Debtor.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

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

Levick Family Trust, which is a Class 2 creditor, holds a secured claim in the Property that Debtor intends the sell. The Amended Plan provides that Levick Family Trust is to receive a monthly dividend in the amount of $1,380.00 for 6 months, or until the sale of the Property is completed. *Id*. However, the amount claimed by Levick Family Trust is disputed by the Debtor and is the subject of a pending arbitration. Debtor states in the Amended Plan that should arbitration not be successful, Debtor will file an objection to the claim. *Id*. The Amended Plan provides that the disputed amount of the claim shall be held in trust until there is a resolution. *Id*. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

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

A. Debtor needs to provide more details regarding the sale of real property because the provisions listed in the Amended Plan are vague. The Amended Plan does not provide an address for the property that will be sold, does not estimate the amount to be contributed to the Amended Plan, nor does it describe any effort required to sell the property. Opposition, Docket 68, p. 2:1-10.

B. Debtor's treatment of Class 2 creditor, Levick Family Trust, is ambiguous. The Amended Plan fails to provide any treatment to Levick Family Trust if the sale of the Property is not complete, or what the creditor will receive if the sale is completed. Opposition, Docket 68, p. 2:11-15.

C. Debtor has failed to provide proof that there is a pending arbitration with Levick Family Trust or what the claim is that is being disputed. Opposition, Docket 68, p. 2:16-20.

D. The Trustee is not clear if the Debtor will follow through and file an objection to claim. Debtor states in the Amended Plan "Should arbitration not be successful, Debtor to file an objection to the claim with in 60 days of the claim being filed". Amended Plan, Dckt. 58, § 7. Debtor has not filed an objection to proof of claim to date, and 60 days for the Debtor to object would have been December 3, 2023 because Levick Family Trust filed its proof of claim on October 4, 2023. Opposition, Docket 68, p. 2:21-26.

E. Debtor has not provided any evidence that the Property has been insured. Opposition, Docket 68, p. 2:27-28. Trustee is concerned that Debtor has failed to obtain insurance for the Property and is failing to provide evidence in order to conceal this fact.

F. Trustee is unable to determine if the Debtor's income is sufficient to sustain the Amended Plan payments. Opposition, Docket 68, p. 3:3-7. Debtor's Schedule I shows $1,200.00 in income from "Room Rental". Petition, Docket 14, p. 17:8h. Debtor has failed to provide adequate evidence of the amount received and the reliability of collecting this rent. Opposition, Docket 68, p. 3:3-7.

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

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

CREDITOR'S OPPOSITION

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

A. There are no creditors in Classes 1, 3, 4, 5, or 6. Class 7 includes one creditor claim in the amount of $11,748.89 to the State of California Franchise Tax Board. Otherwise, Creditor along with the County of Sacramento are the only Class 2 creditors. Opposition, Docket 71, p. 2:3-6.

B. Creditors believe that Debtor has filed this Chapter 13 Case to frustrate foreclosure of a first-priority deed of trust securing a promissory note given by Debtor to Secured Creditors in the purchase and sale of the real property identified above. Opposition, Docket 71, p. 2:1-3.

C. Debtor has failed to pay the 2023-2024 real property taxes owed to the County of Sacramento. His Class 2 debt to the County has increased from $16,970.46 by an additional $7,415.77 for a new debt amount of $24,386.23. The First Amended Plan does not disclose this fact. *Id.* at 2:7-9.

D. Debtor's Amended Plan proposes to reduce the monthly payments to Secured Creditors by $500.00 to a new monthly payment of $1,380.00.

E. Debtor has failed to pay his 2023-2024 real property taxes. *Id.* at 4:18.

F. Debtor asserts that Class 2 secured claims will be paid in full through the plan, but full payment is not possible without a sale of property. *Id.* at 5:4-5.

G. In order for Debtor to distribute property of sufficient value to pay the Claim through the First Amended Plan - for illustration, using only the matured principal amount, $425,000.00 - Debtor would be required to make monthly payments for the benefit of Secured Creditors in the amount of $11,805.55 ($425,000.00 ÷ 36 months = $11,805.55). The Schedules and Statements reveal Debtor cannot pay this amount: He cannot repay Secured Creditors the amount of the Claim through the Plan. *Id.* at 5:15-19.

H. Debtor's income is insufficient to pay the plan. Debtor filed tax returns showing income of $16,812.00 for the year 2021, and $8,259.00 for the tax year 2022. *Id.* at 6:27-28. Therefore, the only way Debtor can pay Secured Creditors is to sell the property.

I. There is no pending arbitration; Debtor has testified and admitted he had not filed any civil action against Secured Creditors and had not filed any petition to compel arbitration. Debtor has not filed any civil action or petition to compel arbitration at any time after the first meeting. *Id.* at 7:16-20.

J. The claim is not disputed. No meet and confer has taken place to identify what counter claim may be asserted against Secured Creditors. Debtor has

had three years to bring any action or proceeding against Secured Creditors, but has not done so. *Id.* at 8:1-7.

K. Debtor intends to delay and avoid payment of the debt he owes to Secured Creditors. *Id.* at 8:8-11.

L. Debtor has failed to submit any evidence of payment of rents by tenants he claims to have at the Property. *Id.* at 10:5-6.

M. Debtor has not shown proof that he will be able to receive income as a Pool Manager through the winter. *Id.* at 10:7-10.

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

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

DEBTOR'S REPLY

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

A. Debtor acknowledges that the Property Taxes are due through 2024, and the amount due through 2023 is $16,836.46. Reply, Docket 80, p. 2:3-5. Debtor also acknowledges that Levick Family Trust Proof of Claim is $453,675.57. *Id*. at 2:6-7.

B. Debtor states that the Property has been insured through 2023, and is presently insured until November 2024. Reply, Docket 80, p. 2:9-11. Debtor submitted proof that the Property is insured through November 16, 2024. Exhibit B, Docket 84.

In reviewing Exhibit B, it is not evidence that insurance is in place, but rather is a Quote of what such insurance would cost from American Modern. At the end of the "evidence" that insurance is in place, there is an important notice:

IMPORTANT NOTICE

This is an insurance quote only, and is not a binder or confirmation of coverage. This quote is subject to change based on the final underwriting review. Coverage will not begin until after you have provided your agent with all required documentation and you have been notified that the insurance company has accepted your application.

Thank you for this opportunity to provide an insurance quotation for your consideration. If you have any questions about the premium, please give us a call.

Exhibit B, Dckt. 84 at 3-4. Thus, this exhibit is not evidence of insurance, but only that Debtor appears to have requested a quote for insurance coverage.

C. Debtor has filed an application to hire a real estate agent to list the Property, and will include the MLS listing for the hearing on February 27, 2024. Reply, Docket 80, p. 2:12-15.

D. Debtor intends to sell the Property within the next 90 days, subject to offers received. Reply, Docket 80, p. 2:16-20. Debtor believes that all offers received will close by June 2024. *Id.*

E. The proposed real estate broker has performed an analysis of the fair market value for the Property and believes that its value is $550,000.00. Decl., Docket 77, p. 2:9-11.

F. Debtor intends that the Levick Family Trust receive a monthly dividend of $1,380.00 during the period prior to the sale of the Property. Reply, Docket 80, p. 3:1-3.

G. Debtor requests that the Trustee hold any amounts in dispute between Debtor and Levick Family Trust, pending resolution through arbitration. Reply, Docket 80, p. 3:4-7.

H. Debtor has amended Schedule B to add the Bitcoin asset. Reply, Docket 80, p. 3:8-9.

I. Debtor is receiving "Room Rental" income of $1,800.00. Reply, Docket 80, p. 3:10-11.

J. Debtor is no longer receiving income for "Dog Care Services". Reply, Docket 80, p. 3:12-13.

K. Debtor has paid $9,000.00 through January 25, 2024, and the Amended Plan requires 5 more payments of $2,250.00 for a total of $11,250.00, before payoff from the sale of the Property. Reply, Docket 80, p. 3:14-17.

L. In this case, there are no unsecured claims, only claims subject to the Property. Reply, Docket 80, p. 3:19-26. Debtor is moving quickly to sell the Property, and is current on the $2,250.00 monthly Amended Plan payments. *Id.* at 4:1-8. Debtor is waiting for the hearing to employ a broker to sell the Property. *Id.* After the sale of the Property, Debtor expects that there will be a profit of $39,487.97. *Id.* at 3:23-26.

M. Debtor request that this Motion to Confirm Amended Plan be continued approximately 60 days. Reply, Docket 80, p. 4:1-8.

DISCUSSION

Terms Regarding Sale of Property

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

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

Ambiguous Treatment of Class 2 Creditors

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

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

Objection to Claim and Arbitration

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

On Amended Schedule A/B Debtor lists this dispute as a lawsuit against Levick Family Trust, and has a value of $1.00. Dckt. 93 at 8. It appears that Debtor is trying to estimate a value, and that estimation is only $1.00. Generally, a debtor would list the dollar amount accurately of what the debtor is seeking to recover, not "just a buck." Taken at Debtor's word stated under penalty of perjury, the litigation will only reduce that Creditor's claim by $1.00, clearly not worth the time and expense to litigation such $1.00 issue.

Evidence of Insurance

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

Insufficient Income

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

Amended Schedules

Trustee objects to confirmation of the Amended Plan because during the First Meeting of Creditors, Debtor admitted that he owned Bitcoin, but has failed to amend Schedule A/B to include this asset. Opposition, Docket 68, p. 3:8-22. Debtor states in his reply that he has amended Schedule B to add the Bitcoin asset. Reply, Docket 80, p. 3:8-9.

Amended Schedule A/B filed on February 22, 2024, does not list $1,250.00 in Bitcoin assets and a Wells Fargo Bank saving account with a balance of $1,915.07, which had not been included on original Schedule A/B. Dckt. 93 at 7.

Additionally, Trustee objects because on Debtor's Schedule I, it shows income from a "Room Rental" for $1,200.00 per month, and $100.00 per month from "Dog Care Services." Petition, Docket 14, p. 17:8h. Debtor has stated that he is actually receiving $1,800.00 from the "Room Rental" and is no longer receiving income from "Dog Care Services". Reply, Docket 80, p. 3:10-13. Upon the court's review of the Docket, no amended Schedule has been filed with the court that corrects either of these discrepancies.

Property Taxes

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

FEBRUARY 13, 2024 HEARING

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

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

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

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

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

21. 23-23242-E-13 PGM-2 **BRYAN GALLINGER Peter Macaluso** **MOTION TO EMPLOY ALEXIS MCGEE GROUP INC. AS REALTOR(S) 1-31-24 [75]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on January 31, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The ~~Motion to Employ is granted.~~

Bryan Gallinger ("Debtor") seeks to employ Alexis McGee of Alexis McGee Group Inc. ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to market and sell the real property commonly known as 9421 Fair Oaks Blvd, Fair Oaks, CA 95628 ("Property").

Alexis McGee, a Real Estate Agent of Alexis McGee Group Inc. , testifies that she is a licensed real estate broker with substantial experience in the field. Decl., Docket 77 ¶¶ 4-3. Ms. McGee testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶¶ 9-11.

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

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

~~Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Alexis McGee of Alexis McGee Group Inc. as Broker for the Chapter13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 78. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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 Employ filed by Bryan Gallinger ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ ~~is granted, and Debtor is authorized to employ Alexis McGee of Alexis McGee Group Inc. as Broker for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 78.~~
>
> ~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~
>
> ~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

22. 23-24568-E-13 RDW-1

SUNDREA GORDON-HACKLEY
Carl Gustafson

OBJECTION TO CONFIRMATION OF PLAN BY ROGER E. LARSEN AND ELIZABETH E. LARSEN, TRUSTEES OF THE LARSEN FAMILY TRUST AND MARK BELOTZ AND SILVIA BELOTZ, TRUSTEES OF THE BELOTZ FAMILY 1999 TRUST
1-24-24 [25]

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

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, creditors, and Office of the United States Trustee on January 24, 2024. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Roger E. Larsen and Elizabeth E. Larsen, Trustees of the Larsen Family Trust and Mark Belotz and Silvia Belotz, also known as Marta Silvia Belotz, as trustees of the Belotz Family 1999 Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Plan is not feasible in violation of 11 U.S.C. § 1325(a)(6) because Debtor does not properly list Creditor's claim and fails to pay the claim in full. Objection, Docket 25, p. 3:1-8. Debtor's Plan lists the amount of

arrears owed to Creditor is $24,065.97, but Creditor claims it is owed $32,850.93. *Id.* at p. 2:26-28.

Creditor submits the Declaration of Richard Mendoza to authenticate the facts alleged in the Objection. Decl., Docket 27.

DEBTOR'S NON-OPPOSITION

Debtor has filed a non-opposition to Creditor's objection and states that Debtor intends to file an amended plan after the claims bar date. Non-Opposition, Docket 30.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim and asserts that it is owed $32,850.93 in arrearage. Decl., Docket 27 p. 2:25-28. This amount consists of pre-petition payments, late charges, and foreclosure fees as of the date of the petition. *Id.* The Plan does not propose to cure those arrearage because it lists the amount of arrears owed to Creditor as $24,065.97. Plan, Docket 2 § 3.07. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage. Debtor has filed a non-opposition to Creditor's objection and states that an amended plan will be filed. Non-Opposition, Docket 30.

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 Roger E. Larsen and Elizabeth E. Larsen, Trustees of the Larsen Family Trust and Mark Belotz and Silvia Belotz, also known as Marta Silvia Belotz, as trustees of the Belotz Family 1999 Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

23. **23-24485-E-13** **CK-2** | **TIMOTHY MURRAY** **Catherine King** | **MOTION TO VALUE COLLATERAL OF SIERRA CENTRAL CREDIT UNION** **1-29-24 [23]**

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

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

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

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

The Motion to Value Collateral and Secured Claim of Sierra Central Credit Union ("Creditor") is denied.

The Motion filed by Timothy Murray ("Debtor") to value the secured claim of Sierra Central Credit Union ("Creditor") is accompanied by Debtor's declaration and Kelley Blue Book Valuation Report. Declaration, Dckt. 26; Exhibit A, Docket 28. Debtor is the owner of a 2017 Ford F150 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $17,965.00 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).

CREDITOR'S OPPOSITION

Creditor filed an Opposition to this motion on the basis that:

1. Debtor's motion fails to provide Creditor with the full value of its claim. Opposition, Docket 31, p.2:18-27. Debtor's Kelley Blue Book valuation does not include the correct engine, transmission and drivetrain. *Id.* at p. 2:1-13. The correct Kelley Blue Book valuation for the Vehicle is $31,106.00. *Id.*

Creditor submits the Declaration of Stephanie Terrell to authenticate the facts alleged in the Opposition. Decl., Docket 32. Ms. Terrell also authenticates Creditor's own Kelley Blue Book Valuation Report, submitted as Exhibit C, Docket 33. The fair purchase price is listed as $31,888. *Id.*

TRUSTEE'S OPPOSITION

Trustee filed an Opposition to this motion on the basis that:

1. Debtor's Motion to Value Collateral is not pleaded with particularity and does not cite to any authority. Opposition, Docket 40, p. 1:22-28.

2. Creditor has not filed a proof of claim. *Id.* at p. 2:3-4.

3. Debtor's bankruptcy case was filled on December 14, 2023, and there is no confirmation hearing pending, nor has a motion to confirm been filed. *Id.* at p. 2:5-6.

Trustee submits the Declaration of Angelina Fernandez to authenticate the facts alleged in the Opposition. Decl., Docket 41.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on June 30, 2021, to secure a debt owed to Creditor with a balance of approximately $28,131.13. Proof of Claim, No. 13. Debtor has filed this motion to value the Vehicle in which the Creditor holds a secured claim for the amount of $17,965.00. However, both the Creditor and Trustee filed oppositions to the motion for several reasons.

Value of the Claim

Creditor opposes this motion because it claims that the Debtor fails to provide Creditor with full value of its claim. Opposition, Docket, p. 1:18-22. Debtor has submitted to the court a Kelley Blue Book valuation for the Vehicle in the amount of $17, 965.00. Exhibit, Docket 28, p. 2. However, Creditor has submitted its own Kelley Blue Book valuation for the Vehicle which is in the amount of $31,106.00. Exhibit, Docket 33, p. 12. The differences in these values is based on the type of engine, transmission, and drivetrain being listed. Both the Creditor and Debtor use different options in the Kelley Blue Book valuations that have been submitted. Thus, depending on what the correct options for the Vehicle are will determine what the true replacement value is. At the hearing, **XXXXXXX**

Pleading with Particularity

Trustee's Opposition to this motion is largely based on the fact that Debtor's motion is not pleaded with particularity as required by Federal Rules of Bankruptcy Procedure 9013. Opposition, Docket 23, p. 1:22-27. 11 U.S.C. § 506 is the normal authority that is cited to when making a motion to value collateral, but Debtor's motion does not make mention to the this statute.

Proof of Claim

Trustee's Opposition, which was filed on February 13, 2024, states that the Creditor "has not filed a proof of claim to date". Opposition, Docket 40, p. 2:3-4. However, Creditor has since filed a proof of claim with the court. On February 21, 2024, Creditor filed a proof of claim stating that the value of the Vehicle is $31,106.00 and that the amount of its claim is $28,131.13. Proof of Claim13-1, p. 2.

Confirmation of Plan

Trustee also opposes this motion on the basis that "there is no confirmation hearing pending, nor has a motion to confirm been filed". Opposition, Docket 40, p. 2:5-6. Debtor filed his petition on December 14, 2023. Petition, Docket 1. On January 10, 2024, Debtor did file a Plan with this court. Plan, Docket 22. However, this Plan has not been confirmed, nor has a motion to confirm Plan been filed by the Debtor. At the hearing, **XXXXXXX**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Timothy Murray ("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 Value Collateral and Secured Claim of Sierra Central Credit Union ("Creditor") is denied.

24. 23-24588-E-13 DPC-1 | **WENDI/MELISSA PRYDE Stephan Brown** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-29-24 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 29, 2024. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

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

1. The Plan includes a Nonstandard Provision that provides for the payment to the Department of Education/Navient to be paid directly by the Debtors in the amount of $811.00 per month. Opposition, Docket 14, p. 1:25-28.

2. The Plan calls for monthly payments of $1,730.21 for 60 months, paying no less than a 12% dividend to unsecured claims. The Trustee estimates based on the schedule amounts for student loans, student loans could be paid as much as 79.12% unless they currently bear interest.

3. Therefore, The Plan does not comply with the Code, (11 U.S.C. §1325(a)(1)), and appears contrary to 11 U.S.C. §1325 (a)(3), with unfair discrimination as to the general unsecured creditors.

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

DISCUSSION

Trustee's objections are well-taken.

Nonstandard Provision

Trustee opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay no less than 12.00% to unsecured claims; however, Debtor proposes to pay their unsecured creditor, the Department of Education/Navient, as an installment or lease payment as mentioned in Schedule J. Schedule J, Docket 1, p. 37 at line 17.

Navient has not filed a claim with the Court, which would give us more of an insight into the value of their unsecured claim. Debtor states numerous outstanding unsecured debts to Navient totaling $61,494.00. Voluntary Petition, Docket 1, Schedule E/F, lines 4.17-4.24. Debtor reiterates this amount under the "Student loans" heading of Schedule E/F. *Id.* at line 6(f).

Debtor includes a monthly Federal Student Loan payment of $811.00 on their Schedule J. *Id.* at Schedule J, line 17(c). Over the course of the 60 month plan, Navient would receive 79.12% of their loan repaid, while the unsecured creditors would receive 12%.

11 U.S.C. section 1322 (b) requires that a plan may designate a class or classes of unsecured claims, but may not discriminate unfairly against any class so designated. 11 U.S.C. § 1322(b)(1). However, such a plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims. Here, Debtor's choice to consolidate the loans as student loan debt is a designation. However, Debtor's decision to pay Navient 79.12% of their loan while paying other creditors 12.00% is discriminating unfairly between them. .

Student loan debt is generally nondischargeable, absent undue hardship, if it falls within any of four categories outlined by statute. 11 U.S.C. § 523(a)(8). One of these categories is "an obligation to repay funds received as an educational benefit, scholarship, or stipend."

The nondischargeable nature of student loan debt is not, by itself, a reasonable basis for discrimination under 11 U.S.C. section 1322 (b)(1). *In re Sperna*, 173 B.R. 654, 658 (B.A.P. 9th Cir. 1994) (stating that Congress's 1990 amendment to the rule shows Congress's desire that student loans be repaid, and notes that Congress had the opportunity to give them priority status but did not).

Here, Debtor has not given any explanation for why the unsecured claims from Navient are being treated differently as a class. At the hearing, **XXXXXXX**.

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

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

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

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

25.	23-20790-E-13 MET-3	DENNIS/ROBIN COBB Mary Ellen Terranella	MOTION TO MODIFY PLAN 1-4-24 [46]

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 January 4, 2024. By the court's calculation, 54 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 debtors, Dennis Samuel Cobb and Robin Karen Cobb ("Debtors") seek confirmation of the Modified Plan because of financial difficulties stemming from their son's on-the-job injury, as he was providing some financial assistance to them. Declaration, Dckt. 49 p. 2:5-7. However, their son is now able to provide assistance through State Disability and is pursuing a Worker's Comp claim. *Id.* at 2:8-9. This modification also serves to provide for claims that ended up being higher than anticipated. *Id.* at 2:11-14.

The Modified Plan provides $29,020.95 to be paid through 9 payments of $3,224.55 per month for 9 months, and $247,095.00 to be paid through 51 payments of $4,845.00 per month for 51 months, and a 0 percent dividend to unsecured claims. Modified Plan, Docket 48. 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 13, 2024. Dckt. 56. Creditor opposes confirmation of the Plan on the basis that:

A. The trustee is unable to fully assess the feasibility of the plan or effectively administer the plan. The previously confirmed plan and the modified plan provide for treatment of PHH Mortgage in class 1. Because Debtor did not make timely payments under the Plan, the trustee was not able to pay the $3,067 post-petition contract installments for October and November 2023. *Id.* at 1:25-2:4.

B. The modified plan fails to specify a cure of the post-petition arrearage including a specific post-petition arrearage amount (including which months were missed), interest rate and monthly dividend.

C. No supplemental Schedule I has been filed to support Debtor's claim that they can afford the payments; the most recently filed Schedule I is dated from March 15, 2023 *Id.* at 2:8-11.

D. Debtors declare that their adult son will be able to provide money which will allow Debtors to make the higher payment to address Trustee's Motion to Dismiss, but have not included any supporting Declarations showing the family member is aware, able, and willing to make these contributions. *Id.* at 2:18-25.

E. Debtor should clarify the actual month to be paid in through month 9 (December 2023) is $29,021.02, rather than $29,020.95. *Id.* at 3:3-9.

Trustee submits the declaration of Angelina Fernandez to authenticate the facts stated in their Opposition.

DEBTOR'S REPLY

A. Debtor's son resides with the Debtors, and he is able and willing to contribute $750.00 per month to the debtors towards rent/household expenses. A Declaration confirming the same has been filed. *Id.* at 19-22.

B. Debtors have filed both pages 1 and 2 of the supplemental schedule, having previously inadvertently filed Schedule J twice and only page 2 of Schedule I.

C. Debtors have caused to be filed an attached proposed Order Modifying Plan, which provides for the post petition arrears of secured creditor PHH

Mortgage, for the months of October and November 2023, in the amount of $3,067.10 each, over the remaining term of the 60 month plan, at 0% interest.

D. The attached proposed Order Modifying Plan clarifies that the total paid into the Chapter 13 plan as of December 2023 is $29,021.02.

Debtor submits the declaration of Christian Michael Cobb to authenticate the first assertion stated in their Reply.

DISCUSSION

It appears to the Court that the issues raised in Trustee's objection have been cured. Debtor's amended Schedule I forms were filed on February 20, 2024. Docket 62. The Order Modifying Plan includes the $29,021.02 figure and provides for the October and November payment to mortgage company. Debtor has submitted the declaration of their adult son to authenticate his awareness, ability, and willingness to provide financial assistance.

At the hearing, **XXXXXXX**.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Dennis Samuel Cobb and Robin Karen Cobb ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

26. 20-23896-E-13 MET-5 | **MILTON PEREZ** Mary Ellen Terranella | **CONTINUED MOTION TO INCUR DEBT** 11-27-23 [137]

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

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

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

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

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

The hearing on the Motion to Incur Debt is xxxxxxx.

February 27, 2024 Hearing

A review of the Docket on February 23, 2024, reveals that no new documents have been filed with the court. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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

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

DISCUSSION

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

Reasonableness / Best Interest of Debtor

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

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

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

JANUARY 9, 2024 HEARING

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

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

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

JANUARY 30, 2024 HEARING

A review of the Docket on January 25, 2024, reveals that no new documents have been filed with the court. At the hearing, counsel for the Debtor reported that they are getting closer to have an agreed

modification. Both counsel for Debtor and Counsel for Creditor requested the continuance, for which counsel for the Trustee stated no opposition.

The hearing on the Motion to Incur Debt is continued 2:00 p.m. on February 27, 2024.

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

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

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

IT IS ORDERED that the Motion to Incur Debt is **xxxxxxx.**

FINAL RULINGS

27. **23-23608-E-13** **PGM-2** | **TEMA ROBINSON** **Peter Macaluso** | **MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP LLC 1-26-24 [56]**

Final Ruling: No appearance at the February 27, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, other parties in interest, and Office of the United States Trustee on January 26, 2024. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Wheels Financial Group LLC, d/b/a 800Loanmart ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $5,000.

The Motion filed by Tema Robinson ("Debtor") to value the secured claim of Wheels Financial Group LLC, d/b/a 800Loanmart ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 59. Debtor is the owner of a 2005 Dodge Ram 1500 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on February 13, 2024. Docket 71.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on December 27, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $8,993.61. Proof of Claim, No. 4-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $5,000, 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 Tema Kay Robinson ("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 Wheels Financial Group LLC, d/b/a 800Loanmart ("Creditor") secured by an asset described as 2005 Dodge Ram 1500 ("Vehicle") is determined to be a secured claim in the amount of $5,000, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $5,000 and is encumbered by a lien securing a claim that exceeds the value of the asset.

28. 24-20313-E-13 **KEANNA ALMEDA** **MOTION TO IMPOSE AUTOMATIC STAY**

PGM-1 **Peter Macaluso** **2-9-24 [25]**

Items 28 thru 29

Final Ruling: No appearance at the February 27, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2024. By the court's calculation, 18 days' notice was provided. 28 days' notice is typically required. As addressed below, the court has issued an order imposing the Automatic Stay on an *ex parte* interim basis. (Order; Dckt. 23.) The Debtor has complied with the service requirements set forth in the Interim Order, and service has properly been made pursuant thereto.

The Motion to Impose 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). 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 Impose the Automatic Stay is granted.

Keanna Almeda ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's fourth bankruptcy petition pending in the past year with the prior three cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 23-90437, 23-90553, and 23-90624) were dismissed on November 3, 2023, December 19, 2023, and January 16, 2024, respectively. *See* Order, Bankr. E.D. Cal. No. 23-90437, Dckt. 38, November 3, 2023; Order, Bankr. E.D. Cal. No. 23-90553, Dckt. 20, December 19, 2023; Order, Bankr. E.D. Cal. No. 23-90624, Dckt. 11, January 16, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Interim Order Imposing Stay,
Setting Hearing, and Deadlines For Filing
Supplemental Pleadings and Opposition

On February 4, 2024, the court issued an Interim Order (Docket 23) on Debtor's original Motion to Impose the Automatic Stay (Docket 8), holding:

> **IT IS ORDERED** that the Motion is granted on an interim basis, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.
>
> **IT IS FURTHER ORDERED** that the continued hearing on this Motion to determine if the stay should be put into place permanently or terminated is continued to 2:00 p.m. on February 27, 2024.
>
> **IT IS FURTHER ORDERED** that the Debtor (now that she has an attorney) shall file supplemental pleadings, supported by admissible evidence, as to why the stay should be imposed on a permanent basis on or before February 9, 2024, and any Opposition to the Motions shall be filed on or before February 23, 2024.

Debtor has filed the Supplemental Pleadings, including a Supplement to the Motion, using Docket Control Number PGM-1.

Here, Debtor states that the instant case was filed in good faith. She explains that the initial previous case (No. 23-90437) was dismissed because she was ill in the hospital and unable to prosecute her bankruptcy case. Decl., Docket 28 ¶ 1. Her second case (No. 23-90553) was dismissed because she was facing an eviction, and while trying to find a new home for herself and her children, she was again unable to prosecute the case. *Id.* at ¶ 2. Her third case (No. 23-90624) was dismissed as she again was unable to comply with the required deadlines. *Id.* at ¶ 3. Debtor further reports that she has car insurance, is now receiving State Disability Benefits, and receives cash aid and Food Stamps. *Id.*; ¶¶ 6, 4.

Additionally, Debtor has now retained experienced consumer bankruptcy counsel and will work with counsel to diligently prosecute this Bankruptcy Case, and comply with the Bankruptcy Code to prosecute a Chapter 13 Plan to reorganize her finances.

No Oppositions to the Motion have been filed.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

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

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file

or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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

A. Why was the previous plan filed?

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

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

DISCUSSION

Debtor's prior cases were dismissed because Debtor was dealing with real life issues while trying to navigate the bankruptcy process in *pro se.* Debtor was facing medical health issues as well as an impending eviction, both uprooting her living situation and making life difficult. Since then, Debtor has retained competent counsel who has complied with the court's orders in prosecuting the case. Debtor has her required schedules on file and properly filled out (Docket 17). Debtor also has a Plan on file that would allow her to restructure her debt with the only creditor in the case, American Auto Financing, Inc., so Debtor can keep her car. Docket 18 § 3.08.

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

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

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

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

The Motion to Impose the Automatic Stay filed by Keanna Almeda ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

29. 24-20313-E-13 **KEANNA ALMEDA** **Peter Macaluso** **CONTINUED MOTION TO IMPOSE AUTOMATIC STAY** **1-26-24 [8]**

Final Ruling

A new Motion to Impose Automatic Stay has been filed on February 9, 2024, at Docket Control Number PGM-1, in compliance with the court's Interim Order issued on February 4, 2024 (Docket 23).

The *Pro Se* Motion to Impose the Automatic Stay filed by the Debtor has been augmented by Supplemental Pleadings filed by Debtor's Counsel Docket Control Number PGM-1.

This *Ex Parte* Motion (without a Docket Control Number) is part of the proceedings and order issued under Docket Control Number PGM-1 (granting the Motion) and no further or separate order is issued thereon, and the hearing is removed from the Calendar.