UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 28, 2023 at 2:00 p.m.

1.	**23-20330-E-13** **MJD-1**	**JUDE DICTADO** **Matthew DeCaminada**	**MOTION TO EXTEND AUTOMATIC STAY** **2-6-23 [10]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 all creditors and parties in interest on February 6, 2023. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Jude Dictado ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 22-22950) was dismissed on December 13, 2022, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 22-22950, Dckt. 19, December 13,

2022. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor lost his job. Debtor and Debtor's Counsel decided that dismissal would be best due to Debtor's lack of funds at the time. Debtor has since started a new job and his income is sufficient to support the ongoing payments, detailed in Schedule I.

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

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

A. Why was the previous plan filed?

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Jude Dictado ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

2.	**22-23246-E-13** **DPC-1**	**TAMANY RESOVICH** **Matthew Gilbert**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-1-23 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on February 1, 2023. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent on plan payments.

B. Debtor misclassified a claim.

C. Debtor has not obtained real property insurance coverage.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $1,180.00 delinquent in plan payments, which represents one month of the $1,180.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Misclassified Claim

Trustee states that creditor Mary Drader is improperly classified. Debtor lists Mary Drader as a creditor who has claims secured by property in her Petition. (Schedule D, Dckt 1, Pg 22). Mary Drader is listed as a Class 4 creditor in Debtors Plan; however, Debtor admitted in a meeting of creditors that she has not paid the January mortgage payment. Debtor is now delinquent on her mortgage payments and therefore Mary Drader should be listed as a Class 1 Creditor. Failure to properly classify claims indicates a failure to be able to comply with the Plan under 11 U.S.C. § 1325(a)(6).

Real Property Insurance

Trustee states that Debtor does not have real property insurance coverage.

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.

3.	**18-27024-E-13 RWH-1**	**PEDRO/GAUDENCIA AMBALONG Ronald Holland**	**MOTION TO CONTINUE CASE ADMINISTRATION,SUBSTITUTE PARTY, AS TO BOTH DEBTORS**
	3 thru 4		**2-13-23 [45]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 13, 2023. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Substitute 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 Substitute is granted.

Successor in Interest Jody Ambalong ("Successor") seeks an order approving the motion to substitute Successor for the deceased Debtors, Pedro Bulahan Ambalong and Gaudencia Lomosad Ambalong ("deceased Debtors"). This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 13 on November 6, 2018. On February 7, 2019, Debtor's Chapter 13 Plan was confirmed. Dckt. 30. Deceased Debtor Pedro Bulahan Ambalong died on January 5, 2020, and deceased Debtor Gaudencia Lomosad Ambalong died on August 17, 2022. Successor asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1016,Successor requests authorization to be substituted in for the deceased Debtors and to perform the obligations and duties of the deceased parties. A Suggestion of Death was filed on February 13 and 14, 2023. Dckts. 46, 50. Successor is the sole child and heir of deceased Debtors and is the successor's heir and lawful representative. Successor states that she will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

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

Here, Jody Ambalong has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the deceased Debtors. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckts. 46, 50. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Successor, Jody Ambalong, as the sole child and heir of the deceased parties, may continue to administer the case on behalf of the deceased Debtors, Pedro Bulahan Ambalong and Gaudencia Lomosad Ambalong. The court grants the Motion to Substitute Party.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Jody Ambalong is substituted as the successor-in-interest to Pedro Bulahan Ambalong and Gaudencia Lomosad Ambalong and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

4. 18-27024-E-13 DPC-2 PEDRO/GAUDENCIA AMBALONG Ronald Holland CONTINUED MOTION TO DISMISS CASE 1-12-23 [38]

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, Office of the United States Trustee, and persons who have filed a Request for Notice on January 12, 2023. By the court's calculation, 41 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 xxxxxxxxx

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

1. The deceased debtors, Pedro B. Ambalong and Gaudencia L. Ambalong ("Deceased Debtor"), is delinquent in plan payments.

DECEASED DEBTOR'S COUNSEL'S REPLY

Deceased Debtor's Counsel filed a Reply on February 2, 2023. Dckt. 43. Deceased Debtor's Counsel states both debtors are deceased. *Id.* In addition, Counsel contends that the estate of the Deceased Debtor was entitled to a discharge prior to the completion of plan payments. *Id.* Counsel states that they will forthwith file the appropriate notices of death, motion to appoint Jodi Ambalong as the representative of the bankruptcy estate, and a Motion for Discharge. *Id.* Counsel requests that the case not be dismissed pending the motion for discharge. *Id.*

DISCUSSION

Delinquent

Debtor is $8,380.34 delinquent in plan payments, which represents multiple months of the $2,281.12 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).

Hearing on Motion to Substitute

The court notes there is a hearing on the Motion to Substitute for deceased debtor set for February 28, 2023. Motion to Substitute, Dckt. 45. The court continues the hearing on this Motion to be heard in conjunction with the Motion to Substitute.

February 28, 2023 Hearing

At the hearing, XXXXXXXXXX

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

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

5. 22-22973-E-13 DPC-3 | **PATRICIA SHERRON** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
Pro Se | **1-23-23 [27]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on January 23, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is overruled as to the homestead exemption, and is sustained as to the "Moneys Deposit."

The Chapter 13 Trustee, David P. Cusick ("Trustee") objects to Patricia Ann Sherron's ("Debtor") claimed exemptions under California law because:

1. Debtor is exempting real property under California Code of Civil Procedure § 704.30(a)(1). Trustee believes Debtor intended to write California Code of Civil Procedure § 704.730(a)(1). Upon the court's review of the California Code of Civil Procedure, § 704.30 does not exist.

2. Debtor is exempting Deposits Money for $13.00; $1.00; and $1.00. Debtor does not cite any code section or legal authority allowing exemption of these deposits.

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*.

Debtor has claimed her other exemptions pursuant to the 704.020 provisions - the normal California exemptions, electing not to use those provided in California Code of Civil Procedure § 703.140(b).

Debtor makes it clear that she is asserting the exemptions provided for under the non-bankruptcy case of the California Code of Civil Procedure arising under California Code of Civil Procedure § 704.010 et. seq. California Code of Civil Procedure § 704.720 provides for the exemption of one's homestead property and § 704.730 provides for the amount of the homestead exemption.

While the Trustee has correctly identified and brought to the court's attention the clerical error of Debtor in writing "704.30(a)(1)," it is a "mere" clerical error from which the court deems the Debtor's intention being to write "704.730(a)(1)," which provides,

> (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).

Cal Code Civ Proc § 704.730(a)(1).

In looking at Debtor's recent multiple prior case filings: 22-20882, 21-23156, 20-23362, and 19-24924, the court notes that in some of the cases Debtor made the same clerical error and others wrote the full statute as "704.730(a)(1).

The court overrules the objection to claim of the homestead exemption, determining it to be a mere clerical error. The Debtor is fortunate that the Chapter 13 Trustee and his counsel carefully review what is filed and work to ensure that there is a clear record in the Bankruptcy Case.

The court sustains the Objection as to the $13.00; $1.00; and $1.00 of "Deposits Money."

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 Objection is overruled as to the exemption claimed in the real property identified as "Real Property," which is identified on Schedules A (Dckt 13) as 5021 Tacomic Dr., Sacramento California, the court determining that there was a mere clerical error on Schedule C and that the homestead exemption as been claimed pursuant to California Code of Civil Procedure § 704.30(a)(1).

IT IS FURTHER ORDERED that the Objection is sustained as "Deposits Money" in the amounts of $13.00; $1.00; and $1.00, for which no statutory basis is provided for such exemption, and said claimed exemptions are disallowed in their entirety.

6. 22-21314-E-13 DPC-2 | **NADIA ZHIRY** / **Peter Macaluso** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-15-22 [56]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on July 15, 2022. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxxxxxx.

February 28, 2023 Hearing

At the hearing, XXXXXXXXXX

REVIEW OF OBJECTION

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

A. Infeasible Plan

B. Delinquency

C. Not Best Effort

Trustee's Status Report

On August 9, 2022, Trustee filed a Status Report (Dckt. 84) indicating:

1. Debtor remains delinquent $500.

2. Debtor appeared at the continued First Meeting of Creditors and the Meeting has been continued to October 13, 2022.

3. Trustee does not believe Debtor knows enough about their finances to accurately testify to matters pertaining to the real properties.

4. The Plan does not provide for the claim of Gerard F. Keena II, Receiver, which was filed as secured and priority.

Debtor's Reply

On August 9, 2022, Debtor filed a reply (Dckt. 86) stating:

A. Debtor's daughter, Vera Zhiry, makes the $500 Plan payment and Debtor's other daughter, Lubya Iyzoshuk, pays the mortgage payments.

B. Debtor "intends to be current" on Plan payments.

C. Lubya is current on the mortgage payments.

D. The Motion to Approve Contractor is pending.

E. Debtor's Counsel has received cashier's checks and obtained releases from Richard Sanders, the Contractor. Bank of Marin is creating a blocked account as ordered by the court.

F. Debtor has worked with the City, the general contractor, the Receiver's project manager and managing director, and discussed the scope of work necessary to abate the properties.

AUGUST 9, 2022 UPDATES
AND SUPPLEMENTAL PLEADINGS

On August 8, 2022, the Chapter 13 Trustee filed an updated Status Report. Dckt. 84. The Trustee reports that the Debtor has made one $500.00 plan payment and is delinquent $500.00. The court notes that the Plan as proposed does not adequately address the Debtor's actual "plan" to fund, promptly make repairs to, and resolve all outstanding issues with the State Court Receiver. An amended plan will be necessary.

The Trustee also states that the First Meeting of Creditors could not be concluded because Debtor lacked knowledge of her finances as they relate to the Claire Avenue Properties. The First Meeting has been continued for Debtor to assemble the information for financing of the repairs, payment of taxes and insurance, and prosecution of a plan in this case.

On August 9, 2022, the Debtor filed her Reply to the Trustee's Objection to Confirmation, stating the following points:

A. It is the Debtor's daughter, Vera Zhiry, who is to make the $500.00 a month plan payment and Lubya Iyzoshuk who is to make the monthly house payments.

B. It is Debtor's intention to be current on the Plan payments as of August 15, 2022.

C. Debtor's daughter, Lubya Iyzoshuk, is the person who is the primary obligor on the two notes secured by the Claire Avenue Properties.

D. A Motion has been filed to employ Richard Sanders, as the contractor, to do the necessary repairs. The hearing on the Motion is set for August 18, 2022, to be heard in conjunction with the hearing of the Receiver's Motion to allow him to take control of the Claire Avenue Properties.

E. Debtor has obtained the cashier's checks for funds to be used for funding of the remedial work on the property and they are being deposited in a blocked account at the Bank of Marin.

F. The Receiver, Receiver's Counsel, Receiver's Project Manager, Debtor's Contractor, Debtor's counsel, and the City's Building Inspector met on August 1, 2022, to discuss the scope of work to remediate the problems on the Claire Avenue Properties.

G. The Reply includes a more detailed scope of work for remediation of the problems on the Properties.

Dckt. 86.

DISCUSSION

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The plan calls for the mortgages due to JP Morgan Chase Bank to be paid as Class 4 by "Debtor's Daughter." Dckt. 29 at 4. Debtor does not name the daughter, nor provide any proof these payments have been paid by the daughter, and will be paid by the daughter.

According to the Trustee's best calculation with the available information it will take over 134 months to complete the Plan.

Trustee further alleges that Debtor's budget is unrealistic. Trustee cites Debtor's Schedule I. Upon the court's review, Debtor lists their husband as a dependent. Additionally, Debtor lists the following expenses:

Electricity, heat, natural gas	$200.57
Water, sewer, garbage collection	$140.00
Telephone, cell phone, Internet, satellite, and cable services	$50.00
Food and housekeeping supplies	$400.00
Clothing, laundry, and dry cleaning	$10.00
Personal care products and services	$20.00
Medical and dental expenses	$25.00
Transportation. Include gas, maintenance, bus or train	$100.00
Entertainment, clubs, recreation, newspapers, magazines, and books	$10.00
Vehicle insurance	$50.00

The court agrees with Trustee. The above budget appears particularly low for two individuals.

Delinquency

Debtor is $500.00 delinquent in plan payments, which represents one month of the $500.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Not Best Effort

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

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

The Plan, (DN 29) proposes payments of $500.00 per month for 36 months, which includes an "Additional Provision" to §7.01 of either the "ADULT CHILDREN" purchasing the "SUBJECT PROPERTY" or Debtor selling the "SUBJECT PROPERTY" within 18 months. The plan is dated June 8, 2022. The "ADULT CHILDREN" are not identified. The "SUBJECT PROPERTY" is not identified where Debtor shows on Schedule A/B they have ownership of two different real properties: 1049 Claire Ave and 1039 Claire Ave. Dckt. 28 at 3-4. Debtor does not identify what sale price is expected, so Trustee cannot determine if sufficient proceeds would be generated from the plan to pay claims. Debtor has no requirement in the plan to attempt to list and sell the property as early as possible, so that Debtor would not default under this provision if they did nothing for 17 months, which is unreasonable. Thus, the court may not approve the Plan.

Trustee's Status Report

Trustee filed a Status Report on October 18, 2022. Dckt. 123. Trustee states Debtor is current on Plan payments. However, the Motion by the State Court Receiver to Excuse Turnover, KSR-1, was continued to January 10, 2023 and the Meeting of Creditors was continued to February 2, 2023. Therefore, Trustee requests the court continue the hearing to after February 2, 2023.

November 11, 2022

At the hearing, counsel for the Receiver reported that the First Meeting of Creditors has not yet been completed, and the deadline for filing objections is computed from that date being completed. Counsels for the Debtor, Receiver, and the Chapter 13 Trustee agreed to a continuance until after the continued 341 Meeting is scheduled to be completed and the extended deadline for filing objections to confirmation has expired.

Debtor also brought to the court's attention the Ex Parte Motion filed for disbursement of monies from the blocked account, and amended the Motion to include the Robla Elementary School District, for the payment of School District fees relating to the permits being obtained to do the corrective work on the Real Property of the Bankruptcy Estate. The amounts to be disbursed are $2,404.52 for Twin Rivers School District and $2,813.80 for the Robla Elementary School District. Counsel for the Trustee and Counsel for the Receiver concurred in the request and the Motion was granted by the court.

Debtor's Status Report

Debtor filed a Status Report on January 10, 2023. Dckt. 137. Debtor informed the court that they have continued working diligently with the City. Additionally, Debtor informed the court that the City waived the fire suppression installation, many fees have been paid, and all permit requests were submitted to the City.

Debtor's Supplemental Status Report

Debtor filed a Supplemental Status Report on February 7, 2023. Dckt. 143. Debtor informs the court are consistent progress and that they are waiting for the City for the lasts permits and inspections.

Trustee's Status Report

Trustee filed a Status Report on February 9, 2023. Dckt. 146. Trustee states the First Meeting of Creditors has been continued to 1:00 p.m. to April 6, 2023. Trustee requests this hearing be continued to after that date.

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 Confirmation filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, the Debtor working to finalize the construction contract for the remedial work to the Property and deposit of the funding for that contract into the blocked account, 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 xxxxxxx.

7. 22-23215-E-13 DPC-1 | **TOM/TONYA BRADLEY** **Patricia Wilson** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-1-23 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice on February 1, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. the debtors, Tom Craig Bradley and Tonya Gail Bradley ("Debtor"), may not have filed tax returns for 2018, 2019, 2020, and 2021.

B. Debtor has failed to provide tax returns.

C. Debtor relies on the valuation of collateral.

D. Debtor's Plan term will likely exceed 60 months.

E. Debtor's attorney has failed to file The Statement of Rights and Responsibilities identifying what fees have been charged and what fees were paid prior to the filing in this case.

DISCUSSION

Trustee's objections are well-taken

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2019 tax years may not have been filed. However, the Internal Revenue Service ("IRS") filed a Proof of Claim indicating Debtor has not filed returns for 2018, 2019, 2020, and 2021. Proof of Claim, 5-1. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Tax Returns

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

Debtor's Reliance on Motion to Value Secured Claim

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

Plan Term is More Than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 75 months due to not listing the priority Proof of Claim filed by the Internal Revenue Service in the amount of $31,816.56. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to File Documents

Debtor has failed to file the Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

According to Local Bankruptcy Rule 2016-1(a), Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, is required if Debtor chooses to comply with the "No-Look" fees of Local Bankruptcy Rule 2016-1(c). According to Debtor's Plan, Debtor's Attorney is opting into the No-Look fees. Proposed Plan § 3.05. Therefore, the filing of Form EDC 3-096 is required.

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.

8. 21-20225-E-13 MOH-5 — DONALD JOHNSON — Michael Hays — MOTION TO SELL — 2-3-23 [170]

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, and Office of the United States Trustee on February 3, 2023. By the court's calculation, 25 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property 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 Sell Property is ~~granted~~.

The Bankruptcy Code permits Donald Blair Johnson, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the real property commonly known as 35501 Brinville Road, Acton, California ("Property").

The proposed purchaser of the Property is Maria Delgado, and the terms of the sale are:

A. Purchase Price: $355,000.00

B. Deposit: $5,000.00

C. Down Payment after Deposit: $66,000.00

D. The sale will have a 45 day escrow and be subject to court approval.

E. Estimated Broker's Fee: 5%

E. Estimated Proceeds to the Estate: $330,000.00

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 14, 2023. Dckt. 178. Trustee opposes this sale on the basis that:

1. The terms of the sale are not clear.

    a. Debtor has failed to provide documents supporting this sale and direction of how the proceeds from escrow will be turned over to the Trustee and disbursed to the creditors.

2. Debtor failed to file documents.

    a. Debtor failed to file a Declaration in Support of the Motion

    b. Debtor failed to file an Estimated Closing Statement, which specially identifies the sale proceeds, costs of sale, and net proceeds.

3. The Chapter 7 administrative fees are not clear.

    a. The Chapter 7 Trustee has not filed a Proof of Claim, and it is not clear to the Trustee the amount that is to be paid as administrative expenses per the court's prior order (Dckt. 134).

4. The Plan is not confirmed.

    a. The Court sustained the Trustee's objection to confirmation of the Debtor's Plan on January 10, 2023. Dckt. 168. No plan is currently pending.

DEBTOR'S RESPONSE

Debtor filed a Response on February 21, 2023. Dckt. 181. Debtor states:

1. In response to Trustee's claims, Debtor has provided a complete copy of the Purchase Agreement and Client Letter in Dockets 173-175.

2. Debtor does not find they need to file a separate declaration since they are the signatory on the Purchase Agreement.

3. Debtor is requesting an Estimated Closing Statement that they hope to have a copy of prior to the hearing.

DISCUSSION

Declaration Not Provided

Debtor failed to file a Declaration in support of their Motion. Debtor states, "Debtor is a signatory on 1/27/23 to EXHIBIT 1 so it should not be necessary for a separate declaration by him to be filed . . . ."

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding. Although Debtor has submitted exhibits, these exhibits are not ones that are "self-authenticating" under the Federal Rules of Evidence. Fed. R. Evid. 902. As such, Debtor must authenticate the exhibit, with testimony of a witness with personal knowledge. Fed. R. Evid. 901.

Vague Terms of Sale

The Motion does not state how the proceeds will be distributed. Additionally, Debtor has failed to provide an Estimated Closing Statement. The Estimated Closing Statement is necessary to determine the sale proceeds, costs of sale, and net proceeds.

Upon review of Debtor's Schedule C, Debtor claims a $600,000.00 exemption in the Property, pursuant to California Code of Civil Procedure § 704.730. However, prior to the conversion of this case to a Chapter 13, the court ruled Debtor's exemption was disallowed in its entirety. Order, Dckt. 64. Additionally, Debtor indicates no opposition to the entire net proceeds to be paid to the Trustee to pay approved trustee fees, attorney's fees, and claims. Response, Dckt. 181.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Additional Terms to be Included in Order Granting Motion

At the hearing, the Debtor proposed the following provisions to be included in the order authorizing the sale:

A.

B.

C.

At the hearing, counsel for the Trustee **xxxxxxx**

The Motion, including the above provisions, is **xxxxxxx**

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

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

The Motion to Sell Property filed by Donald Blair Johnson, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Donald Blair Johnson, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Maria Delgado or nominee ("Buyer"), the Property commonly known as 35501 Brinville Road, Acton, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $355,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 174, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5.00 percent of the actual purchase price upon consummation of the sale. The 5.00 percent commission shall be paid to the Chapter 13 Debtor's agent, the Brad Korb Real Estate Group, and the Purchaser's agent, RE/MAX One.

E. [Additional Provisions **xxxxxxx**]

F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees

and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

9.	**22-23225-E-13** **DPC-1**	**FRANKIE HAYDUK** **Patricia Wilson**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-1-23 [22]**

9 thru 10

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on February 1, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor's plan fails the Chapter 7 liquidation analysis.

DEBTOR'S OPPOSITION

The debtor, Frankie Blu Hayduk ("Debtor"), filed on Opposition on February 14, 2023. Dckt. 26. Debtor states they are in the process of receiving a $26,250.00 claim from the Mill Fire, and the net from this payment will enable Debtor to pay unsecured creditors at least the amount of the liquidation value. *Id.*

Debtor also expects to use the proceeds to pay the $8,614.45 in arrearages claimed by her mortgage company. *Id.*

DISCUSSION

Trustee's objections are well-taken.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that the Debtor's non-exempt equity totals $18,985.00 and the Debtor is proposing a 0% dividend to unsecured creditors. The plan does not pay unsecured creditors what they would receive in the event of a Chapter 7. Debtor argues that this analysis will change when they receive a $26,250.00 Mill Fire claim payment, but this payment remains anticipatory.

If Debtor has knowledge they will receive disbursements to pay unsecured claims more than 0%, their plan should be amended to provide a more accurate representation of what unsecured claims will be paid.

Amended Plan Terms

At the hearing, Debtor proposed the following amendments to the Plan, which shall be stated in the order confirming the Plan:

A.

B.

C.

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

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

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

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

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

10. 22-23225-E-13 KMM-1 | **FRANKIE HAYDUK** **Patricia Wilson** | **OBJECTION TO CONFIRMATION OF PLAN BY SUMMIT FUNDING, INC. 1-26-23 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 26, 2023. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan fails to fully cure the default on Creditor's claim.

B. The Plan fails to provide how Debtor will be able to make payments and comply with the Plan.

DEBTOR'S OPPOSITION

The debtor, Frankie Blu Hayduk ("Debtor"), filed an Opposition on February 14, 2023. Dckt. 29. Debtor states they are in the process of receiving a $26,250.00 claim from the Mill Fire, and the net from this payment will enable Debtor to pay the $8,614.45 in arrearages claimed by Creditor. *Id.*

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $43,614.00 in pre-petition arrearages. The Plan only provides for $35,000.00 of the arrearages, and does not propose to cure the remaining $8,614.45. Even if Debtor anticipates a payment that will allow them to cure all arrearages, prior to confirmation, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Infeasible Plan

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). According to the plan, Debtor will make monthly payments of $1,945.00 for 60 months to the Trustee. According to the Debtor's Schedules, Debtor has a monthly net income of $1,945.00. This amount is insufficient to fund the plan when the further $8,614.45 in arrears is provided for. Thus, the Plan may not be confirmed.

Amended Plan Terms

At the hearing, Debtor proposed the following amendments to the Plan, which shall be stated in the order confirming the Plan:

A.

B.

C.

~~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 Summit Funding, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

11. 22-23160-E-13 DPC-1 | **SHASTA KING** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-1-23 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor on February 1, 2023. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the meeting of creditors.

B. Debtor is delinquent on plan payments.

C. Debtor failed to file required documents.

D. The length of the Plan filed is insufficient.

E. Debtor's plan is not feasible.

F. Debtor fails the liquidation analysis.

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).

Delinquency

Debtor is $400.00 delinquent in plan payments, which represents one month of the $400.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Tax Returns

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

Failure to Provide Pay Advices

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). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Insufficient Length of Plan

Debtor has not proposed a sufficient length of time in the Plan. The debtor proposes a 24 month plan; 11 U.S.C. § 1325(a)(4) allows for a Plan term less than 3 years only when the plan provides for payment in full of all allowed unsecured creditors. Here, debtor is proposing to pay 0% to her unsecured creditors. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

Additionally, the Trustee alleges the debtor has not proposed a sufficient amount in payments to complete the plan in the proposed 24 months. The Plan would take over 60 months to complete. This is cause to deny confirmation because the Plan would exceed the maximum amount of time allowed under 11 U.S.C. § 1325(a)(6).

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals $806.19 and the Debtor is proposing a 0% dividend to unsecured creditors. Trustee states that the Plan doesn't pay unsecured creditors what they would receive in a Chapter 7 liquidation.

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

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

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

12. 22-23289-E-13 DPC-1 | **PAULA KUHLMEYER** Marc Caraska | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 2-2-23 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor's Attorney on February 2, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. the debtor, Paula Zoe Kuhlmeyer ("Debtor"), has not provided her Social Security Number to the Chapter 13 Trustee.

B. Debtor is delinquent in Plan payments.

C. Debtor's Plan is inaccurate.

D. Debtor's Plan regarding attorney fees does not mirror the Rights and Responsibilities document filed.

E. Debtor has failed to provide accurate tax returns.

DISCUSSION

Trustee's objections are well-taken.

No Social Security Number Provided

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is lacking in compliance with the Bankruptcy Code. Debtor has not provided Debtor's Social Security Number. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

Delinquency

Debtor is $133.95 delinquent in plan payments, which represents one month of the $133.95 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Inaccurate Plan

Neither Debtor nor Debtor's attorney have signed the plan, electronically or handwritten. The Local Rules regarding General Requirements of Form indicate that all pleadings and non-evidentiary documents shall be signed by the individual attorney for the party they are representing, or by the party involved. LBR 9004-1 (c).

Attorney Fees

Debtor has indicated that Debtor's attorney has received $0.00 prior to filing and that $0.00 will be paid to Debtor's attorney through the Plan. Proposed Plan, Dckt. 3. However, Debtor's Rights and Responsibilities Form indicates that Debtor's attorney agreed to fees in the amount of $1,300.00 and $0.00 paid prior to filing under LBR 2016-1(c). Form EDC 3-096, Dckt. 6. Debtor's Plan regarding attorney's fees do not mirror what is seen in the filed Rights and Responsibilities. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Inaccurate Chapter 13 Schedules

Debtor admitted at the First Meeting of Creditors they have a "Venmo account." Debtor has not listed this account in their Schedules A/B.

Additionally, Debtor admitted at the Meeting there is a deficiency balance of $14,343.82 for a car loan not disclosed in their schedules. Debtor has not amended their schedules to identify the creditor and claim.

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

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.

13. 11-21824-E-13 HRH-2 | **DANNY/DEBRA HORSFALL** Peter Macaluso | **CONTINUED MOTION TO VACATE** 1-4-23 [84]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 4, 2023 By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 Vacate is granted, and the hearing on the Motion to Value (DCN: PGM-1) is reset to the calendar to hearing at 2:00 p.m. on xxxxxxx, 2023.

Debtor shall file and serve an amended motion and supporting pleadings on or before xxxxxxx , 2023, if Debtor desires to prosecute the Motion to Value.

If the amended pleadings are filed, Opposition, if any, shall be filed and served on or before xxxxxxx , 2023, and Reply filed and served on or before xxxxxxx , 2023.

Comerica Bank ("Movant") moves for the court for relief from the court's order on November 2, 2022 ("Order"), Dckt. 79, granting the Motion to Value the Secured Claim of Movant (the Motion having been imprecisely titled as a "Motion to Value Collateral") filed by Danny Richard Horsfall and Debra Sue Horsfall ("Debtor"). Movant requests the Order be vacated, per Federal Rule of Civil Procedure 60(b), on two grounds:

(1) that service to Movant was improper and insufficient and

(2) the Order is legally erroneous.

Movant states the following grounds with particularity:

1. On September 13, 2022, Debtor served Movant with the Motion and supporting documents by certified mail to "Comerica Bank/An Officer and only an Officer." Motion, Dckt. 84 at 2:12-14.

2. Prior to December 1, 2022, many courts held service upon unnamed corporate officers does not comply with Federal Rules of Bankruptcy Procedure 7004(h). Motion, Dckt. 84 at 2:8-11.

3. Effective December 1, 2022, service is required to identify a person's "position of title." *See* Federal Rules of Bankruptcy Procedure 7004(I). Thus, even if the court applied Rule 7004(I) retroactively, Debtor did not identify a position of title in the service, rather, they just directed service to "An Officer and only an Officer."

4. Pursuant to Federal Rules of Civil Procedure 60(b)(1), Movant's failure to oppose was the result of mistake, inadvertence, or excusable neglect due to improper notice of the Motion. Motion, Dckt. 84 at 2:19-22.

5. The Order is legally erroneous as the Property revested in Debtor when they received their discharge. Because the Property was scheduled and not administered, the Property would have been abandoned to Debtor when the court closed the case. 11 U.S.C. § 506(a) does not permit valuation of a secured claim to which the estate does not have an interest. Motion, Dckt. 84 at 3.

Declaration in Support of Motion

Movant provides testimony in support of the Motion through the Declaration of Mario Martinez, Jr. (Declarant Martinez"). Dckt. 86. Declarant Martinez does not provide testimony as an "expert," but as a witness who has personal knowledge of the facts to which he testifies. Federal Rule of Evidence 602 is very clear that such a witness have personal knowledge of the matter of the testimony, stating:

> Rule 602. Need for Personal Knowledge
>
> 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. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Weinstein's Federal Evidence treatise discussion the application of this Rule and what constitutes "person knowledge." This discussion includes the following in 3 Weinstein's Federal Evidence § 602.02, which states:

> § 602.02 Purpose and Applicability of Rule
>
> [1] Personal Knowledge Based on Sensory Perception
>
> A witness may testify only about matters on which he or she has first-hand knowledge.[1] Because most knowledge is inferential, personal knowledge includes

opinions and inferences grounded in observations or other first-hand experiences.[2] The witness's testimony must be based on events perceived by the witness through one of the five senses.[3]

Rule 602 permits evidence of the requisite personal knowledge to be provided either through the witness's own testimony or through extrinsic testimony. The Rule authorizes the judge to exercise some, although minimal, control over the jury by empowering the judge to reject inherently incredible testimonial evidence, something that rarely occurs (see § 602.03).

. . .

[3] Coordination With Hearsay Rule

Rule 602 is subject to the hearsay rule. A witness may testify as to what he or she heard unless what was heard is excluded under the hearsay rules of Article VIII.[7] The witness's testimony may even contain hearsay within hearsay (see Ch. 805, Hearsay Within Hearsay). There is no inconsistency between Rule 602 and the hearsay rules since the "matter" **the witness is testifying to is what he or she heard** rather than the event described by the hearsay declarant. It is the declarant who must generally have personal knowledge of the underlying event and not the witness, who usually has personal knowledge only of the declarant's statements.[8] However, the hearsay rule does not require proof that the declarant had personal knowledge of the contents of his or her statement in the case of certain statements that are admissible under exceptions to the rule, such as party admissions and coconspirator statements.[9]

FN. 2 Personal knowledge may include opinions. *United States v. Whittemore*, 776 F.3d 1074, 1082 (9th Cir. 2015), citing *United States v. Joy*, 192 F.3d 761, 767 (7th Cir. 1999).

FN.3 Witness's sensory perception. *See United States v. Mendiola*, 707 F.3d 735, 741 (7th Cir. 2013) ("the knowledge required by Rule 602 is not absolute or unlimited knowledge but simply that awareness of objects or events that begins with sensory perception of them, a comprehension of them, and an ability to testify at trial about them.").

3 Weinstein's Federal Evidence § 602.02

The Ninth Circuit Court of Appeals addressed this requirement of personal knowledge of the underlying facts/observations to which the testimony relates in *United States v. Lopez*, 762 F.3d 852, 863-864 (9th Cir. 2014), stating:

> Under Rule 602, a "witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Personal knowledge means knowledge produced by the direct involvement of the senses. See 3 Mueller & Kirkpatrick, Federal Evidence § 6.6 (3d ed. 2012) (collecting cases). . .

> Agent Harris's lay opinion testimony is also inadmissible under Federal Rule of Evidence 701. A lay person may offer testimony in the form of an opinion if it is "(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Rule 701(a) contains a personal knowledge requirement. The advisory committee notes to Rule 701 clarify that 701(a) is "the familiar requirement of first-hand knowledge or observation," Fed. R. Evid. 701 advisory committee notes (1972), and we have held that the personal knowledge requirement under Rule 602 is the same as that under Rule 701(a), *see United States v. Simas*, 937 F.2d 459, 464-65 (9th Cir. 1991).

United States v. Lopez, 762 F.3d 863-864,

Declarant Martinez's testimony under penalty of perjury in his Declaration appear to be of two kinds. Some evidence indicating that he has personal knowleged and other for which he clearly states he is "informed and believes."

For his personal knowledge testimony, he provides the following:

> 1. He is employed by Movant as a Vice President in the Special Assets Group, and Movant has "policies and procedures in place to ensure that legal correspondence is routed to appropriate personnel, which are generally reliable." Dec., ¶¶ 1, 2; Dckt. 86.

The balance of the Declaration is based on Declarant Martinez stating he is "informed and believes." This testimony consists of:

> 1. "I am informed and believe, after a resonable inquiry, that the Bank has no record of receiving a service copy of the Motion to Value Collateral of the Bank [filed by Debtor] . . . . *Id*., ¶ 3.

Declarant Martinez does not provide any testimony of what he did for an inquiry, but just provides his legal conclusion that his inquiry was reasonable. He does not testify as to whom he communicated with, the files he checked, and the reasonable investigation that a Vice President of the Special Assets Group would do when presented with a final order of a federal court.

> 1. "I am informed and Believe that David Smith (who is employed as a Personal Banker in the bank's Walnut Creek, California, branch) received written correspondence from Peter Macaluso, who I am informed and believe is the attorney for the debtors in this bankruptcy case." *Id*.

Declarant Martinez does not provide any testimony as to his inquiry to be so informed and believe or that he talked with David Smith and heard David Smith say he had received the letter. He offers no testimony why David Smith is not testifying as to the fact that he received the letter. Declarant Martinez does not explain what files he reviewed, letter document logs, or other systems maintained by Movant to track such correspondence.

1. Declarant Martinez testifies that a copy of the letter is filed as Exhibit 1 in support to the Motion, and that Exhibit 1 is a true and correct copy of such letter. *Id.*

Declarant Martinez provides no testimony as to what his inquiry consisted of or how he can testify that it is a true and correct copy. No testimony is provided as to the source of this Exhibit that Declarant Martinez now seeks to authenticate.

1. Declarant Martinez contines, stating that "I am informed and believe, after a reasonable inquiry, that Mr. Smint's receipt of this correspondence was the first time any Bank officer or employee had any knowledge of the contents of the Motion and the relief the Motion sought." *Id*.

Once again, Declarant Martinez provides his legal conclusion that there was a reasonable inquiry, and that he can testify as to the fact that no one at the Bank had received the Motion. Declarant Martinez provides no testify of his inquiry, the files reviewed, the procedures of the Movant, or any other personally know facts.

1. Declarant Martinez closes, stating his opinion, as a Vice President of the Special Assets Group, that if a bank officer or employ had seen the Motion filed by the Debtor, the Movant would have opposed such Motion.

This opinion could be proper even for a lay person with what personal knowledge he has to provide such an opinion. However, Declarant Martinez provides no testimony how he could reach such a conclusion, his personal knowledge of how legal service is handled at Movant, or what the files and records of Movant disclose.

A declaration is often the most pure, perfect, and best testimony a person can provide. It is crafted by the attorney, reviewed by the declaration, modified to be accurate as to the declarant's knowledge, and completely state all of the required testimony.

Here, as to the substance of the testimony, Declarant Martinez dictates to the court his legal conclusion that there was reasonable inquiry and he has personal knowledge to testify, and then states his factual conclusions to the court. This leaves little for the court to do with respect to such testimony.

The court finds this testimony suspect, and possibly drafted to provide Declarant Martinez a defense to having committed perjury if contrary evidence were presented. Declarant Martinez's testimony is not credible, other than he is a Vice Present in the Movant's Special Asset Group.

DEBTOR'S OPPOSITION

Debtor filed an opposition on January 23, 2023. Dckt. 94. Debtor states:

1. The court did not lack jurisdiction over Movant. Debtor claims Movant was served at their main office address: 1717 Main Street, Dallas, Texas. The service was signed by Movant on September 19, 2022 at 12:30 p.m.. Opposition, Dckt. 94 at 5:18-23.

The court notes, the tracking information provided by Debtor as evidence states the "item was delivered to an individual." Exhibit 2, Dckt. 95. The information does not indicate the item was signed. Additionally, reviewing Rule 7004(h), the only way to avoid serving an officer of a federally insured financial institution is when it has appeared through an attorney in the contested matter or adversary proceeding. Federal Rules of Bankruptcy Procedure 7004(h)(2). Debtor's Exhibit, indicating an item was delivered to an individual, does not make the service valid.

2. The Order is not legally erroneous. Debtor claims, "the reopening of the case thus putting the motion in time of the pending chapter 13, not after it is closed, and thus before 'vesting'." Opposition, Dckt. 94 at 6:12-14.

Although an unclear statement, the court believes Debtor is stating that reopening unclosed the case file and therefore any property that had vested in the Debtor was revested as Property of the Bankruptcy Estate. No legal authorities are linked to this proposition.

3. Even if the court were to grant relief, Movant's opposition against the Motion to Value would not be successful given the previous factual determinations with regards to two senior deeds and their motions to value. Opposition, Dckt. 94 at 8:22-24.

MOVANT'S REPLY

Movant filed a Reply on January 31, 2023. Dckt. 98. Movant states:

1. Whether Movant had notice of Debtor's bankruptcy case is irrelevant. Debtor was required to serve under the rules set forth in Federal Rules of Bankruptcy Procedure 7004(h). Reply, Dckt. 98 at 1:25-28.

The court agrees that the Federal Rules of Bankruptcy Procedure, as well as the Federal Rules of Evidence, must be followed. Regardless of whether Movant had notice of Debtor's bankruptcy case, 11 U.S.C. § 506(a) and Federal Rules of Bankruptcy Procedure 3012, governing motions to determine the secured status of claims, require compliance accordance with Federal Rules of Bankruptcy Procedure 7004.

2. Failure to serve in compliance of Rule 7004(h) results in a lack of personal jurisdiction in connection with the underlying Motion to Value and relief should be granted pursuant to Federal Rules of Civil Procedure 60(b)(4). Reply, Dckt. 98 at 1:27-28.

3. Additionally, the court should vacate under Federal Rules of Civil Procedure 60(b)(1) because the Order contains a legal error in that the Property was not Property of the estate as the Property was revested with Debtor. *Id.* at 3:5-9.

4. Movant is requesting relief within a reasonable time, only two months after receiving notice of the Motion on November 9, 2022, as required by Federal Rules of Civil Procedure 60(c). *Id.* at 4-5.

5. Vacating the Order would not be fruitless because of the legal error under Federal Rules of Civil Procedure 60(b)(1). *Id.* at 5.

APPLICABLE LAW

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

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

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

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

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

DISCUSSION

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

The court reviews the evidence of the service provided by Debtor on Movant for the Motion to Value. The Certificate of Service for the Motion to Value (Dckt. 70) states that it was served by Certified Mail on:

> Comerica Bank
> An Officer and only an Officer http://research.fdic.gov/
> 1717 Main Street Null
> Dallas, TX 75201
> VIA CERTIFIED MAIL #7019-2970-0000-3407-6294

As Exhibit 2 to the Opposition to the Motion to Vacate (Dckt. 95), Debtor states that a copy of the U.S. Postal Service Certified Mail Receipt. However, it is not a "receipt," but a screen shot of the United States Postal Service Tracking webpage. It state that it was left with an unidentified individual at a non-specified location in Dallas Texas on September 19, 2022. It may be that this ties to other webpages to provide the complete information, but the "USPS Tracking" screen shot does not show on its face to whom and where the documents were delivered.

While Debtor states that it was set by certified mail, the supporting documents are not clear.

Relief Requested for Lack of Personal Jurisdiction
Federal Rules of Civil Procedure 60(b)(4)

Federal Rules of Civil Procedure 60(b)(4) applies "only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). A judgment is void if the judgment was entered in violation of due process, such as a failure to adequately serve a defendant, resulting in a lack of personal jurisdiction. 12 Moore's Federal Practice - Civil § 60.44 (2022); *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999).

Although Rule 60(b) motions are "theoretically" discretionary, the language of Rule 60(b) stating a court "may" relieve a party from a judgment, if a judgment is void, the only way a court may exercise its discretion is by granting relief. 12 Moore's Federal Practice - Civil § 60.44 (2022). The Ninth Circuit has applied this principle to judgments based on a lack of personal jurisdiction, stating if a judgment is void due to lack of personal jurisdiction, a court has a nondiscretionary duty to grant relief from the judgment. *Thos. P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247, 1256 (9th Cir. 1980).

Additionally, unlike other Rule 60(b) motions, the Supreme Court has ruled that a request for relief from a judgment on the grounds that a judgment is void does not require a showing of a meritorious defense as a precondition to relief. The Supreme Court reasons that the Due Process Clause requires "wiping the slate clean," to restore a petitioner to the position they would have been had due process been accorded to them in the first place. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 87 (1988) (citing

Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191 (1965)). "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). Thus, a violation of due process resulting in a void judgment must result in relief from that judgment or order.

Movant's Due Process Requirements Under Federal Rules of Bankruptcy Procedure 7004

Service under Federal Rules of Bankruptcy Procedure 7004(h) requires (emphasis added):

> **Service on an insured depository institution** (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding **shall be made by certified mail** addressed to an officer of the institution unless—
>
> > (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
> >
> > (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
> >
> > (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Rule 7004 was amended in December of 2022. The 2022 amendments added subsection (i) which clarifies the service requirement under Rule 7004(b)(3) and (h). Rule 7004(i) states a "defendant's officer or agent need not be correctly named in the address – or even be named – if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title."

The Advisory Committee Notes on the 2022 Amendment states the purpose of Rule 7004(I) is to reject the cases interpreting 7004(b)(3) and (h) as requiring service on a named officer or agent, rather than using their titles. Federal Rules of Bankruptcy Procedure 7004(I) advisory committee's note to 2022 amendment. The notes give examples of titles that would constitute proper service, including (emphasis added): "Chief Executive Officer," "President," "Officer for Receiving Service of Process," "Managing Agent," "General Agent," "Officer," or "**Agent for Receiving Service of Process**." *Id.*

Effective Date and Application of 2022 Amendments

Pursuant to 28 U.S. Code § 2075, the 2022 Amendments took effect no earlier than December 1, unless otherwise provided by law. Chief Justice John Roberts' Order transmitting the amendments to Congress states (emphasis added):

> The **foregoing amendments** to the Federal Rules of Bankruptcy Procedure **shall take effect on December 1, 2022, and shall govern** in all proceedings in bankruptcy cases thereafter commenced and, **insofar as just and practicable, all proceedings then pending**.

AMEND. FED. RULES BANKR. PROC., H.R. DOC. 117-108, at 2 (2022).

The underlying bankruptcy case was pending on the effective date of the amended rule. Additionally, the contested date of service occurred prior to the effective date. Therefore, the amendment governs whether service was proper "insofar as just and practicable." *See Arrow Elecs., Inc. v. Justus* (*In re Kaypro*), 218 F.3d 1070, 1077 (9th Cir. 2000).

Movant argues Federal Rules of Bankruptcy Procedure 7004(I) should not retroactively apply to the case at hand. Movant states that prior to December 1, 2022, many courts held service upon unnamed corporate officers does not comply with Federal Rules of Bankruptcy Procedure 7004(h). Motion, Dckt. 84 at 2:8-11. Movant states applying the just and practicable standard, Rule 7004(I) should not be applied. Movant does not cite controlling authority, nor whether this District has required named corporate officers in the past. Instead, Movant cites a Central District of California bankruptcy case. *In re Forester*, No. 6:10-bk-16163-WJ, 2021 Bankr. LEXIS 322 (Bankr. C.D. Cal. Feb. 10, 2021).

The court disagrees, and finds the Amendment is not "merely" being retroactively applied, but governs and in effect is merely stating more clearly the Rule as it existed at the time of service for this Motion. Additionally, as Chief Justice Roberts ordered, the amendment shall govern pre-enactment proceedings insofar as just and practicable. It is "just and practical" that it governs in this Contested Matter.

The Ninth Circuit Bankruptcy Appellate Panel had recognized a split in the interpretation of Rule 7004's naming requirements. *Beneficial Cal., Inc. v. Villar* (*In re Villar*), 317 B.R. 88, 93 (B.A.P. 9th Cir. 2004). When interpreting Federal Rules of Bankruptcy Procedure 7004, the Panel found that although there is a split between courts, if a Movant does not specify a named individual or an office title notice is clearly insufficient under the Rule's plain words. *Id.*

The 2022 "cleanup" by the Supreme Court is consistent with this holding that identifying that it is sent to an Officer," even though the officer is not specifically named.

Movant cites no controlling authority that existed at the time service was effectuated which would require Debtor to personally name an agent or officer. Therefore, the court does not find the Amendment to change any substantive rights or prejudice either party. Rather, it resolves uncertainty among courts who have disagreed on statutory interpretation of subsection (h) and whether naming an agent or officer is required.

The court finds it just and practicable for subsection (I) to govern the Motion to Value at issue.

Movant argues even if subsection (I) governs, they were still not properly served because Debtor did not identify an officer by position of title. Subsection (I), however, does not require such title. The Advisory Committee Notes clearly state that serving an "Agent for Receiving Service of Process" (or other similar titles) is sufficient. Federal Rules of Bankruptcy Procedure 7004(I) advisory committee's note to 2022 amendment.

Here, Debtor served (1) "Agent For Service of Process For Comerica Corporate Creations network, Inc. Officer, managing or general agent, or person authorized to receive service of process" and (2) "An Officer and only an Officer" by First Class Mail. Certificate of Service for Motion to Value, Dckt. 70. These titles satisfy the requirements of 7004(I).

In weighing the evidence presented, the court concludes that service of the Motion to Value the Secured Claim was served by Certified Mail on Movant, with it specifically addressed to "An Officer." Adding "For Service of Process" would be even clearer, but service was to "An Officer."

Movant's evidence is woefully lacking, both in substance and credibility. Movant provides his opinion that if the Movant had known, then Movant would have opposed the Motion to Value. This testimony provides for basis for having that conclusion, what the Movant's criteria are for opposing such motions, or whether Movant had any value in its collateral.

Movant's Motion to Vacate under Federal Rules of Civil Procedure 60(b)(4) is denied.

Relief Requested for Legal Error
Federal Rules of Civil Procedure 60(b)(1)

Federal Rules of Civil Procedure 60(b)(1) allows a court to relieve a party from a final judgment or order if there was "mistake, inadvertence, surprise, or excusable neglect."

Prior to 2022, circuits were split as to the extent a judge's legal error was correctable under Federal Rules of Civil Procedure 60(b)(1). *See generally* 12 Moore's Federal Practice - Civil § 60.41 (2022). In June of 2022, the Supreme Court resolved this split, determining a court's error of law is grounds for "mistake" under Rule 60(b)(1). *Kemp v. United States*, 142 S. Ct. 1856 (2022).

Additionally, the Court rejected the argument that mistake includes only clear legal errors. Rather, the Court ruled, "we see no reason to limit Rule 60(b)(1) to 'obvious' legal mistakes . . . . Rule 60(b)(1) covers all mistakes of law made by a judge . . ." *Id.* at 1862. The Court reasoned that the ordinary meaning of "mistake" in Rule 60(b)(1) includes judge's legal errors. *Id.* Additionally, the Court noted, if the drafters of Rule 60(b)(1) intended a narrower meaning of "mistake," they could have easily drafted the Rule to include, or not include, a varying "mistakes." *Id.*

Here, Movant argues the Order is legally erroneous. Movant states the Property revested in Debtor when they received their discharge. Further, because the Property was scheduled and not administered, the Property would have been abandoned to Debtor when the court closed the case in 2016. Pursuant to 11 U.S.C. § 506(a), bankruptcy courts can value a claim secured by a lien on property which the estate has an interest.

Movant argues, after revesting or abandonment of the Property, the Property was no longer property of the estate and the claim could not be valued under § 506(a).

Debtor, however, argues that because two senior deeds of trust were valued, there has already been a determination that there is no equity to support Movant's claim. Movant's secured claim was a fourth position deed of trust. The property was encumbered by Tri Counties Banks' second and third position deeds of trust. In 2011, the secured claims of Tri Counties Bank were determined to have a value of $0.00. Orders to Value, Dckts. 31, 33. Thus, Debtor argues, the Motion should be denied.

Chapter 13 Plan Requirements

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future

income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

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

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

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

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

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

However, 11 U.S.C. § 1325(a)(5) only applies to secured claims that are provided for by the plan. If a plan does not provide for a secured claim, the holders are not provided for by the plan and may seek appropriate relief in furtherance of any contractual or other remedies available against the chapter 13 debtor or their collateral. 8 Collier on Bankruptcy P 1325.06 (16th 2022).

The confirmation of a Chapter 13 Plan modifies the rights and obligations in the bankruptcy debtor-creditor relationship. *Martin v. CitiFinancial Servs.* (*In re Martin*), 491 B.R. 122, 126 (Bankr. E.D. Cal. 2013). It is the Chapter 13 Plan, by which the debtor commits him or herself, which becomes the modified contract between the debtor and creditors. *Id.* (citing *Hillis Motors v. Hawaii Automobile Dealers' Association* (*In re Hillis Motors*), 997 F.2d 581, 588 (9th Cir. 1993). Absent a plan providing for a secured claim, however, no rights and obligations of a secured claim are modified.

11 U.S.C. § 506(a) is a tool that allows the court to bifurcate a claim to determine which portion of the claim is secured, and which is unsecured. Section 506(a) is often referred to as a "lien strip," however, it does not remove a lien from the property. Liens pass through bankruptcy unaffected. *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992).

Section 506(a), however, is not a standalone statute. Bifurcating a claim modifies the contractual obligations in the debtor-creditor relationship. Therefore, in order to use § 506(a), the secured claim must be provided for in the plan, as required by 11 U.S.C. § 1322(b). Although collateral may be overencumbered and have no equity to support the secured portion of the lien, a valuation under § 506(a), absent the claim being provided for in the plan, cannot modify the underlying contractual obligation.

Without the plan providing for the secured claim, upon completion of the plan, the valuation of a claim is null as the contractual obligations cannot be modified. The original terms of the contract, for the full claim amount, will attach to a creditor's surviving lien.

Debtor's Chapter 13 Plan

Debtor's Plan was confirmed on April 9, 2011. Dckt. 34. The Plan did not provide for Movant's secured claim. [FN. 1.] Additionally, the Plan was never modified to provide for Movant's claim. Payments under the Plan completed on January 23, 2013. Trustee's Final Report, Dckt. 50. Plans cannot be modified after the completion of payments. 11 U.S.C. § 1329(a). Therefore, Movant's secured claim was not, and cannot be, provided for in the Plan.

FN. 1. Upon review of Debtor's Schedules, Movant was listed on Debtor's Schedule F as an unsecured nonpriority claim in the "unknown" amount. Dckt. 1 p. 39. Therefore, at the time of filing the petition, it appears Debtor believed Movant was unsecured. Aside from being listed on Schedule F as an unsecured claim, there was no evidence of Movant's interest until Debtor sought to value Movant's claim at the disputed Motion to Value. In support of the Motion to Value, Debtor filed a UCC Financing Statement to show Movant's secured claim for which the Property is the collateral. It was not until then, on October 18, 2022, Dckt. 71, that the court had evidence of Movant's secured claim.

Debtor's Motion seeks to value Movant's collateral at $0.00 and wishes to treat the balance of the loan as a general unsecured claim, Class 7. The court granted Debtor's Motion by default, with no opposition from Movant.

Upon further review, Debtor's Plan did not provide for Movant. Debtor completed their Plan in 2016, therefore, they can no longer modify the Plan to provide for Movant's claim.

It appears that the "mere" valuation of a secured claim pursuant to 11 U.S.C. § 506(a) is a nullity under these circumstances. The secured claim was not provided for under the Plan. The secured claim was not modified by confirmation of the Plan. The mere valuation would not render the lien void as the Plan does not provide for the bifurcation and treatment of the modified secured claim.

In finding that this error occurred, the court does not make a final ruling on this legal issue between the parties. Therefore, the court resets the Motion to Value to the calendar, affording Debtor the opportunity to file an amended motion and the legal basis for why valuing the secured claim has legal significance and presents the court with an actual claim or controversy at issue under the law for adjudication in this federal court.

Court Ruling

The court recognizes that in substance, the not having identified the claim as being secured and not providing for it as a Class 2 Secured Claim in the Chapter 13 Plan (§ 506(a) valuation and bifurcation of the secured claim, modifying the original contract for the secured obligation and paying the valued secured claim, which may be $0.00, in full, and upon plan completion that modification becoming final and there being no obligation left to be secured) may result in an unanticipated secured obligation surviving Debtors performance of the Bankruptcy Plan. This Bankruptcy Case was filed January 25, 2011, in the

crashing real estate market of the Great Recession, with lenders and their loans falling left and right. As Debtor notes, they presented evidence that in the depths of the Great Recession that the Property, their family residence, had a value of $134,000. Dec.; Dckt. 16. The senior deed of trust on the Property secured a claim in the amount of ($168,505), which exhausted all of the value in the property. Proof of Claim 31-1.

In the Opposition, Debtor nibbles around doctrines and legal principles such as latches and other grounds why Creditor is "too late to the party" to assert a secured claim. Debtor also fails to address what legal effect there is to a motion to value a secured claim pursuant to 11 U.S.C. § 506(a) when the Chapter 13 Plan did not provide for such valuation, and treatment of a bifurcated secured and unsecured claim that modifies the pre-petition contract.

The Debtor directs the court's attention that Debtor successfully prosecuted motions to value secured claims of two creditors:

1. Tri Counties Bank, ($35,912).....Second Deed of Trust
   Recorded September 16, 2005; POC 12-1)
   Order; Dckt. 31

2. Tri Counties Bank, ($51,469).....Third Deed of Trust
   Recorded August 24, 2006; POC 13-1)
   Order; Dckt. 33

In the Motion to Value Creditor's secured claim, Debtor provides a copy of a deed of trust titled "Fourth Deed of Trust" naming Comerica Bank as the beneficiary. The recording date on Creditor's Fourth Deed of Trust is October 22, 2007. The Deed of Trust states that the obligation it secures is in the principal amount of ($465,500). Dckt. 76. It identifies the obligation as being an SBA loan to assist small business owners. *Id.*, ¶ 7. On the Statement of Financial Affairs Debtor lists having a business named Nobel Romans Pizza * Tuscano's Subs, which operated from December 25, 2007, to January 11, 2009. Dckt. 1 at 55.

Debtor has also provided the copy of a UCC Financial Statement recorded on October 18, 2007, which does not have the Attachment A showing what personal property is the collateral and where it is located. Dckt. 71. Exhibit 1 filed by Debtor in connection with the present motion is a Financing Statement Termination which has a recording date of June 20, 2017. Dckt. 95.

Pursuant to the foregoing, the court finds legal error in the prior Order on the Motion to Value the Secured Claim of Movant. Order, Dckt. 79. The court vacates the prior order, and sets the Motion to Value the Secured Claim as provided above.

Additionally, the court sets the following supplemental briefing schedule:

1. Debtor's Deadline to File a Supplement to Motion to Value: xxxxxx xx, 2023

2. Movant's Deadline to File an Opposition to the Supplement and Motion: xxxxxx xx, 2023

3. Debtor's Deadline to File a Response: xxxxxx, xx, 2023

The Motion is granted and the court's order valuing Creditor's secured claim (Dckt. 79) is vacated.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Comerica Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Vacate is granted, and the order valuing Movant's secured claim in the amount of $0.00, and the balance of the claim as unsecured to be paid through the confirmed bankruptcy plan is, Order, Dckt. 79, is vacated.
>
> The court by separate order sets a hearing on the Motion to Value Secured Claim (PGM-1).

PGM-1

The court shall issue an separate order substantially in the following form resetting the Motion to Value Secured Claim to the court's Calendar:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the February 28, 2023 hearing on the Motion to Vacate (Dckt. HRH-1) the Order Valuing Creditor's Secured Claim.
>
> The court having vacated the Order (Dckt. 79) granting the Motion to Value Secured Claim of Comerica Bank filed by Debtors Danny and Debra Horsfall, there being unaddressed legal issues concerning whether there is a case or controversy for the court to address for such motion under the Bankruptcy Code, to afford all parties access to the Federal Courts to assert such rights and defenses they believe they have concerning the Motion to Value addressed, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Value the Secured Claim of Comerica Bank (PGM-1, Dckt. 65) is reset to the Calender at 2:00 p.m. on **xxxxxxx** , 2023.
>
> **IT IS FURTHER ORDERED** that Debtors shall file and serve an amended motion and supporting pleadings on or before **xxxxxxx** , 2023, if Debtor desires to prosecute the Motion to Value.
>
> If the amended pleadings are filed, Opposition, if any, shall be filed and served on or before **xxxxxxx** , 2023, and Reply filed and served on or before **xxxxxxx** , 2023.

FINAL RULINGS

14. 22-22405-E-13 ALF-1 | **BARBARA MANNING** / **Ashley Amerio** | **MOTION TO CONFIRM PLAN** / **1-20-23 [32]**

Final Ruling: No appearance at the February 28, 2023 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, and Office of the United States Trustee on January 20, 2023. 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Barbara Ann Manning ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on February 14, 2023. Dckt. 41. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on January 20, 2023, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. 22-23038-E-13 PSB-1 — LINH/SOPHIE NGUYEN — Paul Bains — MOTION TO CONFIRM PLAN — 1-10-23 [15]

Final Ruling: No appearance at the February 28, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 10, 2023. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Linh Nguyen and Sophie Nguyen ("Debtors") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"),filed a Non-Opposition on January 17, 2023. Dckt. 22. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Linh Nguyen and Sophie Nguyen ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on January 10, 2023, 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.

16. 22-22864-E-13 DPC-2 | **NATHANIEL SOBAYO** | **Pro Se** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** | **1-11-23 [92]**

Final Ruling: No appearance at the February 28, 2023 hearing is required.

The case being dismissed, the hearing on the Objection to Claim of Exemption is continued to 1:30 p.m. on March 21, 2023, specially set at the same time as the Motion of Wells Fargo Bank, N.A., as Trustee, for Relief Form the Automatic Stay pursuant to 11 U.S.C. § 362(d)(4). This avoids the refiling of such motion in the event Debtor seeks to not have the case dismissed pursuant to his prior motion, with the entry of the Order of dismissal not being entered until after the March 21, 2023 hearing on the Motion for Relief From the Automatic Stay..

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Exemptions having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection is continued to 1:30 p.m. on March 21, 2023 (specially set time).

The hearing is continued and specially set at the same time as the Motion of Wells Fargo Bank, N.A., as Trustee, for Relief Form the Automatic Stay pursuant to 11 U.S.C. § 362(d)(4). This avoids the refiling of such motion in the event Debtor seeks to not have the case dismissed pursuant to his prior motion, with the entry of the Order of dismissal not being entered until after the March 21, 2023 hearing on the Motion for Relief From the Automatic Stay