UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

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

1.	**24-25101-E-13** **RLG-1**	**MARIE EUSTAQUIO** **Robert Goldstein**	**MOTION TO CONFIRM PLAN** **1-23-25 [17]**

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on January 23, 2025. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

On February 6, 2025, Movant served the correct copy of the Amended Plan on the parties. 33 days notice was provided of the Amended Plan. Movant is two days late of the required notice period. At the hearing, xxxxxxx

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

The Motion to Confirm the Amended Plan is xxxxxxx.

The debtor, Marie Magno Eustaquio ("Debtor"), seeks confirmation of the Amended Plan. Debtor initially filed an incomplete version of the Plan at Docket 19. Debtor later filed correct version of the Plan on February 6, 2025. The Motion does not direct parties in interest to either version, not mentioning a Docket number.

At the hearing, **xxxxxxx**

The Amended Plan provides for one payment of $590 and 59 monthly payments of $608.65 with 9% dividend to unsecured creditors. Amended Plan, Docket 25. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

There is no Declaration or other evidence filed in support of the Plan.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 25, 2025. Docket 29. Trustee opposes confirmation of the Plan on the basis that:

A. No evidence has been filed in support. *Id.* at 2:16-3:3.

B. Debtor's Plan relies on a Motion to Value Collateral being filed for Schools Federal Credit Union, listed in Class 2(B), (Page 4). To date, the Debtor has failed to file a Motion to Value Collateral. *Id.* at 3:9-14.

C. The Debtor failed to provide for Nationstar Mortgage LLC who filed a secured Proof of Claim, for $402,274.85, (Claim #11-1), in the Plan. The Schedules show Debtor may be making these payments outside the Plan, but Trustee lacks knowledge of Debtor's overall financial situation without this expense included in the Plan. *Id.* at 3:15-25.

D. Trustee still has concerns about tax returns. It is true Debtor has attempted to address this issue by including an increase in plan payments to account for 2023 tax returns; however, Trustee still wishes to reserve the right to review future tax returns and Debtor should contribute any amount over $2,000 to the Plan. *Id.* at 3:26-4:5.

DISCUSSION

Failure to Provide Evidence in Support

The glaring problem with this Motion is that there is no Declaration or other admissible evidence filed in support of confirmation. Fed. R. Bankr. P. 9017 incorporates Fed. R. Civ. P. 43, 44, and 44.1, as well as the Fed. R. Evid. in bankruptcy proceedings. Submitting a Plan and Motion to Confirm without authenticated evidence in support is asking the court to simply take the attorney at his word that all pleadings are true and accurate. There is nothing in the Fed. R. Bankr. P., Fed. R. Civ. P., or Fed. R. Evid. that authorize the court to take such liberties. As such, the court is unable to determine if any of the facts alleged in the Motion or terms of the Plan are accurate.

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

grounds for an appropriate sanction. Local Bankr. R. 1001-1(g). This is further cause for denial of confirmation.

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 Schools Federal Credit Union. Debtor has failed to file a Motion to Value the Secured Claim of creditor, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Failure to Provide for Secured Creditor

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

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

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

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

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

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

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

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

Tax Returns

Trustee requests future amounts of tax returns be contributed to the Plan in the amount over $2,000. Such a request is reasonable and represents a debtor contributing their best effort under 11 U.S.C. § 1325(b)(1).

At the hearing, **xxxxxxx**

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

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

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

2. 24-24029-E-13 MB-3

SANDRA BROWN / MICHAEL TIBBETTS
Michael Hays

MOTION FOR ORDER APPROVING STIPULATION ALLOWING FOR THE CLAIM OF VIRGIL AND CAROL TREADWAY TO BE DEEMED TIMELY FILED
2-13-25 [57]

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, 2025. By the court's calculation, 26 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Stipulation 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 for Approval of Stipulation is granted.

Chapter 13 Debtor, Sandra Ann Brown and Michael Dean Tibbetts ("Movant") requests that the court approve a stipulation with Virgil Treadway and Carol Treadway ("Creditor") which provides that Creditor's claim 11-1, although filed late, be deemed timely filed.

STIPULATION

Debtor and Creditor stipulate to an order subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 57):

1. Claim No. 11-1 shall be deemed to be filed timely.

DISCUSSION

The Motion to Approve the Stipulation was filed and was set for hearing. A total of 26 days notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on allowing Creditors Proof of Claim to be deemed timely filed, and as Creditor's claim is secured, allowance of the Claim will permit Debtor to provide for the Claim in this case.

Debtor and creditor have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented a Stipulation that allows Debtor to move on in prosecuting the case.

Proof of Claim 11-1 is a secured claim, for which the collateral is real property sold by Creditor to Movant Debtor

The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Stipulation filed by Chapter 13 Debtor, Sandra Ann Brown and Michael Dean Tibbetts ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Proof of Claim 11-1 filed by Virgil Treadway and Carol Treadway ("Creditor") on December 6, 2024, is deemed timely filed in this Bankruptcy Case.

3.	**24-25731-E-13** **NLG-1**	**DAVID/MARY GILL** **Nicholas Wajda**	**OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE SERVICES, LLC** **2-6-25 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 6, 2025. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Carrington Mortgage Services, LLC ("Creditor"), opposes confirmation of the Plan on the basis that:

1. David Norman Gill and Mary Elizabeth Gill ("Debtor") did not provide for the full amount of Creditor's arrearage in their proposed Plan. Obj. 2:15-21.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $53,708.83 in pre-petition arrearage. POC 7-1. The Plan, ¶ 3.07 expressly provides for payment of Creditor's secured claim, including paying the amount of the arrearage. While Debtor has typed the amount of ($40,604.07) for this Class 1 Claim, the amount stated in the Plan does not control the amount of the arrearage.

The Plan expressly provides that the amount stated by the Debtor in the Plan does not control the amount of the arrearage to be cured, but plainly states:

> A. Proofs of Claim
>
> 3.01. With the exception of the payments required by sections 3.03, 3.07(b), 3.10, and 4.01, a claim will not be paid pursuant to this plan unless a proof of claim is filed by or on behalf of a creditor, including a secured creditor.
>
> 3.02. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless he court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

Plan, § 3, ¶¶ 3.01, 3.02.

Creditor computes that the funding for the Plan would need to be increased by $281.41 a month to pay the arrearage as stated in the Proof of Claim.

Reviewing Schedules I and J, it appears that Debtor has projected disposable income to make the higher Plan payment. Dckt. 1 at 31-34.

As written, the Plan does not propose to cure the full arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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 Carrington Mortgage Services, LLC ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

4. 25-20746-E-13 MS-2 | **JOHN/KRISTEN FIORICA** **Mark Shmorgon** | **MOTION TO EXTEND AUTOMATIC STAY** **2-25-25 [12]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 and all creditors and parties in interest on February 25, 2025. By the court's calculation, 14 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.

John Fiorica and Kristen Fiorica ("Debtor") seek 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. 22-22954) was dismissed on November 14, 2022, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 22-22954, Dckt. 49, January 27, 2025. 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 co-debtor Kristen Fiorica was unemployed. In this case, Ms. Fiorica has obtained employment, and this change of circumstances rebuts the presumption of a bad faith filing.

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 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 John Fiorica and Kristen Fiorica ("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.

5. 25-20052-E-13 AP-1 | **TAMMI KELLER** | **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY BMW BANK OF NORTH AMERICA**

Item 5 thru 6 | **2-13-25 [21]**

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

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 February 13, 2025. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

~~The Objection to Confirmation of Plan is sustained.~~

BMW Bank of North America ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Tammi Bravo Keller's ("Debtor) Plan fails to pay the prime rate of interest on Creditor's claim. Obj. 4:13-22.

2. Debtor is attempting to value Creditor's collateral without there being a Motion to Value on file. *Id.* at 5:7-11.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 4, 2025. Docket 40. Debtor asks the Motion be continued until a date after March 25, 2025, when Debtor has scheduled to hear her Motion to Value.

DISCUSSION

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4%. Creditor's claim is secured by a 2022 BMW X4 xDrive30i. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 7.5%, plus a 1% risk adjustment, for an 8.5% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Creditor. Debtor has filed a Motion to Value the Secured Claim to be heard on March 25, 2025.

At the hearing, **xxxxxxx** .

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by BMW Bank of North America ("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.~~

6. 25-20052-E-13 DPC-1 — TAMMI KELLER, Peter Macaluso — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 2-12-25 [17]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 12, 2025. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

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

1. Tammi Bravo Keller's ("Debtor) Plan relies on the Motion to Value the collateral of BMW Bank of North America ("Creditor"). Obj. 2:1-11.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 19.

DISCUSSION

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 Creditor. Debtor has filed a Motion to Value the Secured Claim to be heard on March 25, 2025.

At the hearing, **xxxxxxx** .

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

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

7.	**24-25653-E-13** **AP-1**	**MICHAEL PARRA** **Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, NATIONAL ASSOCIATION** **2-5-25 [23]**
Item 7 thru 8			

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

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 February 5, 2025. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, National Association, as Trustee for Banc of America Mortgage Securities, Inc. Mortgage Pass-Through Certificates, Series 2007-3 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Michael Anthony Parra ("Debtor") has disposable income of ($3,546.15) per month. However, the Debtor proposes to apply $2,182.00 per month to his Chapter 13 Plan. As the Debtor's Plan payment exceeds his monthly disposable income, the Debtor lacks sufficient monthly disposable income with which to fund the Plan. Accordingly, Debtor's Plan does not have a reasonable likelihood of success and cannot be confirmed as proposed. Obj. 3:19-23.

The Court notes that on Schedule J Debtor's includes a monthly payment of $4,820.02 for a mortgage payment. Dckt. 1 at 40.

2. Additionally, the Plan lists the post-petition payment on the Loan as $1,825.00 per month. However, the actual monthly post-petition payment is anticipated to be $4,692.34. The Plan is not sufficiently funded to allow the Trustee to pay the post-petition payments on the Loan.

DISCUSSION
Feasability

Debtor's Schedule J at Docket 1, page 42 reveals a negative income of ($3,546.15). 11 U.S.C. § 109(e) only permits a debtor with regular monthly income to be in Chapter 13. This inability to fund a Chapter 13 Plan shows the Plan is not feasible, especially, as here, the actual estimated plan payment is $4,692.34 by Creditor's calculation. 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, National Association, as Trustee for Banc of America Mortgage Securities, Inc. Mortgage Pass-Through Certificates, Series 2007-3 ("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.

8. 24-25653-E-13 DPC-2 — MICHAEL PARRA, Pro Se — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 2-5-25 [19]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2025. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Michael Anthony Parra ("Debtor") Debtor failed to submit proof of his Social Security number and identification to the Trustee, by uploading the documents to www.bkdocs.us, prior to the First Meeting of Creditors, held on January 30, 2025, as required pursuant to FRBP 4002(b)(1). Obj. 2:1-3.

2. Debtor failed to make the first Plan payment of $2,182.00 and is delinquent in payments to the Trustee. *Id.* at 2:9-13.

3. Debtor failed to provide 11 U.S.C. § 521 documents, including pay advices and tax returns. *Id.* at 2:15-26.

4. Debtor has a monthly net income of ($3,546.15) and cannot fund a Plan. *Id.* at 3:1-5.

5. Debtor has misclassified the Claim of Westlake Financial in class , there being $0 in arrears owed to this creditor. *Id.* at 3:6-9.

6. Debtor has attempted to exempt assets without specifying a dollar amount. *Id.* at 3:10-12.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 21.

DISCUSSION

Failure to Authenticate Identification Prior to Meeting of Creditors

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

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

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

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

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

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

Delinquency

Debtor is $2,182.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Pay Stubs / 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).

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).

Feasability

Debtor's Schedule J at Docket 1, page 42 reveals a negative income of ($3,546.15). 11 U.S.C. § 109(e) only permits a debtor with regular monthly income to be in Chapter 13. This inability to fund a Chapter 13 Plan shows the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Misclassified Claims

Debtor has classified Westlake Financial in Class 1 of his Plan, which Class only deals with claims that "all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence." Plan § 3.07, Docket 10. It appears Debtor is not delinquent regarding this claim, so it is misclassified.

Claimed Exemptions

Trustee states he will object to Debtor's claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140(b)(1)–(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed.

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.

9. 24-24160-E-13 PGM-2 | **MAI TRANG LE / NHAT TRAN** | **MOTION TO CONFIRM PLAN**
Peter Macaluso | **1-21-25 [39]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors and parties in interest, and Office of the United States Trustee on January 21, 2025. 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 Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is xxxxxxx.

The debtor, Mai Trang Tracy Le and Nhat Van Tran ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid a total of $13,050.00 through December 2024 with plan payments of $4,350.00 commencing for January 25, 2025, and plan payments of $4,820.00 to commence for February 25, 2025 for 56 months. Amended Plan, Docket 44. The Amended Plan further provides that Class 1 claim of New Rez Mortgage for the 2nd DOT shall be paid a lump sum from refinance or sale of real property on or before the 60th month. *Id.* 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee ("Creditor") holding a secured claim filed an Opposition on February 20, 2025. Docket 51. Trustee opposes confirmation of the Plan on the basis that:

A. The provision of the Plan that provides for paying Creditor's arrearage in full from a sale of the property or a refinance is not reasonable. 60 months is too long of a time period to wait to cure the arrearage, not to mention that such a payment is speculative. Obj. 2:6-21.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 21, 2025. Docket 53. Trustee opposes confirmation of the Plan on the basis that:

> A. Trustee agrees with the Creditor that a 60 month refinance or sale appears unduly speculative where Debtor asserts they are below median income, and Debtor must show cause to extend beyond 3 years, (11 U.S.C. §1322(d)(2)(C)). Debtor should be required to demonstrate the reasonableness and feasibility of their cure proposal under 11 U.S.C. §1325(a)(6).

DEBTOR'S REPLY

Debtor filed a Reply on March 4, 2025. Dockets 57, 58. Debtor states they agree to sell or refinance by 36 months, not 60 months as proposed.

DISCUSSION

Reasonableness of Refinance

Creditor and Trustee have objected on the basis that Debtor seeking a refinance within 60 months is too long of a time period; Debtor has agreed, offering the time period of 36 months, instead. Regarding the time period for refinance, the court agrees that 60 months is too long and is simply too speculative.

However, Trustee suggests that Debtor is below median income, and so pursuant to 11 U.S.C. § 1322(d)(2)(C), Debtor must show cause why the Plan can go beyond 36 months. 11 U.S.C. § 1322(d)(2)(C) states:

> (2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—
>
> > (C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 1 per month for each individual in excess of 4,
> >
> > the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.

(Emphasis added). Debtor has not shown cause why this court should approve a longer period that 36 months for the duration of this proposed Plan.

At the hearing, **XXXXXXX**

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Mai Trang Tracy Le and Nhat Van Tran ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is **xxxxxxx**.

10. 24-22967-E-7 CAE-1 **VANESSA FRANKLIN** **STATUS CONFERENCE RE: MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY, AMENDED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY., AMENDED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY**
2-14-25 [102]

Item 10 thru 11

Debtor's Atty: Peter G. Macaluso

Notes:
Set by order of the court filed 2/21/25 [Dckt 119]. Vanessa Franklin, the Debtor, and Peter Macaluso, Esq., Debtor's attorney of record in this bankruptcy case, and each of them, to appear in person.

The Status Conference is xxxxxxx

11. 24-22967-E-7 VLF-1 | **VANESSA FRANKLIN** / **Peter Macaluso** | **AMENDED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY** / **2-18-25 [105]**

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on February 17, 2025. By the court's calculation, 22 days' notice was provided. 28 days' notice is required. Movant is six days late of the required notice period. At the hearing, **xxxxxxx**

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

The Motion for Sanctions is xxxxxxx.

Debtor Vanessa Lynn Franklin ("Debtor"), who is represented by counsel, has filed this Motion for Sanctions in *pro se*. In setting the hearing, the court mentioned the following issues surrounding these pleadings:

> Debtor Vanessa Franklin commenced this voluntary Chapter 7 Case on July 8, 2024, and was granted her discharge on February 12, 2025. Debtor is represented by experienced bankruptcy counsel in this case, Peter Macaluso, Esq.
>
> On February 18, 2025, the Debtor, purportedly in *pro se*, filed the following pleadings:
>
> A. MOTION FOR SANCTIONS, DAMAGES, AND OTHER RELIEF FOR VIOLATIONS OF THE AUTOMATIC STAY, FRAUD ON THE COURT, AND BAD FAITH LITIGATION CONDUCT. Dckt. 102.
>
> 1. The grounds stated relate to conduct of Debtor's landlord concerning rent payment, misrepresentations in obtaining retroactive relief from the stay, and withholding a portion of the security deposit. Debtor additionally makes claims

for retaliation against her, defamation, and emotional distress.

B. CORRECTED MOTION FOR LEAVE TO FILE AMENDED MOTION FOR SANCTIONS, DAMAGES, AND OTHER RELIEF FOR VIOLATIONS OF THE AUTOMATIC STAY, FRAUD ON THE COURT, BAD FAITH LITIGATION, WILLFUL AND MALICIOUS INJURY, RETALIATION, DISCRIMINATION, DEFAMATION, AND EMOTIONAL DISTRESS FILED ON FEBRUARY 14, 2025. Dckt. 105.

1. Debtor seeks recovery for violation of the automatic stay, 11 U.S.C. § 362(k), fraud on the court, bad faith litigation, willful and malicious injury under 11 U.S.C. § 523(a)(6), retaliation and discrimination, and severe emotional distress.

C. Declaration of Debtor in Support of Motion For Leave to File Amended Motion. Dckt. 107.

1. Debtor provides her testimony of the alleged conduct of the Landlord upon which relief is requested.

D. Supplemental Declaration of Debtor in Support of Request for Damages and Justification for Increased Amount. Dckt. 108.

1. Debtor provides additional testimony in support of the requests for relief asserted.

E. Debtor's Declaration in Support of Motion For Leave to File Amended Motion. Dckt. 109.

1. Debtor states further testimony in support of the relief requested.

F. Exhibits in Support of Motion for Sanctions, Damages, and Other Relief. Dckt. 110.

1. Email thread between Debtors, her daughter's teacher, and her daughter's school health provider.

G. Corrected Exhibit List. Dckt. 111.

1. This documents lists 30 exhibits.

H. Exhibits 1-30. Dckt. 112.

The hearings on the Motions are set for 2:00 p.m. on March 11, 2025.

As an initial point, the Debtor is represented by counsel in this Bankruptcy Case and has not filed nor prosecuted this case in *pro se*. No withdrawal of counsel has been filed. It is unclear whether the Debtor individually can prosecute such claims for relief in the bankruptcy case without clarification whether she is continuing to be represented by counsel with respect to this Bankruptcy Case.

Second, while stated as claims based upon alleged violations of the automatic stay, many sound in the nature of common torts (willful and malicious injury, retaliation, discrimination, defamation, and emotional distress), the adjudication of which goes beyond "mere" stay violations and would otherwise be torts for which an adversary proceeding would be required. *See*, Federal Rule of Bankruptcy Procedure 7001. These claims for relief do not appear to be "mere" damages flowing from an alleged violation of the stay, but other legal rights and claims being asserted.

The court concludes it is necessary to conduct a combined Status Conference for the two Motions filed in the Chapter 7 Case to address, first, whether the Debtor is now prosecuting this Bankruptcy Case in *pro se* or counsel still represents her, and second, to address which of these claims (whether some or all) may be addressed through a motion seeking relief for violation of the stay pursuant to 11 U.S.C. § 362(k).

Order, Docket 119.

Of the relief requested that may properly be determined by Motion seeking relief for violation of the Automatic Stay, Debtor states in the Motion:

1. Landlord knew of the bankruptcy because Debtor had emailed an employee at Prime Legends, LLC, the landlord ("Landlord"), notice of the bankruptcy. Debtor alleges she emailed Trina Gross on July 8, 2024, notice of the bankruptcy case. Mot. 3:9-11. Landlord continued to commence actions against Debtor during this time, including collection efforts for unpaid rent.

2. If the email is not sufficient for knowledge of the case, Landlord was on constructive notice of the case as Landlord was Scheduled and should have inquired.

3. Therefore, Landlord should be sanctioned for any collections efforts taken in violation of the automatic stay.

Landlord filed an Opposition on February 25, 2025, and responds as follows:

1. Ms. Gross is a front-line employee, and she did not forward the email or advise the Landlord's management of the email. Opp'n, 8:22-23.

2. Debtor omitted the Landlord from her Verification of Master Address List, and the Landlord did not receive notice of the commencement of this case. *Id.* at 9:2-4.

3. This court granted a Motion for Relief from the Stay, including granting retroactive relief on December 6, 2024. Therefore, Landlord is not liable for any alleged violations of the stay.

   a. On this point, the court would note that it granted retroactive relief from the stay, but failed to include that language in its Order at Docket 100. This is a clerical error as the court granted retroactive relief in the civil minutes at Docket 99. At the hearing, **xxxxxxx**

4. On another note, Debtor may not be eligible for discharge in this case, this bankruptcy case having been Commenced within the eight (8) years of the prior case (identified as Northern District of California Bankruptcy Case 16-42164 , filed August 1, 2016) in which Debtor was granted a discharge. *Id.* at n. 3 p. 5.

Landlord filed in support of the Opposition the Declaration of Trina Gross. Decl., Docket 121. Ms. Gross. Ms. Gross testifies she never sent Debtor's email to management of Prime Administration, LLC, and she is just a front-line office worker. Decl. ¶ 5, Docket 121

Debtor filed a Reply to the Opposition on March 3, 2025. Docket 128. Debtor reiterates her causes of action, seeking $700,000 in damages.

In addition to these pleadings, there are requests for judicial notice and much made by either party in objecting to requests for judicial notice. Fed. R. Evid. 201 states:

> (a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
>
> (b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> (1) is generally known within the trial court's territorial jurisdiction; or
>
> (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
>
> (c) Taking Notice. The court:
>
> (1) may take judicial notice on its own; or
>
> (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
>
> (d) Timing. The court may take judicial notice at any stage of the proceeding.
>
> (e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court

takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

At the hearing, **xxxxxxx**

On March 5, 2025, Debtor filed a Substitution of Attorney whereby attempting to substitute herself in as her own attorney and removing Mr. Macaluso. Docket 136. At the hearing, **xxxxxxx**

APPLICABLE LAW
AND DISCUSSION

11 U.S.C. § 362(k) states:

(k)

(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

Collier's Treatise states on the subject:

A violation of the stay is punishable as contempt of court. Most courts will impose contempt sanctions for a knowing and willful violation of a court order, and the automatic stay is considered as equivalent to a court order. If the conduct is willful, even if based upon advice of counsel, contempt is an appropriate remedy. When a violation of the stay is inadvertent, contempt is not an appropriate remedy. Nevertheless, the creditor has a duty to undo actions taken in violation of the automatic stay. Failure to undo a technical violation may elevate the violation to a willful one. . .

Section 362(k)(1), which was designated as section 362(h) prior to the 2005 amendments, provides for a recovery of damages, costs and attorney's fees by an individual damaged by a willful violation of the stay. In an appropriate case, an individual injured by a stay violation may also recover punitive damages. There also appears to be an "emerging consensus" that emotional distress damages may be recovered in an award of actual damages under section 362(k)(1). However, courts are not in agreement as to whether emotional distress damages may be awarded against the federal government.

> The Supreme Court's decision in *Taggart v. Lorenzen* has called into question the standard to be used to determine whether a creditor's action is willful. Most courts had held that once the creditor becomes aware of the filing of the bankruptcy petition and therefore the automatic stay, any intentional act that results in a violation the stay is "willful." No specific intent to violate the stay or malice is required. But in *Taggart*, the Court rejected this "strict liability" approach when determining whether a creditor violated the discharge injunction set forth in 11 U.S.C. § 524. Although the Court acknowledged that there were differences between the purpose of the stay and the discharge injunction and that it was not deciding the standard to be applied under section 362(k)(1), it also stated that Congress's use of the word "willful" in section 362(k)(1) is not typically associated with a strict liability standard.
>
> The bankruptcy court has exclusive jurisdiction over sanctions for a stay violation.24 This jurisdiction over a stay violation proceeding extends even if the underlying bankruptcy case is dismissed.

3 COLLIER ON BANKRUPTCY ¶ 362.12[2] & [3].

The court issued its order granting retroactive relief from the automatic stay in this case, annulling the stay as to actions Landlord took back to September 5, 2024, based on the evidence in the record showing Landlord was not aware of the bankruptcy case. Indeed, upon review of the Verification of Master Address List, Docket 3, Landlord is not listed. Landlord is not listed in the Amended List at Docket 72, either.

The Declaration in support of the Motion for Relief stated that Landlord learned of the bankruptcy case on October 15, 2024, for the first time. Decl. ¶ 8, Docket 80. Landlord's agent testified that they ceased all actions against the debtor once learning of the bankruptcy case. *Id.*

On the other hand, it is true that an office worker of Landlord, Ms. Gross, received notice of the bankruptcy on July 8, 2024. Decl. ¶ 4, Docket 121. It is true that Landlord continued to attempt to collect unpaid rents from Debtor even after that email was sent and receded. It may be that Ms. Gross was in a position of some authority at the company and had a duty to inform Landlord's management of the bankruptcy. Such a question may come down to the principles of agency law.

At the hearing, **xxxxxxx**

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

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

12. 24-21068-E-13 RMP-2 | **DESIREE LEWIS** | **Sunita Kapoor** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS, INC.** | **5-14-24 [68]**

Item 12 thru 13

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, attorneys of record who have appeared in the Bankruptcy case, the Adversary Proceeding, or contested matter, and Office of the United States Trustee on May 14, 2024. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection / Opposition to Debtor's Motion to Confirm the First Amended Chapter 13 Plan is xxxxxxx

March 11, 2025 Hearing

The court issued an Order continuing this Opposition / Objection to a time after the Parties could complete the evidentiary hearing on the related Motion to Value. The court held the evidentiary hearing on November 12, 2024, and issued its ruling on November 20, 2024, denying the Motion to Value. Dockets 137, 138.

A review of the Docket on March 6, 2025 reveals nothing new has been filed under this Docket Control Number. At the hearing, **xxxxxxx**

REVIEW OF THE OBJECTION

Real Time Resolutions, Inc. as agent for RRA CP Opportunity Trust 2 ("Creditor") holding a secured claim opposes confirmation of the second amended Plan on the basis that:

1. Creditor is not adequately protected. Obj. 1:27, Docket 68. Creditor has a security interest in Debtor's real property, commonly known as 4822

Mission Beach Ct., Elk Grove, CA 95758-5122 ("Property"), which Debtor has listed as her primary residence. Mem. 1:26-28, Docket 70; *see* Petition pt. 1, par. 5, Docket 1. Debtor's Schedule A lists the value of the residence as $326,000.00 on the date of filing, with Schedule D stating that the senior lienholder, Select Portfolio Servicing, was equally owned $326,000.00 on the date of filing. *Id.* at 1:28-2:2. *See* Docket 17, 18.

Creditor obtained a Broker Price Opinion valuing the property at $560,000.00, which can be used to rebut the Debtor's valuation. *Id.* at 2:3-4. *see* Decl., Docket 44.

On the filing date, Creditor was owed a total claim of $203,473.33 on the matured loan. Mem. 1:26-28, Docket 70; *see* Decl. Docket 44. Around May 10, 2024, Debtor filed a Second Amended Chapter 13 Plan, which fails to provide for Creditor, stating Creditor's lien will be reduced to $0.00 based on the value of the collateral under Class 2(C). *Id.* at 2:21-24. *See* Plan, Docket 65. Debtor has not provided a proper valuation to support this reduction, and Creditor believes equity in the property exists above the amount owed to the senior lienholder. *Id.* at 2:24-26.

2. The Plan is not feasible and cannot be made feasible. The Creditor states that the Debtor needs a present and future ability to make payments under the Plan pursuant to 11 U.S.C. § 1325(a)(6), as mere hope of being able to make payments is not sufficient when the Plan is not feasible. *Id.* at 1:28-2:4.
3. Debtor appears to be incapable of reorganization. The Creditor alleges that the Debtor must demonstrate an ability to make all Plan payments in order for the court to confirm the plan. *Id.* at 2:1.

Real Time Resolutions, Inc., as agent for RRA CP Opportunity Trust 2,submits the Memorandum of Points and Authorities to authenticate the facts alleged in the Objection. Mem., Docket 70. Creditor also filed a Declaration in support of its Objection to Confirmation of Debtor's previous plan. Decl., Docket 44.

DISCUSSION

Creditor's objections are well-taken.

Lack of Adequate Protection Under the Plan

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See, e.g.*, *Diaz v. Davis (In re Digimarc Corp. Derivative Litigation)*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("[a]ccordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act."). Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325. Several bankruptcy courts that have considered the issue, however, have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral, here, the Property. *See, e.g.*, *In re Sanchez*, 384 B.R. 574,

576 (Bankr. D. Or. 2008); *Royals v. Massey (In re Denton)*, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

In re Trejos holds that "[w]ith respect to secured creditors, § 1325(a)(5) requires generally that a chapter 13 plan must provide one of three alternative treatments: (1) treatment to which the secured creditor consents; (2) retention of collateral by the debtor with a stream of payments to the secured creditor; or (3) surrender of the collateral to the secured creditor." 374 B.R. 210, 214 (B.A.P. 9th Cir. 2007).

Debtor's Plan proposes none of these options regarding Creditor's claim of $203,473.33 on the matured loan, instead arguing that the Motion to Value will reduce Creditor's secured claim to $0. Mem. 1:26-28, Docket 70; *see* Decl. Docket 44 . In regard to the Motion to Value, Creditor has submitted a Declaration and appraisal of a licensed real estate appraiser, Scott Burton, asserting the Property is valued at $545,000. Docket 89. This valuation leaves equity in the Property for Creditor's secured claim. In the absence of any countervailing evidence, the court accepts Creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II) and sustains the Objection on that basis.

Lack of Feasibility

Under 11 U.S.C. § 1325(a)(6) the Court shall confirm the Plan only if the Debtor demonstrates an ability to make all payments under the Plan and otherwise perform on the provisions of the Plan. Debtor's monthly disposable income is listed as $898.83. Am. Schedule J, Docket 56. Of this amount, the Debtor only proposes to pay $500.00 per month into the Plan for 36 months. Am. Plan § 2.01, Docket 65. In order to pay Creditor's fully-matured lien, if Debtor does not succeed on the Motion to Value, Debtor must pay an additional $5,652.04 into the Plan monthly (for a total of $203,473.33 in 36 months).

Here, the Creditor alleges that the Debtor uses the Plan solely as a vehicle to avoid payments to Creditor, which Creditor reasonably believes is partially or wholly secured by Debtor's primary residence. Mem. 3:21-23, Docket 70.

Debtor is Incapable of Reorganization

The burden is completely on Debtor to show reorganization is in prospect. 11 U.S.C. § 362(g); *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988). Under the standard set by the Supreme Court in *Timbers*, in order to establish that reorganization is in prospect, the Debtor has to demonstrate a "reasonable possibility of a successful reorganization within a reasonable time." *Id.* at 376. Debtor is required to do more than merely assert she can reorganize if only given the opportunity to meet the *Timbers* standard. *See e.g.*, *Am. State Bank v. Grand Sports, Inc.* (*In re Grand Sports, Inc.*), 86 B.R. 971, 975 (Bankr. N.D. Ill 1988).

Here, the Creditor alleges that the Debtor is unable to show that Creditor's lien can be avoided in the instant bankruptcy and is equally unable to pay Creditor's matured lien. Mem. 4:5-8, Docket 70. Debtor's Second Amended Chapter 13 Plan states Creditor's lien will be reduced to $0.00 based on the value of the collateral under Class 2(C). *Id.* at 2:21-24; *see* Plan, Docket 65. Debtor proposes no treatment for the Senior Lienholder in the event the Motion to Value is unsuccessful, and it is unclear if pre-petition arrears were owed to that creditor on the date of filing. *Id.*

There is a pending Motion to Value Creditor's Secured Claim. The court has continued the Motion to Confirm the First Amended Chapter 13 Plan to allow for the Motion to Value to be prosecuted.

The hearing on the Objection to Confirmation, which is deed to be an Opposition to Motion to Confirm the First Amended Chapter 13 Plan, is continued to 2:00 p.m. on September 10, 2024.

September 24, 2024 Hearing

The court continued the hearing on this Objection pending the resolution of the related Motion to Value. A review of the Docket on September 19, 2024 reveals that nothing new has been filed with the court under this Docket Control Number.

The hearing is continued to 2:00 p.m. on December 10, 2024, in light of the court having scheduled an evidentiary hearing on the Motion to Value Secured Claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Real Time Resolutions, Inc. as agent for RRA CP Opportunity Trust 2 ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection / Opposition to Debtor's Motion to Confirm the First Amended Chapter 13 Plan is **xxxxxxx**.

13. 24-21068-E-13 SK-2 | **DESIREE LEWIS** **Sunita Kapoor** | **CONTINUED MOTION TO CONFIRM PLAN** **5-10-24 [63]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on June 10, 2024. However, the court assumed this to be a clerical error, where Movant meant to type in May 10, 2024, the date the pleadings were filed. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Confirmation and Allowance of Professional Fees is xxxxxxx.

March 11, 2025 Hearing

The court issued an Order continuing this Opposition / Objection to a time after the Parties could complete the evidentiary hearing on the related Motion to Value. The court held the evidentiary hearing on November 12, 2024, and issued its ruling on November 20, 2024, denying the Motion to Value. Dockets 137, 138.

Trustee filed a Status Report on February 25, 2025. Docket 150. Trustee states:

1. Debtor is current under the terms of the Plan. *Id.* at 1:21-23.

2. Trustee believes his only outstanding issue in confirming this Plan was the attorney's fees issue, but recommends the fees be granted. *Id.* at 1:24-26.

3. Schedule I and J may require an update where the original Schedule I and J filed on March 31, 2024, indicate Debtor may have been seeking better employment. Similarly, the budget indicates it depends on a contribution

from Debtor's son, but Debtor's son has not filed a Declaration in support indicating his ability to make the contribution. *Id.* at 1:27-2:3.

Neither Debtor nor Creditor have filed any updates. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Debtor Desiree Rebecca Lewis ("Debtor") seeks confirmation of the Amended Plan. The Amended Plan provides for 36 monthly payments of $500 each. Amended Plan, Docket 65. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 3, 2024. Docket 98. Trustee opposes confirmation of the Plan on the basis that:

A. There is a slight delinquency under the terms of the Amended Plan in the amount of $98, likely due to increasing the plan payment from $402 to $500. *Id.* at 2:5-14.

B. The Plan has not been signed by the Debtor in violation of Local Bankruptcy Rule 9004-1(c)(1)(B). *Id.* at 2:16-23.

C. Plan relies on the accompanying Motion to Value. *Id.* at 2:24-28.

D. Debtor states all assets are exempt, but the Trustee does not agree. *Id.* at 3:1-10.

E. There are issues with the attorney's fees where Debtor's attorney accepted $3,000 as a flat rate prior to filing, which may be in violation of Local Bankruptcy Rule 2016-1(c). *Id.* at 3:11-16.

CREDITOR'S OPPOSITION

Real Time Resolutions ("Creditor") holding a secured claim filed an Opposition on May 17, 2024. Docket 84. Creditor opposes confirmation of the Plan on the basis that:

1. Creditor is not adequately protected. Creditor has a second position deed of trust on Debtor's real property, commonly known as 4822 Mission Beach Ct., Elk Grove, CA 95758-5122 ("Property"), which Debtor has listed as her primary residence. Debtor's Schedule A lists the value of the residence as $326,000.00 on the date of filing, with Schedule D stating that the senior lienholder, Select Portfolio Servicing, was equally owned $326,000.00 on the date of filing.

2. On the filing date, Creditor was owed a total claim of $203,473.33 on the matured loan. Around May 10, 2024, Debtor filed the Second Amended Chapter 13 Plan, which fails to provide for Creditor, stating Creditor's lien

will be reduced to $0.00 based on the value of the collateral under Class 2(C). *See* Plan, Docket 65. Debtor's monthly disposable income is $898.83, of which Debtor only proposes to pay $500.00 per month into the Plan for 36 months. In order to pay Creditor's fully-matured lien, Debtor must pay an additional $5,652.04 into the Plan monthly ($203,473.33/36 months). Opp'n 3:25-28, Docket 84.

3. Debtor appears to be incapable of reorganization. Debtor must show it can avoid Creditor's lien to make this Plan feasible, but Debtor is unable to do so. *Id.* at 4:2-13.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $98 delinquent in plan payments, which represents less than a month of the $500 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Signature

Local Bankruptcy Rule 9004-1(c) provides:

> All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

Trustee alleges that Debtor has not signed the Plan, in violation of this rule. The Plan cannot be confirmed without Debtor's signature.

Debtor's Reliance on Motion to Value Secured Claim

The dark horse in Debtor's Plan is that it relies on the court valuing the secured claim of Creditor. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

PREVIOUS CONTINUANCE

The court by prior order has continued the hearing on this Motion to Confirm the First Amended Chapter 13 Plan to 2:00 p.m. on September 24, 2024. The Motion also requests that the court approve a $3,000 no-look (fixed) fee for Debtor's counsel, all of which has been paid in full prior to confirmation. The orders confirming Chapter 13 Plan include the documentation that no-look fees for a debtor's counsel as provided in Local Bankruptcy Rule 2016-1(c)(1) are authorized.

However, Local Bankruptcy Rule 2016(c)(3), (4) require that no more than 25% of the no-look fee may be paid to counsel up front, and that 75% of the fee is then amortized on the term of the Plan.

The Local Rules relating to Chapter 13 debtor attorney's fees were amended in 2023 and the current 25% and 75% requirements put into place. Additionally, the fixed fee agreed to by the attorney is the fee for performing all of the legal work in the case, and an attorney agreeing to a fixed fee cannot seek additional fees and costs for substantial and unanticipated legal services that were allowed in the prior version of Local Bankruptcy Rule 2016-1.

Debtor and Debtor's counsel may well want to readdress the no-look fee in this case and consider whether such fee is reasonable, or if there is possible substantial work that may be necessary in the case that counsel not have a set no-look fee, but proceed with the "traditional" route in seeking interim and final approval of fees pursuant to 11 U.S.C. §§ 330, 331. L.B.R. 2016-1(b).

September 24, 2024 Hearing

The court continued the hearing on this Motion pending the resolution of the related Motion to Value. A review of the Docket on September 19, 2024 reveals that nothing new has been filed with the court under this Docket Control Number.

The hearing is continued to 2:00 p.m. on December 10, 2024, in light of the court having scheduled an evidentiary hearing on the Motion to Value Secured Claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Desiree Rebecca Lewis ("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 for Confirmation and Allowance of Professional Fees is **XXXXXXX**.

14. 24-24470-E-13 MARY JOHNSON MOTION TO CONFIRM PLAN
DBJ-1 Douglas Jacobs 1-21-25 [44]

Item 14 thru 15

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 3, 2025. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

REUSED DOCKET CONTROL NUMBER

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

THE MOTION

The debtor, Mary Lou Johnson ("Debtor"), seeks confirmation of the Amended Plan. Debtor has filed two Amended Plans related to this Motion, one on January 21, 2025, and one on February 3, 2025. Dockets 48, 55. The court considers the later filed Plan on February 3, 2025.

The Amended Plan provides for monthly payments of $2,845.41 pending a sale of Debtor's home. Until the home is sold, Debtor's niece Kristen Keller and brother Ray Johnson will make the plan

payments. Amended Plan, Docket 55. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

Of note, Debtor has filed evidence in support in the form of Declarations to support the Amended Plan filed on January 21, 2025. However, there are no Declarations in support of the later filed Plan on February 3, 2025. The Plan's appear identical in form, only clarifying in the later Plan the names of the family members who will be contributing to the plan payments.

At the hearing, **xxxxxxx**

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 24, 2025. Docket 58. Trustee opposes confirmation of the Plan on the basis that:

A. There is no Declaration of Debtor's niece, Kristen Keller, testifying she will contribute to the Plan. Moreover, there does not appear to be evidence in support of the February 3, 2025 Plan. Opp'n 2:24-28.

B. There is no time line provided for the sale of the residence, which is not reasonable. *Id.* at 3:10-12.

Creditor Richard and Mary Stone, Trustees of the Stone Family Trust dated April 17, 2002 ("Creditor") filed a Joinder to Trustee's Opposition on February 25, 2025, reiterating Trustee's points of opposition. Docket 61.

DISCUSSION

The glaring issue with these pleadings is the congestion in the Docket. There are not only multiple Amended Plans filed seemingly with the Motion to Confirm, but there is a Motion to Employ also under this Docket Control Number. The evidence filed in support of confirmation appears to relate to the earlier filed Plan, and there does not appear to be evidence in support of the later filed Plan. Moreover, there is a missing Declaration from Debtor's niece concerning her contribution to the Plan. A lack of evidence is cause for denial of confirmation.

The court further agrees there should be clarity concerning the time line for the sale. Creditor should not be expected to wait up to the full 60 months for payment on their claim if the Debtor is proposing to make the payments earlier from a sale. 60 months is not a commercially reasonable period for the marketing and sale of real property.

At the hearing, **xxxxxxx**

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

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

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

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

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

15. 24-24470-E-13 DBJ-1 — MARY JOHNSON — Douglas Jacobs — MOTION TO CONFIRM PLAN — 2-3-25 [53]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 3, 2025. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

REUSED DOCKET CONTROL NUMBER

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

THE MOTION

The debtor, Mary Lou Johnson ("Debtor"), seeks confirmation of the Amended Plan. Debtor has filed two Amended Plans related to this Motion, one on January 21, 2025, and one on February 3, 2025. Dockets 48, 55. The court considers the later filed Plan on February 3, 2025.

The Amended Plan provides for monthly payments of $2,845.41 pending a sale of Debtor's home. Until the home is sold, Debtor's niece Kristen Keller and brother Ray Johnson will make the plan payments. Amended Plan, Docket 55. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

Of note, Debtor has filed evidence in support in the form of Declarations to support the Amended Plan filed on January 21, 2025. However, there are no Declarations in support of the later filed Plan on February 3, 2025. The Plan's appear identical in form, only clarifying in the later Plan the names of the family members who will be contributing to the plan payments.

At the hearing, **xxxxxxx**

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 24, 2025. Docket 58. Trustee opposes confirmation of the Plan on the basis that:

A. There is no Declaration of Debtor's niece, Kristen Keller, testifying she will contribute to the Plan. Moreover, there does not appear to be evidence in support of the February 3, 2025 Plan. Opp'n 2:24-28.

B. There is no time line provided for the sale of the residence, which is not reasonable. *Id.* at 3:10-12.

Creditor Richard and Mary Stone, Trustees of the Stone Family Trust dated April 17, 2002 ("Creditor") filed a Joinder to Trustee's Opposition on February 25, 2025, reiterating Trustee's points of opposition. Docket 61.

DISCUSSION

The glaring issue with these pleadings is the congestion in the Docket. There are not only multiple Amended Plans filed seemingly with the Motion to Confirm, but there is a Motion to Employ also under this Docket Control Number. The evidence filed in support of confirmation appears to relate to the earlier filed Plan, and there does not appear to be evidence in support of the later filed Plan. Moreover, there is a missing Declaration from Debtor's niece concerning her contribution to the Plan. A lack of evidence is cause for denial of confirmation.

The court further agrees there should be clarity concerning the time line for the sale. Creditor should not be expected to wait up to the full 60 months for payment on their claim if the Debtor is proposing to make the payments earlier from a sale. At the hearing, **xxxxxxx**

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

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

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

16. 24-25872-E-13 DPC-1 | **MARSHAUN TATE** **James Keenan** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-12-25 [23]**

Item 16 thru 17

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 12, 2025. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Marshaun Keith Tate ("Debtor") admitted at the First Meeting of Creditors, held on February 6, 2025, that he has not filed 2022 and 2023 tax returns, but was doing so in the next few days. The Trustee requested the Debtor upload the returns to the secure website at www.bkdocs.us once they have been filed. To date, the Debtor has failed to provide a copy of either return. Obj. 2:1-7, Docket 23.

2. Debtor's Plan relies on the Motion to Value Collateral of Ally, which is set for hearing on March 11, 2025, the same day as this motion. If the motion to value is not granted, Debtor's Plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation. *Id.* at 2:8-11.

    a. The court would note that the hearing on the Motion to Value is actually set for March 25, 2025. Notice, Docket 19.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 25.

DISCUSSION

Failure to File Tax Returns

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

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 Ally Bank. The hearing on that Motion is not until March 25, 2025. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

17. 24-25872-E-13 JCW-1 | **MARSHAUN TATE** **James Keenan** | **OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK** **1-31-25 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 31, 2025. By the court's calculation, 39 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.

Ally Bank ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Marshaun Keith Tate ("Debtor") has proposed a Plan that relies on a Motion to Value Creditor's collateral. However, Creditor disputes Debtor's valuation. Obj. 1:17.

2. The Plan does not pay the proper prime interest rate on Creditor's claim. *Id.* at 2:22-3:6.

DISCUSSION

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 Creditor. The hearing on that Motion is not until March 25, 2025, and Creditor has indicated that it will dispute Debtor's valuation. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 7%. Creditor's claim is secured by a 2016 Nissan Altima. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 7.5%, plus a 1.25% risk adjustment, for a 8.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Ally Bank ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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

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

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

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

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

The Motion to Confirm the Amended Plan is xxxxxxx.

March 11, 2025 Hearing

The court continued the hearing for Debtor to file Supplemental Schedules and to cure a delinquency of $800. As of March 6, 2025, no Supplemental Schedules have been filed and nothing new has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

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

CHAPTER 13 TRUSTEE'S OPPOSITION

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

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

DISCUSSION

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

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

The Parties requested that the court continue the hearing.

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

February 11, 2025 Hearing

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

At the hearing, counsel for the Debtor says that they are $800 delinquent, their current tax payment having been higher than they through.

The Trustee agreed to continue the hearing, the Debtor stating that Supplement Schedules will be filed.

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

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

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

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

19. 24-24598-E-13 DPC-3 | **WLODZIMIERZ LITWIN** **Peter Macaluso** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **1-27-25 [52]**

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 and other parties in interest on January 27, 2025. By the court's calculation, 43 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 Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Wlodzimierz Jan Litwin's ("Debtor") claimed exemptions under California law. Trustee states:

A. Amended Schedule C claims as exempt $9,525.00 under C.C.P. §704.060 for line 19.1 from Schedule A/B, which appears to be the business interest in Western Enterprises, a car sales business which apparently only owns a 2008 Mercedes. In the exemption Debtor also refers to a business license, but this license is not scheduled in Schedule A/B. Obj. 1:22-26.

B. Trustee objects to this exemption if it seeks to exempt a license not scheduled, and Trustee objects to the exemption if it seeks to exempt the 2008 Mercedes without adequate identification of the vehicle, (such as with the model, mileage, and description, and a VIN).

C. Debtor has claimed $1 exemption on a civil case, case no. 23CV0116, which provides that a cause for action for personal injury is exempt without a claim and that damages or a settlement arising out of personal injury is exempt to the extent necessary for support pursuant to C.C.P. § 704.140. Debtor has not identified how these damages relate to a personal injury claim. *Id.* at 2:17-21.

DISCUSSION

Cal. Code Civ. P. § 704.060 states:

(a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) Eight thousand seven hundred twenty-five dollars ($8,725), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) Eight thousand seven hundred twenty-five dollars ($8,725), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

(d) Notwithstanding subdivisions (a) and (b):

> (1) The amount of the exemption for a commercial motor vehicle under paragraph (1) or (2) of subdivision (a) is limited to four thousand eight hundred fifty dollars ($4,850).
>
> (2) The amount of the exemption for a commercial motor vehicle under paragraph (3) of subdivision (a) is limited to twice the amount of the exemption provided in paragraph (1) of this subdivision.

Under this exemption code section, a vehicle may be claimed as exempt, but only if the vehicle is for use in the trade, business, or profession for which the exemption is claimed.

> Cal. Code. Civ. P. § 704.140 states:
>
> (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for personal injury is exempt without making a claim.
>
> (b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.
>
> (c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.
>
> (d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

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

Cal. Code Civ. P. § 704.060
Exemption

Debtor has claimed the following asset as exempt in the amount of $9,525 pursuant to this section: "Western Enterprises; car sales - Business License and (1) Car- 2008 Mercedes." Am. Schedule C, Docket 34. The exemption also appears to cite to subsection (c) of this section, which would only allow the exemption to apply to the Mercedes. Indeed, the court has held that a liquor license is not a tool of the trade, and Debtor has not otherwise made a showing how the business license in this case is distinguishable

from the court's earlier ruling. *See In re Singh*, 656 B.R. 237 (E.D. Cal. Bankr. 2024). The court sustains Trustee's objection to claiming any business license as exempt.

As for the Vehicle, it may be that Debtor can claim the asset as exempt as a tool of the trade under subsection (c). However, Debtor has not properly identified the Vehicle nor shown how it is used in the business, and so the court sustains the objection to this exemption as well.

Cal. Code. Civ. P. § 704.140
Exemption

Debtor has claimed the following asset as exempt in the amount of $1 pursuant to this section: "civil case, case no. 23CV0116. . ." Am. Schedule C, Docket 34. There is no showing that this case has to do with a personal injury, instead being described as a potential breach of contract dispute. This exemption is disallowed as well.

Debtor did not file any Response to this Objection, despite it being noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1). For these reasons, the Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemption for the Western Enterprises; car sales - Business License and (1) Car- 2008 Mercedes under California Code of Civil Procedure § 704.060, and the claimed exemption for the civil case, case no. 23CV0116, under California Code of Civil Procedure § 704.140, are disallowed in their entirety. *See* Am. Schedule C, Docket 34.

20. 25-20717-E-13 CW-1 | **CASEY WOODBURY** **Pro Se** | **MOTION TO EXTEND AUTOMATIC STAY** **2-26-25 [11]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 26, 2025. By the court's calculation, 13 days' notice was provided. The court set the hearing for March 11, 2025. Dckt. 15.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter xx 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.

Casey Woodbury ("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. 23-23323) was dismissed on August 26, 2024, after Debtor moved to dismiss her own case. *See* Order, Bankr. E.D. Cal. No. 23-23323, Dckt. 102, August 26, 2024. 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.

In the Motion, Debtor does not explain why this case has been filed in good faith, except that the case was filed to halt foreclosure of her rental property. Mot. 2:18-28. Debtor states she will have a Plan and related schedules filed by March 11, 2025. *Id.* at 2:15-17.

In the Declaration improperly attached to the Motion, Debtor states it is her intent to liquidate the rental property within six months. Decl. ¶ 6, Docket 11.

At the hearing, **xxxxxxx**

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 under the facts of this case and the prior case for the court to extend the automatic stay. Debtor intends to use bankruptcy to sell her rental properties, claiming she will efficiently prosecute this case.

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 Casey Woodbury ("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 on an interim basis, 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, through and including on **XXXXXXX**.

IT IS FURTHER ORDERED that the final hearing on this Motion shall be conducted on **xxxxxxx**. Debtor shall provide notice of the continued hearing on or before **xxxxxxx**, with written oppositions, if any, filed and served on or before **xxxxxxx**; and replies, if any, filed and served on or before **xxxxxxx**.

21. 24-24781-E-13 KLG-2 | **JENNIFER AMADI** / **Arete Kostopoulos** | **MOTION TO SELL O.S.T.** / **2-28-25 [44]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on February 28, 2025. By the court's calculation, 11 days' notice was provided. The court set the hearing for March 11, 2025. Dckt. 50.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Jennifer Lynn Amadi, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 2272 Ellesmere Loop Roseville, CA 95747 ("Property").

The proposed purchaser of the Property is David Hildebrand ("Buyer"), and the terms of the sale are:

a. Sales Price: $529,950.00;

b. Payoff of TH MSR Holdings, aka, RoundPoint Mortgage Servicing, LLC: $422,647.31;

c. Payoff of MCLP Asset Company, Inc, aka NewRez, LLC dba Shellpoint Mtg: $42,575.58;

d. Closing Costs: $13,248.75;

e. Remainder due to debtor: $51,478.36.

Mot. 2:1-6.

DISCUSSION

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: **xxxxxxx**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the price appears reasonable and the sale will generate funds to pay creditors of the estate.

Movant has not given the court an estimation for the percent commission to be split between Debtor's Broker, Robin S. Lack of Realty ONE Group Complete, and Buyer's Broker, Laura Miller of KW CA Premier. Movant should provide the court with the percent to the brokers so they may be paid for their work related to this sale. At the hearing, **xxxxxxx**

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

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

The Motion to Sell Property filed by Jennifer Lynn Amadi, 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 the Motion is granted, and Jennifer Lynn Amadi, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to David Hildebrand or nominee ("Buyer"), the Property commonly known as 2272 Ellesmere Loop Roseville, CA 95747 ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $529,950.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 47, 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 **xxxxxxx** percent of the actual purchase price upon consummation of the sale. The **xxxxxxx** percent commission shall be split between Debtor's Broker, Robin S. Lack of Realty ONE Group Complete, and Buyer's Broker, Laura Miller of KW CA Premier.

E. 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.

If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee's demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.

~~F. After payment of the amounts provided above, including the disbursement to the Chapter 13 Trustee directly from escrow, any remaining net sale proceeds may be disbursed directly from escrow to the Chapter 13 Debtor.~~

FINAL RULINGS

22. 24-22625-E-13 **JAMES WALTHOFF**
Peter Macaluso

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

Item 22 thru 23

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

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

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

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

The hearing on the Motion to Dismiss is continued to April 8, 2025.

March 11, 2025 Hearing

The Parties filed a Stipulation with the court on March 4, 2025. Docket 65. The Stipulation explains the Parties' negotiations are ongoing in resolving this Motion and the related Objection, and the Parties stipulate to a continuance of the hearing to 2:00 p.m. on April 8, 2025.

REVIEW OF THE MOTION

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

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

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

February 11, 2025 Hearing

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

The court having continued the hearing on the Objection to Exemptions, the parties reporting that they are finalizing the Stipulation, the court continues the hearing on the Motion to Dismiss.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on March 11, 2025. The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by James D. Walthoff ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing is continued to **2:00 p.m. on April 8, 2025.**

23. 24-22625-E-13 DNL-1 | **JAMES WALTHOFF** Peter Macaluso | **CONTINUED OBJECTION TO HOMESTEAD EXEMPTION 8-26-24 [20]**

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

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

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

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

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

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

The hearing on the Objection to Exemptions is continued to 2:00 p.m. on April 8, 2025.

March 11, 2025 Hearing

The Parties filed a Stipulation with the court on March 4, 2025. Docket 65. The Stipulation explains the Parties' negotiations are ongoing in resolving this Objection and the related Motion, and the Parties stipulate to a continuance of the hearing to 2:00 p.m. on April 8, 2025.

REVIEW OF OBJECTION

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

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

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

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

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

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

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

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

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

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

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

> Disclaimer: This report: (i) is **not an insured product or service or an abstract, legal opinion or a representation of the condition of title to real property**, and (ii) is issued exclusively for the benefit of First American Data Tree LLC (Data Tree) customers and may not be used or relied upon by any other person. Estimated property values are: (i) based on available data; (ii) are not guaranteed or warranted;

> (iii) do not constitute an appraisal; and (iv) should not be relied upon in lieu of an appraisal. Data Tree does not represent or warrant that the information is complete or free from error, and expressly disclaims any liability to any person or entity for loss or damage caused by errors or omissions in the report. If the "verified" logo {(3t-") is displayed, or a record is designated "verified; Data Tree's algorithm matched fields from two or more data sources to confirm source data.

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

DEBTOR'S OPPOSITION

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

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

DISCUSSION

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

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

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

> (b) Objecting to a Claim of Exemptions.
>
> > (1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Computation of Deadline For

Filing Objection to Exemption

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

> July 26 - July 31.....6 days
> August 1 - August 24.....24 days
>
> Thirty days expires, by the Debtor's calculation on August 24, 2024.

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

> Rule 9006. Computing and Extending Time; Time for Motion Papers [Effective until December 1, 2024]
>
> (a) Computing Time. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.
>
> (1) Period stated in days or a longer unit. When the period is stated in days or a longer unit of time:
>
> (A) **exclude the day of the event that triggers the period**;
>
> (B) **count every day**, including intermediate Saturdays, Sundays, and legal holidays; and
>
> (C) **include the last day of the period**, **but if the last day is a Saturday, Sunday**, or legal holiday, **the period continues to run until the end of the next day** that is not a Saturday, Sunday, or legal holiday.
>
> . . .
>
> (4) "Last day" defined. Unless a different time is set by a statute, local rule, or order in the case, the last day ends:
>
> (A) for electronic filing, at midnight in the court's time zone; and
>
> (B) for filing by other means, when the clerk's office is scheduled to close.
>
> (5) "Next day" defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
>
> . . . .

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

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

ISSUES OUTSTANDING

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

Possible Transfers of Property

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

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

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

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

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

In response to paragraph 18 of the Statement of Financial Affairs Debtor states under penalty of perjury that within two years before the filing of this Bankruptcy Case the Debtor did not "sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your

business or financial affairs." Dckt. 13 at 25. The is not consistent with the allegations of Creditor that in May 2023 title to the Property was transferred to MRDC, LLC.

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

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

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

October 8, 2024 Hearing

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

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

December 10, 2024 Hearing

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

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

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

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

Debtor's Supplemental Pleadings

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

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

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

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

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

DISCUSSION

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

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

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

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

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

§ 11930. Transfer by inter vivos gift or by death

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

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

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

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

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

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

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

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

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

> (c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment

> debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

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

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

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

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

> § 43:26. Equitable interests
>
> Equitable interests in property may be homesteaded. A party may homestead "any interest in real property."[1] An equitable title that supports a right of occupancy is sufficient to enable the owner to claim a homestead of the premises.[2]
> Vendee under installment contract of sale. A vendee in possession of property pursuant to a contract of sale under which the vendor retains legal title can declare a homestead upon his or her equitable interest in the property.[3] This interest is subordinate to the rights of the vendor, but superior to any third-party claim to the property that accrues after the declarant records the declaration of homestead.[4]
>
> 1

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

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

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

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

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

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

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

Case Example:

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

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

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

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

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

Comment:

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

11
Civ. Proc. Code, § 704.710.

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

12

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

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

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

In its findings, filed on August 12, 1952, the [trial] court found . . .that on April 9, 1951, Robert Smith conveyed all his right, title and interest in this property to Stanley Smith without consideration and with intent to defraud his creditors; that the property was then worth $ 8,000; that Stanley Smith accepted and received this deed with the intent to hold the property "as a secret trust for said Robert Smith"; "that since said conveyance the title to the above described real property has remained in the name

> of" Stanley Smith; that despite such conveyance Robert Smith and his wife remained in exclusive possession of said property until January 1, 1952, . . . As conclusions of law, it was found that on February 15, 1951, Breeden became a creditor of the senior Smiths; that said conveyance was fraudulent as to creditors, and the senior Smiths became insolvent by reason thereof; and that the plaintiffs were entitled to a judgment decreeing that this conveyance was fraudulent as to Breeden, and should be set aside and annulled "insofar as it affects the rights of" Breeden. Judgment was entered on August 12, 1952, adjudging solely that this conveyance was fraudulent as to Breeden, and "hereby is set aside and annulled insofar as it affects the rights of the plaintiff Joseph W. Breeden." No appeal was taken from that judgment.

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

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

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

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

> entered. In the absence of any showing that the respondents were entitled to a sale of the property on execution it was error to refuse the restraining order asked for. While the respondents could have proceeded under sections 1245 to 1259 of the Civil Code, if the circumstances warranted, no such procedure is involved in this appeal.

Id., at 66.

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

> Courts "adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor." *(Amin v. Khazindar*, *supra*, 112 Cal.App.4th at p. 588.) . . .
>
> . . .
>
> Several California cases recognize that judgment debtors who continuously reside in their dwellings retain a sufficient equitable interest in the property to claim a homestead exemption even when they have conveyed title to another. (*Breeden v. Smith* (1953) 120 Cal.App.2d 62, 66; *Putnam Sand & Gravel Co. v. Albers* (1971) 14 Cal.App.3d 722, 726; *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 81.) Such a result is consistent with the purpose of California's homestead exemption to protect one's dwelling against creditors. (*Amin v. Khazindar, supra*, 112 Cal.App.4th at p. 588; *accord, Wells Fargo Financial Leasing, Inc. v. D & M Cabinets*, *supra*, 177 Cal.App.4th at p. 67.)
>
> . . .
>
> (5) Broadway does not dispute that the property was Tarlesson's principal residence when it acquired its judgment lien. Nor does it dispute that she has continuously resided in the home since 1984, and there is no evidence that rebuts Tarlesson's claim that, "At all times I retained the beneficial interest in my home, which was acknowledged by Peola [Lane]." In the circumstances, Tarlesson's continuous occupancy of her home qualifies it as her "homestead" under section 704.710, subdivision (c). We will not also read a requirement into section 703.020 or 704.710 that Tarlesson must have held continuous title to her home to claim the homestead exemption. [6]
>
> 6
>
> In its reply brief, Broadway refers to a separate statutory definition of a "declared homestead owner" in section 704.910, subdivision (b)(1). But this case deals solely with an automatic homestead exemption claim rather than a declared homestead. We will not further address an argument raised for the first time in a reply brief. *(Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1372, fn. 11 [131 Cal. Rptr. 2d 524].)

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

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

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

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

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

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

January 28, 2025 Hearing

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

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

February 11, 2025 Hearing

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

At the hearing, the Parties reported that a tentative agreement worked out.

The hearing on the Objection to Exemptions is continued to 2:00 p.m. on March 11, 2025.

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

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

IT IS ORDERED that the hearing on the Objection to Exemptions is continued to **2:00 p.m. on April 8, 2025.**

24. 25-20141-E-13 CRG-1 — ADEMAR/ROSELEENE SAMIANO — Carl Gustafson — MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCIAL — 1-22-25 [13]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 22, 2025. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Capital One Auto Financial ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $28,270.00.

The Motion filed by Ademar Montejo Samiano and Roseleene Diaz Samiano ("Debtor") to value the secured claim of Capital One Auto Financial ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 15. Debtor is the owner of a 2021 Tesla Model Y ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $28,270.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a Non-Opposition on February 25, 2025. Docket 22.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in June of 2022, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $48,921.00. Declaration ¶ 5, Docket 15. Therefore, Creditor's claim secured by a lien on the

asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $28,270.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Ademar Montejo Samiano and Roseleene Diaz Samiano ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Capital One Auto Financial ("Creditor") secured by an asset described as 2021 Tesla Model Y ("Vehicle") is determined to be a secured claim in the amount of $28,270.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $28,270.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

25. 24-25862-E-13 DPC-1 | **SUSAN SCOTT**
Cindy Lee Hill | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK**
2-12-25 [25]

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 12, 2025. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Susan C. Scott ("Debtor") has not filed all tax returns in violation of 11 U.S.C. § 1329(a)(9). Obj. 1:27-2:3.

2. Trustee is advised some property may have been sold postpetition in January of 2025. *Id.* at 2:4-5.

3. The Plan is not clear as to sales of certain assets. *Id.* at 2:7-18.

4. The petition and schedules contain inaccurate or missing information. *Id.* at 2:19-3:7.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 27.

DEBTOR'S NON-OPPOSITION

Debtor filed a Non-Opposition on February 26, 2025. Docket 30. Debtor informs the court that the petition was filed on an emergency notice as a skeletal petition and Plan in an emergency to stop a pending foreclosure. Debtor informs the court she will file an amended Plan and Schedules prior to this hearing.

A review of the Docket on March 6, 2025 reveals no amended documents have been filed.

DISCUSSION

Trustee's objections are well-taken by both Debtor and the court. Debtor has explained the reasons for not having sufficient information on the petition and Schedules. Debtor is reminded filing tax returns is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Of concern to the court is Trustee's statement that property of the estate may have been sold postpetition in January of 2025. Such a sale would require a noticed motion pursuant to 11 U.S.C. § 363(b)(1), the sale of property not being in the ordinary course of business. The court has not seen a Motion to Sell.

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.

26. 24-21773-E-13 DWL-2 **FARRON/VALERIE DRYLIE** **Patricia Wilson** **MOTION TO CONFIRM PLAN 1-20-25 [46]**

DEBTORS DISMISSED: 01/27/25

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

The case having previously been dismissed, the Motion is denied as moot without prejudice. Order, Docket 56.

The Motion to Dismiss is denied as moot without prejudice, the case having been dismissed on January 22, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied as moot without prejudice, the case having been dismissed.

27. 24-22674-E-13 DPC-2 | **ANDREW/JOANNA NEWBOLD** **Eric Schwab** | **CONTINUED MOTION TO DISMISS CASE** **11-8-24 [30]**

Items 27 thru 28

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 8, 2024. By the court's calculation, 75 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 denied without prejudice.

March 11, 2025 Hearing

The court continued this Motion to Dismiss to be heard in conjunction with Debtor's Motion to Confirm. The court has granted that Motion to Confirm by final ruling, there being no opposition filed and the Plan being filed with proper support evidence. The Motion is denied without prejudice.

REVIEW OF MOTION

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

1. The debtor, Andrew Francis Newbold and Joanna Hennessee Newbold ("Debtor"), is delinquent $12,876.00 in plan payments. Mot. 1:24, Docket 30.

2. Trustee objected to confirmation of the Debtor's original Plan, which was sustained at hearing on September 10, 2024. The Debtors have failed to file an amended Plan and set a hearing for confirmation. *Id.* at 2:3-6.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 32.

DEBTOR'S RESPONSE

Debtor filed a Response on January 8, 2025. Docket 36. Debtor has informed the court there will be an Amended Plan on file shortly. Moreover, Debtor has filed a Motion to Employ real estate broker to sell their home and an accompanying Motion to Sell. The hearing on the Motion to Sell is set for January 28, 2025.

DISCUSSION
Delinquent

Debtor is $12,876.00 delinquent in plan payments, which represents more than a month of the $9,139.00 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

It appears Debtor is prosecuting this case, selling their residence to pay creditors.

The court continues the hearing to 9:00 a.m. on March 5, 2025, to allow the Motion to Sell be prosecuted and to provide the Trustee with time to determine whether such sale will resolve the delinquency.

March 5, 2025 Hearing

The court continued the hearing on the Motion as it appeared Debtor was prosecuting this case, selling his residence to pay his creditors. Trustee filed a Reply on February 26, 2025. Docket 71. Trustee states Debtor has a hearing set to confirm their Modified Plan; however, Debtor has missed the February payment.

At the hearing, counsel for the Debtor reported that a TFS payment was initiated last Friday. The Parties agreed to continue the hearing.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on March 11, 2025, to be conducted in connection with the confirmation hearing.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 denied without prejudice.

28. 24-22674-E-13 EJS-2 | **ANDREW/JOANNA NEWBOLD** **Eric Schwab** | **MOTION TO CONFIRM PLAN** **1-21-25 [50]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2025. 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 debtor, Andrew Francis Newbold and Joanna Hennessee Newbold ("Debtor") have provided evidence in support of confirmation. *See* Decl., Docket 53; Exhibits, Docket 54. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on February 24, 2025. Docket 69. 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 debtor, Andrew Francis Newbold and Joanna Hennessee Newbold ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on January 21, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

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

29. 24-21778-E-13 MS-1 | **VITALIY/OKSANA NEVAR** | **MOTION TO MODIFY PLAN**
Mark Shmorgon | **1-28-25 [29]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, other parties in interest, and Office of the United States Trustee on January 28, 2025. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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 debtor, Vitaliy Nevar and Oksana Nevar ("Debtor") have provided evidence in support of confirmation. *See* Decl., Docket 31. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on February 25, 2025. Docket 36. 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 debtor, Vitaliy Nevar and Oksana Nevar ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on January 28, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. 24-24580-E-13 TLA-2 | **EILEEN ARGEL** | **Thomas Amberg** | **MOTION TO CONFIRM PLAN** | **1-19-25 [51]**

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

The case having previously been dismissed, the Motion is denied as moot without prejudice. Order, Docket 64.

The Motion to Dismiss is denied as moot without prejudice, the case having been dismissed on March 3, 2025.

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

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

The Motion to Confirm 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 Motion is denied as moot without prejudice, the case having been dismissed.