

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 12, 2024 at 2:00 p.m.

1. 23-22217-E-13 DPC-1 1 thru 2	WLODZIMIERZ LITWIN Peter Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK 8-21-23 [33]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on August 21, 2023. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The to Objection to Confirmation of Plan is sustained.

March 12, 2024 Hearing

On March 5, 2024 the Chapter 13 Trustee, David Cusick (“Trustee”) filed a Status Report with the court. Docket 85. In his Status Report, Trustee states:

1. Some of the issues of Trustee’s Objection have been resolved, but not all.
2. Tax returns have been filed, so this issue has been resolved. *Id.* at ¶ 1.
3. Trustee has not received all business documents, namely, six months of bank statements for all bank accounts and the business questionnaire. *Id.* at ¶ 2.
4. Schedule I, a Statement of Financial Affairs, proof of expenses, non-standard provisions of the proposed Plan relating to the ability to pay, and address mortgage arrears have all either not been amended or supplemented *Id.* at ¶¶ 3-9.

This Objection to Confirmation was filed on August 21, 2024. Dckt. 33. As addressed below, this hearing has been continued multiple times to allow Debtor and Debtor’s counsel to diligently prosecute this Chapter 13 case. Though having been continued multiple times over the past six months, Debtor and his counsel have nothing further filed to document any resolution of the outstanding issues. Additionally, the Trustee reports that Debtor and Debtor’s counsel have continued to fail to provide the Trustee with the required documents and has not corrected or supplemented prior documents filed.

It well appears that if Debtor could prosecute this case, the Objection would have been resolved.

At the hearing, **XXXXXXX**

The Objection to Confirmation is Sustained and the Plan is not confirmed.

REVIEW OF OBJECTION

Trustee opposes confirmation of the Plan on the basis that:

- A. Tax returns were not provided to the Trustee, the Debtor has not filed all tax returns required under 11 U.S.C. § 1308, and the priority claims by the Internal Revenue Service and the Franchise Tax Board will not allow the Plan to be completed in 36 months.
- B. The Debtor failed to provide documents as requested by the Plan. Debtor is self-employed, and owns two LLCs. The Debtor only provided the Trustee with a 6-month Profit and Loss Statement for one LLC.
- C. Debtor may be unable to make the payments called for by the Plan. Schedule I does not appear to contain accurate business income. The Debtor admitted at the Meeting of Creditors that his ex-wife resides with the debtor and helps with the expenses. The Debtor had failed to comply with the Plan as the non-standard provision calls for an adversary to be filed within 30 days of filing, and no adversary appears filed. Wells Fargo Bank, N.A., had

filed a proof of claim identifying that the Debtor is delinquent, and it was misclassified in Class 4 and should be listed in Class 1 of the Plan.

- D. The Plan payment may not be the Debtor's best efforts under 11 U.S.C. § 1325(b). The Trustee believes 60 months is required and the Debtor may have a required payment to unsecured creditors other than 0%.

Dckt. 33.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Tax Returns

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

Failure to File Tax Returns

Claims by two different tax entities show tax returns have not been filed. The Internal Revenue Service shows years 2017, 2018, 2019, 2020, 2021 or 2022 returns have not been filed. Claims by the Franchise Tax Board show 2013, 2016, 2017, 2019, 2020, 2021, and 2022 tax returns 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).

Failure to File Documents Related to Business

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

- A. The business questionnaire,
- B. Two years of tax returns from 2022 and 2021, and
- C. Six months of bank statements for all bank accounts

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

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

- A. Schedule I does not appear to contain accurate business income as Line #8a lists debtors net business income as \$4,500 and the business income and expenses list the

debtors average net monthly income as \$4,000. Dckt. 14. The Statement of Affairs does not list any year-to-date income. It is not clear to the Trustee if the Debtor is generating income from the real property in Naples, Texas, if any income is being produced from this property and if the debtor is receiving any income from the property, or if the Debtor actually intends to surrender the property.

- B. The Debtor admitted at the Meeting of Creditors that his ex-wife resides with him and helps with the expenses.
- C. The Debtor has failed to comply with the Plan. The non-standard provision calls for an adversary to be filed within 30 days of filing. Debtor's voluntary petition was filed July 5, 2023; no adversary appears filed.
- D. Wells Fargo Bank, N.A., has filed a proof of claim, identifying that the debtor is delinquent \$988.45 (Claim 3-1). It appears this creditor is misclassified in Class 4 and should be listed in Class 1 of the Plan.

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

Not Best Effort

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

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

The Debtor claims to be below median income and lists \$4,500 of calculated monthly disposable income on Form 122C-1. Dckt. 14. The Plan proposes to pay a 0% percent dividend to unsecured claims. The debtor failed to list his gross business income of approximately \$12,625.00 on Form 122C-1. The Trustee believes with this income, the Debtor is above median and a 60 month term may be required. Thus, the court may not approve the Plan.

At the hearing, Debtor's counsel requested additional time to address these issues. Rather than sustaining the objection, the court continues the hearing to afford Debtor and Debtor's counsel a little more flexibility in putting forward and amended plan.

October 2024, 2023 Hearing

At the hearing, counsel for the Debtor addressed what information had been provided and the efforts Debtor was making to confirmation of the Plan. The Trustee concurred with the request for an extension.

December 5, 2023 Hearing

A review of the docket on November 29, 2023 reveals that Debtor filed an amended Statement of Financial Affairs, shedding light on the Debtor's current financial affairs. Dckt. 62. The amendment adds an additional Federal Court pre-petition piece of litigation. *Id.* at 4.

The review of the Docket on November 29, 2023 further reveals that Creditor MEB Loan Trust IV, U.S. Bank Trust National Association filed its Proof of Claim on September 13, 2023. POC 25-1. Creditor asserts a Claim in the amount of \$200,726.02. However, the parties have not submitted any supplemental briefing addressing the effect of a 1099-C on debt forgiveness.

At the hearing, counsel for the Debtor reported that no agreement has been achieved. Debtor has now filed an Objection to Creditor's Claim, which is set for hearing on January 23, 2024.

The court continues the hearing to allow for further review and the prosecution of the Claim Objection, if necessary.

January 30, 2024 Hearing

A review of the Docket on January 24, 2024 reveals no new documents have been filed with the court in regard to this matter. However, Creditor MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee as serviced by Specialized Loan Servicing LLC ("Creditor") filed an Opposition to Debtor's Objection to Claim (DCN. PGM-1). Docket 73. Debtor filed a Reply to Creditor's Opposition on January 15, 2024. Docket 75. The court heard Debtor's Objection to Creditor's Claim on January 23, 2024, and continued that matter to March 12, 2024. Minutes, Docket 78 p. 1.

At the hearing, counsel for Debtor stated that he and counsel for the Creditor for Creditor (who was not at the hearing) request a continuance to 2:00 pm. March 12, 2024. Counsel for Debtor reported that the issues are being resolved and by March 2024 they should have the amount of the claim set and the Plan ready to be confirmed, including any amendments as necessary.

The Trustee did not oppose a continuance, but Debtor has some other issues to address.

The hearing is continued to 2:00 p.m. on March 12, 2024.

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

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

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

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

2. [23-22217-E-13](#)
[KMM-1](#)

WLODZIMIERZ LITWIN
Peter Macaluso

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY MEB
LOAN TRUST IV, U.S. BANK TRUST
NATIONAL ASSOCIATION
7-26-23 [\[23\]](#)**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 26, 2023. By the court's calculation, 62 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

March 12, 2024 Hearing

A review of the Docket on March 6, 2024 reveals that no new documents have been filed with the court in this matter.

At the hearing, XXXXXXX

REVIEW OF OBJECTION

MEB Loan Trust IV, U.S. Bank Trust National Association, acting as trustee serviced by Specialized Loan Servicing LLC ("Creditor") holding a secured claim, opposes confirmation of the Plan on the basis that:

- A. The Creditor has a claim secured by the property commonly known as 3704 Larkspur Lane, Cameron Park, California 95682 (“Property”). The Creditor will file its proof of claim by the deadline of September 13, 2023. In the mean time, Creditor will file a copy of the note, deed of trust, and assignment of deed of trust to evidence the claim. A review of the docket on October 18, 2023 shows Creditor did file its Proof of Claim on September 13, 2023.
- B. The Plan fails to provide for the curing of the default on the Creditor’s claim pursuant to 11 U.S.C. § 1322(b)(5).

Objection, Dckt. 23.

DEBTOR’S REPLY TO CREDITOR’S OPPOSITION

- A. Creditor has no standing as no proof of claim has been filed.

The court notes that while failing to file a proof of claim, which is *prima facie* evidence of the obligation, or a declaration providing testimony of the facts alleged (such as the amount of the debt and alleged defaults) may render the Objection evidentiary insufficient, it does not deprive Creditor of standing to object to how Debtor proposes to deal with the obligation owed to Creditor. In any case, Creditor now has its proof of claim on file.

- B. Creditor’s note, deed of trust, and assignment have not been authenticated.
- C. Creditor’s alleged claim was forgiven in 2019.

Reply, Dckt. 37.

CREDITOR’S RESPONSE TO DEBTOR’S REPLY

Creditor filed its Response to Debtor’s Reply on September 22, 2023. Dckt. 40. In its Response, Debtor states:

- A. On September 13, 2023, Creditor filed its Proof of Claim as Claim 25-1 in the amount of \$200,726.02 with arrears in the amount of \$113,388.60.
- B. The lien referred to by Debtor (previous servicer, Bank of America) has not been released by either Creditor or Bank of America.
- C. Creditor is in contact with Bank of America and is obtaining signed declarations of individuals who are familiar with the situation.

Dckt. 40.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$200,726.02 in this case, including arrearages in the amount of \$113,388.60. Debtor's Schedule D estimates the amount of Creditor's claim as \$0.00 and indicates that he was released from this obligation on September 27, 2019. The Plan does not provide for this claim.

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

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

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

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

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

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

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

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

Alleged Claim was Allegedly Forgiven

The Debtor claims that the alleged claim was forgiven by the previous servicer, Bank of America, in 2019. The Debtor attached exhibits to this effect (Dckt. 38), but failed to file any declaration supporting its contention.

Unauthenticated Exhibits 2 and 3 are stated to be Bank of America's release of the obligation that is the basis of the claim and the Bank of America Tax Statement documenting the forgiveness of the obligation, respectively. Dckt. 38.

Exhibit 2 is dated September 16, 2019, states that the Bank "will release the obligation from your home equity line of credit." Exhibit 3 is a 2019 Tax Statement from Bank of American stating that the obligation of Debtor in the amount of \$188,462.28 was discharged in 2019 by Bank of America.

Looking at Exhibit 2, it does not state that the obligation was determined uncollectible and Bank of America deemed a bad debt with little likelihood of payment, but states "Amount of Debt Discharged 188,462.28."

While not authenticated, it is helpful information for Creditor in tracking down whether the obligation has previously been discharged and is no longer enforceable.

In its Reply, Movant states that it is obtaining declarations from Bank of America concerning the alleged forgiveness of the obligation and its claim in this case. Movant requests that the hearing on the Objection be continued.

At the hearing, Creditor states that it is asserting a claim in this case.

The court continues the hearing to allow Debtor and Creditor to investigate the claim and prior 1099 Statement of Debt Forgiveness.

October 24, 2023 Hearing

At the hearing, counsel for the Debtor reported the efforts made to date to address the issue of whether the debt has been forgiven. Counsel for Creditor concurred with a continuance as Creditor and Debtor work to address the effect of the 1099-C "debt forgiveness" tax statement, with counsel to proceed with determining the information from Bank of America about its records on this specific debt and treatment of 1099-C debt forgiveness tax reporting.

December 5, 2023 Hearing

A review of the Docket on November 29, 2023 reveals that Creditor filed its Proof of Claim on September 13, 2023. POC 25-1. Creditor asserts a Claim in the amount of \$200,726.02. However, the parties have not submitted any supplemental briefing addressing the effect of a 1099-C on debt forgiveness.

At the hearing, counsel for the Debtor reported that no agreement has been achieved. Debtor has now filed an Objection to Creditor's Claim, which is set for hearing on January 23, 2024.

The court continues the hearing to allow for further review and the prosecution of the Claim Objection, if necessary.

January 30, 2024 Hearing

A review of the Docket on January 24, 2024 reveals no new documents have been uploaded with the court in regard to this matter. However, Creditor MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee as serviced by Specialized Loan Servicing LLC (“Creditor”) filed an Opposition to Debtor’s Objection to Claim (DCN. PGM-1). Docket 73. Debtor filed a Reply to Creditor’s Opposition on January 15, 2024. Docket 75. The court heard Debtor’s Objection to Creditor’s Claim on January 23, 2024, and continued that matter to March 12, 2024. Minutes, Docket 78 p. 1.

At the hearing, counsel for Debtor stated that he and counsel for the Creditor for Creditor (who was not at the hearing) request 2:00 pm. March 12, 2024. Counsel for Debtor reported that the issues are being resolved and by March 2024 they should have the amount of the claim set and the Plan ready to be confirmed, including any amendments as necessary.

The Trustee did not oppose a continuance, but Debtor has some other issues to address.

The hearing is continued to 2:00 p.m. on March 12, 2024.

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

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

The Objection to the Chapter 13 Plan filed by MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee as serviced by Specialized Loan Servicing LLC (“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 Objection to Confirmation of Plan is **XXXXXXX**.

3. [23-22286-E-13](#)
[MET-2](#)

RIZZALINA MIKAELA TODD
Mary Ellen Terranella

**CONTINUED MOTION TO CONFIRM
PLAN**
12-21-23 [47]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2023. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

March 12, 2024 Hearing

The court's review of the Docket on March 5, 2024 shows that Debtor filed a Status Report with the court on February 16, 2024. Docket 61. Debtor informs the court, the final outstanding issue here of the IRS's claim, has been resolved. Debtor's report is confirmed by the Internal Revenue Service's proof of claim having been amended. The IRS's current claim is for \$0.00. Proof of Claim 9-2. As such, it appears all of Trustee's objections to the Plan have been addressed.

At the Hearing, **XXXXXXX**

REVIEW OF THE MOTION

The debtor, Rizzalina Mikaela Todd ("Debtor") seeks confirmation of the Amended Chapter 13 Plan. The Plan provides monthly payments of \$610.00 for 5 months, then \$740.00 for 43 months. Amended

Plan, Dckt. 50 § 77. Unsecured nonpriority claims total \$73,518.00 and will receive no less than a 0% dividend. *Id.* at ¶ 3.14. The value of priority claims is set at \$0.00. *Id.* at ¶ 3.12. Attorney’s fees include \$1,000.00 paid prior to the filing of the case, and \$3,000.00 paid through the plan. *Id.* at ¶ 3.05. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

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

- A. Debtor underestimates the amounts of claims to be paid. The Internal Revenue Service has filed a Proof of Claim, which show a priority amount of \$4,741.45, (POC 9-1), where the Plan identifies \$0.00. Harley Davidson has also filed a Proof of Claim, which shows a secured amount of \$17,400.00, (POC 13-1), where the Plan identifies the creditor in Class 2 with secured claim amount of \$15,965.00, (Amended Plan, Dckt. 50 § 3.08(d)).
- B. The Plan does not work mathematically. According to the Trustee’s calculation it will take 58 months to complete the Plan to address the correct amounts of claims, as opposed to the 48 months proposed by the Plan.
- C. The Debtor is \$200.00 delinquent in Plan payments to the Trustee. The next scheduled payment of \$740.00 is due on February 25, 2024.

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

DEBTOR’S REPLY

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

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

September 7, 2023, docket number 38, stipulating to the value of the vehicle at \$15,965.00, with interest at 8.25%.

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

DISCUSSION

Delinquency

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

Debtor asserts that she has paid the delinquent amount. At the hearing, counsel for Trustee was able to verify that the delinquency has been cured.

Failure to Provide for Priority Claim

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

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

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

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

At the hearing, counsel for Trustee reported that the IRS will soon be amending their Proof of Claim, but Trustee has received tax returns and has seen that there is no tax liability.

Failure to Provide for Unsecured Claim in Full

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

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

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

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

At the hearing, Counsel for Trustee reported all issues have been resolved, except for the IRS filing their Amended proof of claim. The hearing on the Motion to Confirm is continued to March 12, 2024 at 2:00 p.m. to see if the matter is finally resolved.

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

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

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

IT IS ORDERED that the Motion to Confirm the Plan is granted, and the proposed Chapter 13 Plan is confirmed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 2024. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Tema Kay Robinson (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides that Debtor has paid a total of \$4,726.00, and will begin monthly plan payments of \$3,445.00 per month for a period of 57 months. The Plan will continue for 60 months total and pay a 0.00% dividend to unsecured creditors. Plan, Dckt. 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 February 27, 2024. Dckt. 76. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not filed her 2022 tax returns.
- B. Debtor’s Liquidation Summary (Docket 64) fails to include specific non-exempt assets, but rather lumps Schedule C exceptions as total amounts.

- C. Trustee believes that unsecured claims may not be receiving what they would in the event of a hypothetical Chapter 7 liquidation. Debtor's non-exempt assets listed on Scheduled A/B total \$11,085.90. Deducting the priority claim of the Internal Revenue Service in the amount of \$3,247.01 and the Chapter 7 Trustee fee of \$1,533.89 would leave \$6,305.00 in non-exempt assets available to unsecured creditors.

However, Trustee further states that they would not be opposed to stating that unsecured creditors would receive no less than \$6,305.00 in the Order Confirming the Debtor's plan. Docket 76, p. 2:18-19.

DISCUSSION

Failure to Provide Tax Returns

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

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). As the Chapter 13 Trustee states, it appears Debtor has reported non-exempt equity in the amount of \$11,085.90. Docket 22, Schedule B, line 36. After subtracting the priority claim of the IRS in the amount of \$3,247.01, and a Chapter 7 Trustee's fees of \$1,533.89, unsecured creditors would received approximately \$6,305 under Chapter 7. However, Debtor is proposing a 0 percent dividend to unsecured claims.

No opposition to exemptions has been filed by any party in interest. On Schedule C, Debtor claims the following exemptions:

1. 40th Street Property
 - a. Value of Debtor's Interest.....\$125,000
 - b. Exemption.....\$30,647.94 C.C.P. § 704.730
2. Household Goods.
 - a. Value \$500.....All Claimed Exempt.....C.C.P. § 704.020
3. Appliance, TV, Phone PC
4. Misc. Clothing
 - a. Value \$200.....All Claimed Exempt....C.C.P. § 704.020
5. Costume
 - a. Value \$50.....All Claimed Exempt....C.C.P. § 704.040.

Dckt. 22 at 9.

At the hearing, **XXXXXXX**.

The 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 Chapter 13 Plan filed by the debtor, Tema Kay Robinson (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

5. 22-21314-E-13 DPC-5 5 thru 8	NADIA ZHIRY Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 6-21-23 [260]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Debtor’s Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

The Motion to Dismiss is **XXXXXXX.**

March 12, 2024 Hearing

On March 7, 2024, Gerard F. Keena II filed a Status Report (Dckt. 367) advising the court and parties in interest concerning the four pending Contested Matters Status Conferences identified as:

1. Motion To Excuse Turnover and Confirmation of Exemption from The Automatic Stay (DCN: KSR-1);

2. Debtor's Objection to Proof of Claim #1-1 Gerard F. Keena II Receiver (DCN:PGM-3);
3. Debtor's Motion to Confirm Second Amended Plan Filed on July 12, 2023 (DCN:PGM-5); and
4. Trustee's Motion to Dismiss Case (DCN: DPC-5).

The Receiver Reports as follows:

On February 26, 2024, the Superior Court issued a Tentative Ruling, in advance of the scheduled hearing, granting the Receiver's Motion. The Tentative Ruling notified the parties of the procedure to request oral argument and oral argument was requested.

On February 27, 2024, the hearing was held, and the parties presented their oral arguments. At the conclusion of the hearing, the Receiver's Motion was taken under submission by the Superior Court.

As of the date and time this document is signed, no ruling has yet been issued by the Superior Court. It is, therefore, respectfully requested that the Status Conferences currently scheduled for March 12, 2024, at 2:00 P.M. be further continued to a future date, to allow the Superior Court time to issue its final ruling in connection with the Receiver's Motion.

Dckts. 365, 367, 369, 371.

At the Status Conference, **XXXXXXX**

REVIEW OF MOTION

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Nadia Zhiry (“Debtor”) has failed to file a new plan.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on July 3, 2023. Dckt. 272. Debtor states an amended plan will be filed. Debtor awaits the discharge of the Receiver in a civil action in Superior Court. *Id.* Debtor then plans to file a motion for final payment to Debtor’s contractor, which will allow for the increase in payments to satisfy the claims in the Chapter 13 case, specifically the non-dischargeable claim of the City of Sacramento, California. *Id.*

Failure to Provide Evidence

Debtor’s counsel filed an Opposition making several factual assertions. However, no declaration of the Debtor was filed to support those assertions or authenticate the exhibits provided. 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).

FILING OF SECOND AMENDED PLAN

Debtor filed a Second Amended Plan and Motion to Confirm on July 12, 2023. Dckts. 285, 289. The court has reviewed the Motion to Confirm the Second Amended Plan and the Declaration in support filed by Debtor. Dckts. 287, 289. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

The Court continues the hearing on the Motion to Dismiss for consideration in conjunction with Debtor's Motion to Confirm the proposed Second Amended Plan in this Bankruptcy Case.

August 22, 2023 Hearing

At the hearing, the Parties agreed to continue the hearing to allow the Debtor and Receiver to prosecute the Motion for discharge of the Receiver and determination of the Receiver's fees and expenses, the hearing for which is set for October 31, 2023, in the State Court.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 332. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court's calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

January 30, 2024 Hearing

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court's own motion. Docket 352. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

The State Court hearings have now been continued to February 22, 2024.

The court continues this matter to 2:00 p.m. on March 12, 2024.

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

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

The hearing on the Motion to Dismiss this Chapter 13 Case filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, the court being notified that the hearings in the State Court Receivership Action having been continued to January 17, 2024, and now having been concluded, upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXX**

6. [22-21314-E-13](#)
[KSR-1](#)

NADIA ZHIRY
Peter Macaluso

**CONTINUED MOTION TO EXCUSE
TURNOVER AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
5-31-22 [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.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

The Motion to Excuse Turnover is XXXXXXX.

March 12, 2024 Hearing

On March 7, 2024, Gerard F. Keena II filed a Status Report (Dckt. 367) advising the court and parties in interest concerning the four pending Contested Matters Status Conferences identified as:

1. Motion To Excuse Turnover and Confirmation of Exemption from The Automatic Stay (DCN: KSR-1);
2. Debtor's Objection to Proof of Claim #1-1 Gerard F. Keena II Receiver (DCN:PGM-3);
3. Debtor's Motion to Confirm Second Amended Plan Filed on July 12, 2023 (DCN:PGM-5); and
4. Trustee's Motion to Dismiss Case (DCN: DPC-5).

The Receiver Reports as follows:

On February 26, 2024, the Superior Court issued a Tentative Ruling, in advance of the scheduled hearing, granting the Receiver's Motion. The Tentative Ruling notified the parties of the procedure to request oral argument and oral argument was requested.

On February 27, 2024, the hearing was held, and the parties presented their oral arguments. At the conclusion of the hearing, the Receiver's Motion was taken under submission by the Superior Court.

As of the date and time this document is signed, no ruling has yet been issued by the Superior Court. It is, therefore, respectfully requested that the Status Conferences currently scheduled for March 12, 2024, at 2:00 P.M. be further continued to a future date, to allow the Superior Court time to issue its final ruling in connection with the Receiver's Motion.

Dckts. 365, 367, 369, 371.

At the Status Conference, **XXXXXXX**

REVIEW OF MOTION

JULY 11, 2023 CONTINUED STATUS CONFERENCE

On June 27, 2023, Nadia Zhiry, the Debtor, filed an updated Status Report (Dckt. 267). The court summarizes the updated Status Report as follows:

- A. Debtor has completed all of the repairs and abatements on the Property and has received final approval for all such repairs and abatements from the City.
- B. Debtor has moved to discharge the Receiver and conclude those state court proceedings.
- C. Upon the determination of the Receiver's claim (fees and expenses), the Debtor will provide for payment of those through the Chapter 13 Plan.

The court has modified the automatic stay to allow the Receiver to prosecute the necessary motions for the determination of his fees, costs, and expenses in the Receivership State Court Action. Order; Dckt. 280.

The Status Conference is continued, it appearing that the remedial work for which the Receiver was seeking relief from the stay has been resolved by the General Contractor hired by the Debtor.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court's calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

January 30, 2024 Hearing

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court's own motion. Docket 349. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

The court continues this matter to 2:00 p.m. on March 12, 2024.

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

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

The hearing on the Motion to Excuse Turnover filed by Gerard F. Keena II, the State Court Receiver, having been presented to the court, the court being notified that the hearings in the State Court Receivership Action having been continued to November 8, 2023, and now having been concluded, upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Motion to Excuse Turnover is **XXXXXXX**

7. [22-21314-E-13](#)
[PGM-3](#)

NADIA ZHIRY
Peter Macaluso

**CONTINUED OBJECTION TO CLAIM OF
GERARD F. KEENA, II, RECEIVER,
CLAIM NUMBER 1
4-23-23 [193]**

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.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

The Objection to Claim of Gerard Keena, II, POC 1-1 is **XXXXXXX.**

March 12, 2024 Hearing

On March 7, 2024, Gerard F. Keena II filed a Status Report (Dckt. 367) advising the court and parties in interest concerning the four pending Contested Matters Status Conferences identified as:

1. Motion To Excuse Turnover and Confirmation of Exemption from The Automatic Stay (DCN: KSR-1);
2. Debtor's Objection to Proof of Claim #1-1 Gerard F. Keena II Receiver (DCN:PGM-3);
3. Debtor's Motion to Confirm Second Amended Plan Filed on July 12, 2023 (DCN:PGM-5); and
4. Trustee's Motion to Dismiss Case (DCN: DPC-5).

The Receiver Reports as follows:

On February 26, 2024, the Superior Court issued a Tentative Ruling, in advance of the scheduled hearing, granting the Receiver's Motion. The Tentative Ruling notified the parties of the procedure to request oral argument and oral argument was requested.

On February 27, 2024, the hearing was held, and the parties presented their oral arguments. At the conclusion of the hearing, the Receiver's Motion was taken under submission by the Superior Court.

As of the date and time this document is signed, no ruling has yet been issued by the Superior Court. It is, therefore, respectfully requested that the Status Conferences currently scheduled for March 12, 2024, at 2:00 P.M. be further continued to a future date, to allow the Superior Court time to issue its final ruling in connection with the Receiver's Motion.

Dckts. 365, 367, 369, 371.

At the Status Conference, **XXXXXXX**

REVIEW OF OBJECTION

Nadia Zhiry, Chapter 13 Debtor, (“Debtor”) requests that the court disallow the claim of Gerard F. Keena, II, (“Receiver”), Proof of Claim No. 1-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$183,585.18. Debtor asserts, without stating the legal basis supporting such argument, that:

1. **Receiver has no claim:**

- a. Receiver has no claim against Debtor “having been discharged in the ‘Chapter 7’, as the ‘Receiver’” The Receiver has not been reappointed. Objection, Dckt. 193 at 3:4-7.

The court notes, Debtor has not provided any legal grounds that Receiver was discharged upon Debtor receiving their Chapter 7 discharge. Upon review of 11 U.S.C. § 727, a Chapter 7 discharge does not discharge the duties of an appointed custodian, but rather discharges debts and liabilities that arose before the date requesting relief. Debtor does not point to any authority in the Bankruptcy Code or the Superior Court’s Receivership Order (*see* Order Appointing a Receiver Pursuant to Stipulated Judgment, Cal. Super. Ct. Sacramento Cnty. No. 34-2017-00208154, May 3, 2021 (filed in this case as Dckt. 195) (hereinafter the “Receivership Order”)) that requires “reappointment” of the Receiver. The discharge did not abate the Receiver and Debtor provides no grounds that Receiver would need to be reappointed after receiving Chapter 7 relief.

2. **Receiver has no standing:**

- a. Receiver has no “standing” to assert any claim in this Chapter 13 case. Objection, Dckt. 193 at 3:14-15.

Upon review of the Proof of Claim, Receiver states they are owed money for the services provided. Receiver is not asserting a claim for a third party. Receiver, thus, has standing. Debtor conceded this at the hearing on the Status Conference on the Motion to Excuse Turnover and/or Motion to Confirm Termination or Absence of Stay.

3. **Receiver is owed no funds:**

- a. Receiver’s Proof of Claim reflects no costs, no fees, and no charges between the filing of the previous Chapter 7 case and the filing of the current Chapter 13 case. Objection, Dckt. 193 at 2:8-12.

The Chapter 7 case was filed on July 29, 2021. E.D. Cal. No. 21-22759. The current case was filed on May 25, 2022. E.D. Cal. No. 22-21314.

Upon review of Receiver’s Proof of Claim (E.D. Cal. No. 22-21314, Proof of Claim 1-1), Receiver does not provide a breakdown of the fees incurred before and after the Chapter 7 case. However, Receiver’s Proof of Claim in the Chapter 7 case (E.D. Cal. No. 21-22759, Proof of Claim 1-1) was for \$82,217.54. Receiver’s Proof of Claim in the current case is for \$183,585.18. Receiver clarifies their pre-Chapter 7 filing fees and post-Chapter 7 filing fees in their Response, which is summarized under “Receiver’s Response.”

- b. Having been discharged, and no claim transferring into the pending Chapter 13 case, Receiver is owed no funds.

The court notes, the claim is asserted to be fully secured. It is well known that liens survive a debtor’s discharge, so the fact that Debtor received a discharge is not relevant to the claims survival. The debt still exists, and to the extent it is secured it is still enforceable.

RECEIVER’S RESPONSE

Receiver filed a response on May 30, 2023. Dckt. 234. Receiver indicates they amended their Proof of Claim to clarify distinctions between the *in personam* and *in rem* claim. The court notes, once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006. The court acknowledges that Receiver attempts to address Debtor’s contentions that Receiver would be violating the discharge injunction.

The amended Proof of Claim, Proof of Claim 1-2, indicates the following:

Claim amount.....Unknown

It is not clear to the court why the amended claim amount is unknown, when Receiver later asserts the claim is fully secured in the amount of \$185,585.18.

Amount of claim that is secured.....\$185,585.18

Amount owed from expenses incurred
pre-Chapter 7 filing (July 29, 2021).....\$84,461.04

Amount owed from expenses incurred
post-Chapter 7 filing to date of
Chapter 13 filing (July 29, 2021 - May 25, 2022).....\$99,124.14

Receiver first addresses the *in personam* claim and states that Debtor’s Objection to Receiver’s Proof of Claim has been rendered moot because the \$99,124.14 *in personam* claim in the Amended Receiver Proof of Claim does not reflect any personal liability of Debtor that was previously discharged in Debtor’s Chapter 7 case. *Id.* at 7; *see also* Attachment A to Amended Proof of Claim of Gerard F. Keena II, filed May 26, 2023.

Receiver also states that it still has a secured claim that was not previously discharged and that remains as an encumbrance against the Claire Avenue Properties. Dckt. 234, at 7. Finally, Receiver states that it appears that Debtor is arguing that the Chapter 7 case abated the Receivership Order. Dckt. 234, at 7. Receiver asserts that this argument is incorrect and lacks citation to any legal authority in support. *Id.* Receiver points to 11 U.S.C. § 543(d) and argues that the order appointing Receiver has not been abated and it was not necessary to reappoint the Receiver as Debtor suggests. *Id.* at 8.

DEBTOR’S REPLY

Debtor filed a reply on June 3, 2023. Dckt. 240. Debtor’s reply concedes that the Amended Proof of Claim “technically moot[s]” Debtor’s Objection, but asserts that:

(1) Receiver did not follow the state court order;

(2) Receiver has not had any fees approved;

and (3) Receiver has not recorded its lien as required by the state court, rendering any claim as unsecured rather than secured.

Dckt. 240, at 1-2.

Debtor identifies a number of disputed material facts, *id.* at 7-8, and requests that this court either sustain its objection or, in the alternative, allow for an evidentiary hearing to determine the value of the claim, if any, *id.* at 9-10.

DISCUSSION

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

It appears what remains unresolved is the amount of fees and expenses that are to be recoverable by Receiver. Debtor argues that Receiver has no fees allowed by the state court under the Receivership Order.

California Rule of Court 3.1179 states that the Receiver is “the agent of the court,” to act in the benefit of all people. The Receiver is an agent of the Superior Court of California. The court has not been provided with any legal authority indicating that a federal bankruptcy judge takes over the state court’s jurisdiction to determine the rights of the Receiver.

California Health and Safety Code gives explicit authority to a receiver to record a lien for fees and expenses, allowing a receiver:

To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, **with court approval, secure that debt** and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. **The lien shall be recorded in the county recorder's office** in the county within which the building is located.

Cal. Health & Safety Code § 17980.7 (emphasis added).

Pursuant to the court order that was provided to the court, and recorded on May 13, 2021, “[t]he Receiver may record a lien (‘Receiver’s Lien’) against the Subject Properties to secure the repayment of the Receiver’s compensation, costs, and expenses, in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver’s Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.” Proof of Claim 1-2, Recorded Order Appointing a Receiver Pursuant to Stipulated Judgment, Attachment 1 at ¶ 7.

Continuance of Hearing

As the court addressed at the hearing, in light of the Receiver seeking to pursue the allowance of fees and expenses in the State Court Action, the court continues the hearing on this Objection for purposes of conducting a status conference thereon to determine what, if any amended pleadings are required and if any dispute remains to be resolved.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Objection may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court’s calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

January 30, 2024 Hearing

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court’s own motion. Docket 350. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

The court continues this matter to 2:00 p.m. on March 12, 2024.

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

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

The Objection to Claim of Gerard F. Keena, II, (“Receiver”), filed in this case by Nadia Zhiry, Chapter 13 Debtor, (“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 Objection to Claim of Gerard Keena, II, POC 1-1 is **XXXXXXX**

8.	<u>22-21314-E-13</u> <u>PGM-5</u>	NADIA ZHIRY Peter Macaluso	CONTINUED MOTION TO CONFIRM PLAN 7-12-23 [285]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Debtor’s Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

The Motion to Confirm the Amended Plan is **XXXXXXX.**

March 12, 2024 Hearing

On March 7, 2024, Gerard F. Keena II filed a Status Report (Dckt. 367) advising the court and parties in interest concerning the four pending Contested Matters Status Conferences identified as:

1. Motion To Excuse Turnover and Confirmation of Exemption from The Automatic Stay (DCN: KSR-1);
2. Debtor's Objection to Proof of Claim #1-1 Gerard F. Keena II Receiver (DCN:PGM-3);
3. Debtor's Motion to Confirm Second Amended Plan Filed on July 12, 2023 (DCN:PGM-5); and
4. Trustee's Motion to Dismiss Case (DCN: DPC-5).

The Receiver Reports as follows:

On February 26, 2024, the Superior Court issued a Tentative Ruling, in advance of the scheduled hearing, granting the Receiver's Motion. The Tentative Ruling notified the parties of the procedure to request oral argument and oral argument was requested.

On February 27, 2024, the hearing was held, and the parties presented their oral arguments. At the conclusion of the hearing, the Receiver's Motion was taken under submission by the Superior Court.

As of the date and time this document is signed, no ruling has yet been issued by the Superior Court. It is, therefore, respectfully requested that the Status Conferences currently scheduled for March 12, 2024, at 2:00 P.M. be further continued to a future date, to allow the Superior Court time to issue its final ruling in connection with the Receiver's Motion.

Dckts. 365, 367, 369, 371.

At the Status Conference, **XXXXXXX**

REVIEW OF MOTION

The debtor, Nadia Zhiry (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of \$500 per month for the first 13 months, followed by \$2,000 per month for the remainder of the Plan. Amended Plan, Dckt. 289. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Over the 60 months of the Plan, this would total \$100,500 in plan payments by Debtor.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 1, 2023. Dckt. 300. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.
- B. The Plan may extend sixty (60) months, depending on when the Civil Action concludes.
- C. Debtor relies on payments from daughter, however, Daughter has not provided a declaration indicating they will be able to make Plan payments for sixty (60) months.
- D. Debtor’s expenses appear low.
- E. The Plan appears underfunded if the receiver’s claim remains allowed in the full amount.

RECEIVER’S JOINDER

The Receiver, Gerard F. Keena II (“Receiver”), filed a “Joinder” to Trustee’s opposition on August 8, 2023. Dckt. 303. The court treats the “Joinder” as the Receiver’s Opposition. The Receiver shares Trustee’s concerns in that:

- 1. No information is provided to determine how long the Debtor’s daughter intends to relocate at the property.
- 2. The rent is taxable income and there has been no discussion as to the anticipated amount of taxes paid on the rent.
- 3. There is no evidence as to the daughter’s intention and ability to make the payments on a consistent basis.

DEBTOR’S RESPONSE

Debtor filed a response, Dckt. 305, on August 8, 2023, indicating:

- 1. Debtor intends to be current by the hearing date.
- 2. Debtor believes the Receiver fees will be determined on August 31, 2023, thus concluding the civil action and not making the case overextended.
- 3. Debtor submitted the declaration of Debtor’s daughter as evidence to support the daughter’s commitment to helping fund the Plan.

From the court’s review of the docket, Debtor’s daughter, Vera, submitted a declaration on April 24, 2023, in support of Debtor’s First Amended Plan, indicating that they are willing and able to contribute \$1,500 per month. Dckt. 198. Vera does not indicate how long they intend to live at the property.

Debtor's daughter has not submitted a declaration in support of the current Motion indicating their ability to help fund the Second Amended Plan.

4. Debtor has filed current amended schedules and assert that their expenses are lower than the average family of two.

The court notes, Debtor has only filed Amended Schedules I, no Amended Schedule J. Dckt. 292.

5. Debtor asserts that the Receiver's fees will be significantly less than the Proof of Claim.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,500 delinquent in Plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Complete Plan Within Allotted Time

Trustee indicates Debtor may not be able to complete the Plan in sixty months, as the Civil Action is still pending and Debtor does not intend to pay the Receiver until after the conclusion of the "Civil Action." Debtor indicates the Civil Action will be concluded at the end of the month.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Debtor's daughter has not submitted a declaration in support of the current Motion and ability to fund the Second Amended Plan. Debtor's daughter only submitted a declaration for the First Amended Plan, which was denied confirmation.

Debtor has only filed an Amended Schedule I, and not an Amended Schedule J. Dckt. 292. Therefore, the court does not have an accurate picture of Debtor's expenses and financial reality.

Debtor leaves the court to consider her family expenses (for two adults, Debtor and her husband) as set forth in Supplemental Schedule J filed on April 10, 2023. Dckt. 192. The expenses which Debtor states under penalty of perjury are reasonable and necessary for her family unit of two adults consist of:

Mortgage	\$0.00	In the proposed Chapter 13 Plan Debtor's Daughter is to make monthly payments totaling \$1,750.00 to JPMorgan Chase Bank as Class 4 direct payments under the Plan.
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Property Insurance	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Real Estate Taxes	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Home Maintenance and Repairs	\$0.00	
Electricity, Heat, Natural Gas	\$200.00	This is for two residential properties on the Debtor's real property
Water, Sewer, Garbage	\$140.00	
Telephone, Internet, Cell Phone	\$50.00	
Food and Housekeeping Supplies	\$400.00	Assuming \$50 a month for housekeeping supplies, that leaves \$350 a month for food for the two adults. In a thirty day month, that allows for \$1.94 per meal per person for food (assuming three meals a day per person).
Clothing and Dry Cleaning	\$10.00	This allows each adult \$5 a month for clothing over the 60 months of the Plan. This is only \$60 per adult per year for clothing for five years.
Personal Care and Products	\$20.00	This allows each adult \$10 a month for personal care (such as haircuts and hair dressers) and products (such as lotions, creams, and the like).
Medical and Dental Expenses	\$25.00	This allows each adult \$12.50 a month for medical and dental co-pays, band-aids, creams, mouthwash, toothpaste and the like.
Transportation (gas, maintenance, and repairs)	\$100.00	<p>On Amended Schedule C, Debtor claims an exemption in a 2007 Kia Rondo with 165,000 miles on it. Dckt. 227. Debtor lists this as the only vehicle Debtor has an interest in on Amended Schedule A/B, stating it has a value of \$2,500.00. Dckt. 207.</p> <p>If one allows only \$35.00 a month for repairs for the next five years (which is only \$420 a year), there is \$65 for gas a month. Paying \$5.00 a gallon for gas, Debtor and her non-debtor Spouse can purchase only 13 gallons of gas a month. Assuming the 2007 vehicle gets 20 miles to the gallon, that would allow Debtor to drive only 65 miles a week, which is only 9 miles a day.</p>

Entertainment	\$10.00	This allows the Debtor and her non-debtor Spouse only \$5 a month for entertainment. Thus, for the five years of the Plan, Debtor and her non-debtor Spouse will have next to no entertainment in their lives.
Vehicle Insurance	\$50.00	For the 2007 vehicle that Debtor and her non-debtor Spouse can only drive for 9 miles a day, Debtor will pay \$600 a year in insurance.

Debtor’s statement under penalty of perjury that Debtor and her non-debtor Spouse only have \$1,005 a month in necessary and reasonable expenses for the five years of the bankruptcy plan.

On the latest Supplemental I filed, Dckt. 292, Debtor states having the following Income:

Debtor’s Social Security Income.....\$505.00
Non-Debtor Spouse’s SSI.....\$1,000.00

Dckt. 292. Debtor also lists an additional \$1,500.00 in monthly rent paid by her daughter Vera and Debtor includes that in computing her monthly income. However, the Second Amended Plan requires an unidentified daughter of Debtor to make monthly payments of \$1,500.00 and \$250.00 to Class 4 Creditor JPMorgan Chase Bank, N.A. Second Amd Plan, ¶ 3.10; Dckt. 289. In her Declaration in support of the Motion to Confirm the Second Amended Plan, Debtor testifies that it is her daughter Luyba who is making the monthly mortgage payments, which include insurance and taxes. Dec., ¶ 8; Dckt. 287.

There appear to be some significantly understated expenses by Debtor. These include gas, maintenance, and repairs for Debtor 16 year old vehicle, maintenance and repair of Debtor’s two residences, cell, internet, and video service for two adults, food, personal care, medical expenses, and entertainment. Rather than stating actual reasonable and necessary expenses, it appears that Supplemental Schedule J is a MAI (made as instructed) Schedule J to show a preconceived monthly net income.

The Receiver’s Proof of Claim indicates a secured claim in the amount of \$183,585.18. Debtor insists the Civil Action will determine that the claim is for significantly less, and is hopefully that the Receiver’s fees and costs will be only \$3,625.10. This is significantly less than Receiver’s claim.

Looking at Amended Proof of Claim 1-2, the Receiver has filed it as a secured claim, with the lien being asserted on the Real Property in this case. Exhibit 1 to Amended Proof of Claim 1-2 is a copy of the order appointing the receiver that was recorded with the Sacramento County Recorder, which states a recording date of May 13, 2021. With respect to compensation, expenses, and a lien securing the amounts owing to the Receiver, the State Court Order Appointing Receiver includes:

3. The Receiver will be compensated for his services in the amount of \$250 per hour. The Receiver may use the Receiver’s attorneys, paralegals, and other staff to assist him as necessary. Receiver’s personnel will be compensated in the amounts outline in the billing rate schedule attached here to as Exhibit A. The Receiver will be reimbursed for the Receiver’s reasonable costs and expenses incurred in connection with receivership activities, including expenses for those labor and service described in this Order, travel, copying, long distance telephone calls, and legal process. . . .

7. The Receiver may record a lien (“Receiver’s Lien”) against the Subject Properties to secure the repayment of the Receiver’s Compensation, costs, and expenses in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver’s Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.

In the General Statement of Claim that is attached to Amended Proof of Claim 1-2, the Receiver states that there were \$84,461.04 in fees and expenses incurred from his May 3, 2021 appointment (Date on the State Court Order of Appointment) through July 29, 2021, and additional fees and expenses in the amount of \$88,124.14 incurred for the period July 30, 2021 through May 25, 2022 (the Chapter 13 filing date). Amended Proof of Claim No. 1-2 does not include amounts for fees and expenses incurred during this Chapter 13 Case.

The Order appointing the Receiver allows him to bill his time at \$250 an hour. There are similar hourly rates allowed for in-house counsel of the Receiver. There is not an hourly rate stated for any “out-house counsel” employed by the Receiver. If during the fourteen months of this Chapter 13 Case the Receiver and his counsel billed only ten hours a month, then each would be seeking compensation for 140 hours each, with an hourly rate of at least \$250.00 (this court does not know what hourly rate the State Court will allow for the “out-house counsel). One hundred and forty hours times \$250 an hour equals \$19,600.00, each for the Receiver and the “out-house counsel,” which then totals \$39,200.00 in fees since the commencement of this Chapter 13 case.

It is not readily apparent how Debtor computes Receiver to have a claim of only \$3,625.10 at the outset. It is also unclear how the Receiver has incurred fees and expenses totaling \$183,585.18, plus additional fees and expenses during this case, in light the status of the property at issue when this case was filed.

Debtor has not provided a provision in the Plan as to what will occur if Receiver’s claim is determined to be for the full amount of \$183,585.18, plus post-Chapter 13 filing fees and costs, or any lesser reasonable amount allowed by the State Court judge in the Receivership Action. Without the court knowing the extent of Receiver’s claim, the Plan does not appear confirmable.

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

In light of the prosecution of the discharge of the Receiver and determination of his fees and expenses, which hearing is set for October 31, 2023, the Parties agreed to the continuance of the hearing on this Motion.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court's calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

January 30, 2024 Hearing

On January 18, 2024, the State Court Receiver, Gerard F. Keena, notified the court that the hearings in the State Court receivership have been continued to February 22, 2024, by the State Court's own motion. Docket 351. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding. The State Court Receiver requests that this matter be continued to a date after February 22, 2024.

The court continues this matter to 2:00 p.m. on March 12, 2024.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Nadia Zhiry ("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

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 7, 2024. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Jeffrey Fernandez (“Debtor”) fails to provide for creditor Quantum3 Group LLC, who filed a secured claim in the amount of \$38,678.05 on January 22, 2024. While Quantum3 Group LLC’s claim asserts a household goods fixture lien, it includes as an attachment a “REVOLVING CREDIT SLIP.” Trustee is not certain if the claim is in fact secured, but raises the issue as to plan feasibility. Docket 13, p. 1:23-2:6.

The court further notes that on March 4, 2024, NewRez LLC d/b/a Shellpoint Mortgage Servicing, creditor, filed a secured claim in the amount of \$455,016.10. However, this creditor seems to be listed in Class 1 of the proposed Plan to cure arrears in the amount of \$28,479.43. Creditor only asserts arrears in the amount of \$27,500.37 in its Proof of Claim 17-1.

2. Debtor has failed to disclose information in Schedules D and J regarding Quantum3 Group LLC. *Id.* at 2:1-3.
3. At the First Meeting of Creditors, Debtor admitted to sustaining substantial gambling losses over the last year. However, Debtor's Statement of Financial Affairs does not accurately reflect these losses. *Id.* at 2:6-11.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 15.

As of the court's review of the docket on March 5, 2024, no opposition by Debtor has been filed.

DISCUSSION

Trustee's objections are well-taken.

Possible Failure to Provide for a Secured Claim

Creditor Quantum3 Group LLC asserts a secured claim of \$38,678.05 in this case, secured by a "Household Good(s)/Fixture Lien(s)." Proof of Claim 8-1. Creditor asserts that the basis for perfection is a "PMSI." *Id.* Creditor has attached a "REVOLVING CREDIT SLIP" for landscaping services, but this document does not appear to reference a lien, so the debt could be unsecured.

Debtor's Schedule D acknowledges the debt, but does not provide a value for the claim and has listed it as a nonpriority unsecured claim. If the Plan does not provide for respondent Creditor's secured claim, then doubts are raised about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

At the hearing, **XXXXXXX**

Inaccurate or Missing Information

Debtor's Schedules D and J may contain outdated or inaccurate information. Debtor's Statement of financial Affairs does not represent the gambling losses admitted to at the First Meeting of Creditors. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

1. Creditor holds a security interest in the vehicle identified as a 2022 Ford F150 Supercrew Cab XLT Pickup 4D 6 ½ ft, VIN ending in 8188 (Vehicle).
2. The Chapter 13 Plan filed proposes to pay Creditor's claim in the amount of \$67,264.51, the balance owed under the Sales Contract at the time of filing the petition, at 5.9% interest over the term of 60 months.
3. However, the current prime rate of interest is 8.5%.

Docket 16, ¶¶ 3, 7-8.

DISCUSSION

Creditor's objections are well-taken.

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 5.9%. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.5%, plus a 1% risk adjustment, for a 9.5% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Ford Motor Credit Company, 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.

11. [24-20039-E-13](#) **KENNETH/MARIANNE GOETZE** **OBJECTION TO CONFIRMATION OF**
[KMM-1](#) **Candace Brooks** **PLAN BY WILMINGTON TRUST,**
 NATIONAL ASSOCIATION
 2-8-24 [20]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the March 12, 2024 Hearing is required.

Wilmington Trust, National Association (“Creditor”) having filed a Notice of Withdrawal, Dckt. 26, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on January 12, 2024. By the court’s calculation, 60 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is ~~XXXXXXX~~.

The debtor, Glenn Burton Lewis (“Debtor”) seeks confirmation of the Second Modified Plan because his Veteran Affairs educational benefits stopped for a short period of time but will be recommencing in March of 2024. Declaration, Dckt. 143 p. 2:12-15. The Modified Plan provides \$4,000 to be paid for months 54 - 60, with Debtor already having paid \$225,190.20 into the Plan to date. Second Modified Plan, Dckt. 142 p. 7. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on February 27, 2024. Dckt. 151. Trustee opposes confirmation of the Plan on the basis that:

- A. There has been no supplemental Schedule I and J filed with the court, so Trustee cannot assess the feasibility of the second Modified Plan.

- B. The Second Modified Plan, while proposing to cure delinquency, does not clearly state which months the Debtor was delinquent. Trustee does not oppose an order confirming the Plan with these amendments clearly stated.

DISCUSSION

No Supplemental Schedule I and J

Debtor proposed a Second Modified Plan with \$4,000 monthly payments to finish the Plan, but Debtor has not provided updated income and expense information. The trustee is unable to confirm whether Debtor is able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. At the hearing, **XXXXXXX**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Glenn Burton 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 is granted, and Debtor's Second Modified Chapter 13 Plan filed on January 12, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

13 thru 14

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

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

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

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

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

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. Juan Mendez, (“Debtor”) has failed to accurately disclose information in the Plan and Schedules as well as provide documents to the Trustee. Docket 21 p. 1:27-28. (The Objection does not identify what inaccurate information has been provided.)
2. Debtor has likely misclassified creditor US Bank/Guidance Residential in Class 4, whereas this creditor likely should be in Class 1. *Id.* at p. 2:1-2. Creditor US Bank has filed Proof of Claim 4-1 stating that there is a \$7,027.64 prepetition arrearage on this secured claim.

3. Debtor also testified under oath at the First Meeting of Creditors, that he has not made all domestic support obligations as required by 11 U.S.C. §1325(a)(8). *Id.* at p. 2:20-21. Debtor must be current in these payments.
4. Pursuant to Local Bankruptcy Rule 3015-1(b)(6), the debtor is required to serve upon the trustee no later than fourteen (14) days after the filing of the petition a Domestic Support Obligation Checklist. To date, the Debtor has failed to provide the Trustee with the Domestic Support Obligation Checklist, thereby hindering the Trustee from performing his duties. *Id.* at p. 2:14-18.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 23.

DISCUSSION

Trustee's objections are well-taken.

Default in Domestic Support Obligation Payments

Debtor has admitted at the Meeting of Creditors that he has not made all of his domestic support payments, which are set to increase later in 2024, as required by 11 U.S.C. § 1325(a)(8). This is cause to deny confirmation.

Further, Debtor must supply the Trustee with a Domestic support Obligation Checklist pursuant to Local Bankruptcy Rule 3015-1(b)(6). Failure to comply with the Local Rules is cause to deny confirmation. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 8, 2024. By the court’s calculation, 33 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

U.S. Bank National Association (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. The proposed Plan does not cure the arrearages owed on Creditor’s deed of trust. The prepetition arrears are in the amount of \$7,027.64 (POC 4-1), and this amount is not addressed in the Plan. Docket 17 ¶ 2.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$7,027.64 in pre-petition arrearage. The Plan does not propose to cure those 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 U.S. Bank National Association ("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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 17, 2024. By the court’s calculation, 55 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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.

The debtor, Shaun Patrick Deitzel (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for increase in plan payments from \$3,149 to \$3,533 per month for months 1-60. Mtn., Docket 24 ¶ 9; Amended Plan, Docket 28 § 2.01. 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 February 26, 2024. Dckt. 40. Trustee opposes confirmation of the Plan on the basis that:

- A. The Debtor is \$3,647.00 delinquent in Plan payments to the Trustee. The next scheduled payment of \$3,533.00 is due on February 25, 2024. *Id.* at ¶ 1.
- B. The Debtor may not be able to make the Plan payments and comply with the Plan, 11 U.S.C. §1325(a)(6), and the plan may fail liquidation, 11 U.S.C. §1325(a) (4). *Id.* at ¶ 2.

- C. Franchise Tax Board filed a secured claim in the amount of \$4,299.16 on February 5, 2024, (POC13-1). This debt is not provided for in the Plan or listed on Schedule D, and there is no expense listed on Schedule J to provide for payment of this claim. *Id.* at ¶ 2a.
- D. Based on the Trustee’s review of Debtor’s 2022 state and federal tax returns, which appear dated December 8, 2023, Debtor had a federal refund of \$1,947.00 and a state refund of \$898.00. Where the case was filed November 13, 2023, these tax refund appear property of the estate and do not appear on Schedules A, B, or C filed on November 27, 2023, (Docket 19, p. 9 ¶ 28, ps. 13-14 .). Docket 40 ¶ 2b.

DISCUSSION

Delinquency

Debtor is \$3,647 delinquent in plan payments, which represents just more than one month of the \$3,533 plan payment. Before the hearing, another plan payment will be due. The Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Inaccurate or Missing Information

Debtor does not list the Franchise Tax Board secured claim in the amount of \$4,299.16 in the proposed Plan. *See* POC 13-1. This claim was asserted after the Motion to Confirm was filed, meaning it is understandable the claim was ignored in the proposed Plan, but it must now be addressed for the Plan to remain feasible.

Further, Trustee reports Debtor realized a federal refund of \$1,947.00 and a state refund of \$898.00 post-petition, but these funds were not reported in Debtor’s Schedules. These funds constitute property of the bankruptcy estate and must be properly accounted for in the filings. *See* 11 U.S.C. § 06.

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, Shaun Patrick Deitzel (“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. [24-20060](#)-E-13
[DPC-1](#)

MARKO MIKOVIC
Michael Hays

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK**
2-14-24 [\[27\]](#)

16 thru 18

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2024. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor has neither filed the Petition or Plan in good faith, and is merely stalling. Objection, Docket 27.
2. The Plan proposes no specific plan payment. *Id.*

3. The non-standard provisions of the Plan state that Debtor's residence located at 356 Mountain Springs Road, Lewiston, California ("Property") is currently listed for sale, and that Debtor expects to have the property sold by June 1, 2024. *Id.* However, no payment or due date is required, nor has a motion to employ a realtor been filed. *Id.* It is also unclear as to whether the sale of the property will provide enough equity to pay off the creditors.
4. Debtor's plan discloses that Debtor's attorney was paid \$3,000.00 prior to the filing of this case, where the case was a "skeletal" filing, and the attorney has not opted into the "no look" fee. *Id.*
5. Two creditors are listed in the Plan, but no arrears on either mortgage is disclosed, and Debtor's Plan states the ongoing payment on each mortgage is \$0.00. *Id.*
6. The Plan provides that Santander Consumer for a 2022 Chevy Equinox is being paid \$706 per month by the Debtor and that \$27,115 is owing and it is a 72 month contract. *Id.* But Debtor's Schedules show \$0.00 income, therefore Debtor cannot pay for the claimed expenses in Schedule J. *Id.*

Trustee submits the Declaration of Christina Lloyd to authenticate the facts alleged in the Objection. Decl., Docket 29.

DISCUSSION

Trustee's objections are well-taken.

Inaccurate or Missing Information

Debtor's Schedule I states that he receives \$0.00 in income. Schedule, Docket 23, p. 4. Schedule J states that his expenses are \$1,736.00. *Id.* at p. 6. Thus, it is unclear how Debtor is able to survive month to month since he has not stated that he receives any assistance.

Additionally, Debtor states that he has no real property expenses in Schedule J, despite Debtor owning real property that he uses as his residence. *Id.* Debtor also states that he spends \$300.00 a month on food and housekeeping supplies. *Id.* Unless Debtor is receiving some form of assistance, this would mean that Debtor spends less than \$3.00 per meal, assuming three meals per day over a 30 day month. Without an accurate picture of Debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Attorney's Fees

Debtor's Attorney has been paid \$3,000.00 prior to the filing of the Plan, and is seeking approval of an additional \$9,000.00 that shall be paid through the Plan. Plan, Docket 10, § 3.05. It is unclear as to what the initial \$3,000.00 covered since a skeletal petition was initially filed.

Also, Debtor's Attorney has not opted for the no look fees, meaning he would need to move this court for authorization of later fees, which Debtor's attorney will attempt to collect in the amount of \$9,000

from the sale of the Property. *Id.* This appears to be a relatively simple case, resulting in the sale of a home to pay off the two secured creditors. Requested fees in the amount of \$12,000 are not typical in this type of case.

At the hearing, **XXXXXXX**

Plan Payments

Debtor's Plan provides for no monthly plan payments. Plan, Docket 10, § 2.01. Debtor states in the non-standard provisions of the Plan that he expects to have the property sold by June 1, 2024, and that the sale should give him the ability "to pay off in full the secured claims of the first and second mortgages, the secured property taxes, his attorney's administrative claims of \$9,000.00 and the Trustee's fees with a 0% dividend to his unsecured creditors". *Id.* at § 7.

First, the Debtor needs to be making plan payments to provide adequate protection to the secured creditors that have an interest in the Property. Bankruptcy does not allow the Debtor to not make any payments in a Chapter 13 and to just wait until the sale of the Property. Second, it is unclear that the sale of the Property will be able to fund the Plan in full and pay all secured creditors 100%.

Debtor has filed a motion to hire a realtor to sell the Property and the Property is being listed for sale in the amount of \$510,000.00. Motion, Docket 34. However, accounting for all of the creditor claims that need to be paid, realtor fees, and administrative fees, it does not appear that the sale of the Property will be able to pay all of these claims in full. If there is not enough equity to pay the claims in full, then Debtor needs to commit to a three-year Chapter 13 plan. 11 U.S.C. § 1325(b)(4).

At the hearing, **XXXXXXX**

Review of Schedules

The court's interest having been piqued, the court has reviewed the Schedules and Statement of Financial Affairs, which include information stated under penalty of perjury by the Debtor, that includes the following:

- A. On Schedule I, Debtor states that he is a self-employed and he has no income from any sources. Dckt. 1 at 3.
- B. Debtor confirms on Schedule J, listing expenses of only (\$1,736), that he has no income to pay his expenses. *Id.* at 5-6.
- C. On the Statement of Financial Affairs, Paragraphs 4, 5, Debtor states under penalty of perjury having no income from employment or business, and no income from any other source (specifically stated to include Social Security, unemployment, pensions, rental income, gambling and lottery winnings and the like) for 2024, 2023, and 2022. *Id.*

Secured Claims

Debtor's Plan lists two Class 1 creditors that have a secured claim in the Property. Plan, Docket 10, § 3.07(c). However, Debtor states that the amount of arrears is unknown, and the Plan provides no

monthly payments to these Creditors. *Id.* The Class 1 creditors have filed two proof of claims stating that the total amount of the two claims are \$490,836.04, and states that the total amount necessary to cure any defaults as of the date of the petition is \$237,605.63. Proofs of Claim Nos. 8 and 9. Therefore, Debtor's proposed Plan does not accurately list the creditors claim and does not provide any adequate protection payments leading up to the sale.

At the hearing, **XXXXXXX**

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

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

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

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

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

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

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

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

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

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

The Motion to Employ is **XXXXXXX .**

Marko Mikovic (“Debtor”) seeks to employ Shannon Aikins (“Broker”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to sell Debtor’s residence located at 356 Mountain Springs Road, Lewiston, California 96052 (“Property”). Some of the documents that Debtor has filed lists the address as “355 Mountain Springs Road” (Docket 34, p. 1:20-21), while other documents list the address as “356 Mountain Springs Road” (Exhibit 1, Docket 37 ¶ 1). The court believes that 356 Mountain Springs Road is the correct address.

At the hearing, **XXXXXXX**

Debtor argues that Broker’s appointment and retention is necessary to sell Debtor’s Property. Debtor and Broker currently have a Residential Listing Agreement, which states that Broker’s fees are 5% and the Debtor’s realtor’s share is capped at 2.5%. Exhibit 1, Dckt. 37. The listing price of the Property shall be \$510,000.00. *Id.*

Shannon Aikins, an agent of Big Valley Properties, testifies that she is a licensed real-estate agent and has been selling real-estate for the last nineteen years. Shannon Aikins testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl., Dckt. 36 p. 2:14-17.

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

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

Debtor's Apparent Inability to Qualify to File a Chapter 13 Case and Having No Income to Fund a Plan

Debtor has admitted under penalty of perjury that he has no income to either pay his bills or fund a Chapter 13 Plan. As presented, Debtor's Plan is merely to come into Bankruptcy, pay no one while he now tries to market a real property (for which the Debtor cannot pay the taxes, utilities, maintenance, or any adequate protection payments). The "Plan" is merely to have six month hiatus during which creditors can take no action.

Ruling

~~————— Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Shannon Aikins as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit 1, Dckt. 37. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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

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

The Motion to Employ filed by Marko Mikovic ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED~~ that the Motion to Employ is granted, and Debtor is authorized to employ Shannon Aikins as Broker for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit 1, Dekt. 37.

18. [24-20060-E-13](#)
[RDW-1](#)

MARKO MIKOVIC
Michael Hays

**OBJECTION TO CONFIRMATION OF
PLAN BY DWYNE L. ANDERSON,
TRUSTEE OF THE DWYNE L.
ANDERSON REVOCABLE TRUST, DATED
AUGUST 3, 2021, DWYNE ANDERSON
AND DARLENE ANDERSON
2-15-24 [31]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 15, 2024. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

Dwyne L. Anderson, Trustee of the Dwyne L. Anderson Revocable Trust, and Dwyne L. Anderson and Darlene Anderson (“Creditor”) holding two secured claims opposes confirmation of the Plan. The Objection is brought together in one objection by these two separate creditors with two separate deeds

of trust in the real property commonly known as 356 Mountain Springs Road, Lewiston, California 96052 (“Property”). Dwyne L. Anderson, Trustee of the Dwyne L. Anderson Revocable Trust is the senior lienholder in the Property in the amount of \$291,480.41. POC 8-1. Dwyne L. Anderson and Darlene Anderson, husband and wife as tenants in common, is the junior lienholder in the Property in the amount of \$199,355.63. POC 9-1. Creditor objects on the basis that:

1. Marko Mikovic’s (“Debtor”) Plan does not provide any payments to the Creditor, meaning Creditor assumes all the risk, and is proposing 0% interest on the Creditor’s claims. Objection, Docket 31, p. 4:7-20. Creditor states that the interest rate being proposed is below both the *Till* rate and the Prime rate. *Id.* at p. 5:17-28.
2. Debtor’s Plan fails to properly list Creditor’s claim and proposes to pay Creditor \$0.00 in arrears. *Id.* at p. 4:21-25.
3. Debtor lacks income to fund to the Plan. *Id.* at p. 4:26-28.
4. Debtor’s Plan is speculative. *Id.* at p. 5:4-16. Debtor’s Plan provides that Creditor’s claim will be paid off once Debtor sells the Property. *Id.* However, the Plan does not provide adequate assurance that Creditor will receive payment by a certain date, and there is no motion to employ a realtor to sell the Property. *Id.*
5. Creditor also believes that the sale of the Property will not provide enough equity to pay all the claims, taxes, and closing costs. *Id.*

Creditor did not submit a Declaration of to authenticate the facts alleged in the Objection.

DISCUSSION

Creditor’s objections are well-taken.

Infeasible Plan

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). First, Creditor states that the Debtor lacks income to fund the Plan. Objection, Docket 31, p. 4:26-28. Debtor’s Schedule I states that he receives \$0.00 in monthly income. Petition, Docket 23, p. 4. Debtor’s Schedule J states that he has \$1,736.00 in monthly expenses. *Id.* at p. 6. Thus, the Debtor has insufficient funds available to make any plan payment. Additionally, the Plan does not propose to make any plan payments and instead proposes that Debtor will sell his Property to pay off the Creditor in full by June 1, 2024. Plan, Docket 10, § 7. However, there are no assurances given that this sale will be completed. Debtor has filed a motion to employ a realtor, but no evidence has been given that shows there are any interested purchasers in the Property. Motion, Docket 34.

Furthermore, it is not clear that there will be sufficient equity from the sale of the Property to pay off all of the creditor claims in the Plan and to cover the closing costs associated with the sale. Debtor’s Property is being listed for sale at \$510,000.00 and the realtor is be compensated at 5% of the sale price. *Id.* at p. 1:24-31. Creditor’s claim totals \$490,836.07, which would leave \$19,163.93 in equity to “pay off

in full the secured claims of the first and second mortgages, the secured property taxes, his attorney's administrative claims of \$9,000.00 and the Trustee's fees with a 0% dividend to his unsecured creditors", as the Plan proposes. Plan, Docket 10, § 7. Therefore, it appears that Debtor's Plan is not confirmable. At the hearing, **XXXXXXX**

Lack of Adequate Protection Under the Plan

The objecting Creditor, who holds a security interest in Debtor's personal property, alleges that the Plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay Creditor are insufficient to provide it with adequate protection during the period of the Plan. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.* is referred to for the proposition that adequate protection is intended to protect creditors from depreciation in value of their collateral during the bankruptcy case. See 484 U.S. 365, 377 (1988); see also *First Fed. Bank v. Weinstein (In re Weinstein)*, 227 B.R. 284, 296 (B.A.P. 9th Cir. 1998).

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

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

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

The court has not found opinions from the Ninth Circuit Court of Appeals nor any of its sister circuits that have 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. 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.

Creditor has a secured claim on Debtor's Property in the amount of \$490,836.04, and Debtor's Plan proposes to pay Creditor \$0.00 a month in plan payments. Plan, Docket 10, § 3.07(c). This Plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay Creditor are insufficient to provide it with adequate protection during the period of the Plan. The Plan proposes that the Debtor's Property will be sold no later than June 1, 2024, and the money from the sale will pay the Creditor in full. *Id.* at § 7. In the meantime, Creditor is expected to wait and receive no payments, and is offered no assurance that money will be received in the future. Debtor's Plan must offer some form of adequate protection to the Creditor under 11 U.S.C. § 1325(a)(5)(B)(iii)(II). At the hearing, **XXXXXXX**

Failure to Cure Arrearage of Creditor

The objecting Creditor holds two separate recorded deeds of trust secured by Debtor's Property. Creditor Dwyne L. Anderson, Trustee of the Dwyne L. Anderson Revocable Trust has filed a timely proof of claim in which it asserts \$199,355.63 in pre-petition arrearage. Proof of Claim No. 9-1, p. 2. Creditor Dwyne L. Anderson and Darlene Anderson has also filed a second timely proof of claim in which it asserts \$38,250.00 in pre-petition arrearage. Proof of Claim No. 8-1, p. 2. The Plan does not propose to cure those arrearages and states that the amount of arrears is unknown. Plan, Docket 10, § 3.07(c). 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.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loans with Debtor to 0%. Creditor's claim is secured by a Debtor's Property. 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. Here, Debtor is proposing that Creditor receive a 0% interest rate. Plan, Docket 10, § 3.07(c). This is prejudicial to the Creditor and the objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii). At the hearing, **XXXXXXX**

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

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

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

The Objection to the Chapter 13 Plan filed by Dwyne L. Anderson, Trustee of the Dwyne L. Anderson Revocable Trust, and Dwyne L. Anderson and Darlene Anderson ("Creditor") holding two a secured claims, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on February 7, 2024. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtors did not make their first Plan payment, which was due on January 25, 2024. Objection, Docket 22, p. 2:3-4. Debtors are currently delinquent \$3,410.00, which represents one month of Plan payments. *Id.* at 2:4-5. By the date of the March 12 Hearing, another payment will come due on February 25, 2024. *Id.* at 2:5-7.
2. Debtor’s Schedules A/B do not include a burial plot with an estimated value of \$6,000.00, which Debtors advised the Trustee they possess. *Id.* at 2:15-16. Approximately \$2,700.00 is still owed on the plot. *Id.* at 3:7-10.

3. Debtor's Schedules A/B represent that Debtors have two bank accounts. *Id.* at 2:17-18. However, Debtors advised the Trustee that they have three bank accounts. *Id.* at 2:15-16.
4. Debtor may also have additional bank accounts, as Trustee's review of Debtor Miriam Ramirez's pay advices from 12/22/23 show that her net pay is deposited into five different accounts. *Id.* at 19-22. Debtor Miriam Ramirez advised Trustee at the First Meeting of Creditors that they have closed some financial accounts and that her check is no longer being deposited into the different accounts. *Id.* at 2:25-27. Debtors' Statement of Financial Affairs shows Debtors two checking accounts in but does not identify the account numbers. *Id.* at 2:25-3:2.
5. To date, Debtors have failed to amend Schedules A/B or provide current bank statements. *Id.* at 3:2-3.
6. Debtors did not list the secured creditor for Debtors' burial plot in Vallejo, California on their Schedule D, and have not amended the schedule to include it. *Id.* at 3:7-10.
7. Debtors admitted at the First Meeting of Creditors that Debtor Armando Ramirez receives an estimated \$3,000.00 a month in retirement income, yet their Schedule I lists retirement income as \$4,444.77. *Id.* at 3:11-13. To date, Debtors have failed to amend Schedule I to show the correct retirement income.
8. Debtors admitted they were scammed \$50,000.00 by a builder in the Philippines, but do not list this loss on the Statement of Financial Affairs. *Id.* at 3:15-17. To date, Debtors have failed to amend the Statement of Financial Affairs to include this income.
9. Debtors failed to provide for the treatment of the secured creditor for the burial plot in the Plan or on Schedule J, and the Trustee is not clear how, or if, this claim is being paid. *Id.* at 3:19-21.

Trustee would also like to request that Debtors provide their January 2024 pay advices from Kaiser Permanente which shows how the net wages are allocated into their current financial accounts. *Id.* at 3:3-6.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 24.

Debtor's Response to Trustee's Objection to Confirmation

The Chapter 13 Debtors, Armando Yalong Ramirez and Miriam Rose So Ramirez ("Debtors"), filed a Response on February 15, 2024. Docket 31. Debtors assert that they have filed amended schedules and submitted all documents Trustee requested in the Objection to Confirmation. *Id.* at 1:15-17. Debtor

requests that the payment to burial plot lender Skyview Memorial Lawn (\$150.00 per month to be paid outside the plan) be put into the Order Confirming Plan as an additional provision.

DISCUSSION

Debtors addressed Trustee's grounds for objection in the following manner:

1. Debtors filed Amended Schedules A/B listing a burial plot with a value of \$8,000.00, owned in its entirety by Debtors. Amended Schedule A/B, Docket 26, line 1.3. Debtor also shows four "deposits of money" (two checking, two savings). *Id.* at line 17.
2. Debtors filed an Amended Schedule I showing a pension/retirement income of \$3,650.00. Amended Schedule I, Docket 27, line 8(g).
3. Debtor filed an Amended Schedule D, showing a claim of \$2,900.00 on the Skyview Memorial Lawn burial plot. Amended Schedule D, Docket 30, p. 2 line 2.3.
4. Debtors filed an Amended Statement of Financial Affairs listing the \$50,000.00 loss to a builder in the Philippines. Amended Statement of Financial Affairs, Docket 28, line 15.
5. Debtors filed an Amended Schedule J, showing a \$150.00 per month payment to Skyview Memorial Lawn. Amended Schedule J, Docket 27, line 17(c).
6. Debtors filed an Amended Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period, showing an average monthly payment to Skyview Memorial Lawn of \$50.00.

Delinquency

Debtor is \$3,410.00 delinquent in plan payments, which represents one month of the \$3,410.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in §2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Debtor has made no assertion that delinquency has or will be cured. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor has been productive in addressing Trustee's concerns, including adding a provision to pay Creditor Skyview Memorial Lawn regarding burial plot.

However, these "mistakes" and "missing" items cause the court significant concern. It appears that Debtor and Debtor's counsel have approached the Federal Bankruptcy Law and process as one in which accuracy of information is not important, get away with what a debtor can get away with, and if caught, then try to fix it and have the court approve a Plan.

This does not demonstrate prosecution of a bankruptcy case in good faith. This violates not only the Debtor having made inaccurate and incomplete information under penalty of perjury, but also violates the certifications arising under Federal Rule of Bankruptcy Procedure 9011.

At the hearing, **XXXXXXX**.

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

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

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

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

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

20 thru 21

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and parties in interest on January 26, 2024. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). However, Debtor did not include information regarding people who must be served with a proffered Opposition.

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.

The debtor, Ryan Greenlaw (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$425.00 for 60 months, and pay out unsecured creditors at 100 percent. Amended Plan, Dckt. 37. 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 February 27, 2024. Dckt. 49. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s Notice of Motion to Confirm is insufficient, as it does not contain specific filing deadlines, names and addresses of persons who must be served, or a statement that the motion may be resolved without oral argument. *Id.* at 1:23-28.

- B. Debtor's Plan is overextended; by Trustee's calculation, monthly payments of \$425.00 per month with 100% paid to unsecured creditors would take 108 months. *Id.* at 2:18-22.
- C. Debtor's monthly net income is stated as \$644.00. However, Debtor may have additional income. Debtor lists as an expense student loan payments, which will be paid 100% through the plan. Thus, Debtor's net income is likely higher. *Id.* at 2:28-3:1.
- D. Furthermore, Debtor is claiming in his Schedule J food and housekeeping supply expenses of \$1,575.00 per month. This is nearly double the amount for two people under the National Standards for Allowable Living Expenses. *Id.* at 3:8-14.
- E. Finally, Debtor claims an "unmarried partner" as a dependent but does not identify whether he is the sole support of the partner or if they have separate income and are able to contribute to the monthly income and expenses. *Id.* at 3:17-20.
- F. Debtor has not filed a Domestic Support Obligation Checklist as required. *Id.* at 3:26-28.
- G. Debtor has failed to justify additional deductions for special circumstances and provide a detailed explanation of the "special circumstance and documentation for the expenses." *Id.* at 3:4-10. The additional deductions sought are payments to Debtor's unmarried partner and student loans, and the Trustee is not certain that the Court would allow such payments under this category.
- H. Debtor has failed to state any amounts being claimed as exempt on Amended Schedule C. Furthermore, Debtor has not described all assets in detail. *Id.* at 4:11-16.

Trustee submits the declaration of Teryl Wegemer to authenticate the facts herein. Declaration, Docket 50.

DISCUSSION

Issues with Notice of Motion

Local Bankruptcy Rule 9014-1(d)(3)(B) (not, as Trustee suggests, 9004-2) states, Notice.

(i) The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.

(ii) If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.

As Trustee remarks, Debtor's Notice fails as to this Rule because it does not give a specific date for the deadline for filing and serving any opposition, along with specific names and addresses of persons that must be served, such as the Chapter 13 Trustee. It also does not specifically state that the motion may be resolved without oral argument. Debtor is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

Insufficient Information

Debtor has supplied insufficient information relating to Debtor's net income/assets. Debtor has not filed a Domestic Support Obligation Checklist, has not identified the amount of exemptions claimed on his amended Schedule C, and has not explained his deviation in his food and housekeeping and student loan expenses, his additional deductions under "special circumstances" and the extent of his unmarried partner's dependent status. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 108 months if paid out at its current monthly amount to cover 100% of unsecured debt. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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, Ryan Greenlaw, ("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.

Final Ruling: No appearance at the March 12, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 7, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions on Amended Schedule C (Dckt. 38) is sustained and such exemptions stated in the Amended Schedule C are disallowed.

This is without prejudice to the exemptions claim in Original Schedule C (Docket 1).

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Ryan Greenlaw's ("Debtor") claimed exemptions under California law because the Debtor failed to check the box and state any amounts which are being claimed as exempt pursuant to Amended Schedule C (Dckt. 38). Objection, Docket 45, p. 3:23-28 (sic). Trustee further states that he cannot determine the amount of exemption claimed where some assets are not described in detail (car with no year, make or model; household furnishings with no specificity, jewelry with no specificity, deposits of money with no bank or partial account numbers, personal injury settlement with no identification or description of the cause of action or court if filed, electronics with no specificity, collectibles of value with no specificity, equipment sports/hobby with no specificity, and nonfarm animals with no specificity). *Id.* at 4:1-9 (sic). Thus, Trustee objects to any exemption higher than previously claimed.

Trustee provides the declaration of Christina Lloyd to authenticate the facts therein. Declaration, Docket 47.

Debtor's Schedules

In Debtor's previously filed Schedule C, Debtor claimed exemptions in the following amounts:

1. Car; \$2,000 pursuant to C.C.P. § 703.140(b)(2)
2. Household Furnishings; \$500 pursuant to C.C.P. § 703.140(b)(3)
3. Jeweler; \$1,200 pursuant to C.C.P. § 703.140(b)(4)
4. CalPERS account; \$14,373 pursuant to C.C.P. § 707.140(b)(10)(E)
5. Accrued leave; \$12,261 pursuant to C.C.P. § 707.140(b)(10)(F)
6. Personal injury lawsuit; \$10,000 pursuant to C.C.P. §§ 707.140(b)(11)(D), (b)(5)
7. Electronics; \$800 pursuant to C.C.P. § 703.140(b)(5)
8. Collectibles of value; \$2,000 pursuant to C.C.P. § 703.140(b)(5)
9. Equipment sport/hobby; \$700 pursuant to C.C.P. § 703.140(b)(5)
10. Clothes; \$300 pursuant to C.C.P. § 703.140(b)(5)
11. Nonfarm animal; \$200 pursuant to C.C.P. § 703.140(b)(5)
12. Tax refund; \$2,172 pursuant to C.C.P. § 703.140(b)(5)

Schedule C, Docket 1 ps. 23-24.

On Debtor's Amended Schedule C filed on January 17, 2024, Debtor does not claim any amount as being exempt in the assets listed. Debtor merely states what is the current value of the Debtor's interest in the asset. While stating a statutory basis for the claimed exemptions, Debtor states no amount as being exempt.

Applicable Law

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

Debtor is permitted under California Code of Civil Procedure section 703.140(b) to claim exemptions for various items of property. Debtor has cited to various provisions of C.C.P. §703.140(b) in his amended Schedule C. Docket 38.

Discussion

Under Debtor's Amended Schedule C, the amount of exemptions claimed is \$0.00. If the Trustee had not objected to Amended Schedule C, Debtor would have effectively waived all of his exemptions. Such Objection was proper for the Trustee to make in this case.

The Objection to Claimed Exemptions on Amended Schedule C (Dckt. 38) is sustained and such exemptions stated in the Amended Schedule C are disallowed.

This is without prejudice to the exemptions claim in Original Schedule C (Docket 1).

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 the Objection to Claimed Exemptions on Amended Schedule C (Dckt. 38) is sustained and such exemptions stated in the Amended Schedule C are disallowed.

This is without prejudice to the exemptions claim in Original Schedule C (Docket 1), which remain in full force and effect.

FINAL RULINGS

22. [23-23717-E-13](#)
[BLG-2](#)

MICHELE DAVENPORT
Chad Johnson

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M. JOHNSON,
DEBTORS ATTORNEY(S)
2-2-24 [23]

Final Ruling: No appearance at the March 12, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors who have filed claims, parties requesting special notice, and Office of the United States Trustee on February 2, 2024. 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). 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 for Allowance of Professional Fees is granted.

Chad M. Johnson, the Attorney ("Applicant") for Michele Davenport, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Applicant submits the declaration of Chad M. Johnson to authenticate the facts in the Motion. Declaration, Docket 26.

Fees are requested for the period August 3, 2023, 2023, through March 12, 2024. Exhibit B, Docket 25. Applicant has opted out of the no-look fee. Plan, Docket 4, ¶3.07.

Applicant requests fees in the amount of \$2,880.00 and costs in the amount of \$21.91. Applicant declares that the balance currently held in trust for attorney's fees is \$542.00. Declaration, Docket 26, p. 2:7-9.

Applicant thus requests that he be authorized to pull the remaining balance of \$542.00 out of trust, and that the Chapter 13 Trustee is authorized to pay the remaining balance of fees and expenses owed in the amount of \$2,359.91 from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

TRUSTEE'S NON-OPPOSITION

Chapter 13 Trustee has filed a Statement of Non-opposition to Applicant's Motion. Docket 28.

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant’s services for the Estate include case preparation, case administration, and preparing and filing a Motion to Extend Stay and a Fee Motion. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Preparation: Applicant spent 1.6 hours in this category. Applicant evaluated the option of bankruptcy filing, collected necessary documents, and prepared, reviewed, and filed the required bankruptcy documents. Decl., Docket 26 p. 3:1-5.

General Case Administration: Applicant spent 3.9 hours in this category. Applicant organized and sent the required documents to the trustee, attended the meeting of creditors, and reviewed the proof of claims as they came in. *Id.* at 3:6-11.

Motion to Extend Stay: Applicant spent 0.8 hours in this category. Applicant prepared a Motion to Extend Stay. Debtor had one prior case dismissed within the twelve months prior to the filing of this case, and a foreclosure was pending at the time of the filing of this case. A motion to extend stay was required. *Id.* at 3:12-15.

Fee Motion: Applicant spent 0.9 hours in this category. Applicant has opted out of the fee guidelines, and thus is required to file a motion for approval of fees. *Id.* at 3:16-19.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Chad M. Johnson, Attorney	7.2	\$400.00	\$2,880.00
Total Fees for Period of Application			\$2,880.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$21.91 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$13.86
Printing and Envelopes		\$8.05
Total Costs Requested in Application		\$21.91

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$2,880.00 are approved pursuant to 11 U.S.C. § 331. Applicant is authorized to withdraw the remainder of the funds from the client trust account in th amount of \$542 with the rest of the requested fees of \$2,338 to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Costs & Expenses

First Interim Costs in the amount of \$21.91 are approved pursuant to 11 U.S.C. § 331 and authorized to be paid by the Chapter 13 Trustee from the available Plan in a manner consistent with the order of distribution in a Chapter 13 case.

Applicant is allowed, and the Chapter 13 Trustee authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,880.00
Costs and Expenses	\$21.91.

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Chad M. Johnson (“Applicant”), Attorney for Michele Davenport, the Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Professional employed by Chapter 13 Debtor

Fees in the amount of \$2,880.00
Expenses in the amount of \$21.91,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that as part of this fee award, Applicant is authorized to disburse the remaining balance of \$542.00 out of trust with the remainder of the requested fees of \$2,338 to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Final Ruling: No appearance at the March 12, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2024. By the court’s calculation, 43 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). 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 for Allowance of Professional Fees is granted.

Thomas L. Amberg, Jr., the Attorney (“Applicant”) for Marcelino Ramirez, Chapter 13 Debtor (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 3, 2023, through January 29, 2024. Applicant elected to receive attorney’s fees in accordance with § 3.05 of the Plan, opting out of the no-look fees. Plan, Docket 3. The court issued an order confirming the Plan on December 15, 2023. Order, Docket 15. Applicant requests fees in the amount of \$3,087.50, with \$1,000.00 of the funds to be withdrawn from Applicant’s trust that holds Debtor’s retainer payment (“Trust”), and the remaining amount of \$2,087.50 to be paid through Debtor’s Plan.

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant’s services for the Estate include working with Debtor to analyze his situation, preparing all of Debtor’s schedules, proposing a viable Chapter 13 plan, attending the Debtor’s meeting of creditors, confirming a plan, and reviewing all of the claims that were filed. Decl, Docket 21. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Fees

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

Pre-Filing Tasks: Applicant spent 5.9 hours in this category. Applicant communicated with Debtor, reviewed documents, prepared Debtor’s petition, reviewed petition with Debtor, and filed Debtor’s case. Exhibit B, Docket 22 p. 3.

Post-Filing, Pre-Confirmation: Applicant spent 1.8 hours in this category. Applicant communicated with Debtor, prepared and uploaded all 521 documents, attended meeting of creditors, sent the Trustee documents, and confirmed the Plan. *Id.*

Post-Filing, Post-Confirmation: Applicant spent 1.8 hours in this category. Applicant communicated with Debtor, reviewed all of the filed claims, and prepared this Motion. *Id.*

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Thomas Amberg	9.5	\$325.00	\$3,087.50
Total Fees for Period of Application			\$3,087.50

FEES ALLOWED

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$3,087.50 are approved pursuant to 11 U.S.C. § 331. Applicant is authorized to withdraw \$1,000.00 from the Trust, and the Chapter 13 Trustee is authorized to pay the remaining amount of \$2,087.50 from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is authorized the following amounts as compensation to this professional in this case:

Fees	\$3,087.50
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pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case. Applicant is allowed to withdraw \$1,000.00 from the client trust account, and the Chapter 13 Trustee is authorized to pay the remaining amount of \$2,087.50 from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

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

The Motion for Allowance of Fees and Expenses filed by Thomas L. Amberg, Jr. (“Applicant”), Attorney for Marcelino Ramirez, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Thomas L. Amberg, Jr. is allowed the following fees as an attorney of the Estate:

Thomas L. Amberg, Jr., Attorney employed by Chapter 13 Debtor

Fees in the amount of \$3,087.50,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay \$2,087.50 of the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. Applicant is authorized to withdraw \$1,000.00 from the client trust account.

Final Ruling: No appearance at the March 12, 2024 Hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 17, 2024. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

This hearing has been continued. The Debtor has decided to file an amended Plan, which moots the confirmation of this Plan. No other claims are asserted against Debtor. 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.

March 12, 2024 Hearing

On February 27, 2024, The Chapter 13 Trustee, David Cusick (“Trustee”) filed a Status Report with the court in the wake of the previous continuation. Docket 22. Trustee informs the court:

1. Robert Dahl and Samantha Dahl (“Debtor”) attended the continued Meeting or Creditors held on February 22, 2024, so this part of trustee’s Objection is resolved. *Id.* at p. 2:1-2.
2. However, Trustee now expresses other issues with the Plan he learned at the continued Meeting.
3. Debtor is delinquent in their plan payments to the Trustee in the amount of \$588.84. *Id.* at p. 2:5-6.
4. Debtor’s Plan will be overextended as proposed, taking approximately 77 months to complete. The problem appears to be Class 1 creditor, Village Capital & Investment, LLC filed its claim with arrears in the amount of

\$58,664.48 (POC 1-1), but Debtor only scheduled this creditor's arrears in the amount of \$38,500. *Id.* at p. 2:7-15.

5. There are minor issues with attorney's fees in this case because Debtor's attorney accepted a retainer slightly higher than the retainer allowed under the court's no-look fee, but Trustee suggests this can be easily cured by paying any excess over the life of the Plan. *Id.* at p. 2:16-27.

On March 5, 2024, Debtor filed a new proposed Amended Plan (Docket 30) and Motion to Confirm (Docket 26). The Amended Plan appears to resolve Trustee's objections. Therefore, the court will sustain Trustee's Objection as to the Plan filed on December 6, 2023 at Docket 3.

REVIEW OF OBJECTION

Trustee opposes confirmation of the Plan on the basis that:

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

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

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

February 13, 2024 Hearing

Debtor's counsel stated they would ask for a continuance until the February 22, 2024 meeting of creditors can be conducted. Counsel for Trustee concurred. The hearing on the Objection is continued to March 12, 2024 at 2:00 p.m. Two weeks prior to that date Trustee should stand on objection or withdraw.

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

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

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

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