

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

**Chief Bankruptcy Judge**

**Sacramento, California**

**March 22, 2022 at 2:00 p.m.**

---

|    |  |  |   |
|----|--|--|---|
| 1. | <a href="#"><u>21-22085</u></a> -E-13<br><a href="#"><u>BMV</u></a> -2<br>1 thru 2 | <b>SHARRON WINGHAM</b><br><b>Bert Vega</b> | <b>CONTINUED MOTION TO CONFIRM<br/>PLAN</b><br>12-17-21 <a href="#"><u>[45]</u></a> |
|----|--|--|---|

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2021. By the court's calculation, 43 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).

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

The debtor, Sharron Renee Wingham ("Debtor"), seeks confirmation of the Second Amended Plan. The Amended Plan provides for a proposed plan payment of \$934.50 per month for 60 months to pay for Debtor's Homeowner's Association arrears, her regular monthly Homeowner

**March 22, 2022 at 2:00 p.m.**

**- Page 1 of 38 -**

Association fees and all priority claims, except those in Section 7 of the plan.

Debtor shall pay her monthly mortgage of \$973.17 outside of the plan to New Rez LLC dba Shellpoint Mortgage (“Creditor”). Arrears owed to Creditor of \$2,686.12 have been added to the unpaid principal balance of \$113,962.04, therefore making the new unpaid principal balance \$116,648.16. Amended Plan, Dckt. 45. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on December 29, 2021. Dckt. 59. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor may not be able to make all payments under the plan and comply with the plan.
- B. Creditor is still improperly listed as a Class 4 claim.

## **DISCUSSION**

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Trustee states Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee’s reasoning is because § 7.03 of the Plan under Nonstandard Provisions modifies § 2.01 of the Plan. The modification allows Debtor to pay their delinquent plan payment and December 2021 payment on or before December 30, 2021. Trustee has not provided evidence as to whether Debtor has made these two payments. It is not clear to the court whether Trustee is concerned if Debtor will be able to continue making plan payments or if Trustee is only concerned regarding the delinquent payment and the December 2021 payment.

### **Improperly Listed Creditor**

The court has previously denied confirmation of Debtor’s plan because Creditor was improperly treated as a Class 4 claim. *See* Civil Minutes and Order from Trustee’s Objection to Confirmation of Plan, Docket Control No. DPC-1, Dckts. 21, 22 and Civil Minutes and Order from Motion/Application to Confirm Chapter 13 Plan, Docket Control No. BMV-1, Dckts. 39, 40. Under the Plan’s provisions of § 3.07, “Class 1 includes all delinquent secured claims”. This would include Creditor.

### **Debtor’s Response**

Debtor filed a Response to Trustee’s Opposition to Debtor’s Motion to Confirm on February 4, 2022. Dckt. 70. In her Response, Debtor asserts that she has cured her delinquency and is current as of January 30, 2022. *Id.* at ¶ 1. Debtor states that she will continue making her plan payments on or before the 25<sup>th</sup> of each month. *Id.* The court has not received a status report from Trustee verifying whether Debtor has cured her delinquency.

Debtor further states that Creditor filed an Amended Proof of Claim #4 on February 2, 2022

which shows an unpaid principal balance in the amount \$116,648.16 and the arrears in the amount \$0.00. *Id.* at ¶ 2; *see also* Exhibit 1, Dckt. 71. Based on Creditor's Amended Proof of Claim, Debtor asserts that Creditor can now be classified as Class 4 and can be paid outside of the plan by Debtor or a third party, therefore resolving Trustee's objection. *Id.*

## DECISION

As reported by Debtor, Creditor filed Amended Proof of Claim 4-1 on February 2, 2022, stating that there are no pre-petition defaults to be cured on its claim. POC, ¶ 9. With there being no pre-petition defaults to be cured, the claim of Creditor is properly placed in Class 4 under the Second Amended Plan.

The Trustee's feasibility objection related to the classification of Creditor's secured claim, and if it was included in Class 1, with the arrearage stated in Creditor's original Proof of Claim 4, then the plan was not sufficiently funded, and it was questionable if Debtor could. With Amended Proof of Claim 4-2 filed, this basis of the opposition is resolved.

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

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

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

The Motion to Confirm the Second Amended Chapter 13 Plan filed by the debtor, Sharron Renee Wingham ("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 Amended Chapter 13 Plan filed on December 17, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 6, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

|  |
|--|
| <p><b>The Motion to Dismiss is denied without prejudice.</b></p> |
|--|

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

1. the debtor, Sharron Renee Wingham ("Debtor"), is delinquent and no plan is pending.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 21, 2021. Dckt. 54. Debtor states they will cure their delinquency on or before December 30, 2021 and they filed their Second Amended Plan on December 17, 2021. The Motion to Confirm is set for hearing on January 25, 2022. Dckt. 46.

The court notes these filings are reflected on the docket. As such, this cures Trustee's concern for no plan pending.

## **TRUSTEE'S STATUS REPORT**

Trustee filed a status report on December 29, 2021. Dckt. 58. Trustee states a motion to modify is set for January 25, 2022 but no payment has been received in December to date although an electronic payment is pending. Trustee requests that the matter be continued.

**January 25, 2022 Hearing**

At the hearing, the Trustee did not oppose a continuance to allow the Debtor to document by a claim amendment or prosecute an objection to claim to establish that there are no defaults to be cured.

### **March 22, 2022 Hearing**

The court has confirmed Debtor's Second Amended Plan. The Motion to Dismiss is denied without prejudice.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

**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 3, 2022. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is denied.**

The debtor, Fouad Afif Mizyed ("Debtor") seeks confirmation of the Modified Plan because due to a misunderstanding, Debtor failed to increase their plan payments as listed in their step-up plan. Declaration, Dckt. 84. The Modified Plan provides Debtor will make their February 2022 payment in the amount of \$3,583.52. Debtor will then resolve a \$8,428.92 post-petition delinquency by increasing their monthly plan payment to \$4,115.00 beginning March 2022. Modified Plan, Dckt. 85. 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 March 8, 2022. Dckt. 90. Trustee opposes confirmation of the Plan on the basis that:

- A. The Trustee is not certain if the Debtor can afford the payments, or can reasonably afford to pay more, where the last Schedules I and J were filed with the Court on March 18, 2020. Dckt. 34. The Debtor filed this

motion in response to the Trustee's Motion to Dismiss for Delinquency and is now proposing to increase plan payments. Without a supplemental Schedule I and J, the Trustee cannot ascertain the Debtor's current budget and whether or not the modified plan is feasible. The Debtor has failed to carry the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

## DISCUSSION

### Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor had not filed an updated Schedules I and J since March 18, 2020. Dckt. 34. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

On March 17, 2022, after the Trustee filed an Opposition stating there was inadequate financial information provided in this case (the financial information being more than two years stale), Debtor filed new Schedules I and J. Dckt. 93. Under penalty of perjury Debtor states that one is an Amended/Supplemental Schedules I and the other is an Amended/Supplemental Schedule J, and the financial information therein dates back to the February 7, 2020 filing of this case, or may be truthful and accurate information from only some, unstated, post-petition date.

The new Schedule I and new Schedule J stated to each be both Amended and Supplemental cannot be both, and attempting to state they are indicates a "game" being played and a way for Debtor to provide inaccurate information with "plausible deniability."<sup>FN.1.</sup>

-----  
FN. 1. Definitions of plausible deniability include:

Plausible deniability is the ability to deny any involvement in illegal or unethical activities, because there is no clear evidence to prove involvement. The lack of evidence makes the denial credible, or plausible. The use of the tactic implies forethought, such as intentionally setting up the conditions to plausibly avoid responsibility for one's future actions.

<https://politicaldictionary.com/words/plausible-deniability/>

A condition in which a subject can safely and believably deny knowledge of any particular truth that may exist because the subject is deliberately made unaware of said truth so as to benefit or shield the subject from any responsibility associated through the knowledge of such truth.

<https://www.urbandictionary.com/define.php?term=plausible%20deniability>

Plausible deniability is a term coined by the CIA during the Kennedy administration to describe the withholding of information from senior officials in

order to protect them from repercussions in the event that illegal or unpopular activities by the CIA became public knowledge.

[https://military-history.fandom.com/wiki/Plausible\\_deniability](https://military-history.fandom.com/wiki/Plausible_deniability)

-----

The Chapter 13 Trustee filed his Status Report stating that since the Amended/Supplemental (with no date that they are supplementally accurate from) Schedule I and Amended Schedule J (dating all the way back to the 2020 filing of this case) have been filed, the Trustee supports confirmation. It is unclear to the court how such Amended/Supplemental Schedules could provide accurate current information as to whether the Plan is feasible.

Comparing the 2020 Schedule I to the 2021 Amended/Supplemental Schedule I, Debtor's net income from his business dropped from \$6,384.00 to \$5,316 – which is \$1,068 less income a month that may not have existed all the way back to when this case was filed.

On the incorrect original Schedule J Debtor stated under penalty of perjury that his expenses were (\$3,809) a month. However, he has now filed the Amended Schedule J on March 17, 2022, stating that the accurate amount is only (\$3,291) a month – indicating that Debtor may have had an extra \$518 a month for the two years of this case.

While the Debtor may think that the incorrect use of legal terminology under penalty of perjury is “just technical stuff” which can be ignored, unfortunately such an assertion is incorrect. The court has addressed this “check every box” practice by other attorneys. Here, with Debtor stating a two year old “correct” documenting that his expenses were \$518 lower than he previously said under penalty of perjury is very significant.

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, Fouad Afif Mizyed (“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 denied ~~granted, and Debtor's Modified Chapter 13 Plan filed on February 3, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee~~



~~will submit the proposed order to the court.~~

4. [20-20715](#)-E-13      **FOUAD MIZYED**  
[DPC-1](#)                      **Peter Macaluso**

**CONTINUED MOTION TO DISMISS  
CASE  
12-22-21 [77]**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 22, 2022. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

|   |
|---|
| <p><b>The Motion to Dismiss is granted and the case is dismissed.</b></p> |
|---|

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

1. the debtor, Fouad Afif Mizyed ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on January 3, 2022. Dckt. 81. Debtor states they are not able to make a lump sum payment of \$14,754.50 by the time of the hearing and will file a Motion to Modify their Chapter 13 Plan to resolve the delinquency. Response, Dckt. 81. There is no proof of service for Debtor's response and so it is not clear to the court if Trustee received notice of Debtor's response.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,587.46 delinquent in plan payments, which represents multiple months of the \$3,583.52 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **DEBTOR'S PENDING MODIFIED PLAN**

Debtor filed a Modified Plan on February 3, 2022. Dckt. 85. The hearing for confirmation of Debtor's Modified Plan is on April 19, 2022 at 2:00 p.m. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 82, 84.

The court's review of the Motion discloses that it does not state the grounds ( 11 U.S.C. §§ 1329, 1325, 1322) with particularity upon which the requested relief, confirmation of a modified plan, may be granted. Such failure could be grounds to grant the present motion and dismiss the case.

The court has addressed on multiple occasions the pleading requirements required by the U.S. Supreme Court in Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007, 9014. The grounds stated in the present Motion to Confirm are:

- A. Debtor filed a voluntary Chapter 13 case;
- B. Debtor has a confirmed Chapter 13 Plan in this case;
- C. Debtor failed to increase his plan payments as required in the current Chapter 13 Plan;
- D. The Trustee has now filed a Motion to Dismiss the Chapter 13 case because Debtor is \$14,754.50 delinquent in Plan payments;
- E. Debtor has funded the Plan with \$72,768.50; and
- F. Debtor is filing a Modified Plan that increases plan payments to cure the post-petition defaults.

Motion to Confirm; Dckt. 82.

While providing the court with some summary information, the Debtor does not state what grounds under §§ 1329, 1325, 1322 are the grounds stated with particularity upon which the requested relief is based. The various sections having conflicting grounds upon which a modified plan is confirmed, depending upon what the terms of the modified plan are for which confirmation is requested.

In reviewing the Declaration (Dckt. 84), though Debtor states that he forgot to increase the payments as required under the confirmed Plan and there is a \$14,754.50 delinquency, Debtor does not advise the court, Trustee, and parties in interest where the \$14,754.50 in cash is. It would appear that Debtor could just take the extra cash and cure the default, rather than having paid part and spreading the balance over the life of the plan. Debtor shall provide a supplemental declaration and evidence of where the monies relating to the default are located, and if not available, on what those monies were expended.

The court continues the hearing to afford Debtor the opportunity to file a supplemental pleading to the Motion (not an amended motion) stating the grounds with particularity and supporting pleadings relating thereto.

## March 22, 2022 Hearing

At the hearing, the court addressed with the parties the court denying confirmation because Debtor provided conflicting information under penalty of perjury on his income and expenses in connection with this case

The Trustee filed an *Ex Parte* Motion (Dekt. 95) for the court to dismiss the Trustee's Motion to Dismiss the bankruptcy case. In light of the conflicting financial information provided under penalty of perjury in the Amended/Supplemental Schedule I and Amended/Supplemental Schedule J, and neither providing any date from which the supplemental financial information is accurate (if they are supplemental schedules), ~~the court denies the Motion to Dismiss the Trustee's Motion to Dismiss the Bankruptcy Case.~~

At the hearing, **XXXXXXX**

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

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

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

~~**IT IS ORDERED** that the Motion to Dismiss is granted and the bankruptcy case is dismissed.~~

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

-----

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 9, 2022. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

|  |
|--|
| <p><b>The Motion to Confirm the Modified Plan is denied.</b></p> |
|--|

The debtor, Michael Roy Mullins (“Debtor”) seeks confirmation of the Modified Plan because they have suffered a financial hardship due to the pandemic. Declaration, Dckt. 54. The Modified Plan provides as follows:

- A. Plan payments of \$3,000 per month will commence February 25, 2022 for 59 months;
- B. Balance on hand as of January 25, 2022 is \$367.27.
- C. Class 2 claim of Santander is reduced to the amounts already disbursed by the Trustee.
- D. Attorney Dale Orthner was paid \$2,500.00 for attorney’s fees through the plan;

- E. Counsel for Debtor will apply for attorney fees not to exceed \$2,000.00 and if approved, shall be paid in accordance with the Plan.

Modified Plan, Dckt. 53. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on February 14, 2022. Dckt. 58. Trustee responds to the proposed confirmation of the Plan on the basis that:

- A. Debtor has explained the prior delinquency, Dckt. 57, which includes the loss of a café. Dckt 1.
- B. While Debtor's attorney incorrectly indicates that the current Schedule I & J are both amended, (implying the original were incorrect), and supplemental, (implying the original were correct but numbers later changed), Debtor's attorney has not yet made a motion for fees, where the attorney has substituted in after the death of the prior attorney. Dckt. 45.
- C. The Trustee believes the plan complies with 11 U.S.C. §§ 1325 and 1329, provided Debtor makes the \$3,000.00 Plan payment due on February 25, 2022, which is prior to the hearing.

Trustee's concerns are well taken.

## **CREDITOR'S OPPOSITION**

Santander Consumer USA Inc. ("Creditor") holding a secured claim filed an Opposition on February 24, 2022. Dckt. 62. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor's proposed Plan provides for inconsistent treatment of Santander's claim. Debtor lists the vehicle in Class 2(B) and Class 3 of the Amended Plan. If Debtor is proposing to list the vehicle as a Class 2(B) claim, the Debtor must file a Motion to Value to reduce the value of Santander's interest in the vehicle. Santander requests the Debtor file an amended Plan that clarifies Santander's treatment in the underlying chapter 13 case.

## **DEBTOR'S REPLY**

Debtor filed a Reply on March 8, 2022. Dckt. 65. Debtor responds to Creditor's opposition as follows:

- A. Debtor indicates that they will surrender the collateral to Santander and the amount listed in the Plan is the amount paid by the Trustee prior to surrender. Therefore, it is correctly listed as no further payments will be made to Santander. Dckt. 65.

## DECISION

Though the court discussed the deficiency in filing Schedules purporting to state under penalty of perjury that they are both amended, dating back to the date of the filing of the case, and also supplemental, providing accurate financial information from some post-petition date, Debtor has chosen not to correct his under penalty of perjury “error.”

The court’s concern over the conflicting financial information provided by Debtor under penalty of perjury was not only discussed orally, but clearly stated in the tentative ruling posted prior to the March 9, 2022 hearing on this Motion, as well as in the Civil Minutes, FN. 1 (Dckt. 67), which states:

FN. 1. The court notes that Debtor’s counsel, as he and his staff have done in other unrelated cases, continues to file supplemental Schedules I and J as dual amended schedules and supplemental schedules, checking both the amended box and the supplemental box on the Schedule. In doing so, the Debtor is stating under penalty of perjury and the attorney is filing with the Fed. R. Bankr. P. 9011 certification that the information is true and correct that the income and expense information relate all the way back to December 26, 2019 filing of this case. Given this repeated conduct by counsel and this specific conduct by Debtor, it may well be that the court concludes that Debtor is not prosecuting this case in good faith and is intentionally misstating financial information to his advantage. After the court having repeatedly addressed this inaccurate making of statements under penalty of perjury with Debtor’s counsel in prior unrelated bankruptcy cases, the filing of such statement under penalty of perjury by Debtor could not be mere “clerical error.”

With the ambiguous and conflicting financial information provided under penalty of perjury, and Debtor choosing not to correct it in the thirteen (13) days following the hearing on the Motion to Dismiss, the court does not have credible financial information to determine that the Plan is feasible. Additionally, the court has concerns that such Amended/Supplemental Schedule filing is merely a “game” being played and a way for Debtor to provide inaccurate information with “plausible deniability.”<sup>Fn.1.</sup> This leads the court to not being able to determine that Debtor is prosecuting this case and this Modified Plan in good faith.

-----  
FN. 1. Definitions of plausible deniability include:

Plausible deniability is the ability to deny any involvement in illegal or unethical activities, because there is no clear evidence to prove involvement. The lack of evidence makes the denial credible, or plausible. The use of the tactic implies forethought, such as intentionally setting up the conditions to plausibly avoid responsibility for one’s future actions.

<https://politicaldictionary.com/words/plausible-deniability/>

A condition in which a subject can safely and believeably deny knowledge of any

particular truth that may exist because the subject is deliberately made unaware of said truth so as to benefit or shield the subject from any responsibility associated through the knowledge of such truth.

<https://www.urbandictionary.com/define.php?term=plausible%20deniability>

Plausible deniability is a term coined by the CIA during the Kennedy administration to describe the withholding of information from senior officials in order to protect them from repercussions in the event that illegal or unpopular activities by the CIA became public knowledge.

[https://military-history.fandom.com/wiki/Plausible\\_deniability](https://military-history.fandom.com/wiki/Plausible_deniability)

-----  
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, Michael Roy Mullins ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

-----  
~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 9, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 9, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

|  |
|--|
| <b>The Motion to Dismiss is <span style="color: red;">XXXXXXX</span></b> |
|--|

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

1. the debtor, Michael Roy Mullins (“Debtor”), is delinquent on plan payments.

#### **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on February 9, 2022. Dckt. 53 and 50, respectively. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 54. 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. <sup>FN.1.</sup>

-----

FN. 1. The court notes that Debtor’s counsel, as he and his staff have done in other unrelated cases, continues to file supplemental Schedules I and J as dual amended schedules and supplemental schedules, checking both the amended box and the supplemental box on the Schedule. In doing so, the Debtor is stating under penalty of perjury and the attorney is filing with the Fed. R. Bankr. P. 9011 certification that the information is true and correct that the income and expense information relate all the way back to December 26, 2019 filing of this case.



Given this repeated conduct by counsel and this specific conduct by Debtor, it may well be that the court concludes that Debtor is not prosecuting this case in good faith and is intentionally misstating financial information to his advantage. After the court having repeatedly addressed this inaccurate making of statements under penalty of perjury with Debtor's counsel in prior unrelated bankruptcy cases, the filing of such statement under penalty of perjury by Debtor could not be mere "clerical error."

-----

Debtor's good faith in the prosecution of this case appearing in question, the court continues the hearing.

### **March 22, 2022 Hearing**

At the hearing the court discussed with the parties the denial of the Motion to Confirm Modified Plan and concerns with Debtor providing conflicting financial information under penalty of perjury.

At the hearing, **XXXXXXX**

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

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

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

~~**IT IS ORDERED** that the Motion to Dismiss is granted and the bankruptcy case is dismissed.~~

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

-----

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 15, 2022. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

|  |
|--|
| <p><b>The Motion to Confirm the Modified Plan is denied.</b></p> |
|--|

The debtor, Patricia Margaret Nelson ("Debtor") seeks confirmation of the Modified Plan because they have fallen behind on Plan payments to the Chapter 13 Trustee because they have had a substantial decrease in the volume of their work and no longer receive any overtime. Additionally, since interest rates have increased as a result of pandemic-related inflation, so too has the volume of refinances that supplied them with ample work and overtime opportunities as a mortgage underwriter. Declaration, Dckt. 92. The Modified Plan provides starting February 2022 Debtor shall pay \$1,250.00 per month for the remainder of the Plan. Modified Plan, Dckt. 94. 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 March 8, 2022. Dckt. 100. Trustee opposes confirmation of the Plan on the basis that:

- A.           The Debtor is delinquent in Plan payments.

## DISCUSSION

### Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,250.00 delinquent in plan payments, which represents less than one month of the \$1,998.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 7, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

|  |
|--|
| <b>The Motion to Dismiss is <span style="color: red;">XXXXXXX</span></b> |
|--|

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

1. the debtor, Patricia Margaret Nelson (“Debtor”), is delinquent on plan payments.

#### **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on February 15, 2022. Dckt. 94 and 90, respectively. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 92. 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 Trustee reported that Debtor is in default on the payments and requested that the hearing on this Motion be continued and conducted in conjunction with the Motion to Confirm.

At the hearing XXXXXXX

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

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

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

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

9. [21-23744-E-13](#) **CARLOS PALACIOS-CAZARES** **MOTION TO CONFIRM PLAN**  
[PGM-1](#) **Peter Macaluso** **2-14-22 [71]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2022. By the court’s calculation, 37 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

|   |
|---|
| <b>The Motion to Confirm the Plan is granted.</b> |
|---|

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Carlos Palacios-Cazares (“Debtor”), has provided evidence in support of confirmation.

**TRUSTEE’S OPPOSITION**

On March 15, 2022, Chapter 13 Trustee, David P. Cusick, filed an opposition. Dckt. 81. Trustee acknowledges their opposition is untimely. However, Trustee states they confused this matter with Trustee's Objection to Exemptions. Upon review, the court accepts the late opposition.

Trustee states an amended claim was filed as unsecured by Americredit Financial Services, Inc, on March 7, 2022 for \$24,607.74. Proof of Claim 1-2. The plan proposes 100% to unsecured but estimates unsecured at \$3,631.00. Dckt. 75 at 5. The plan, therefore, is not feasible. *See* 11 U.S.C. § 1325(a)(6).

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, Carlos Palacios-Cazares ("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.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2021. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

|   |
|---|
| <b>The Motion to Confirm the Modified Plan is denied.</b> |
|---|

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

#### **CHAPTER 13 TRUSTEE'S OPPOSITION**

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

- A. No current Schedules of I and J have been filed to support this motion so

the Court may find Debtors have not proved they can afford the payments.

## DISCUSSION

### Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not filed current Schedules I & J. The most recent filed Schedules I & J are dated March 24, 2021. Dckt. 33. Schedule I, (Dckt. 1 at 32), reflects monthly income of \$4,520 from a probate case, where the declaration of the executor, (Dckt. 91), does not specifically support this. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, counsel for the Debtor requested a continuance in light of changing circumstances continue, with the Debtor now arranging to pay off the Plan in one lump-sum payment.

The Trustee concurred with the request for a continuance.

### MARCH 22, 2022 CONTINUED HEARING

A review of the court's filed for this case on March 20, 2022 disclosed that no Supplemental Schedule I or Supplemental Schedule J have filed by Debtor.

At the hearing ~~XXXXXXXX~~.

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

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

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

~~**IT IS ORDERED** that the Motion is denied.~~



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

-----

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

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

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

|   |
|---|
| <p><b>The Motion to Dismiss is <del>granted</del> and the case is <del>dismissed</del>.</b></p> |
|---|

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

1. the debtor, Douglas Matthew Lutes and Valerie Lynn Lutes ("Debtor"), is delinquent in payments.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 21, 2021. Dckt. 85. Debtor states they will file a new Chapter 13 Plan on or before the hearing date.

## DISCUSSION

### Delinquent

Debtor is \$45,586.24 delinquent in plan payments, which represents multiple months of the \$4,696.24 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor states that the money to cure the Plan is to come from an inheritance that is being delayed. Declaration, Dckt. 86.

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.

### **Plan and Motion to Confirm Filed**

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

In light of some issues concerning the proposed Plan, the Trustee requested the hearing be continued.

### **Status of Case**

Neither the Trustee nor the Debtor have filed any pleadings related to the current Motion since the January 5, 2022 hearing.

The hearing on the Debtor's Motion to Modify Chapter 13 Plan After Confirmation filed on December 31, 2021, Dckt. 88, is scheduled for March 22, 2022. Dckt. 104.

The Trustee filed an Opposition to Debtor(s) Motion to Modify Chapter 13 Plan After Confirmation Filed on December 31, 2021. Dckt. 100. In the Opposition the Trustee informs the court that Debtor has failed to file updated Schedules I and J which prohibits the court from adequately assessing the feasibility of the Debtor's plan.

The hearing on the Motion to Dismiss was continued to be heard in conjunction with the Motion to Modify the Plan.

### **MARCH 22, 2022 HEARING**

Debtor did not update the financial information with Supplemental Schedules. The court did not confirm Debtor's Modified Plan.

At the hearing **XXXXXXX**.

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

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

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

~~**IT IS ORDERED** that the Motion is granted and the case is dismissed.~~

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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)©.**

-----

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 March 8, 2022. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

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

The Motion to Approve Loan Modification filed by Christina M. Berger ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$1,132.00 per month with 3.75% interest to \$1,094.58 per month with 3.125% interest.

The Motion is supported by the Declaration of Christina M. Berger. Dckt. 36. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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

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

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

The Motion to Approve Loan Modification filed by Christina M. Berger (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Christina M. Berger to amend the terms of the loan with Wells Fargo Bank, N.A. (“Creditor”), which is secured by the real property commonly known as 7569 Circuit Drive, Citrus Heights, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 37).

|     |  |   |   |
|-----|--|---|---|
| 13. | <a href="#"><u>21-24170-E-13</u></a><br><a href="#"><u>DPC-2</u></a> | <b>DHRUP GOSAI</b><br><b>Peter Macaluso</b> | <b>OBJECTION TO DEBTOR'S CLAIM OF<br/>EXEMPTIONS</b><br><b>2-16-22 [25]</b> |
|-----|--|---|---|

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney and Chapter 13 Trustee on February 16, 2022. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

|  |
|--|
| <b>The Objection to Claimed Exemptions is dismissed without prejudice.</b> |
|--|

The Chapter 13 Trustee, David P. Cusick (“Trustee”) having filed an *Ex Parte* Motion to

Dismiss the pending Objection on March 16, 2022, Dckt. 33; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Dhrup Chand Gosai (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

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

The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David P. Cusick (“Trustee”) having been presented to the court, The Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 33, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is dismissed without prejudice, Debtor filing an Amended Schedule C (Dckt. 32) in response to the Trustee’s Objection.

# FINAL RULINGS

14. [21-24167](#)-E-13      RONALD/ANGELA CUSTODIO      OBJECTION TO DEBTOR'S CLAIM OF  
[DPC-2](#)      Peter Macaluso      EXEMPTIONS  
2-22-22 [\[29\]](#)

**Final Ruling: No appearance at the March 22, 2022 Hearing is required.**

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on February 22, 2022. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Objection to Claimed Exemptions is dismissed without prejudice.**

The Chapter 13 Trustee, David P. Cusick ("Trustee") objects to Ronald Gene Custodio and Angela Alvarado Custodio's ("Debtor") claimed exemptions under California law because of improper use of California Code of Civil Procedure § 704.070 for wage income deposited into financial accounts. California Code of Civil Procedure § 704.070(b)(2) allows for exemption of only 75% of the paid earnings that can be traced into deposit accounts. Debtor exempted 100% of the money listed in their bank accounts for a combined total of \$2,168.90. The amounts listed for each financial account identified as Patelco Credit Union #4393; US bank #6702; Bank of the West #8337; Bank of the West #7959; Sutton Bank #1757; Sutton Bank #1281; Travis Credit Union #0155; Robinhood; crypto account: voyager; crypto currency: coinbase; and cash app: cash app. Dckt. 19.

## **Reply of Debtor**

On March 8, 2022, Debtor filed a Reply. Dckt. 33. Debtor represents that an Amended Schedule C has been filed to alleviate the Chapter 13 Trustee's concerns.

## **Trustee's Motion to Dismiss Trustee's Objection**

Trustee filed a request to dismiss Trustee's Objection to Exemptions. Dckt. 36.

The court construes Trustee's Motion to Dismiss as an *Ex Parte* Motion to Dismiss the pending Objection; no prejudice to the responding party appearing by the dismissal of the Objection; the Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

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

The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David P. Cusick ("Trustee") having been presented to the court, Trustee having requested the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 36, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is dismissed without prejudice, the Debtor having filed an Amended Schedule D on March 8, 2022 (Dckt. 35).

**Final Ruling:** No appearance at the March 22, 2022 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 8, 2022. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Brandon Tyler Moore ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 2, 2022. Dckt. 54. 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, Brandon Tyler Moore ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 8, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the March 22, 2022 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2022. By the court's calculation, 35 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 Rule 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Kristen Michelle Larsen ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by creditors. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 8, 2022. Dckt. 42. 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, Kristen Michelle Larsen ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 15, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

17. [19-25539-E-13](#)      **SAYED/SHEILA SHAH**      **MOTION TO MODIFY PLAN**  
[PGM-2](#)      **Peter Macaluso**      **2-14-22 [43]**  
17 thru 18

**Final Ruling: No appearance at the March 22, 2022 Hearing is required.**

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2022. By the court's calculation, 36 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).

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

The debtor, Sayed Naim Shah and Sheila Diann Shah ("Debtor") seeks confirmation of the Modified Plan to begin remitting payments of \$1,850.00 per month starting February 25, 2022 and pay their creditors to the best of their ability. Declaration, Dckt. 45. The Modified Plan provides payments of \$1,850.00 to commence on February 25, 2022 for 56 months, and a zero (0) percent dividend to unsecured claims totaling \$10,390.35. Modified Plan, Dckt. 47. 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 March 8, 2022.

Dckt. 56. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's proposed Plan relies on an Order approving a loan modification.

## **DISCUSSION**

### **Debtor's Reliance on Motion to Approve Loan Modification**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Wells Fargo Bank, N.A. ("Creditor"). Debtor filed a Motion to Approve Loan Modification of Creditor on February 14, 2022 which will be heard in conjunction with this present Motion to Confirm the Modified Plan. Dckt. 49. Trustee filed a nonopposition in response to Debtor's Motion to Approve Loan Modification on March 8, 2022. Dckt. 59. Since the court grants Debtor's Motion to Approve Loan Modification, the court will also grant Debtor's present Motion to Confirm the Modified Plan.

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, Sayed Naim Shah and Sheila Diann Shah ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 14, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the March 22, 2022 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2022. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

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

The Motion to Approve Loan Modification filed by Sayed Naim Shah and Sheila Diann Shah (“Debtor”) seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. (“Creditor”), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$2,169.55 per month to \$1,875.63 per month. The modification will include all amounts and arrearages that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges) less any amounts paid to Creditor but not previously credited to Debtor’s Loan.

The Motion is supported by the Declaration of Sayed Naim Shah and Sheila Diann Shah. Dckt. 51. The Declaration affirms Debtor’s desire to obtain the post-petition financing and provides evidence of Debtor’s ability to pay this claim on the modified terms.

### **Trustee’s Nonopposition**

The Chapter 13 Trustee, David P. Cusick (“Trustee”) filed a nonopposition on March 8,

This post-petition financing is consistent with the proposed Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. The court believes this loan modification is fair because Debtor will no longer be in default, Debtor will see a lower mortgage payment, and the interest rate is reasonable. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve Loan Modification filed by Sayed Naim Shah and Sheila Diann Shah ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Sayed Naim Shah and Sheila Diann Shah to amend the terms of the loan with Wells Fargo Bank, N.A. ("Creditor"), which is secured by the real property commonly known as 4619 Charleston Drive, Carmichael, California 95608, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 52).