UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 25, 2025 at 2:00 p.m.

---

1. 25-20141-E-13 DPC-1 | **ADEMAR/ROSELEENE SAMIANO** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
Carl Gustafson | **2-26-25 [24]**

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

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 26, 2025. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled without prejudice.

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

1. The Plan may not be feasible because the Plan relies on Debtor's Motion to Value Collateral of Debtor's vehicle. Obj. 2:1-8, Docket 24. And if the court does not grant the motion (notably Trustee filed a non-opposition to

Debtor's motion), then Debtor's Plan is not sufficiently funded to pay the claim in full. *Id.*

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 26.

DISCUSSION
Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Capital One Auto Financial. Trustee filed a non-opposition to Debtor's Motion to Value, and the court granted that Motion at the hearing held on March 11, 2025. Docket 28. Therefore, Trustee's Objections is overruled.

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 is overruled, and Ademar Montejo Samiano and Roseleene Diaz Samiano's ("Debtor") Chapter 13 Plan filed on January 14, 2025, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2.	**24-25073-E-13** **PGM-2**	**SHELLEY BETTENCOURT-TILLMAN** **Peter Macaluso**	**MOTION TO CONSOLIDATE LEAD CASE 24-24505 WITH 24-25073, MOTION FOR JOINT ADMINISTRATION** **2-14-25 [46]**

Items 2 thru 3

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 14, 2025. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Substantively Consolidate Case no. 24-25073 with Case no. 24-24505 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Substantively Consolidate Case of Shelley L. Bettencourt-Tillman Bankruptcy Case, No. 24-25073 with the Leon Moses Tillman Chapter 13 Bankruptcy, Case No. 24-24505, Shelley L. Bettencourt-Tillman's spouse, is xxxxxxx.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an

attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Here, the Motion makes no legal citations to any authority apart from Fed. R. Civ. P. 42(a). Counsel has made a request for substantive consolidation to this Rule before, and the court informed counsel that this is not the correct Rule under which to bring a substantive consolidation Motion. *See* Civil Minutes, Docket 33 (explaining in the bankruptcy context, Fed. R. Civ. P. 1015 is the correct Rule under which to bring a substantive consolidation Motion). The Motion does not cite to any other cases, Rules, or statutes in support of moving the court for substantive consolidation. This lack of legal support fails the pleading with particularity standard.

At the hearing, **xxxxxxx**

THE MOTION

Debtor Shelley L. Bettencourt-Tillman ("Debtor") has filed a Motion titled "Motion for Substantively Consolidated Case and Joint Administration of Related Cases" which states:

> Debtors are requesting that Shelley administered as one case with the schedules and Plan filed with the Court as case #24-24505-E L. Bettencourt-Tillman case be joined with Leon Moses Tillman Sr. case and be-13C.

Mot. 2:7-11, Docket 46.

It appears by this language that the two Debtors desire to substantively consolidate their cases, not merely have them "jointly administered." Joint administration is a term of art referring to cases remaining separate but operating under a single docket number. *See* Fed. R. Bankr. P. 1015.

The court has seen various counsel use substantive consolidation and joint administration interchangeably on multiple motions now; however, they are distinct procedural concepts and counsel cannot be asking for them both.

At the hearing, **xxxxxxx**

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, Lilian Tsang ("Trustee"), filed a Reply styled like an Opposition on February 28, 2025. Docket 54. Trustee states:

> 1. There are administrative issues regarding the consolidation of an unconfirmed case into a confirmed case and the logistical issues of doing so. It is unclear which proof of claims is to be paid if the two cases are to be consolidated and how to do the accounting for the disbursements that have already been made in Spouse's confirmed chapter 13 case. Opp'n 3:7-10.

2. First, Debtor's Section 341 hearing has not been concluded. Ms. Bettencourt-Tillman has not testified at her section 341 hearing, which has been continued multiple times. *Id.* at 3:10-12.

   a. On this point, the Debtor appeared at the continued Meeting held on March 6, 2025, and the Meeting was continued further to April 2, 2025.

3. Second, Ms. Bettencourt-Tillman has not made a single chapter 13 Plan payment in her bankruptcy case, which has created a substantial delinquency that is not likely to be cured. It is unclear whether Debtor will be able to navigate the gauntlet of a chapter 13 case, make the substantial plan payments, and obtain a discharge. Proposing a "consolidation" with her Spouse's case should not allow Debtor to side-step the confirmation requirements. *Id.* at 3:12-16.

4. Third, the proof of claim filed by the mortgage claim holder shows pre-petition mortgage arrears of $175,625.97, but Ms. Bettencourt-Tillman's Plan proposes to pay only $12,000.00 in prepetition arrears. The significant amount of mortgage arrears renders Debtor's plan infeasible, and therefore consolidation and joint administration with another case is not practicable. *Id.* at 3:17-20.

DEBTOR'S REPLY

Debtor filed a Reply to the Opposition on March 18, 2025. Docket 56. Debtor states:

1. Counsel has reached out to the United States Trustee regarding the consolidation and reassigning the Trustee as each case is assigned to a different one. *Id.* at 1:20-22.

2. The cases were filed identically with no additional creditors, using the same income and expenses. Mr. Tillman is current and recently confirmed. The consolidation of his disabled spouse case into his, is in the best interest of all creditors. *Id.* at 1:23-2:1.

3. Counsel filed two identical motions, one in each case, serving the same creditors and respective Trustees. Each Trustee was not specifically served the other case's Motion, but it should be noted that both Trustee's filed Objections. Counsel would request a continuance if further noticing is needed. *Id.* at 2:5-9.

APPLICABLE LAW

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:

> (a) CASES INVOLVING SAME DEBTOR. If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.
>
> (b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).
>
> (c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

The advisory notes to this Rule states:

> Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates.

Notably, "neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law." 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Substantive consolidation of assets and liabilities between different entities may be "dealt with as if the assets were held, and the liabilities incurred, by a single entity. This type of consolidation generally is referred to as substantive consolidation. . . The power to consolidate substantively is derived from the court's general equitable powers as set forth in section 105. . ." *Id.* at ¶ 1015.02[3]. The court is also aware that "[t]he power to consolidate should be used sparingly because of the potential harm to creditors of substantive consolidation." *Id.* at ¶ 105.09[1][d] (internal quotations omitted).

The Ninth Circuit has recognized the power of the bankruptcy courts to substantively consolidate cases of two separate debtors as an equitable remedy available to the bankruptcy courts. *See In re Bonham*,

229 F. 3d 750, 763 (9th Cir. 2000) ("The bankruptcy court's power of substantive consolidation has been considered part of the bankruptcy court's general equitable powers since the passage of the Bankruptcy Act of 1898."). When the bankruptcy court finds substantive consolidation is proper and issues an order accordingly, "[t]he consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-company claims are extinguished; and, the creditors of the consolidated entities are combined for purposes of voting on reorganization plans." *Id.* at 764.

The primary purpose of substantive consolidation is to ensure the equitable treatment of all creditors. *Id.* The Ninth Circuit has instructed that "in ordering substantive consolidation, courts must consider whether there is a disregard of corporate formalities and commingling of assets by various entities; and balance the benefits that substantive consolidation would bring against the harms that it would cause." *Id.* at 765. In making a determination of whether to order substantive consolidation, the Ninth Circuit has adopted the test used by the Second Circuit. Bankruptcy courts are to consider "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. . . The presence of either factor is a sufficient basis to order substantive consolidation." *Id.* at 766.

The first factor is satisfied when the record shows "lenders structure their loans according to their expectations regarding th[e] borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets." *Id.* (internal quotations omitted). The second factor is met when "the time and expense necessary even to attempt to unscramble [the debtors] [is] so substantial as to threaten the realization of any net assets for all the creditors or where no accurate identification and allocation of assets is possible." *Id.* (internal quotations omitted).

Joint administration is the alternative to consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when "the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds." 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

> (a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.
>
> (b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7 r subchapter V of chapter 11 of the Code.
>
> (c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

. . .

(d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

DISCUSSION

The issue with consolidation as Trustee points out is the practical aspect of consolidating cases when one case has a confirmed Chapter 13 Plan, and in the other, the Debtor not only does not have a confirmed Plan, but the Debtor is extremely delinquent under the terms of the proposed Plan. There is no discussion by Debtor how the cases can be joined at such different and seemingly irreconcilable stages of Chapter 13.

Debtor Leon Moses Tillman has provided his Declaration in support. Docket 48. There is no Declaration of Shelley L. Bettencourt-Tillman in support. Mr. Tillman testifies that they have listed the same properties in their respective schedules. Decl. ¶ 1, Docket 30. Mr. Tillman further testifies they have claimed the same exemptions. In the Reply, Debtor comments that the creditors are completely identical.

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 for Joint Administration, which the court construes to be a Motion to Substantively Consolidate Case no. 24-25073 with Case no. 24-24505, filed by Shelley L. Bettencourt-Tillman ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

3. 24-24505-E-13 PGM-1 — LEON TILLMAN / Peter Macaluso — MOTION TO CONSOLIDATE LEAD CASE 24-24505 WITH 24-25073, MOTION FOR JOINT ADMINISTRATION 2-14-25 [28]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 14, 2025. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Substantively Consolidate Case no. 24-25073 with Case no. 24-24505 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Substantively Consolidate Case of Shelley L. Bettencourt-Tillman Bankruptcy Case, No. 24-25073 with the Leon Moses Tillman Chapter 13 Bankruptcy, Case No. 24-24505, Shelley L. Bettencourt-Tillman's spouse, is xxxxxxx.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an

attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Here, the Motion makes no legal citations to any authority apart from Fed. R. Civ. P. 42(a). Counsel has made a request for substantive consolidation to this Rule before, and the court informed counsel that this is not the correct Rule under which to bring a substantive consolidation Motion. *See* Case no. 24-25073, Civil Minutes, Docket 33 (explaining in the bankruptcy context, Fed. R. Civ. P. 1015 is the correct Rule under which to bring a substantive consolidation Motion). The Motion does not cite to any other cases, Rules, or statutes in support of moving the court for substantive consolidation. This lack of legal support fails the pleading with particularity standard. At the hearing, **XXXXXXX**

THE MOTION

Debtor Leon M. Tillman, Sr. ("Debtor") has filed a Motion titled "Motion for Substantively Consolidated Case and Joint Administration of Related Cases" which states:

> Debtors are requesting that Shelley L. Bettencourt-Tillman case be joined with Leon Moses Tillman Sr. case and be administered as one case with the schedules and Plan filed with the Court as case #24-24505-E-13C.

Mot. 2:7-11, Docket 28. It appears by this language that the two Debtors desire to substantively consolidate their cases, not merely have them "jointly administered." Joint administration is a term of art referring to cases remaining separate but operating under a single docket number. *See* Fed. R. Bankr. P. 1015. The court has seen counsel use substantive consolidation and joint administration interchangeably on multiple motions now; however, they are distinct procedural concepts and counsel cannot be asking for them both.

At the hearing, **XXXXXXX**

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 11, 2025. Docket 32. Trustee states:

> 1. The motion lacks factual information and evidentiary support. The Debtor states that he wants to consolidate his case with his wife's subsequently filed case but fails to state any legal basis to do so and fails to analyze any of the facts or pitfalls associated with doing so. Opp'n 2:4-8.
>
> a. Areas of concern include: Would the wife's creditors be bound by the husband's confirmed plan? There are no facts here that would support revoking the husband's confirmation and that would cause a hardship for his creditors if it were to happen since they might rely on certain aspects of the confirmed plan. *Id.* at 2:11-15.

b. Debtor has not acknowledged that in their current status, the cases cannot be easily consolidated since they are each assigned to different Chapter 13 Trustees. Only the United States Trustee can assign or remove a Chapter 13 Trustee to a case. *Id.* at 2:16-20.

2. There is no evidence in support.

3. There may be a notice issue where the Motion and pleadings were only served on the matrix of creditors and Trustee in this case. *Id.* at 3:8-18.

DEBTOR'S REPLY

Debtor filed a Reply to the Opposition on March 18, 2025. Docket 35. Debtor states:

1. Counsel has reached out to the United States Trustee regarding the consolidation and reassigning the Trustee as each case is assigned to a different one. *Id.* at 1:20-22.

2. The cases were filed identically with no additional creditors, using the same income and expenses. Mr. Tillman is current and recently confirmed. The consolidation of his disabled spouse case into his, is in the best interest of all creditors. *Id.* at 1:23-2:1.

3. Counsel filed two identical motions, one in each case, serving the same creditors and respective Trustees. Each Trustee was not specifically served the other case's Motion, but it should be noted that both Trustee's filed Objections. Counsel would request a continuance if further noticing is needed. *Id.* at 2:5-9.

APPLICABLE LAW

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:

> (a) CASES INVOLVING SAME DEBTOR. If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.
>
> (b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order

> shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).
>
> (c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

The advisory notes to this Rule states:

> Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates.

Notably, "neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law." 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Substantive consolidation of assets and liabilities between different entities may be "dealt with as if the assets were held, and the liabilities incurred, by a single entity. This type of consolidation generally is referred to as substantive consolidation. . . The power to consolidate substantively is derived from the court's general equitable powers as set forth in section 105. . ." *Id.* at ¶ 1015.02[3]. The court is also aware that "[t]he power to consolidate should be used sparingly because of the potential harm to creditors of substantive consolidation." *Id.* at ¶ 105.09[1][d] (internal quotations omitted).

The Ninth Circuit has recognized the power of the bankruptcy courts to substantively consolidate cases of two separate debtors as an equitable remedy available to the bankruptcy courts. *See In re Bonham*, 229 F. 3d 750, 763 (9th Cir. 2000) ("The bankruptcy court's power of substantive consolidation has been considered part of the bankruptcy court's general equitable powers since the passage of the Bankruptcy Act of 1898."). When the bankruptcy court finds substantive consolidation is proper and issues an order accordingly, "[t]he consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-company claims are extinguished; and, the creditors of the consolidated entities are combined for purposes of voting on reorganization plans." *Id.* at 764.

The primary purpose of substantive consolidation is to ensure the equitable treatment of all creditors. *Id.* The Ninth Circuit has instructed that "in ordering substantive consolidation, courts must consider whether there is a disregard of corporate formalities and commingling of assets by various entities; and balance the benefits that substantive consolidation would bring against the harms that it would cause." *Id.* at 765. In making a determination of whether to order substantive consolidation, the Ninth Circuit has adopted the test used by the Second Circuit. Bankruptcy courts are to consider "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or

(2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. . . The presence of either factor is a sufficient basis to order substantive consolidation." *Id.* at 766.

The first factor is satisfied when the record shows "lenders structure their loans according to their expectations regarding th[e] borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets." *Id.* (internal quotations omitted). The second factor is met when "the time and expense necessary even to attempt to unscramble [the debtors] [is] so substantial as to threaten the realization of any net assets for all the creditors or where no accurate identification and allocation of assets is possible." *Id.* (internal quotations omitted).

Joint administration is the alternative to consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when "the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds." 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

> (a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.
>
> (b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7 r subchapter V of chapter 11 of the Code.
>
> (c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.
>
> > (1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.
> >
> > . . .
>
> (d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.
>
> (e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

DISCUSSION

The issue with consolidation as Trustee points out is the practical aspect of consolidating cases when one case has a confirmed Chapter 13 Plan, and in the other, the Debtor not only does not have a confirmed Plan, but the Debtor is extremely delinquent under the terms of the proposed Plan. There is no discussion by Debtor how the cases can be joined at such different and seemingly irreconcilable stages of Chapter 13.

Debtor has provided his Declaration in support. Docket 30. Debtor testifies that they have listed the same properties in their respective schedules. Decl. ¶ 1, Docket 30. Debtor further testifies they have claimed the same exemptions. In the Reply, Debtor comments that the creditors are completely identical.

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 for Joint Administration, which the court construes to be a Motion to Substantively Consolidate Case no. 24-25073 with Case no. 24-24505, filed by Shelley L. Bettencourt-Tillman ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxx**.

4. 25-20305-E-13 DPC-1 — MARIA GUILLEN, Harry Roth — OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK 3-5-25 [12]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 March 5, 2025. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor misclassified the claims listed in Class 1 of the plan. Obj. 2:1-16, Docket 12. Debtor listed four claims under Class 1, which includes: (1) ADT Security, (2) California Housing Finance Agency, (3) California Housing Finance Agency, and (4) Lakeview Mortgage. Plan § 3.07(c), Docket 3. Debtor's Plan lists all four claims as having $0.00 in arrears under Class 1. *Id.* And according to Trustee, none of the creditors have filed a proof of claim. As a result the Trustee is concerned that Debtor misclassified the claims.

2. Debtor misclassified the claim listed in Class 2 of the plan. Obj. 2:13-16, Docket 12. Debtor listed Lakeview Mortgage's claim in the amount of $216,998.733 with 0% interest and a monthly dividend of $108.33. Plan § 3.08(d), Docket 3. According to the Trustee, the creditor has not filed a proof of claim to date. Obj. 2:15-16, Docket 12. Accordingly, the Trustee

is concerned that the claim may have been misclassified. Obj. 2:13-16, Docket 12.

3. Debtor did not specify a monthly payment fee for Attorney Fees. Obj. 2:19-24, Docket 12. The Plan specifies that attorney fees in the amount of $8,500.00 shall be paid through the plan. Plan § 3.05, Docket 3. But the Plan under "Administrative expenses" reflects that the attorney will be paid $0.00 each monthly payment. Plan § 3.06, Docket 3. The Trustee estimates that monthly payments for attorney fees should be $141.67. Obj. 2:22-24, Docket 12. Thus, the Trustee believes that the plan may not be feasible because the Plan does not adequately specify monthly attorney fees. *Id.*

4. Debtor may be able to increase the Plan payment based off of Debtor's previous tax refund in 2023. Obj. 3:8-10, Docket 12. Debtor's Plan proposes payments of $2,445.80 per month for 60 months. Plan § 2.01, Docket 3; Plan § 2.03, Docket 3. According to the Trustee, Debtor should be paying more into the monthly payments under the Plan, because Debtor is potentially receiving an annual $2,000.00 net tax refund during the life of the Plan. Obj. 3:11-14, Docket 12.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 14.

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). According to the language of the Plan, Class 1 "includes all *delinquent* secured claims that mature after the completion of th[e] plan." Plan § 3.07, Docket 3 (emphasis added). Debtor lists four claims, all of which have $0.00 in arrears. Plan § 3.07(c), Docket 3. As such, Trustee is concerned that Debtor may have misclassified the claims. And to date, none of the creditors have filed a proof of claim.

Additionally, Debtor may have misclassified the claim listed in Class 2(A). Plan § 3.08(d), Docket 3. The language of section 3.08 of the Plan states that Class 2 "includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed." Plan § 3.08, Docket 3. The mortgage has a substantial amount left to be paid, meaning the mortgage likely should be placed in either class 1 or class 4, maturing some time after the completion of the Plan. As a result, Trustee is concerned that the claim may have been misclassified as a Class 2 claim.

Attorney's Fees

The Plan cannot be confirmed without the discrepancy in attorney's fees resolved. Debtor's Plan specifies that the attorney will be paid $0.00 of each monthly payment. The Trustee notes however, that the attorney fees should approximately be $141.67 and should be specified in the plan so that the Trustee and the court can assess the feasibility of the Plan.

Not Best Effort

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

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

The Plan proposes payments of $2,445.80 per month for 60 months with 0% to unsecured claims. The Trustee believes that Debtor may be able to increase the Plan payment significantly based on Debtor's previous tax refund. According to the Trustee, Debtor received $7,269.00 in federal tax refund and a state refund of $3,648.00, totaling $10,917.00 for the 2023 tax year. The Trustee also notes that Debtor listed their 2024 estimated state and federal tax refunds as "Unknown" on Schedule A/B. Petition 15, Docket 1. Debtor should be paying into the Plan any amount over the annual $2,000.00 next tax refunds received during the life of the Plan, starting with the 2024 tax refund, to the extent it is not exempt.

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.

5. 25-20130-E-13 DPC-1 — MICHELLE BOHANON, Mary Ellen Terranella — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 2-26-25 [20]

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 26, 2025. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Michelle Yvonne Bohanon ("Debtor") admitted at the First Meeting of Creditors, held on February 20, 2025, that she was required to file tax returns for 2020 through 2023 and has not done so. Obj. 2:3-8.

2. Debtor's first Plan payment of $3,950.00 was due as of February 25, 2025, and has not been paid, contrary to 11 U.S.C. §§1322(a)(2) & (6.) The Debtor advised the hearing officer at the First Meeting of Creditors that she will be setting up payments to be paid through TFS payment system. To date the Trustee has not received any payments from TFS. *Id.* at 2:11-15.

3. The Plan may not be proposed in Debtor's best efforts. First, the Plan proposes 0% to unsecured creditors, but Schedule I shows the Debtor and the Non-Filing Spouse, ("NFS"), are making a voluntary contribution in a retirement plan for a total of $1,129.00 per month. *Id.* at 2:16-24.

4. Additionally, Schedule I shows the Debtor, and the NFS, are paying retirement loans for a total of $679.00 per month. The Trustee is concerned that these loans will be paid in full at some point during the Plan and the Debtor should make step-up Plan payment(s), if these loans are paid off prior to the completion of the Plan. *Id.* at 2:27-3:2.

5. Debtor has not provided sufficient information regarding her NFS on her Schedule H. Debtor advised she would amend Schedule H, but no such amendment has yet been made. *Id.* at 3:3-7.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 22.

DISCUSSION
Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2020, 2021, 2022, and 2023 tax years have not been filed. Filing of the returns is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Delinquency

Debtor is $3,950.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Disposable Income / Not Best Effort

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

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

The Plan proposes to pay a 0 percent dividend to unsecured claims, though Debtor schedules voluntary retirement payments of $1,129 per month. Moreover, it appears Debtor will have an increase in disposable income when her retirement loan is paid off. Failing to contribute any to unsecured creditors under these circumstances does not appear to be Debtor's best efforts. Thus, the court may not approve the Plan.

Inaccurate or Missing Information

Debtor's Schedules H must be amended to properly inform parties about her NFS. To date, no amended Schedule H has been filed. 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.
>
> 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.

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

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

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

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

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

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

The Objection to Confirmation of Plan is xxxxxxx.

March 25, 2025 Hearing

The hearing was continued to allow Debtor sufficient time to put together language for the amended terms specifying how the Plan will be funded. A review of the Docket on March 14, 2025 reveals nothing new has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

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

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

DISCUSSION

Failure to Cure Arrearage of Creditor

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

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

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

Plan, § 3, ¶¶ 3.01, 3.02.

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

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

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

Counsel for the Debtor requested a short continuance to put together the amended terms and funding of the Plan. Creditor concurred with the request. The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on March 25, 2025.

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

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

The Objection to the Chapter 13 Plan filed by Carrington Mortgage Services, LLC ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is **xxxxxxx**.

7. 25-20234-E-13 DPC-1 | **JOHN BARNWELL** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-26-25 [15]**

Item 7 thru 9

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

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 26, 2025. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx .

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

1. John Michael Barnwell's ("Debtor") Plan relies on two pending Motions to Value the collateral of Greenstate Credit Union, Class 2(B) claims. Obj. 2:3-9.

2. Debtor advised the hearing officer, at the First Meeting of Creditors held on February 20, 2025, that he recently obtained new employment. The hearing officer requested that the Debtor amend Schedules I and J to reflect the new employment, income and expenses. To date, no amended, or supplemented, Schedules I or J have been filed with the Court. *Id.* at 2:10-14.

3. Debtor must amend his Statement of Financial Affairs ("SOFA") to reflect the 2025 income with his new job. *Id.* at 2:15-20.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 17.

DEBTOR'S REPLY

Debtor filed a Reply on March 18, 2025. Docket 50. Debtor states he has amended his Schedules I and J and SOFA, and the Motions to Value are filed and set to be heard on April 8, 2025.

DISCUSSION
Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of Greenstate Credit Union. Debtor has filed the Motions to Value, but without the Motions being granted, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The hearings on those Motions are set for April 8, 2025.

New Employment

As Debtor has obtained new employment, the Schedules I and J as well as the SOFA must be amended to reflect this employment. Debtor filed the Amended Documents on March 18, 2025. Dockets 51, 52.

~~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 **XXXXXXX** .

8. **25-20234-E-13 GAL-2** | **JOHN BARNWELL** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY GREENSTATE CREDIT UNION 2-27-25 [26]**

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 27, 2025. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

GreenState Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. John Michael Barnwell's ("Debtor") Plan improperly values Creditor's collateral, a 2014 Dodge Challenger vin ending in 1221. Obj. 2:21-25.

Creditor submits the Declaration of Jordyn Schmitt to authenticate the facts alleged in the Objection. Decl., Docket 33.

DEBTOR'S REPLY

Debtor filed a Reply on March 18, 2025. Docket 48. Debtor states the Motions to Value are filed and set to be heard on April 8, 2025.

DISCUSSION
Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of Creditor. Debtor has filed the Motions to Value, but without the Motions being granted, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The hearings on those Motions are set for April 8, 2025.

~~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 GreenState Credit Union ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is **XXXXXXX**.

9. 25-20234-E-13 GAL-3 | **JOHN BARNWELL** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY GREENSTATE CREDIT UNION 2-27-25 [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, and Office of the United States Trustee on February 27, 2025. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx .

GreenState Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. John Michael Barnwell's ("Debtor") Plan improperly values Creditor's collateral, a 2019 Dodge Ram 1500 vin ending in 7521. Obj. 2:19-22.

2. Additionally, the Plan does not propose the appropriate interest rate. *Id.* at 3:1-3.

Creditor submits the Declaration of Jordyn Schmitt to authenticate the facts alleged in the Objection. Decl., Docket 28.

DEBTOR'S REPLY

Debtor filed a Reply on March 18, 2025. Docket 49. Debtor states the Motions to Value are filed and set to be heard on April 8, 2025.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of Creditor. Debtor has filed the Motions to Value, but without the Motions being granted, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The hearings on those Motions are set for April 8, 2025.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4%. Creditor's claim is secured by a 2019 Dodge Ram 1500 vin ending in 7521. 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, 7.5%, plus a 1.25% risk adjustment, for a 8.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by GreenState Credit Union ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is **XXXXXXX**.

10. 21-23539-E-13 PGM-6 | **DEREK WOLF** Peter Macaluso | **CONTINUED MOTION TO MODIFY PLAN** 10-29-24 [331]

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, attorneys of record, and Office of the United States Trustee on October 29, 2024. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied without prejudice.

March 25, 2025 Hearing

The court continued the hearing under the representation that the Parties were close to agreeing to Creditor's treatment under the Plan. On March 11, 2205, Creditor filed a Status Report with the court. Docket 356. Creditor states:

1. Debtor has failed to engage in settlement negotiations, and as such, Creditor has withdrawn its settlement offer. *Id.* at 1:24-2:2.

2. Creditor has attempted for more than one year to resolve Debtor's claims, but Debtor has been nonresponsive to all overtures. Debtor's counsel has also advised that Debtor has recently been nonresponsive to him as well. *Id.* at 2:3-5.

3. Creditor requests, for reasons previously stated in both Creditor's Opposition and the Trustee's Opposition, that the Motion to Modify be denied and that the Court dismiss this bankruptcy proceeding. *Id.* at 2:8-10.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

The debtor, Derek L Wolf ("Debtor") seeks confirmation of the Modified Plan. The Modified Plan provides for $28,388.96 through October of 2024 with $900 monthly payments to commence for 12 months thereafter. Modified Plan, Docket 335. Additionally, there is an explanation in the Non-Standard Provisions of the Plan how Debtor's mortgage has been treated. *Id.* 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 26, 2024. Docket 342. Trustee opposes confirmation of the Plan on the basis that:

A. A post-petition arrearage arose under the terms of the previously confirmed Plan for the months of September, October, November and December 2022, March, July, August, September, November 2023 in the amount of $8,870.85. The Non-Standard Provisions of the Plan do not clearly deal with this arrearage. *Id.* at 1:24-2:15.

B. The Plan is vastly overextended due to the post-petition delinquency and the pending R.E.S.P.A. accounting. *Id.* at 2:17-22.

C. The Plan relies on an R.E.S.P.A. accounting, which leaves too many issues in a state of flux. *Id.* at 2:23-3:2.

D. No supplemental Schedule I & J have been filed to support this motion. *Id.* at 3:3-10.

Opposition of U.S. Bank N.A., as Trustee

On January 23, 2025, U.S. Bank, N.A., as Trustee, ("USBT") filed an opposition to the Motion to Confirm set for the continued hearing on January 28, 2025. Dckt. 349. USBT and the Debtor have been meeting to try and resolve this issue of the amount of the claim and arrearage.

In addition to asserting that the treatment of its secured claim under the proposed Third Modified Plan, the Opposition hits the following points:

a. First, Creditor objects to the Third Proposed Modified Plan because it requires Creditor to waive post-petition payments owed, as it seeks to have Debtor deemed current as of October 25, 2024. . . The Third Proposed Modified Plan does not make any provision to cure the delinquency and as a result, impermissibly modifies Creditor's claim and right to full payments on an obligation secured by real property that is Debtor's principal residence. Opp., p. 2:1-3, 10–13; Dckt. 349.

b. Second, Debtor seeks to modify the plan solely to litigate his dispute as to the interest bearing principal amount owed. *See* Dkt. 333, ¶ 2. Debtor has been aware of this "dispute" but has not brought any motion to have the Court adjudicate the issue, despite being advised to do so at the July 2, 2024 hearing. This dispute need not be litigated in this Court, and doing so unnecessarily expends the Court and the Trustee's time and resources. *Id*.; p. 2:14-18.

c. Further, the dispute regarding the interest-bearing principal amount has no merit. Debtor contends that all California Housing Relief Funds and funds received from the Trustee should have been applied to the Loan's principal only. Dkt. 270.

Debtor is wrong. First, the California Housing Relief Fund grant received on August 17, 2022 should not have been applied solely to the principal. These funds were provided to reinstate the Loan, i.e., to pay off pre-petition amounts owed, which includes payment of principal, interest, and fees. *See* Dkt. 178, June 14, 2023 Status Report payment ledger (noting application of funds to post-petition principal, interest, and escrow, as well as pre-petition arrearages). Similarly, the $8,893.66 in reissued grant funds were applied to six delinquent monthly payments (which consisted of principal, interest, and escrow), as well as to escrow and corporate advances. *See* Dkt. 271, Exh. 4. *Id*.; p. 2:19 - p. 3:1.

d. Third, the Trustee's payments were applied correctly. Debtor's reliance on the Trustee's Payment History to support his contention that the payments received from the Trustee should be applied solely to principal is flawed. *See* Dkt. 270, ¶ 9. Importantly, the confirmed plan does not require Creditor to apply the Trustee's payments to principal only. *See* Dkt. 60. *Id*.; p. 3:6-9.

DISCUSSION

Postpetition Arrearage

Trustee asserts that Debtor has not cured the post-petition arrearage, and that the terms of the Plan are not clear as to how the post-petition arrearage will be cured. Regarding the post-petition arrearage, the Plan states:

> 7. Debtor's first Plan payment was due November 2021 through March 2024, or (29) twenty-nine months, due for a total of $22,993.81 in Post-Petition Payments Due thru March of 2024.
>
> 8. While the Creditor returned $8,893.66 of the "Grant", these funds were reissued in late 2023, and applied to (6) six monthly post-petition payments totaling $7,572.48, and $1,063.84, and $257.34 corporate advances.

9. Of the $22,993.81 that has came due, less the $7,572.48 applied equals $15,421.33.

10. Of the $15,421.33 Post-Petition Payments Due, the Trustee has disbursed $17,628.83 since November of 2021, to the Class 1 Creditor, US Bank, N.A.(1st Deed of Trust), and has $1,976.57 "On-Hand" pending disbursement, for a total of $19,605.40 Post-Petition Arrears.

11. As such, the Trustee has disbursed $17,628.83, on a $15,421.33 class 1, which is $2,207.50 such that the Debtor's next Post-Petition Class 1 Payment was due for May 25, 2024.

12. Debtor then paid a total of $4,800.00 from April 2024 through September 2024.

13. As such,

(1) The Debtor is Post-petition Current as of 8/25/24,
(2) The "Non-interest Bearing Principle Balance is $36,400.00,
(3) The Interest Bearing Principle Balance is $77,778.99, effective 6/1/24,
(4) The on-going mortgage payment is $792.89 for principle, interest and escrow, effective 6/1/24

14. The Debtor disputes the total "Arrears" to be $1,970.08, as reflected in the 5/20/24, statement from Rushmore Servicing, and asserts that the Debtor is contractually current, as of October 25, 2024.

Modified Plan § 7, Docket 335.

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).

R.E.S.P.A. Accounting

Trustee asserts that the Plan relies on a favorable R.E.S.P.A. accounting, and without this accounting, the Plan is severely overextended and not feasible.

Debtor has informed the court on numerous occasions that he is hiring an accountant to take a look at the numbers and identify the proper amount of the principal balance.

It is reported on the Docket that the Parties appear to be working out a Stipulation in determining the final principal balance owed on the deed of trust.

Supplemental Schedules

Debtor's most recently filed Schedules I and J are from approximately seven months ago on April 10, 2024. Docket 293. It is not clear Debtor can still afford to make plan payments in this case or that

the income has remained the same, although those Schedules show a monthly disposable income sufficient to make the plan payments.

At the hearing, counsel for the Debtor requested a further continuance in light of Creditor changing its servicer. Creditor concurred. In light of the continuing efforts of both counsel for Debtor and counsel for creditor to assemble the information relating to the debt, payments, and credits, the hearing is continued.

The hearing is continued to 2:00 p.m. on March 25, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Derek L Wolf ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Modified Plan is denied without prejudice.

11. 24-21140-E-13 MMM-1 | **MORGAN MITCHELL** Mohammad Mokarram | **MOTION TO MODIFY PLAN** 1-21-25 [21]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2025. By the court's calculation, 63 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, Morgan Rachel Mitchell ("Debtor") seeks confirmation of the Modified Plan Debtor crashed her vehicle of which Trustee was paying the claim. Declaration ¶ 3, Docket 23. The Modified Plan provides Trustee having received plan payments totaling $68,431.97 to date with Plan payments for the last 51 months to be $1,000.00 per month. Modified Plan, Docket 24. 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 11, 2025. Docket 28. Trustee opposes confirmation of the Plan on the basis that:

A. The proposed Modified Plan provides for paying unsecured creditors a 5% dividend, but by Trustee's calculations, the Plan will pay approximately 49.59% to unsecured creditors. *Id.* at 1:25-2:5.

B. There have been some changes in expenses represented on Debtor's Amended Schedule J, Debtor's rent increasing by $750 and Debtor still paying $250 per month in vehicle insurance even though she totaled her

vehicle. It is true, however, Debtor is paying the car insurance on the vehicle she is currently using. *Id.* at 2:6-22.

C. Debtor did not serve the Amended Schedules I and J with the moving papers in violation of Fed. R. Bankr. P. 1009(a)(1). *Id.* at 2:23-3:5.

D. The Motion does not cite any legal authority in support. *Id.* at 3:6-9.

DISCUSSION
Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and

> every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Here, the Motion makes legal citations to 11 U.S.C. §§ 1323, 1324, and 1325. These sections are not applicable to modification after confirmation, which is presented in 11 U.S.C. § 1329. Failing to cite to applicable authority falls short of the pleading with particularity requirement. At the hearing, **xxxxxxx**

Service of Supplemental Schedules

> Fed. R. Bankr. P. 1009(a) states:
>
> (a) General Right To Amend. A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. **The debtor shall give notice of the amendment to the trustee and to any entity affected thereby.** On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.

(Emphasis added). Debtor's Certificate of Service at Docket 26 does not show that the Schedules were served with this Motion.

Remaining Issues

Debtor does not explain the increase of $750 in her rent expenses, especially in light of it not being apparent whether Debtor has moved. Further, the amount to unsecured creditors should be clarified.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Morgan Rachel Mitchell ("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 **xxxxxxx**.

12. 24-22050-E-13 JOSE GARCIA MOTION TO MODIFY PLAN
PGM-3 Peter Macaluso 2-7-25 [118]

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 that have filed claims, and Office of the United States Trustee on February 7, 2025. 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).

The Motion to Confirm the Modified Plan is xxxxxxx.

The debtor, Jose Antonio Garcia ("Debtor") seeks confirmation of the Modified Plan after becoming delinquent in plan payments. Debtor explains he became delinquent in plan payments because he had to travel to Mexico to tend to the deaths of some of his family members. Declaration ¶ 2, Docket 121. The Modified Plan provides for Debtor having paid of total of $4,050.00 through January 2025 with plan payments of $4,775.00 per month to commence on February 25, 2025 for 52 months. Modified Plan, Docket 120. 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 11, 2025. Docket 129. Trustee opposes confirmation of the Plan on the basis that:

A. The Pln is overextended, completing in 73 months by Trustee's calculation. The overextention appears to be due to tax claims being filed for more than what the Debtor anticipated. The plan estimates $31,000.48 and claims are filed for $74.540.77. Obj. 1:25-2:11.

B. There is no supplemental Schedule I on file, so Trustee argues he cannot adequately assess whether the Plan has been filed in good faith. *Id.* at 2:15-21.

C. The Plan does not clearly explain how the post-petition arrearage will be cured. *Id.* at 2:23-3:2.

DISCUSSION
Overextended Plan

Trustee estimates the Plan will take 73 months to complete as the tax claims came in much larger than anticipated. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

Other Issues with Pleadings

The court agrees a Supplemental Schedule I would be helpful to determine whether Debtor can afford to make the payments, or whether Debtor is committing his best efforts under the Plan. A review of the Docket on March 14, 2025 reveals no Supplemental Schedule I is on file.

Additionally, it must be clarified in the language of the Plan as to which amounts will go toward curing the post-petition arrearage. At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jose Antonio Garcia ("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 **xxxxxxx**.

13. 25-20052-E-13 PGM-1 | **TAMMI KELLER** Peter Macaluso | **MOTION TO VALUE COLLATERAL OF BMW FINANCIAL SERVICES NA, LLC 2-17-25 [25]**

Item 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 17, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of BMW Financial Services NA, LLC ("Creditor") is xxxxxxx.

The Motion filed by Tammi Bravo Keller ("Debtor") to value the secured claim of BMW Financial Services NA, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 27. Debtor is the owner of a 2022 BMW 320i x4 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $18,500.00 as of the petition filing date based in part on various physical issues with the Vehicle. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee"), filed an Opposition on March 11, 2025. Docket 41. Trustee opposes the Motion on the basis that the Motion seeks to value the Vehicle at $18,500, but the Plan has listed the Vehicle in Class 2(B) with a value of $18,000.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on March 11, 2025. Docket 46. Creditor opposes the Motion on the basis that Creditor argues the value of the Vehicle is actually $31,950.00. *Id.* at 2:13. Creditor requests time to conduct its own inspection and appraisal of the Vehicle to better assess its value. Thus, BMW

requests the Court grant additional time to allow for sufficient time to obtain an independent valuation as well as provide the Debtor and BMW sufficient opportunity to discuss resolving these matters consensually.

DEBTOR'S REPLY

Debtor filed a Reply on March 18, 2025. Docket 54. Debtor states that the value of the vehicle was $18,500.00 not the $18,000.00 listed on the Plan and requests that the value be clarified in the Order Confirming. *Id.* at ¶ 1.

In responding to Creditor, Debtor argues Creditor has not provided any evidence of a higher valuation, so Debtor's valuation should be accepted.

DISCUSSION

Creditor has the right to conduct discovery and come forward with its own valuation. The court recalls discussing the right to discovery in contested matters, at a hearing, fifteen years ago, and over the more recent years. Seeing such an opposition based on denying Creditor's right to discovery, the court begins to wonder if the Debtor is prosecuting this Bankruptcy Case in good faith, and whether it would possible for her to confirm a Plan in this Case.

The court does also note that Debtor in her Declaration, ¶ 6, (Dckt. 27) notes that there are some significant damages to this Vehicle, stating:

> 6. The following items are broken, damaged, and/or in need of repair:
>
> A. Damage to front grill
>
> B. Damage to rear bumper
>
> C. Brakes and pads need replacement as they squeak.
>
> D. Transmission slips when in drive to neutral
>
> E. Alignment issues

This gives Creditor a running start in assessing the value of the Vehicle.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Tammi Bravo Keller ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

14.	**25-20052-E-13** **PGM-2**	**TAMMI KELLER** **Peter Macaluso**	**MOTION TO VALUE COLLATERAL OF RENT A CENTER** **2-17-25 [30]**

Final Ruling: No appearance at the March 25, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 17, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Rent A Center ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $300.00.

The Motion filed by Tammi B. Keller ("Debtor") to value the secured claim of Rent A Center ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 32. Debtor is the owner of personal property identified as a "fireplace" ("Property"). Debtor seeks to value the Property at a replacement value of $300 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 trustee filed a Non-Opposition on March 11, 2025. Docket 44.

The lien on the Property secures a purchase-money loan incurred more than a year ago to secure a debt owed to Creditor with a balance of approximately $1,800.00. Declaration ¶ 4, Dckt. 32. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $300, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Tammi B. Keller ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Rent A Center ("Creditor") secured by an asset described as a "fireplace" ("Property") is determined to be a secured claim in the amount of $300, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $300 and is encumbered by a lien securing a claim that exceeds the value of the asset.

15. 22-23266-E-13 PSB-2 — WANDA BAETA, Pauldeep Bains — MOTION TO SELL — 3-4-25 [53]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on March 4, 2025. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Wanda Kay Baeta, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 25295 Josephine St, Los Molinos, CA 96055 ("Property").

The proposed purchaser of the Property is William Joe Schneider, Jr and Skyla Marie Ball ("Buyer"), and the terms of the sale are:

A. Purchase price of $261,500;

B. 5.5% broker's commission; and

C. Debtor will be making a lump sum payment, if this motion is approved, to pay her plan in full at 100% to all filed general unsecured claims.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor's confirmed Plan provides for a 0% dividend to unsecured creditors, but from the sale of the Property, unsecured creditors will receive a 100% dividend.

Movant has estimated that a 5.5% percent broker's commission from the sale of the Property will equal approximately $14,382.50. Debtor's broker, Keller Williams Realty Chico Area, will received a 3% commission in the amount of $7,845. Buyer's broker, Real Broker Technologies, will receive a 2.5% commission in the amount of $6,537.50. As part of the sale in the best interest of the Estate, the court permits Debtor to pay the brokers' commission.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Wanda Kay Baeta, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Wanda Kay Baeta, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Name of William Joe Schneider, Jr and Skyla Marie Ball or nominee ("Buyer"), the Property commonly known as 25295 Josephine St, Los Molinos, CA 96055 ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $261,500, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 55, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens,

and other customary and contractual costs and expenses incurred to effectuate the sale.

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

D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5.5 percent of the actual purchase price upon consummation of the sale. Debtor's broker, Keller Williams Realty Chico Area, will received a 3% commission in the amount of $7,845. Buyer's broker, Real Broker Technologies, will receive a 2.5% commission in the amount of $6,537.50.

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

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

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

16. 24-24781-E-13 KLG-2 | **JENNIFER AMADI** Arete Kostopoulos | **CONTINUED MOTION TO SELL** 2-28-25 [44]

Item 16 thru 17

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

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

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

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

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

No opposition was stated at the hearing.

The Motion to Sell Property is xxxxxxx.

March 25, 2025 Hearing

The court continued the hearing on this Motion based on a number of concerns. There is no Motion to Employ a broker on file, and there was no specified amount of commission stated in the Motion. Debtor did not file a preliminary escrow statement showing how liens will be paid. Finally, Debtor may need to address how the funds will be reinvested in order to be eligible to claim them as exempt pursuant to the homestead exemption.

On March 19, 2025, the Debtor filed a Motion to Employ Realty ONE Group Complete as the broker for this sale. Dckt. 58. On March 21, 2025, the court entered its Order granting the Motion to Employ. Dckt. 62.

Exhibit A filed in support of the Motion to Employ is an Amended Seller's Statement from Chicago Title. Dckt. 60. It shows the net sales proceeds for Debtor to be $2,141.94.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

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

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

a. Sales Price: $529,950.00;

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

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

d. Closing Costs: $13,248.75;

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

Mot. 2:1-6.

DISCUSSION

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

The Trustee also reported that the pleadings filed by Debtor does not include a preliminary escrow statement showing the projected net proceeds from the sale.

Additionally, Debtor has not obtained authorization to hire a real estate broker, a professional for which an order authorizing employment pursuant to 11 U.S.C. § 327 must be obtained for that broker or its agents to be paid any compensation for the services rendered.

The Trustee further requested that the court order all net proceeds of the sale be held by the trustee pending further order of the court, citing to requirements under California law stating that the homestead exemption in proceeds from the sale of a homestead property expires after six months if the money is not reinvested in a new homestead property.

The court continues the hearing to 2:00 p.m. on March 25, 2025.

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

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

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

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

~~A. The Property shall be sold to Buyer for $529,950.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 47, and as further provided in this Order.~~

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

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

~~D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than **XXXXXXX** percent of the actual purchase price upon consummation of the sale. The **XXXXXXX** percent commission shall be split between Debtor's Broker, Robin S. Lack of Realty ONE Group Complete, and Buyer's Broker, Laura Miller of KW CA Premier.~~

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

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

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

17. 24-24781-E-13 KLG-1 | **JENNIFER AMADI** Arete Kostopoulos | **MOTION TO CONFIRM PLAN** 1-28-25 [34]

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 28, 2025. However, Debtor initially incorrectly noticed the Motion for March 27, 2025. Docket 35. Debtor filed an Amended Notice on February 21, 2025, informing parties of the correct hearing date and time. Docket 42. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). Movant is three days late of the required notice period. At the hearing, **xxxxxxx**

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

The Motion to Confirm the Amended Plan is xxxxxxx.

The debtor, Jennifer Lynn Amadi ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $1,117.54 per month for two months with a step up to $1,775.54 per month for the remaining 58 months. Amended Plan, Docket 16. 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 March 11, 2025. Docket 53. Trustee's opposition is based on the fact that the Amended Plan provides for paying the

mortgagees in Classes 1 and 4. However, Debtor has filed a Motion to sell her residence which has been continued to be heard in conjunction with this Motion. It is unclear what the Plan will look like if the Motion is granted and Debtor sells her residence.

DISCUSSION

Debtor, in explaining how her Amended Plan can move forward even with the sale of her residence, at the hearing, **XXXXXXX**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Jennifer Lynn Amadi ("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**.

18. 23-23586-E-13 PLG-1 | **MOHAMMADREZA MOLLAEI** Rabin Pournazarian | **MOTION TO INCUR DEBT** 2-26-25 [30]

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 26, 2025. By the court's calculation, 27 days' notice was provided. 28 days' notice is required. Movant is one day late of the required notice period. At the hearing, **xxxxxxx**

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

The Motion to Incur Debt is xxxxxxx.

Mohammadreza Mollaei ("Debtor") seeks permission to purchase a 2024 Toyota Rav4 Hybrid SE, with a total purchase price of $33,000.00 and monthly payments of $624 over78 months with a 14.39% interest rate.

The Chapter 13 Trustee filed a Non-Opposition on March 10, 2025. Docket 35. Trustee notes the error regarding notice in the Non-Opposition, but otherwise states Debtor is current and requests the Motion be granted.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Reasonableness

Debtor does not address the reasonableness of incurring debt to purchase a brand new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor owned a 2014 Toyota Camry with 135,000 miles before requesting authorization to purchase the new Rav4. When the Camry was

damaged, Debtor received $9,870 in insurance proceeds. Rather than using the proceeds to purchase an affordable vehicle, Debtor seeks to borrow an additional $31,296 to purchase a the Rav4.

Debtor testifies in his Declaration as to why he requires a new vehicle:

1. I have two young children, ages 6 and 8, and need a safe vehicle to drive them around in. Given the recent accident, I want a mid-sized vehicle. Decl. ¶ 4, Docket 33.

2. My employment with the state requires that I travel to Riverside once a month. The drive is significant, and I need a dependable vehicle for the commute. I am also required to be in office two days a week, which has increased my travel. *Id.* at ¶ 5.

Debtor does nothing to explain how an older, more affordable vehicle could not accomplish the same goals.

At the hearing, **xxxxxxx**

In review Debtor's Amended Schedules I and J at Docket 28, Debtor lists reasonable expenses that do provide for affording the Rav4 payment.

The Motion is **xxxxxxx**.

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

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

The Motion to Incur Debt filed by Mohammadreza Mollaei ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxx**.

19. 23-24387-E-13 NLH-6 | **JERRY HARDEMAN** Nancy Haley | **MOTION TO CONFIRM PLAN** 2-10-25 [165]

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 February 6, 2025. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx.

The debtor, Jerry Glenn Hardeman ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for debtor having paid $9,940 through January 1, 2025, with payments of $3,614 per month beginning in February of 2025 for the remainder of the 60 month Plan. Amended Plan, Docket 166. 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 March 11, 2025. Docket 177. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is $3,614.00 delinquent in Plan payments to the Trustee. The payment for February of 2025. *Id.* at 2:3-10.

B. The Plan relies on two Motion to Avoid Liens of creditors Dennis Lanni and Ygrene Energy Funding California. If both Motions are not filed and granted, the Debtor's Plan does not have sufficient monies to pay their claims in full. It appears Debtor is attempting to prosecute avoidance through adversary proceedings based on the language of the Plan, but no adversary proceedings have been filed. *Id.* at 2:11-23.

C. Debtor's Plan relies on help from his children, Torey Hardeman, Tamica Hardeman, and Keisha Hardeman. The children have filed declarations stating that they will contribute monthly to Debtor's Plan, but because the first payment is delinquent, Trustee has concerns this arrangement may not be viable.

DISCUSSION
Delinquency

The Chapter 13 Trustee asserts that Debtor is $3,614.00 delinquent in plan payments, which represents one month of the plan payment. By the time of the hearing, another plan payment will be due. 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).

Motion to Avoid Liens

Trustee is concerned the Plan relies on pending Motion to Avoid Liens. However, it may be that Debtor will not be avoiding liens through motion practice, but will instead be determining rights and interests in property pursuant to Fed. R. Bankr. P. 7001. The court has confirmed plans that build litigation into them, so long as the litigation is diligently prosecuted. A review of the Docket on March 17, 2025 shows no adversary proceedings having been filed in the case.

At the hearing, **xxxxxxx**

Debtor's Children

The court echos Trustee's concerns over Debtor's children contributing to the Plan. It is true that the children have filed Declarations in support testifying that they will contribute, and the court finds this to be credible evidence weighing in favor of confirming the Plan. *See* Decls., Dockets 170-72. However, Debtor is delinquent, and so it may be the children are unable to reliably contribute.

At the hearing, **xxxxxxx**

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Jerry Glenn Hardeman ("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**.

20. 24-24390-E-13 NOS-1 | **TARRA WASILCHEN** | **MOTION FOR A NEW TRIAL PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59(A)**
Peter Cianchetta | **2-25-25 [35]**

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, and Office of the United States Trustee on February 24, 2025. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for a New Trial, ~~which the court construes to be a Motion to Vacate pursuant to Fed. R. Civ. P. 60(b)is granted.~~

Creditor David Chapman ("Creditor") moves this court for a new trial regarding the confirmation of Tarra Diane Wasilchen's ("Debtor") Chapter 13 Plan pursuant to Fed. R. Civ. P. 59(a) as incorporated into bankruptcy through Fed. R. Bankr. P. 9023. The court confirmed the Plan on January 13, 2025. Docket 32. Creditor alleges he was not provided with notice of the bankruptcy filing at any time and was not even aware of the bankruptcy case until after the Court had already approved the Debtor's Chapter 13 plan at a hearing on the Chapter 13 trustee's objection to the plan. Mot. 2:4-6.

The Chapter 13 Trustee filed a Reply suggesting the court grant the Motion and order a new trial for confirming the Plan. Docket 42.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 11, 2025. Docket 44. Debtor states:

1. Indeed, notice to Creditor was not provided. *Id.* at 2:12.

2. However, Creditor is a contingent creditor and is not entitled to payments, so the Plan would not change at all even if Creditor were a part of the confirmation process. *Id.* at 4:1-9.

3. Debtor is entitled to a partition action of the Subject Property as an available remedy to force the sale of the Subject Property, which is the same end result as the confirmed Plan is achieving. *Id.* at 4:12-19.

4. Debtor mistakenly classified the subject property as community property, but North Carolina is not a community property state. The state instead recognizes equitable distribution, which is the functional equivalent of community property. The mistake in nomenclature was a harmless error. *Id.* at 4:23-5:18.

CREDITOR'S REPLY

Creditor filed a Reply on March 18, 2025. Docket 46. Creditor reiterates the fact that his due process has been violated by not receiving notice of the proceedings and not being able to partake in administration of the case.

APPLICABLE LAW & DISCUSSION

Fed. R. Bankr. P. 9023 states:

> Except as provided in this rule and Rule 3008 , Rule 59 F.R.Civ.P. applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment. In some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending.

Rule 9023 therefore incorporates Fed. R. Civ. P. 59(a), which states:

> (a) In General.
>
> > (1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows:
> >
> > > (A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or
> > >
> > > (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.
> >
> > (2) Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

Wright & Miller discuss in their Treatise on the Federal Rules of Civil Procedure:

> Rule 59 gives the trial judge ample power to prevent what the judge considers to be a miscarriage of justice. It is the judge's right, and indeed duty, to order a new trial if it is deemed in the interest of justice to do so. The court may act either on the motion of a party or on its own initiative. The grounds on which it may act are discussed in later sections. Courts do not grant new trials unless it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done, and the burden of showing harmful error rests on the party seeking the new trial. Ultimately the motion invokes the sound discretion of the trial court,7 and appellate review of its ruling is quite limited. . .
>
> One case suggests a limitation on the discretion of the trial judge when it is claimed that a new trial is required because of an error of law at the trial. In the case in question the trial court, believing that it erroneously had admitted a certain piece of evidence, ordered a new trial. . .
>
> If a new trial is granted, the district court has broad discretion in its control and management of the new trial. Decisions respecting the admission of additional witnesses and proof should be guided by considerations of fairness and justice to all parties. . . The more difficult question is whether the trial court may set aside successive verdicts as excessive, or against the weight of the evidence. That the power to do so exists seems perfectly clear, but it is equally clear that it is a power to be exercised only in the most exceptional cases. When two juries have reached substantially the same result, the possibility of a miscarriage of justice is very slight. Thus the practice of the courts seems to follow a Supreme Court dictum that "courts rarely grant a new trial after two verdicts upon the facts in favor of the same party."

11 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2803 (3d ed. Am. 2024). The Ninth Circuit has held the following standard when considering to apply Rule 59(a):

> As this circuit has noted, "Rule 59 does not specify the grounds on which a motion for a new trial may be granted." *Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020, 1035 (9th Cir.2003). Rather, the court is "bound by those grounds that have been historically recognized." *Id.* Historically recognized grounds include, but are not limited to, claims "that the verdict is against the weight of the evidence, that the damages are excessive, or that, for other reasons, the trial was not fair to the party moving." *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251, 61 S.Ct. 189, 85 L.Ed. 147 (1940). We have held that "[t]he trial court may grant a new trial only if the verdict is contrary to the clear weight of the evidence, is based upon false or perjurious evidence, or to prevent a miscarriage of justice." *Passantino v. Johnson & Johnson Consumer Prods.*, 212 F.3d 493, 510 n. 15 (9th Cir.2000).

Molski v. M.J. Cable, Inc., 481 F.3d 724, 729 (9th Cir. 2007).

In this case, Debtor alleges he was not served notice of this bankruptcy case or of the Chapter 13 Plan prior to confirmation, and as a result, he should be awarded a new trial. As an initial matter,

Creditor has missed the window to move the court for a new trial, the Motion coming beyond the 14-day time limit prescribed by Fed. R. Bankr. P. 9023.

Moreover, the reason for requesting a new trial does not fit within the Circuits description or the rule's historical basis for granting a new trial. Lack of notice is a due process violation, not a violation of law or fact at a trial. Indeed, Creditor appears to be moving this court for an order vacating its order confirming the Plan pursuant to Fed. R. Civ. P. 60(b).

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

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

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

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

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

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

In this case, it is clear the court must vacate its order confirming the Chapter 13 Plan dated January 13, 2025, or enter an order that the Confirmation Order is of no force and effect as to Creditor and Creditor's interest in the Property.

Debtor's arguments that Creditor is somehow a contingent creditor and is not entitled to notice is without merit. Creditor has what appears to be an unliquidated claim, and Creditor's status as having an unliquidated claim does not deprive Creditor the right to proper notice so Creditor may appear and contest confirmation.

Debtor's Master Address List at Docket 3 omits Creditor's name. Debtor herself appears to admit she did not serve Creditor notice of this case or her Chapter 13 Plan. The Plan is not confirmable as written as Creditor's interests are not provided for in the Plan, and when Creditor is accounted for, the other creditors' treatment will be affected. Therefore, the Motion is granted pursuant to Fed. R. Civ. P. 60(b), and the court's order confirming the Chapter 13 Plan dated January 13, 2025 is vacated.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for a New Trial, which the court construes to be a Motion to Vacate pursuant to Fed. R. Civ. P. 60(b), filed by David Chapman ("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 Motion to ~~Vacate is granted, the court's Order confirming the Chapter 13 Plan dated January 13, 2025, at Docket 32, is vacated.~~

21. 24-24690-E-13 MJG-1 — DANETTE LIZARRAGA — Matthew Gilbert — MOTION TO CONFIRM PLAN — 1-20-25 [27]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 20, 2025. By the court's calculation, 64 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx.

The debtor, Danette Rochelle Lizarraga ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $0.00 per month for three months, $5,460.00 per month for 42 months, and finally $5,587.00 per month for 15 months. Amended Plan, Docket 29. 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 March 11, 2025. Docket 37. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has not paid any plan payments where $5,5460 was due by February 25, 2025. *Id.* at 1:23-25.

DEBTOR'S REPLY

Debtor filed a Declaration as a Reply on March 18, 2025. Debtor testifies she has cured the delinquency and the Plan is confirmable. Decl. 2:3-6.

DISCUSSION
Delinquency

The Chapter 13 Trustee asserts that Debtor is $5,5460 delinquent in plan payments, which represents one month of the plan payment. On the day of the hearing, another plan payment will be due. 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).

In confirming whether Debtor is current under the terms of the Plan, at the hearing, **XXXXXXX**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Danette Rochelle Lizarraga ("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**.

22. 24-24297-E-13 DPC-1 | **LATASHA RICHARDSON** / **Peter Macaluso** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**

Item 22 thru 25 | **11-18-24 [29]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 18, 2024. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

March 25, 2025 Hearing

The court continued the hearing on this Objection to be heard after Debtor's Motion to Value had been decided. The court continued the Motion to Value pending an amended stipulation being filed with the court. Order, Docket 85.

As of the court's review of the Docket on March 22, 2025, no amended stipulation has been filed.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

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

1. Debtor Latasha Denell Richardson's ("Debtor") Plan relies on a pending Motion to Value and is not feasible if the Motion is not granted.

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Objection. Decl., Docket 31.

Debtor filed a response on December 9, 2024, requesting a continuance, noting the hearing on the Motion to Value has been continued to February 25, 2025. *See* Docket 52.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Certificate Trustee of Bosco Credit VI Trust Series 2012-1. That Motion to Value requires discovery for resolution and has been continued to February 25, 2025. Docket 52. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The court continues the hearing on this Objection to 2:00 p.m. on March 25, 2025, pending resolution of the Motion to Value.

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 overruled.

23. 24-24297-E-13 NLG-1 | **LATASHA RICHARDSON** Peter Macaluso | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR WILMINGTON SAVINGS FUND SOCIETY, FSB 11-21-24 [36]**

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, all parties in interest, and Office of the United States Trustee on November 21, 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.

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

March 25, 2025 Hearing

The court continued the hearing on this Objection to be heard after Debtor's Motion to Value had been decided. The court continued the Motion to Value pending an amended stipulation being filed with the court. Order, Docket 85. As of the court's review of the Docket on March 17, 2025, no amended stipulation has been filed.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Certificate Trustee of Bosco Credit VI Trust Series 2012-1 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor's Plan is not proposing to pay the arrearage on Creditor's claim in the amount of $31,640.22. It is true Debtor has a Motion to Value on file seeking to value Creditor's claim at $0, but that Motion has not been resolved. The Plan cannot be confirmed if that Motion is not granted. Creditor has requested time for discovery proceedings related to that Motion to Value.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Certificate Trustee of Bosco Credit VI Trust Series 2012-1. That Motion to Value requires discovery for resolution and has been continued to February 25, 2025. Docket 52. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The court continues the hearing on this Objection to 2:00 p.m. on March 25, 2025, pending resolution of the Motion to Value.

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 Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Certificate Trustee of Bosco Credit VI Trust Series 2012-1 ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to ~~Confirmation of Plan is overruled~~.

24. 24-24297-E-13 PGM-1 | **LATASHA RICHARDSON** / **Peter Macaluso** | **CONTINUED MOTION TO VALUE COLLATERAL OF WILMINGTON SAVINGS FUND SOCIETY, FSB 11-4-24 [24]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on November 4, 2024. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Wilmington Savings Fund Society, FSB ("Creditor") is xxxxxxx.

March 25, 2025 Hearing

The court continued the hearing on the Motion to Value pending an amended stipulation and order being filed with the court. Order, Docket 85. As of the court's review of the Docket on March 22, 2025, no amended stipulation has been filed.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The Motion to Value filed by Latasha Denell Richardson ("Debtor") to value the secured claim of Wilmington Savings Fund Society, FSB ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 26. Debtor is the owner of the subject real property commonly known as 9980 Wyland Drive, Elk Grove, CA 95624 ("Property"). Debtor seeks to value the Property at a fair market value of $1,002,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a Nonopposition on November 26, 2024. Docket 43.

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

OPPOSITION

Creditor filed an Opposition on November 21, 2024. Docket 40. Creditor believes the true valuation is much higher than what Debtor estimates and requests 90 days to obtain an appraiser.

DEBTOR'S REPLY

Debtor filed a Reply on December 3, 2024, requesting the court set a briefing schedule for an evidentiary hearing on the issue.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $1,040,839.60. Schedule D 12:2.2, Docket 12. Creditor's second in position deed of trust secures a claim with a balance of approximately $192,054.86. *Id*. Therefore, Creditor's claim secured by a junior deed of trust would be under-collateralized if the valuation were correct. However, Creditor requests time to gather evidence of its own to support a higher valuation.

To allow for Discovery, the hearing on the Motion to Value Collateral and Secured Claim of Wilmington Savings Fund Society, FSB ("Creditor") is continued to 2:00 p.m. on February 25, 2025. Opposition pleadings shall be filed and served on or before February 14, 2025, and Reply pleadings, if any, will be filed and served on or before February 21, 2025.

February 25, 2025 Hearing

The court continued the hearing on this Motion, the Parties having a dispute as to the value of the Property. Opposition pleadings were to be filed and served on or before February 17, 2025, and Reply pleadings, if any, were to be filed and served on or before February 24, 2025.

On February 17, 2025, the Parties filed a Stipulation with the court that settles Creditor's objection to this Motion. Docket 81. The terms of the Stipulation are summarized as follows:

1. The Parties hereby consent to an Order issued by the Court which provides that for the purposes of Debtor's Chapter 13 proceeding, Creditor shall hold an unsecured claim of $192,054.86. Stip. 2:9-11.

2. Creditor shall release its secured interest in the second deed of trust upon Debtor's timely and successful completion of the Chapter 13 Plan, and the Debtor's receipt of a discharge in this Chapter 13 case. *Id.* at 2:12-14.

On this point, there are statutory and contractual obligations for reconveyance of the deed of trust and well established Ninth Circuit law requiring such reconveyance upon the completion of the Plan when a secured claim has been valued pursuant to 11 U.S.C. § 506(a).

3. If the case is dismissed or converted or Debtor does not receive a discharge, such lien shall be retained by Creditor in an amount based on the full balance of the underlying promissory note ("Note"), plus all accrued interest, fees and costs, including advances, less any credits for monies paid to Creditor since the Debtor filed their bankruptcy petition. *Id.* at 2:15-19.

4. In the event the Debtor fails to make any of the payments required under this Stipulation during the pendency of this Chapter 13 case, the full Claim Amount shall be reinstated, plus any interest, fees, costs and advances which would have ordinarily accrued but for the Parties' entry into this Stipulation, minus any payments received from Debtor by Creditor. *Id.* at 2:20-23.

By this Stipulation the Parties appear to be trying to have a "piecemeal" Chapter 13 Plan confirmed.

5. In the event that the first lienholder obtains relief from the automatic stay under 11 U.S.C. § 362 and §1301, Creditor shall also have relief from the automatic stay without further order of this Court. *Id.* at 3:1-3.

While Debtor and Creditor may agree that if a senior lienholder gets relief from the stay then Creditor may have relief, the court does not issue orders stating that the stay is terminated in the future. The parties can agree to have a simple *ex parte* relief from stay process.

6. In the event that any entity, including the holder of the first lien on the Property, forecloses on its security interest and extinguishes Creditor's Deed of Trust prior to the Debtor's completion of her Chapter 13 Plan and receipt of a Chapter 13 discharge, Creditor's lien shall attach to the surplus

proceeds of the foreclosure sale for the full amount of the loan balance at the time of the sale. *Id.* at 3:4-7.

This court has long ago written, and was affirmed, on this point, determining that the 11 U.S.C. § 506(a) valuation and completion of the Chapter 13 Plan was all that was required for the secured claim amount to be fixed at the lower amount, and the lien released, no discharge required. *In re Frazier*, 448 B.R. 803 (Bankr. E.D. Cal. 2011); *affrm*. 469 B.R. 889 (E.D. Cal. 2012). *See also, HSBC Bank USA, N.A. Blendheim (In re Blendheim)*, 803 F.3d 447 (Cir. 9 2015), providing a detailed discussion why no discharge is required for 11 U.S.C. § 506(a) secured claim valuation and the "lien stripping" occurring upon completion of the Chapter 13 plan.

It is not clear why, if the property were sold and the proceeds in excess of the senior lien were held until the Plan was completed, why Creditor would get those monies.

7. In the event the Property is destroyed or damaged prior to the entry of a discharge order and the amount of damage to the Property is greater than the then existing balance on the first mortgage secured by the Property, then Creditor shall be entitled to its full rights and compensation as loss payee with respect to any insurance proceeds, up to the entire balance due on the loan at the time of the loss. *Id.* at 3:11-15.

It is not clear that the Debtor's rights to use the proceeds to rebuild the home are also protected. Additionally, if the Plan is completed, it is not clear why Creditor would get the proceeds in excess of the senior lien.

8. In the event the Debtor sells the Property or refinances prior to a successful completion of the Chapter 13 Plan or discharge, the amount due and owing shall not be affected by the terms of this Stipulation. The Creditor shall be paid in full under the original terms of the Note and Deed of Trust. *Id.* at 3:16-19.

The prior comments of the court are equally relevant to this provision.

At the hearing, counsel for the Debtor and counsel for the Creditor addressed the court's concerns and amended the Stipulation to remove the "discharge" requirement for the lien being void and agreed to providing an ex parte motion process for Creditor to obtain an order granting relief from the stay as provided in the Stipulation.

The Trustee stated that he has no opposition to the Motion and Stipulation as amended.

The hearing Motion to Value Collateral and Secured Claim of Wilmington Savings Fund Society, FSB ("Creditor") is continued to 2:00 p.m. on March 25, 2025, with Debtor to filed the amended stipulation and lodge with the court a proposed order.

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

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

The Motion to Value Collateral and Secured Claim filed by Latasha Denell Richardson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing Motion to Value Collateral and Secured Claim of Wilmington Savings Fund Society, FSB ("Creditor") is **xxxxxxx**.

25. 24-24297-E-13 RAS-1 | **LATASHA RICHARDSON** / **Peter Macaluso** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION** **11-21-24 [33]**

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 November 21, 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.

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

March 25, 2025 Hearing

The court continued the hearing on this Objection to be heard after Debtor's Motion to Value had been decided. The court continued the Motion to Value pending an amended stipulation being filed with

the court. Order, Docket 85. As of the court's review of the Docket on March 17, 2025, no amended stipulation has been filed.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

U.S. Bank Trust Company, National Association, as Trustee, as successor-in-interest to U.S. Bank National Association, as trustee, on behalf of the holders of CSAB Mortgage-Backed Pass-Through Certificates, Series 2007-1 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor's Plan does not propose to pay the pre-petition arrearage in full. Creditor asserts a pre-petition arrearage of $418,066.39, but Debtor proposed to pay an arrearage in the amount of $414,236. Obj. 3:5-14, docket 33.

Debtor filed a Reply on December 9, 2024, stating that there is a Motion to Value in this case, so the Objection should be continued.

DISCUSSION
Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $418,547.77 in pre-petition arrearage. POC 16-1. The Plan does not propose to cure that arrearage in full, proposing to pay an arrearage in the amount of $414,236. Plan § 3.07, Docket 13. 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).

It is true Debtor has on file a pending Motion to Value that is undergoing discovery procedures; however, this Creditor's claim is not subject to the Motion to Value.

At the hearing, the Parties agreed to continue the hearing to 2:00 p.m. on March 24, 2025, in light of the pending Motion to Value. The Debtor is to increase the monthly plan payment by approximately $100.00 for the arrearage amount, but that such will likely not occur until confirmation of the Plan can be determined.

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 Trust Company, National Association, as Trustee, as successor-in-interest to U.S. Bank National Association, as trustee, on behalf of the holders of CSAB Mortgage-Backed Pass-Through Certificates, Series 2007-1 ("Creditor") holding a secured claim,

having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the ~~Objection to Confirmation of Plan is overruled.~~

26. 24-24334-E-13 DPC-2 | **KENNETH WILKINSON** **Pro Se** | **CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **1-13-25 [53]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 13, 2025. 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 xxxxxxx.

March 25, 2025 Hearing

The court continued the hearing in light of Debtor seeking counsel. No attorney has substituted in to represent Debtor as of the court's March 22, 2025 review of the Docket in this Case.

Debtor filed an Opposition to the Objection on March 24, 2025. Debtor states:

1. Debtor will be amending the Schedules to claim the homestead as exempt pursuant to Cal. Code. Civ. P. § 704.730. Opp'n 3:13-16.

2. The constitution ensures the court applies Title 11 properly.

3. The lien on the homestead is void.

4. Trustee has not met his burden in showing why Debtor cannot claim the homestead exemption.

No Amended Schedule C has yet been filed. At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

The Chapter 13 Trustee, David Cusick ("Trustee"), objects to Kenneth Gene Wilkinson's ("Debtor") claimed exemptions under California law because Debtor has attempted to claim exemptions of 100% of fair market value and without citing any specific law or authority for the claimed exemptions.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 29, 2025. Opp'n, Docket 74. Debtor states:

1. The Constitution protects his right to secure shelter. Opp'n 2:3-7, Docket 74.

2. The Fourth and Fifth Amendment of the Constitution protects against "unreasonable seizures and deprivation of property without due process." Opp'n 2:8-11, Docket 74.

3. The property is necessary for his fundamental rights. Opp'n 2:12-15, Docket 74.

4. 11 U.S.C. § 522 protects him from destitution. Opp'n 3:1-5, Docket 74.

5. The property is protected under Constitutional rights, which were established though his "labor and inheritance." Opp'n 4:5-11, Docket 74.

6. The Commerce Clause ensures that exemptions are protected throughout the states. Opp'n 4:12-18, Docket 74.

7. Section 522(d)(5) protects his house because it is "intrinsic to [Debtor's] private life." Opp'n 5:15-18, Docket 74.

8. State law protects his house because it is a burial plot where his late wife's ashes were spread. Opp'n 5:19-20, Docket 74.

9. The property is protected under First Amendment rights to Freely Exercise his religion. Opp'n 5:21-23, Docket 74.

10. Congress intended exemption laws to provide basic necessities in life. Opp'n 7:3-10, Docket 74.

11. Creditor, under section 1635(b), failed to return the original promissory note to Debtor and failed to take possession of the property within 20-days after tender by the Debtor's successor. Opp'n 8:8-13, Docket 74.

12. Creditors are committing fraud by "mischaracterizing the debtor's principal dwelling as commercial property." Opp'n 10:4-6, Docket 74.

13. The Bank loan was inequitable as it was "a form of financial manipulation." Opp'n 11:11-13, Docket 74.

14. He maintains the right to rescind a transaction (it is unclear on what transaction Debtor is referring to) under Federal Consumer Protection Laws despite statute of limitations because Creditor allegedly committed fraud. Opp'n 12:8-15, Docket 74.

15. Creditor failed to return the promissory note or its value under the Federal Consumer Protection Laws. Opp'n 13:1-4, Docket 74.

DISCUSSION

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

California Code of Civil Procedure § 703.140(b)(1)–(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed. Am. Schedule C, Docket 20. Moreover, Debtor has not cited to any exemptions in attempting to claim property as exempt.

Debtor offers many arguments in the Opposition supposedly showing why the Debtor is entitled to retain the residence in question, or to claim a homestead exemption. The court generally agrees that Debtor may claim a homestead exemption. However, as we are operating under Title 11 of the United States Code, as passed by Congress in 1978, the exemptions must be claimed in accordance with the requirements and procedures of Title 11. The exemptions have not been properly claimed here, Debtor not citing to any specific amount of exemption claimed as well as not citing to any statutory authority to authorize claiming exemptions. *See generally* 11 U.S.C. § 522; Cal. Code. Civ. P. § 703.140.

At the hearing the court addressed with the Debtor and the family member assisting the Debtor the shortcomings with respect to the prosecution of this case, including the exemptions claimed. Debtor and his supporting family member reported that they will be seeking the assistance of counsel for the prosecution of this Bankruptcy Case.

Counsel for the Chapter 13 Trustee concurred with the court's "suggestion" that this hearing be continued in light of the Debtor seeking counsel.

The hearing is continued to 2:00 p.m on March 25, 2025.

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

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

The Objection to Claimed Exemptions filed by 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 is **XXXXXXX.**

FINAL RULINGS

27. 25-20228-E-13 DPC-1 | **DANIEL BAKER** | **Douglas Jacobs** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **3-4-25 [13]**

Final Ruling: No appearance at the March 25, 2025 hearing is required.

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 4, 2025. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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 misclassified two secured vehicles under Schedule D, Class 4, when instead the two vehicles should have been listed in Class 2 because, according to Trustee, the vehicles would be paid off prior to the completion of the Plan. Obj. 2:2-11, Docket 13.

2. Debtor's Disclosure of Attorney Compensation does not match the Plan. Obj. 2:13-20, Docket 13.

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

Debtor's Response

Debtor does not contest the objection to the confirmation of the plan. Response 2:3, Docket 17.

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). According to Trustee, Debtor incorrectly misclassified two secured vehicles under Class 4

of Schedule D. The amount owed on both vehicles will be fully paid off prior to the completion of the plan. Class 4 claims are only reserved for claims that "mature after the completion of th[e] plan." Plan § 3.10, Docket 3. Thus, Debtor should have instead listed the claims in Class 2.

Further, Debtor's Disclosure of Attorney Compensation does not match the Plan. Indeed, Trustee points out that the Plan reflects an attorney fee of $2,125.00 to be paid prior to the filing of the Chapter 13, and the additional fee in the amount of $6,375.00 would be paid through the Plan. But Debtor's Disclosure instead states that entire attorney fee of $2,500.00 would be paid in total prior to the filing of the Chapter 13. Debtor Plan should contain consistent provisions on attorneys fees.

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.

28. 24-24242-E-13 RPH-3 — MICHAEL/MERCEDES HICKEY — Robert Huckaby — MOTION TO CONFIRM PLAN — 2-2-25 [44]

Final Ruling: No appearance at the March 25, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on February 2, 2025. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Michael James Hickey and Mercedes Velasquez Hickey ("Debtor") have provided evidence in support of confirmation. *See* Decl., Docket 46. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 11, 2025. Docket 52. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael James Hickey and Mercedes Velasquez Hickey ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on February 2, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form,

and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

29.	**25-20746-E-13 MS-1**	**JOHN/KRISTEN FIORICA Mark Shmorgon**	**MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC 2-20-25 [8]**

Final Ruling: No appearance at the March 25, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, other parties in interest, and Office of the United States Trustee on February 20, 2025. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Onemain Financial Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $2,239.00.

The Motion filed by John Fiorica and Kristen Fiorica ("Debtor") to value the secured claim of Onemain Financial Group, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 10. Debtor is the owner of a 2013 Fiat 500 Sport Hatchback 2D ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $2,239.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a Non-Opposition on March 11, 2025. Docket 20.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on November 11, 2021, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $2,562.00. Declaration ¶ 4, Docket 10. Therefore, Creditor's claim secured by a lien on

the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $2,239.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by John Fiorica and Kristen Fiorica("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Onemain Financial Group, LLC ("Creditor") secured by an asset described as 2013 Fiat 500 Sport Hatchback 2D ("Vehicle") is determined to be a secured claim in the amount of $2,239.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $2,239.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

30. 24-25872-E-13 JLK-1 | **MARSHAUN TATE** / **James Keenan** | **MOTION TO VALUE COLLATERAL OF ALLY BANK** **2-4-25 [18]**

Final Ruling: No appearance at the March 25, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on February 4, 2025. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Ally Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $3,500.

The Motion filed by Marshaun Keith Tate ("Debtor") to value the secured claim of Ally Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 20. Debtor is the owner of a 2016 Nissan Altima, vin ending in 6648 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $3,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on February 4, 2022, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,638.30. Proof of Claim, No. 5-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $3,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Marshaun Keith Tate ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ally Bank ("Creditor") secured by an asset described as a 2016 Nissan Altima, vin ending in 6648 ("Vehicle") is determined to be a secured claim in the amount of $3,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $3,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.