

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 26, 2024 at 2:00 p.m.

1. **23-22540-E-13** **SATINDER SINGH** **MOTION TO CONFIRM PLAN**
RCW-89 **Ryan Wood** **1-30-24 [148]**

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 parties in interest, parties requesting special notice, and Office of the United States Trustee on January 30, 2024. By the court’s calculation, 56 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Satinder Singh (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for repaying Placerville Investment Group, LLC (“Creditor”), secured creditor whose secured claim is not reduced to \$0, with an 8% dividend to general unsecured claims. Amended Plan, Dckt. 151. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on March 12, 2024. Dckt. 192. Trustee states that Debtor has paid \$27,958 into the Plan. *Id.* at p. 1:21. Trustee notes that the Plan is contingent on a Motion to Value, which will be heard on June 4, 2024, and so Trustee recommends continuing the matter beyond that date. *Id.* at 1:22-27.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on March 12, 2024. Dckt. 194. Creditor opposes confirmation of the Plan on the basis that:

- A. The Plan must be denied because it proposes to pay 0% interest on Creditor's secured claim in violation of 11 U.S.C. § 1325(a)(5). *Id.* at p. 2:17-24.
- B. Debtor is not committing all of his disposable income to the Plan in violation of 11 U.S.C. § 1325(b)(1). As one example, Debtor states his monthly rent for his business is \$4,500 per month, which the monthly expense records provided by Debtor indicate that his monthly rent is \$3,600. *Id.* at p. 2:22-3:5.
- C. There are problems with Debtor's Amended Schedules. Debtor is reducing expenses to pay for an increased plan payment, but Debtor's reduced expenses are not feasible in this inflationary time. *Id.* at p. 4:13-25.
- D. Should Debtor fail to successfully value Creditor's secured claim, the Plan would be underfunded. *Id.* at p. 5:3-9.

DISCUSSION

A Review of Debtor's Schedules

Debtor's most recent Amended Schedules I and J, at Docket 153, state the following expenses:

1. 0\$ per month in real estate taxes;
2. 0\$ per month in homeowner's or renter's insurance;
3. 0\$ per month in home maintenance, repair, and upkeep expenses;
4. 325\$ per month in both housekeeping supplies and food;
5. 20\$ per month in clothing, dry cleaning, and laundry;
6. 0\$ per month in personal care products and services;
7. 0\$ per month in medical and dental expenses;

8. 0\$ per month in entertainment expenses;
9. 0\$ in life insurance and health insurance;
10. 355\$ per month in vehicle insurance for one Dodge Dakota, a year 2000 model with 301,000 miles on it; and
11. 0\$ per month in real property expenses.

Amended Schedule I and J, Docket 153 ps. 1 line 4 - 2 line 21.

The court has concern when it is presented with such a tight budget. Debtor is expected to make his plan payments every month for five years, but Debtor does not budget in every-day life events that often arise during this period.

For example, Debtor tells the court that he never needs to spend money on household items for home repairs, meaning he never needs to buy replacement light bulbs or other similar items. Apparently neither Debtor nor his dependents will ever need to visit the doctor or the dentist in five years, proposing 0\$ in medical expenses. Debtor lists having a life insurance policy on his most recently Amended Schedule A/B (Docket 181 ps. 4-5 line 31), but Debtor informs the court he makes no monthly payments on this life insurance policy.

Debtor also makes no monthly payments on any renter's or homeowner's insurance policies, either of which is usually required in a lease or mortgage agreement. Debtor does schedule \$355 per month in vehicle insurance. Debtor's sole vehicle listed is an old, 2000 Dodge Dakota, which Debtor states under penalty fo perjury that it is in "Poor Condition" and has a value of only \$2,500. At \$355 per month, Debtor's annual car insurance bill would be \$4,020, which appears to be extraordinarily high for a poor condition twenty-five year old model vehicle.

Debtor schedules \$325 per month in both food and housekeeping supplies. For just the Debtor alone, this is an unrealistic, unreasonable budget. However, Debtor lists three teenage sons as dependents, and the record appears to indicate Debtor's ex-spouse, Sonia Madaan, also cohabitates with Debtor.

Assuming \$50 a month for housekeeping supplies, in a thirty (30) day month, and providing three meals per day in a four-person household, with Debtor having only \$275 a month for food, Debtor has scheduled only \$0.76 per meal per person each day. See, Original Schedule J, Dckt. 29. Debtor has not otherwise indicated to the court that he and his dependents are receiving outside help for food or housekeeping expenses.

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 0%. Creditor's claim is secured by the inventory, goodwill, furniture, fixtures, and equipment of Debtor's business, Wheatland 99 Cent & Liquor Store. UCC Financing Statement, Exhibit C, Docket 124. 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 proposed Amended Plan fixes the interest rate below the *Till* rate. Therefore, the objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii).

11 U.S.C. § 1325(b)(1): Committing Disposable Income to the Plan

Creditor 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.

Creditor alleges that Debtor is not committing all of his disposable income because the listed expenses of his business' rent is higher than the actual expense. Debtor lists his business property rent/lease expense as \$4,500. Docket 40, p. 3. Creditor submitted properly authenticated profit and loss statements of Debtor's business as attached exhibits to its Opposition. Docket 197. Those statements appear to show a monthly rent expense in the amount of \$3,000 (not \$3,600 as reported by Creditor). *Id.* If Debtor calculated his rent for the business as \$4,500 monthly on his Schedule I, but the rent is actually \$3,000 per month, there is a difference of \$1,500 per month in disposable income Debtor must commit to the Plan. Debtor's proposed Amended Plan lists a monthly lease expense in the amount of \$3,000 (Amended Plan, Docket 151 p. 5 § 4.02), corroborating the rent expense reported in Debtor's business profit and loss statements. Debtor reports to the court, under penalty of perjury subject to Fed. R. Bankr. P. 9011(c) sanctions, that his gross monthly income is \$6,449, calculating \$4,500 in rent, when the record appears to show rent for the business is actually \$3,000 per month. Similar problems exist with the reported utilities expenses Debtor lists (reported as \$3,760 in Debtor's Schedule I, Dockets 40, 153, but as approximately \$1,803 in Debtor's profit and loss statements, Docket 197).

At the hearing, **XXXXXXXX**

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

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

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

in the real property commonly known as 228W 14TH ST, Chico, CA 95928 (“Property”). The proposed Plan does not cure the pre-petition arrearage owed to creditor on the loan. Docket 21, p. 2. 10-14.

DISCUSSION

Creditor has objected on the basis that Debtor’s proposed Plan, at Docket 11, does not propose to cure the full amount of the arrearage owed to Creditor. As an initial matter, Creditor states three separate amounts as to its arrearage. In its Objection, editor states the arrearage is anticipated to be both \$54,987.12 (Docket 21, p. 2:13) and \$157,064.47 (*Id.* at p. 3:5).

However, Creditor’s Proof of Claim 4-1, signed under penalty of perjury by Sean Ferry as the authorized agent for Creditor states that the pre-petition arrearage on this Secured Claim is only (\$38,703.44). POC 4-1, § 9.

The Objection to Confirmation filed by Creditor is also signed by Sean Ferry, now as the attorney for Creditor. Clearly stated in the Objection, which is stated subject to the duties and confirmations made by counsel for Creditor, are the following as to the amount of arrearage:

The Plan includes payments toward Creditor’s claim; however, the figures used by Debtor are inaccurate. Secured Credit’s [sic] anticipates its Proof of Claim will show the pre-petition arrearage due to Creditor in the amount of \$54,987.12, whereas the Plan proposes to pay only \$32,993.73.

Objection, p. 2:11-14; Dckt. 21. The Objection then goes further, stating:

In the present case, the major deficiency with Debtor’s Plan is that it incorrectly asserts the outstanding arrearage balance of Creditor’s pre-petition claim. Specifically, Debtor’s Plan states that Creditor’s pre-petition arrears are only \$150,000.00; however, Creditor anticipates that its claim will reflect pre-petition arrears in the amount of \$157,064.47. Accordingly, Debtor’s Plan fails to meet the requirements of section 1325(a)(1) because it does not provide to promptly cure the entire outstanding balance of Creditor’s arrearage claim as required by section 1322(b)(5).

Id.; p. 3:3-8. It is unclear how Creditor asserts that the arrearage is \$54,987.12, and then states it is \$157,064.47.

Interestingly, Creditor’s Objection is devoid of any evidentiary support. It does not cite to a filed proof of claim. No witness for Creditor apparently was willing to provide any testimony under penalty of perjury in support of the Objection.

The Objection was filed on February 6, 2024. Dckt. 21. Proof of Claim 4-1 for Creditor was filed on March 12, 2024, stating the correct amount of the pre-petition arrearage to be \$38,703.44.. Between February 6, 2024 and March 12, 2024, Creditor was unable to file a supplemental pleadings correcting the gross errors stated in the Objection to Confirmation.

In any case, the Plan does not propose to cure those arrears as the Plan only proposes to cure

arrears in the amount of \$32,993.73. Plan, Docket 11 § 3.07. 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.

As stated under penalty of perjury by Creditor in Proof of Claim 4-1, Creditor's statements in the Objection to Confirmation are wrong and its Objection is clearly without merit.

The Objection to Confirmation is overruled.

Issues relating to Creditor's compliance with the obligations and certifications arising under Federal Rule of Bankruptcy Procedure 9011 will be addressed by separate proceeding, if the court determines that such is appropriate.

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

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

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, National Association, successor by merger to Wells Fargo Bank Minnesota, National Association, as Trustee f/k/a Norwest Bank Minnesota, National Association, as Trustee for Structured Asset Investment Loan Trust, 2003-BC12 ("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 overruled, and the Chapter 13 Plan is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on February 28, 2024. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

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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 is delinquent \$4,602 in plan payments. Docket 24 ¶ 1.
2. The Debtor admitted at the First Meeting of Creditors that he is in a trial loan modification and that the arrearage on the loan with PHH Mortgage regarding the property located at 228 West 14th Street, Chico, California (“Property”) are going to be added to the end of the loan. The creditor has not filed a proof of claim yet so it is unclear what, if any, the amount of the arrears are or if there is a loan modification. *Id.* at ¶ 2a.
3. At the Meeting of the Creditors, the Debtor testified that he is owed

\$50,000.00 in back rent for his rental properties located at 224-228 West 14th Street, Chico, CA and 243 West 3rd Ave. Chico, CA. The Trustee requested that Schedule A/B be amended to list these back rent amounts owed. To date, no amendment has been filed. *Id.* at ¶ 2b.

4. Schedule I, Line 8a, reflects \$5,500.00 per month in business, or real property income, (Docket p. 19.) The Debtor failed to attach a statement showing gross receipts, ordinary and necessary business expenses, or six months of profits and loss statements. Docket 24 at ¶ 2c.
5. The Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. §1325(a)(4). The Debtor's non-exempt equity totals \$ 378,443.39 (Docket 18 ps. 12-13) and the Debtor is proposing a 0% dividend to unsecured creditors (Docket 11 p. 5.) The non-exempt assets include the Debtor's real property located at 228 W 14TH Chico, CA in the amount of \$127,014.59; real property located at 243 W 3rd in the amount of \$242,388.80; cash in the amount of \$40.00; and shares of Tesla Stock in the amount \$9,000.00 (Docket 18, ps. 3-11). Docket 24 at ¶ 3.

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

DISCUSSION

Delinquency

Debtor is \$4,602 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. The Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents, including a statement showing gross receipts, ordinary and necessary business expenses, or six months of profits and loss statements. Line 8a of Schedule I requires Debtor to “[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.” Debtor has also failed to update his Schedules to reflect \$50,000 owed in rent payments. Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Liquidation Analysis

Trustee argues that Debtor fails a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides “the value, as of the effective date of the plan, of property to be distributed

under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.” Here, General unsecured creditors will receive a 0% distribution, Plan, Docket 11 § 3.12, but Trustee estimates Debtor has \$378,443.39 in non-exempt equity in assets of the estate. At the hearing, **XXXXXXX**

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on February 12, 2024. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Cassandra Viscia (“Debtor”), has filed evidence in support of confirmation. Decl., Docket 71; Exhibits, Docket 72.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a conditional Non-Opposition on March 11, 2024. Dckt. 80. Trustee requests that the Motion be granted with the months of the post-petition arrears and the total amount of post-petition fees, expenses, and charges be specified in the order confirming.

At the hearing, **XXXXXXX**

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

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on February 12, 2024 at Docket 73, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

5. [20-23896-E-13](#)

MILTON PEREZ

CONTINUED MOTION TO INCUR
DEBT

[MET-5](#)

Mary Ellen Terranella

11-27-23 [\[137\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2023. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Incur Debt 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.

The Motion to Incur Debt is XXXXXXX.

March 26, 2024 Hearing

A review of the Docket on March 20, 2024, reveals that no new documents have been filed with the court. At the previous hearing on February 27, 2024, counsel for the Debtor reported that the Debtor is needing to provide more updated information for Debtor and counsel to proceed with this financing, so the court continued this matter.

At the hearing, XXXXXXX

REVIEW OF THE MOTION

Milton Raul Perez (“Debtor”) seeks permission to enter into a refinancing agreement of his mortgage loan on his residence commonly known as 717 Auburn Court, Vallejo, California 94589

Tuesday, March 26, 2024 at 2:00 p.m.

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(“Property”). Dec., Dckt. 140. Debtor has already been approved for the loan refinance. The loan is in the amount of \$220,000.00 at 12% interest, and Debtor asserts the loan term is 11 months. *Id.* According to debtor, this refinanced loan is enough to pay off the existing first mortgage and a second mortgage, paying off the entire Chapter 13 Plan. The refinanced loan monthly payment will be \$2,280.00, which is less than Debtor’s current monthly mortgage and plan payment.

1 Oak Ventures step Fund (“Creditor”) filed an Opposition to this Motion on December 5, 2023. Dckt. 143. In its Opposition, creditor states it is a secured creditor with a junior lien on Debtor primary residence, the Property. Creditor has a Claim for \$219,614.10 of which \$128,194.64 are arrears, but after Debtor’s plan payments over the years, now is owed only \$113,503.57 on the principal and arrears. POC 5-1. Creditor seems to object on numerous grounds, not citing to any law in the process. Creditor’s main objection appears that it will not be paid out in full from proceeds of the refinancing agreement. Dckt. 143 ¶ 5. Creditor further states the loan is not in the best interest of the Debtor, calling for a balloon payment in one year, and Debtor would be better off if he refinanced out of his loan with Creditor instead. *Id.* at ¶ 7.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001©. *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001© 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 / Best Interest of Debtor

Debtor does not address the reasonableness of incurring debt to refinance his mortgage loan. The loan calls for a substantial interest charge—12%. While it may be true that Debtor would be making smaller monthly payments in the interim, Debtor does not explain to the court how he can afford a massive balloon payment at the end of his 11 month refinance. As such, the transaction may not be in the best interest of Debtor.

At the hearing, counsel for Debtor explained the economic rationale for Debtor doing this short-term refinance, getting the Plan fully funded from the loan proceeds and creditors paid, and then pursuing a refinance outside of bankruptcy.

Demand amounts are still being computed and some additional information is required, and the Parties requested a short continuance.

JANUARY 9, 2024 HEARING

A review of the Docket on January 5, 2024 reveals that no new documents have been filed. At the hearing, counsel for the Debtor reported that a demand has now been filed by One Oak. There may be an issue as to the amount of attorney’s fees provided in the demand.

A further continuance was requested to allow the final closing terms resolved. All Parties in

attendance agreed to the continuance.

The hearing is continued to 2:00 p.m. on January 30, 2024.

JANUARY 30, 2024 HEARING

A review of the Docket on January 25, 2024, reveals that no new documents have been filed with the court. At the hearing, counsel for the Debtor reported that they are getting closer to have an agreed modification. Both counsel for Debtor and Counsel for Creditor requested the continuance, for which counsel for the Trustee stated no opposition.

The hearing on the Motion to Incur Debt is continued 2:00 p.m. on February 27, 2024.

February 27, 2024 Hearing

A review of the Docket on February 23, 2024, reveals that no new documents have been filed with the court. At the hearing, counsel for the Debtor reported that the Debtor is needing to provide more updated information for Debtor and counsel to proceed with this financing. Counsel for Debtor requested one final continuance.

The hearing on the Motion to Incur Debt is continued to 2:00 p.m. on March 26, 2024.

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

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

The Motion to Incur Debt filed by Milton Raul Perez (“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 Incur Debt is **XXXXXXX**.

6. [19-20607-E-13](#)
[TLA-2](#)

SHAYNE/CHIANTEL SEXAUER
Thomas Amberg

**MOTION TO SELL AND/OR MOTION
TO EMPLOY COLDWELL BANKER
KAPPEL GATEWAY REALTY AS
REALTOR(S) O.S.T
3-12-24 [38]**

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the 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 not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and parties in interest, and Office of the United States Trustee on March 12, 2024. By the court’s calculation, 14 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice). Movant is seven days late of the required notice period. At the hearing, **XXXXXXX**

The Motion 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 Employ Real Estate Broker, for Authorization to Sell Real Property, and for payment of the Broker’s fees ~~is granted.~~

Shayne Eden Sexauer and Chiantel Shari Sexauer’s (“Movant,” “Debtor”) petitions the court for authorization to sell their real property commonly known as 1080 Iowa Court, Dixon, California 95620 (“Property”). In the same Motion, Movant requests the court approve the employment of Movant’s real estate broker, Coldwell Banker Kappel Gateway Realty (“Broker”). Finally, Movant also requests authorization to pay Broker’s fees related to the sale of the Property.

This Motion is brought seeking retroactive approval because the sale has already taken place on March 5, 2024. Motion, Docket 38 ¶ 2. Debtor explains that they completed their Plan payments and were eager for a fresh start in Texas. Decl., Docket 41 ¶¶ 2-3. However, Debtor was unaware that they needed court approval for such a sale even after completing plan payments. Therefore, upon learning this fact,

Debtor immediately took action to gain the court's retroactive approval. *Id.* at ¶ 4. Debtor also plans to pay off the secured creditors at 100% from the proceeds of the sale, which Debtor has already issued a check in the amount of \$15,488.85 to fully pay off those unsecured claims. *Id.* at ¶ 10.

Retroactive Authorization

As a preliminary matter, Debtor is correctly requesting a “retroactive authorization” rather than *nunc pro tunc* authorization. The Ninth Circuit has noted that *nunc pro tunc* approval is not the proper name for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). *Nunc pro tunc* amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations “retroactive approvals,” it is customary, but not necessarily correct, to refer to them generically as *nunc pro tunc* in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974–78 (9th Cir. 1995) (alternating between using *nunc pro tunc* and “retroactive approval” when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court). This long standing Ninth Circuit law was restated by the Supreme Court in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020).

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor's estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in “exceptional circumstances.” *Atkins*, 69 F.3d at 974.

In this case, the court finds retroactive authorization is appropriate. Debtor explains that they were unaware of the requirement of gaining court approval to make a sale. Evidence of the good faith mistake is shown by Debtor selling the home on March 5, then working to immediately file their Motion just one week later. The court further finds authorization is appropriate in this case because Debtor is going to pay off their unsecured creditors at 100%, and the mortgagee, the sole lienholder on the Property, will be paid in full.

Motion to Employ

Movant seeks to employ Coldwell Banker Kappel Gateway Realty (“Broker”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Movant seeks the employment of Broker to list and sell the Property. The sale was consummated on March 5, 2024. Motion, Docket 38 ¶ 1. Broker was both the listing and selling agent, and Broker was paid \$23,997 as listing agent and \$19,997.50 as selling agent. *Id.* at ¶ 16. The terms of the Sale Agreement state that Broker is both Buyer's and Movant's real estate agent. Exhibit A, Docket 40 p. 6.

There is no Declaration on file from Broker explaining the terms of the employment and that Broker does not represent or hold any interest adverse to Debtor or to the Estate.

At the hearing, **XXXXXXXX**

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional

must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, ~~considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to authorize retroactively employment of Coldwell Banker Kappel Gateway Realty as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Sales Contract filed as Exhibit A, Dckt. 40. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

Motion to Sell / Motion for Allowance of Broker's Fees

The proposed purchaser of the Property is Arvid Klas Holderson and Candace Holgerson (“Buyer”), and the terms of the sale are:

- A. The purchase price is \$799,000. Sales Contract, Exhibit A, Docket 40 p. 1 ¶ 3.
- B. The initial deposit amount is \$12,500, or %1.56 of the purchase price. *Id.*
- C. Buyer is placing an additional \$367,400 as a down payment and paying the remainder of the purchase price by borrowing \$420,000. *Id.*

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor can pay their unsecured creditors at 100% as well as finish up their bankruptcy case and begin their fresh start.

The court estimates that a 5.5 percent broker's commission from the sale of the Property will equal approximately \$43,994.50. As part of the sale in the best interest of the Estate, the court permits Movant to pay the Broker a 5.5 percent commission, computed on the gross sales price.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because the sale has already taken place.

Although not typically serving as grounds for waiver of Federal Rule of Bankruptcy Procedure 6004(h), the court finds Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement in this case as required under Federal Rule of Bankruptcy

Procedure 6004(h). This part of the requested relief 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 for Retroactive authorization to Employ Real Estate Broker, authorization to Sell Real Property, and Allowance of Real Estate Broker's Fees filed by Shayne Eden Sexauer and Chiantel Shari Sexauer, Chapter 13 Debtor, ("Movant," "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 is authorized, retroactive to the post-petition period when the employment started, to employ Coldwell Banker Kappel Gateway Realty as Broker for Debtor on the terms and conditions as set forth in the Sales Contract filed as Exhibit A, Dckt. 40, for the real property commonly known as 1080 Iowa Court, Dixon, California.

IT IS FURTHER ORDERED Coldwell Banker Kappel Gateway Realty, Broker for Debtor, is allowed compensation in the amount of 5.5 percent of the actual gross purchase price of the above identified property, to be paid from the sales proceeds,

IT IS FURTHER ORDERED that Debtor is authorized, retroactive to the the date of the Sales Contract, to sell pursuant to 11 U.S.C. § 363(b) to Arvid Klas Holderson and Candace Holgerson or nominee ("Buyer"), the Property commonly known as 1080 Iowa Court, Dixon, California 95620 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$799,000, on the terms and conditions set forth in the Sales Contract, Exhibit A, Dckt. 40, 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 Debtor shall deliver payment of \$15,488.85, which has been stated to have been delivered in conjunction with the filing of this Motion, which represents the remaining amount due to pay all general unsecured claims, Trustee fees, and expenses in this case to pay 100% of such amounts.
- D. The Chapter 13 Debtor is authorized, retroactively to the date of the Sales Contract, to execute any and all documents reasonably

necessary to effectuate the sale.

- E. The Chapter 13 Debtor is authorized, retroactively to the date of the Sales Contract, to pay a real estate broker's commission in an amount not more than 5.5 percent of the actual purchase price from the sales proceeds to Coldwell Banker Kappel Gateway Realty, the real estate broker for Debtor, there being no Broker for the Buyer.
- F. The proceeds from the sale are authorized, retroactively to the close of escrow, to be disbursed to the Debtor.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

7. [19-20607-E-13](#) **SHAYNE/CHIANTEL SEXAUER** **MOTION TO INCUR DEBT**
[TLA-3](#) **Thomas Amberg** **3-12-24 [43]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and parties in interest, and Office of the United States Trustee on March 12, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.

Shayne Eden Sexauer and Chiantel Shari Sexauer (“Debtor”) seek permission to purchase real property commonly known as 908 Bluestem Drive, Denton, Texas 76227, with a total purchase price of \$698,000 and monthly payments of \$5,134.82 to Pinnacle Funding Group, Inc. over 30 years with a 5.75% fixed interest rate. Exhibit B, Docket 45 p. 18. Debtor explains that the that the sale is reasonable and in their best interest because they will “be able to establish roots in [their] new community, and [they] are comfortable with the monthly payment.” Decl., Docket 46 ¶ 11. Debtor has completed their Chapter 13 Plan and no longer makes Chapter 13 Plan payments. *Id.* at ¶ 10.

The Chapter 13 Trustee, David Cusick, filed a statement of non-opposition on March 15, 2024. Docket 49.

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).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. Debtor asserts they have the funds to make the mortgage payment having now completed their Chapter 13 Plan, and 5.75% interest is a good rate in today’s market.

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 Shayne Eden Sexauer and Chiantel Shari Sexauer (“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 Shayne Eden Sexauer and Chiantel Shari Sexauer are authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 45.

8 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.

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, 2024. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Maureen Denise Johnson (“Debtor”) seeks confirmation of the Modified Plan to address changes in income and creditor claims. Declaration, Dckt. 30, p. 2:1-2. Debtor’s income from self-employment is reduced, and she is not earning the money she was prior to the filing of this case. *Id.* at 2:2-3. Debtor has secured employment and with this new employment income will be able to make the proposed payments into her plan. *Id.* at 2:3-5.

Debtor states she has filed the petition in good faith in an effort to resolve her debt problems, and she is seeking to cure arrears in tax payments as well as past due HOA dues and a loan received from First Trust. *Id.* at 2:11-13. Multiple creditors have liens on Debtor’s residence, and Debtor is providing for such claims to be paid as Class 2 creditors. *Id.* at 2:13-14.

The Modified Plan provides \$89,019.96 to be paid through payments of \$484.44 for 9 months, and payments of \$1,660.00 for 51 months, and a 0 percent dividend to unsecured claims totaling 5,412.00. Modified Plan, §§ 7, 3.14, Dckt. 29. 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 6, 2024. Dckt. 35. Trustee opposes confirmation of the Plan on the basis that:

- A. Trustee is concerned that Debtor cannot make the payments required under the plan. Debtor is delinquent \$1,659.46 under the terms of the modified plan through February 2024. *Id.* at 1:25-27.
- B. Debtor's last payment posted September 6, 2023 in the amount of \$1,088.50. *Id.* at 2:2-4.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,659.46 delinquent in plan payments, which represents nearly one month of the proposed \$1,660.00 plan payment. Before the hearing, a plan payment of \$1,660.00 will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is ~~XXXXXXX~~.

March 26, 2024 Hearing

The court continued the hearing on the Motion to Dismiss to 2:00 p.m. on March 26, 2024, to be conducted in conjunction with Debtor’s Motion to Confirm the First Modified Chapter 13 Plan.

A review of the Docket on March 19, 2024 reveals that no new documents have been filed with the court under this Docket Control Number. At the hearing, ~~XXXXXXX~~.

REVIEW OF THE MOTION

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

1. The debtor, Maureen Denise Johnson (“Debtor”), is delinquent \$3,255.50 in plan payments.

Docket 21. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 23.

DEBTOR’S RESPONSE

Debtor filed a Response on February 7, 2024. Dckt. 25. Debtor states that there is a First

Modified Plan on file that proposes to address and cure the delinquency. *See* Modified Plan, Docket 29. Debtor is current under these new proposed Plan terms.

DISCUSSION

Delinquent

Debtor is \$3,255.50 delinquent in plan payments, which represents multiple months of the \$1,088 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has proposed a Modified Plan to cure the delinquency. The hearing on the Modified Plan will be conducted on March 26, 2024. *See* Notice, Docket 28 p. 2.

The court continues the hearing on the Motion to Dismiss to 2:00 p.m. on March 26, 2024, to be conducted in conjunction with Debtor's Motion to Confirm the First Modified Chapter 13 Plan.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 12, 2024. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Incur Debt is granted.

George Richard Stubblefield and Lindsay Tyler Stubblefield (“Debtor”) seeks permission to purchase a used 2015 Mercedes-Benz ML 350, with a total purchase price of \$33,635.92 and monthly payments of \$ 436.61 to Mercedes Benz of Rocklin over 72 months, with a 15.99% interest rate. Motion, Docket 46, p. 2:5-13. Debtor only plans to finance \$20,000 as they will be receiving \$17,000 trade in value for their 2018 Volkswagen Tiguan. Decl., Docket 48 ¶ 4(c).

Debtor needs another vehicle because their current vehicle has a pet allergen problem that has caused Mrs. Stubblefield to be unable to use the vehicle without severe allergic reactions. Mrs. Stubblefield has been examined by her primary care physician and has been advised not to use the vehicle anymore. However, her symptoms continued because Debtor only has one car and she has to drive it on occasion. Mrs. Stubblefield was subsequently referred to an allergist, who evaluated her and also recommended she not use the car anymore. Debtor will trade in their current vehicle, a 2018 Volkswagen Tiguan, for trade-in credit on the 2015 Mercedes-Benz ML350. *Id.* at ¶ 3.

Debtor should be able to afford the monthly vehicle payment as the monthly vehicle payments will be cheaper than their current vehicle lease payments. Motion, Docket 46 p. 2:14-16; Declaration,

Docket 48, p. 2:11-13. Debtor's original Schedule J listed monthly payments of \$730.98. Voluntary Petition, Schedule J, Docket 1, p. 37 line 17(a). Debtor's supplemental Schedule J filed on November 8, 2023, lists monthly payments of \$418.87. Supplemental Schedule J, Docket 38 p. 5 line 17(a).

DISCUSSION

Certificate of Service

Debtor's Certificate of Service does not indicate that Trustee or U.S. Trustee was served. Certificate of Service, Docket 43, p. 2, line 5. Rule 5 of the Federal Rules of Civil Procedure require that certain documents, including pleadings filed after the initial original complaint and written notices, must be served on every party in the case. FED. R. CIV. P. 5(a)(1). Here, it appears that the parties were nonetheless served through the electronic filing system, as Trustee filed an Opposition to the Motion.

In the future, counsel for Debtor is reminded to check the applicable boxes on their Certificate of Service to guarantee that service on parties is properly documented.

Motion to Incur Debt

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).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. The monthly payment is lower while allowing Mrs. Stubblefield to use the vehicle without being afflicted by her allergies. There being no opposition from any party in interest and the terms being reasonable, the Motion 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 Incur Debt filed by George Richard Stubblefield and Lindsay Tyler Stubblefield ("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 George Richard Stubblefield and Lindsay Tyler Stubblefield is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 49.

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 February 12, 2024. By the court’s calculation, 43 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 granted.

The debtor, Christina M. Gutierrez (“Debtor”) seeks confirmation of the Modified Plan because Debtor’s 2009 Toyota Corolla, which served as the collateral for Westlake Services’s loan, was destroyed in an automobile accident. Declaration, Dckt. 40, p. 2:4-7. With the court’s approval (Order, Docket 33), Debtor used the insurance proceeds from the accident to pay the Westlake claim in full through the Plan. Declaration, Dckt. 40 at p. 2:7-9. Debtor’s confirmed Plan provided she would pay the auto loan to Westlake Services in full and zero percent to unsecured creditors. *Id.* at 2:2-5. Thus, as Debtor’s Westlake claim is paid in full through the Plan, Debtor requests that the duration of her Chapter 13 be reduced from 60 months to 37 months. *Id.* at 2:8-13.

Debtor’s proposed Modified Plan is identical to her original Plan, except for two amendments: first, that any payments to student loan creditors shall be paid directly by the Debtor. Student loan creditors shall not be paid anything under Class 7 of the plan. Second, that Westlake Services LLC shall not be paid any additional funds because its claim has already been paid in full. *Id.* at 2:23-3:4.

The Modified Plan provides \$7,696.00 to be paid through payments of \$208.00 for 37 months, and a 0 percent dividend to unsecured claims totaling \$149,500.00. Modified Plan, Dckt. 37, §§ 7, 3.14.

The Modified Plan also provides that any payment to student loan creditors shall be paid directly by the Debtor, and student loan creditors shall not be paid anything under Class 7 of the Plan. *Id.* at §7.10. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 8, 2024. Dckt. 46. Trustee opposes confirmation of the Plan on the basis that:

- A. While Debtor is current with their plan payments through February 2024 and have paid the \$208.00 for 30 months, Debtor failed to include the stipulated insurance proceeds as part of their plan payments. *Id.* at 1:26-2:1. Trustee received \$4,634.45 in insurance proceeds and issued a final disbursement of \$4,300.77 to pay creditor Westlake Services's claim in full. *Id.* at 2:1-5. However, Trustee and Debtor stipulated that the insurance proceeds in the amount of \$4,634.45 are to be treated as an additional payment under section 2.02, but this was not incorporated into this Modified Plan. *Id.* at 2:6-10.
- B. Debtor's Supplemental Schedules I and J were filed without the required amendment cover sheet EDC 2-015, and are thus unsigned by the Debtor. *Id.* at 2:13-16.

The Trustee submits the declaration of Angelina Fernandez in support of Trustee's Opposition. Declaration, Docket 47.

DEBTOR'S REPLY

Debtor filed a Reply on March 12, 2024. Dckt. 51. Debtor states that:

- A. Debtor's only remaining obligation is unpaid attorney's fees, amounting to \$1,375.00. *Id.* at 1:24-27. Debtor needs to make seven more payments to satisfy this obligation. *Id.* at 2:1-4.
- B. Section 3.07 of the Amended Plan states that Westlake Services LLC shall not be paid any additional funds because its claim has already been paid in full. *Id.* at 2:9-12. Thus, Debtor respectfully requests that the Amended Plan be accepted with the following minor modification, or variation of this language: "The insurance proceeds from Progressive Insurance in the amount of \$4,634.45 are to be treated as an additional payment under section 2.02." Debtor states that this minor modification is really just a clarification of what is already stated in the Amended Plan and will not prejudice any creditor in any way. *Id.* at 3:18-20.
- C. Debtor has resolved the issue of Supplemental I and J schedules filed with the wrong cover sheet by filing the same schedules using the correct cover sheets. *Id.* at 3: 22-25.

DISCUSSION

Certificate of Service

Debtor's Certificate of Service does not indicate that Trustee or U.S. Trustee was served. Certificate of Service, Docket 43, p. 2, line 5. Rule 5 of the Federal Rules of Civil Procedure require that certain documents, including pleadings filed after the initial original complaint and written notices, must be served on every party in the case. FED. R. CIV. P. 5(a)(1). Here, it appears that the parties were nonetheless served through the electronic filing system, as Trustee filed an Opposition to the Motion.

In the future, Debtor is reminded to check the applicable boxes on their Certificate of Service to guarantee that service on parties is properly documented.

Insurance Payments Reflected in Plan

Trustee states that \$4,634.45 was received in insurance proceeds for Debtor's 2009 Toyota Corolla. Trustee states that a final disbursement of \$4,300.77 was issued to Westlake Services on January 31, 2024. Opposition, Docket 46, p. 2:1-6.

Debtor agrees with Trustee that the insurance proceeds from Progressive Insurance in the amount of \$4,634.45 are to be treated as an additional payment under Section 2.02.

Supplemental Schedules

Debtor has uploaded supplemental Schedules I and J with the correct cover sheet. Dockets 49, 50.

Debtor has responded to the points raised by Trustee in their Opposition. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Christina M. Gutierrez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 12, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that the insurance proceeds from Progressive Insurance in the amount of \$4,634.45 are to be treated as an additional payment under Section 2.02 of the Modified Plan, Docket 37, which shall be stated as an amendment in the Order Confirming the Plan.

12. [23-23735-E-13](#)
[SMJ-2](#)

MARY JAYNE MCINTYRE
Scott Johnson

MOTION TO MODIFY PLAN
2-9-24 [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 not Provided. Debtor did not submit proof that she served any interested parties any of the documents required by LOCAL BANKR. R. 3015-1(d)(2). No Certificate of Service has been filed by Debtor. Failure to comply with service requirements is cause to deny the Motion.

At the hearing, **XXXXXXX**

~~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, Mary Jayne McIntyre ("Debtor") seeks confirmation of the Modified Plan to lower the monthly payment, extend the term from 38 months to 60 months, and to adjust the dividends paid on attorney's fees and the secured claim of Travis Credit Union. The Plan also cures the one month payment default that exists under the current plan. Declaration, Dckt. 23 ¶ 7. Debtor fell behind under her previously confirmed Plan because unexpected bills came due, and Debtor experienced health issues in January. *Id.* at ¶ 8. The Modified Plan provides for a payment of \$550 for one month, 0\$ for the next month, then \$410 for the following 57 months. Modified Plan, Dckt. 24 ¶ 2.01. Unsecured creditors will receive a 0% distribution. *Id.* at ¶ 3.14. 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 6, 2024. Dckt. 26. Trustee opposes confirmation of the Plan on the basis that:

- A. Trustee also identifies the service issue.
- B. Debtor has overpaid under the terms of the Modified Plan by \$140, so Trustee requests the parties clear this up at the Hearing.
- C. The provisions surrounding attorney's fees is unclear. Debtor's attorney has opted for the no-look fees of this district, explaining Debtor's attorney was paid \$1,995 prior to filing and seeks \$4,505 through the life of the plan. Under section 3.06 of the Plan, Debtor then states see Section 7 in how administrative expenses will be paid. Section 7 states:

Section 3.06 Administrative Expenses. Debtor has paid a total of 372.42 towards approved attorney's fees through January 2024. Starting February 2024 the monthly dividend on attorney's fees shall be \$73.00 per month.

Modified Plan, Docket 24.

Docket 26.

DISCUSSION

Debtor has proposed a reasonable Modified Plan and detailed Declaration in support. Debtor is current under the terms of the Modified Plan, which appears feasible. However, Debtor has not properly noticed the Plan.

Further, the court requires some clarification as to how Debtor's attorney's fees are to be paid. At the hearing, **XXXXXXX**

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

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

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

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

~~IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 9, 2024 at Docket 24, is confirmed. Debtor's~~

Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. [21-23841-E-13](#)
[PGM-4](#)

DENNIS FRAZIER
Peter Macaluso

**CONTINUED OBJECTION TO CLAIM
OF FREEDOM MORTGAGE
CORPORATION, CLAIM NUMBER 4
12-30-23 [141]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 13 Trustee, other parties in interest, parties requesting special notice, and Office of the United States Trustee on December 30, 2023. By the court's calculation, 59 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Proof of Claim Number 4-1 of U.S. Bank National Association is overruled without prejudice.

March 26, 2024 Hearing

The court continued this Hearing "ONE FINAL TIME" (court's emphasis in the order re-continuing the hearing) to have U.S. Bank National Association, not in its individual capacity but solely as trustee for RMTP Trust, Series 2021 Cottage-TT-V("Creditor"), verify how the final amount in dispute of \$3,117.57 was applied to other defaults. Order, Docket 169. Creditor was to submit to Dennis Frazier, the Chapter 13 Debtor, ("Objector," "Debtor") the final accounting as to the one remaining issue of \$3,117.57 by March 15, 2024.

The parties were ordered to file with the court their proposed stipulation resolving all issues, with

the exception of the \$3,117.57 dispute if they cannot resolve that, on or before March 22, 2024. There has been no stipulation filed with the court, but Creditor did file a Status Report on March 21, 2024. Docket 172.

Creditor's Status Report

Creditor Status Report provides the following information concerning the resolution of this Contested Matter:

1. On March 2, 2020, the \$3,117.57 funds were deposited into the suspense account bringing the suspense balance to \$3,707.17.
2. On March 10, 2020, the \$3,117.57 funds were taken out of suspense and a payment in the amount of \$1,596.05 was applied to the loan, which advanced the due date to January 1, 2020. This left a balance from the \$3,117.57 in the amount of \$1,521.52, which was placed back into suspense. At this point, the suspense balance was \$2,111.12.
3. On March 18, 2020, the \$2,111.12 was taken out of suspense and applied to a second payment in the amount of \$1,596.05, which advanced the due date of the loan to February 1, 2020; late charges in the amount of \$284.64; \$190.43 was applied to the principal balance; and a property inspection fee was paid in the amount of \$40. This reduced the suspense balance to \$0.00.

Docket 172, p. 3:1-10. Creditor states that it communicated this information to Debtor on March 19, 2024, four days after the court ordered deadline of March 15, 2024. *Id.* at p. 3:13. Creditor also states it amended its proof of claim to reflect this information on March 21, 2024. *See* POC 4-2.

At the hearing, **XXXXXXX**

The Objection to Claim is **XXXXXXX**

REVIEW OF OBJECTION

Objector requests that the court disallow the claim of Creditor, Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$126,942.93. POC 4-1.

Objector asserts that creditor First Trust ("First Trust") (POC 2-1) made an advance of \$37,000 to Creditor, on behalf of Debtor, to stop a foreclosure sale of Debtor's home. Debtor argues that such payment has not been fully applied to Creditor's Claim 4-1, at least not applying the amount of \$6,247.67. Reply, Docket 162 p. 2:14-16.

Apart from filing Proofs of Claim 2-1 and 4-1 (Docket 143), Debtor did not file any admissible evidence in support of this Objection.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a statement indicating nonopposition on January 26, 2024. Docket 157. Trustee states it appears the \$37,000 has not been applied on Creditor’s Proof of Claim.

CREDITOR’S OPPOSITION

Creditor filed an Opposition on January 30, 2024. Docket 159. Creditor states:

1. Creditor has applied the \$37,000. *See* Exhibit 3, Docket 160 ps. 18-22; Exhibit 4, Docket 160 ps. 23-29.
2. Exhibit 3 shows \$29,697.97 has been applied to the loan. Exhibit 4 shows the remaining \$7,302.03 has also been applied.

DEBTOR’S REPLY

Debtor filed a Reply on February 6, 2024. Docket 162. In his Reply, Debtor states:

1. Creditor is still not accounting for \$6,247.67 of the \$37,000 payment. Claim 4-1 should be credited with an additional \$6,247.67.
2. Debtor also prays for attorney’s fees and costs as the prevailing party.

DISCUSSION

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

In this case, Creditor has submitted unauthenticated Exhibits showing how and where the money has been applied. Debtor claims that \$6,247.67 has not been properly accounted for. However, upon the court’s review of Creditor’s exhibits, it appears as though the \$37,000 has been properly accounted for.

At the February 27, 2024 hearing, Debtor’s counsel reports that he thinks that there is an unapplied balance of \$3,117.57, otherwise the \$37,000 has been accounted for by Creditor and Debtor.

Counsel for Creditor states that they are trying to verify how the \$3,117.57 was applied to other defaults.

Creditor's counsel stated that this accounting can be completed and communicated to Debtor's counsel in two weeks. Both counsel for the Creditor and counsel for Debtor requested a continuance, which the court orders as the FINAL CONTINUANCE of this Objection.

Counsel for Debtor and Counsel for Creditor will also work on all of the agreed facts and isolate the one issue in dispute and have a stipulation on the agreed facts and propose what proceeding the Debtor will commence, likely an objection to claim, for adjudication of the one remaining disputed.

Counsel for Creditor will have the final accounting as to the one remaining \$3,117.57 issue to Debtor's counsel by March 15, 2024.

The hearing is continued to 2:00 p.m. on March 26, 2024. The parties shall file with the court their proposed stipulation resolving all issue, with the exception of the \$3,117.57 dispute if they cannot resolve that, on or before March 22, 2024.

Request for Attorneys' Fees

In the Reply, almost as if an afterthought, Debtor requests that it be allowed attorneys' fees. The Reply does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Debtor grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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

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

The Objection to Claim of U.S. Bank National Association, not in its individual capacity but solely as trustee for RMTP Trust, Series 2021 Cottage-TT-V ("Creditor"), filed in this case by Dennis Frazier, the Chapter 13 Debtor, ("Objector," "Debtor") having been presented to the court, the Parties reporting that all issues have been resolved except one, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 4-1 of Creditor is ~~overruled~~ without prejudice.

14 thru 15

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 13, 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 granted and the Modified Plan is confirmed.

The debtor, Robert Hunter (“Debtor”) seeks confirmation of the Modified Plan because over the life of the confirmed Plan, Debtor lost income and was unable to remit full payments. Declaration, Dckt. 207 ¶ 4. Debtor attempted to enter into a reverse mortgage back in 2022, but there were fraudulent titles recorded on his property that prevented him from obtaining the reverse mortgage. The court removed those fraudulent titles and recently granted Debtor authority to obtain and enter into a reverse mortgage. Order, Docket 218. The Modified Plan provides for a lump some payment to be made that will complete the Plan and pay administrative expenses and unsecured creditors at 100%. Modified Plan, Dckt. 208. 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 6, 2024. Dckt. 219. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan exceeds 60 months, being completed in 67 months under the terms of the Modified Plan.
- B. The lump sum payment must be in the amount of \$10,773.93 to pay off the Plan in full, not \$9,000 as Debtor suggested.
- C. Debtor did not serve Supplemental Schedules I and J in conjunction with this Motion to Confirm the Modified Plan, in violation of Local Bankruptcy Rule 9014-1(e)(1).

DEBTOR'S REPLY

Debtor filed a Reply on March 19, 2024 (Docket 222), informing the court that he has corrected the service issue and is amenable to the \$10,773.93 lump sum payment.

DISCUSSION

Service Issues

Debtor must serve his Supplemental Schedules I and J with his Motion to Confirm on the same date. Local Bankruptcy Rule 9014-1(e)(1) provides:

Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.

Furthermore, our Local Rules require that amended or supplemental Schedules I and J be filed and served with a Motion to Modify if the debtor's financial condition has materially changed. Local Bankruptcy Rule 3015-1(g)(3). Debtor does not list the Supplemental Schedules I and J as having been served along with this Motion to Modify (Certificate of Service, Docket 209), although Debtor informed the court that the Amended Schedules were served.

At the hearing, **XXXXXXX**

Overextension, Plan Completion

While the Modified Plan appears it would complete in month 67, seven months beyond the statutory time period allotted for in 11 U.S.C. § 1322(d), the court notes this lump sum payment would relate back to the 60 month of the Plan to complete. The Modified Plan will complete at 100% under these circumstances in a lump sum payment, not merely proposing extended monthly payments beyond the 60 months. Further, there were unique challenges in this case pertaining to the fraudulent deeds placed on debtor's residence that hindered his ability to timely receive the reverse mortgage. The court granted Debtor the authorization to enter into the reverse mortgage after removing the fraudulent deeds so Debtor can pay off his Plan in full. Therefore, the court waives the defect as to completing the Plan in the required 60 month period.

Debtor is amenable to increasing the lump sum payment from \$9,000 to whatever Trustee suggests is the proper amount. Modified Plan, Docket 208 § 7.

Agreeing on the required amount, at the hearing, **XXXXXXX**

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

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on February 13, 2024 at Docket 208, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

15. [18-25851-E-13](#)
[DPC-7](#)

ROBERT HUNTER
Peter Macaluso

CONTINUED MOTION TO DISMISS
CASE
5-8-23 [163]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 8, 2023. By the court’s calculation, 44 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is **XXXXXXX.**

March 26, 2024 Hearing

The court continued this hearing to be heard in conjunction with Debtor's Motion to Modify after the court granted Debtor's Motion to Obtain a Reverse Mortgage. Order, Docket 218. A review of the Docket on March 18, 2024 reveals that no new documents have been filed under this docket control number. At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

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

1. The debtor, Robert Paul Hunter ("Debtor"), is delinquent in Plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 7, 2023. Dckt. 167. Debtor states there are two adversary proceedings, Case No.'s 22-02087 and 22-02088, and they have motions for entry of default judgment for both the adversaries. Debtor expects the default judgment will allow them to avoid two deeds of trust and obtain a reverse mortgage to pay off the Plan. Declaration, Dckt. 168.

Debtor requests that the Trustee's motion be denied or, in the alternative, continued for sixty (60) days to allow for resolution of the adversary proceedings.

DISCUSSION

Delinquent in Plan Payments

Debtor is \$4,172.00 delinquent in plan payments, which represents multiple months of the \$1,900.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case.

However, Debtor asserts that if they avoid the two deeds of trust subject to the adversary proceeding, they can obtain a reverse mortgage to complete the Plan. Debtor asserts the hearings on their Motions for Entry of Default Judgment are set for August 24, 2023. Upon review of the adversaries' dockets, no motions for entry of default judgment have been filed or set for hearing.

REQUEST FOR CONTINUANCE

On August 20, 2023, Debtor filed a request for continuance, as Debtor's Counsel was out of town and unavailable to attend the August 24, 2023 hearing. The court construes the document to be an *Ex Parte Motion* (as required by Fed. R. Bankr. P. 9013) to continue the hearing.

Upon consideration of the *Ex Parte Motion*, the court continues the hearing on the Motion to Dismiss to September 21, 2023 at 11:00 a.m.

The court has further continued the hearing to October 18, 2023 at 9:00 a.m. pursuant to prior

order of this court (Order, Dckt. 176).

October 18, 2023 Hearing

The continued hearings on the Motions for Entry of Judgment in the two Adversary Proceedings are scheduled for November 2, 2023.

November 29, 2023 Hearing

On November 9, 2023, the court entered its orders in *Hunter v. Peachtree Group Trust, 22-2088*, and *Hunter v. Fillmore Group Trust, 22-2087*, granting the motions for entry of default judgments determining that the respective deeds of trust were of no legal force and effect.

The Debtor had previously lodged two proposed judgments with the court, and then included two additional proposed judgments with the latest versions of the Motions for Entry of Default Judgment. The court noted that the various forms contained slight differences, some of which could be attributed to clerical errors, or possibly a substantive difference. Some conflicts were created in language used.

Though the court attempted to craft two judgements, in light of the “particularity” of title companies and the Debtor’s need to get good clean judgments and clear title, the court requests that counsel for the Debtor prepare two final, clear, parallel language judgments for the two adversary proceedings, confirm that such are sufficient for title companies, and lodge such proposed judgments with the court.

At the hearing, the Trustee concurred that the hearing may be continued.

January 17, 2024 Hearing

The Court has now entered the judgments which have removed the two deeds of trust from the Debtor’s property.

At the hearing, counsel for the Debtor reported that the reverse mortgage is taking longer than anticipated. Additionally, given the age of the case modification of the Plan is not a feasible alternative. Counsel requested a continuance so that he could meet further with Debtor so they can make a final decision of whether this case will be converted to one under Chapter 7 or dismissed.

The Trustee concurred with the request for a final continuance to allow Debtor’s counsel to communicate further with Debtor.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on February 21, 2024, one final time to afford Debtor and Debtor's counsel afford time for them to decide whether this case should be converted to Chapter 7 or dismissed.

February 21, 2024 Hearing

The Debtor has filed a proposed Third Modified Plan, and Motion to Confirm with supporting pleadings on February 13, 2024. Dckts. 205 -209. Debtor has also filed a Motion for Authorization to obtain a reverse mortgage. Dckts. 200 - 204.

At the hearing, counsel for the Trustee concurred with the Debtor's request for a further continuance to work out the final funding of this Plan.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on February 28, 2024. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. John Hiser (“Debtor”) is delinquent \$2,165 in plan payments to the Trustee. Docket 16, p. 2:3-9.
2. Debtor told Trustee at the Meeting of Creditors that his parents will contribute \$1,500 per month. Trustee asked Debtor to confirm this in a Declaration, but no evidence in support of the parents’ contribution has yet been provided. *Id.* at p. 2:13-19.
3. At the Meeting of Creditors Debtor admitted he has a court ordered domestic obligation for child support, but neither Schedule I nor J lists this obligation. Debtor also failed to submit a Domestic Support Obligation

form. *Id.* at p. 2:20-24.

4. At the Meeting of Creditors Debtor admitted he does not own a vehicle and uses his parent's truck. Debtor's Statement of Financial Affairs fails to identify any property the Debtor holds for someone else. *Id.* at ps. 2:25-3:2.

Trustee submits the Declaration of Christina Lloyd to authenticate the facts alleged in the Objection. Decl., Docket 18.

DISCUSSION

Delinquency

Debtor is \$2,165 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor has indicated that his parents will contribute \$1,500 a month, but no evidence supporting this claim has been submitted. At the hearing, **XXXXXXX**

Inaccurate or Missing Information

Debtor's Schedules I and J and Statement of financial Affairs contain missing or inaccurate information. Debtor has not reported his domestic support obligation in Schedule I and J nor filled out Form EDC 003-088, the Domestic Support Obligation Checklist. Further, Debtor has failed to state in his Statement of Financial Affairs that he is holding and using his parent's truck. 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.

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 parties in interest, and Office of the United States Trustee on February 7, 2024. By the court’s calculation, 48 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, Tammera Mae Ridge (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$200 for 36 months with an estimated 6% to general unsecured creditors. Amended Plan, Dckt. 26. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on March 8, 2024. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s attorney’s initial retainer was too high. Local Bankruptcy Rule 2016-1(c) permits a retainer in the amount of not more than 25% of the no-look fee. The no look fee in this case totals \$4,950, so Debtor’s attorney was permitted to receive a \$1,237.50 retainer. Debtor’s attorney received a retainer in the amount of \$1,637. *Id.* at ps. 1:27-2:7. Along the lines of this objection, Debtor’s attorney needs to clarify the monthly dividend

- Debtor's attorney will receive during the life of the Plan.
- B. Debtor's Plan fails the Chapter 7 liquidation analysis. *Id.* at p. 2:21-27.
- C. Creditor Digital Federal Credit Union ("DFCU") is misclassified in Class 1. Debtor admitted at the Meeting of Creditors that she was current on this secured claim, so DFCU should have been listed in Class 4.
- D. Debtor admitted at the Meeting of Creditors that she and her son, Jesse Ridge, are codebtors on the loan at Chase Mortgage which is secured by the real property located at 5922 Castle Avenue, Dunsmuir, California. Debtor's Schedule H has not been amended to reflect there is a codebtor on that debt.
- E. Debtor has electronically signed the Plan and Schedules, but she must provide wet signatures as required by Local Bankruptcy Rule 9004-1(c). Trustee states that the Debtor admitted at the 341 Meeting that she has signed the petition, schedules and plan using the Docusign digital replacement signature for her actual signature.

In looking at the Plan and other documents, the signature block for Debtor is stated as "/s/ Tammera Mae Ridge," which when used is a certification by counsel that such counsel has the wet signature in counsel's hand and will retain such wet signatures for period of at least three years after the conclusion of the case.

- F. Creditor Les Schwab Tire Center of California ("Tire Center") filed a secured claim in the amount of \$742.43 on January 5, 2024 (POC 2-1), but this debt is not provided for in the Plan or listed on Schedule D.

DISCUSSION

Attorney's Fees

When an attorney opts for the no-look fee arrangement provided for by Local Bankruptcy Rule 2016-1(c), section 2016-1(c)(3) provides that "[a]ttorneys who claim fees under subdivision (c) shall not seek, nor accept, a retainer greater than the sum of (A) 25% of the fee specified in subdivision (c)(1)." The no look fee in this case totals \$4,950, so Debtor's attorney was permitted to receive a \$1,237.50 retainer. Debtor's attorney received a retainer in the amount of \$1,637, approximately \$400 higher than the retainer permitted by this District's Local Rules.

Further, Debtor's proposed Amended Plan does not provide for monthly payments of the remainder of Debtor's attorney's fees. Section 3.06 of the Plan, Administrative Expenses, lists a \$0 monthly distribution. Debtor's attorney cannot be paid under these proposed terms.

At the hearing, **XXXXXXX**

Liquidation Analysis

Trustee argues that Debtor fails a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the

plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.” Here, General unsecured creditors have claims that total \$46,004 and will receive a 6% distribution, Plan, Docket 26 § 3.14, but Trustee estimates Debtor has \$160,318 in non-exempt equity in assets of the estate.

At the hearing, **XXXXXXX**

Misclassified Creditor

Class 1 of the Plan includes “all delinquent secured claims that mature after the completion” of the Plan. Amended Plan, Docket 26 § 3.07. Here, Debtor has listed DFCU in Class 1, but Debtor does not have any outstanding delinquency under the terms of her loan agreement with DFCU. There are no arrears to cure, so it appears as though this creditor is misclassified. (And by doing so, Debtor will committing herself to pay an additional 7% to 8%).

At the hearing, **XXXXXXX**

Inaccurate or Missing Information

Debtor’s Schedules H omits any mention of there being a codebtor on the Property, but Debtor admitted that her son is a codebtor.

Debtor also does not list in her Schedules or provide for treatment in the Plan Tire Center’s secured claim. Finally, Debtor’s Plan and Schedules have been signed electronically, and Trustee requested Debtor’s wet signature for verification. Debtor has not complied in sending Trustee her wet signatures. Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3).

At the hearing, **XXXXXXX**

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 13, 2024. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Creditor has a claim (POC 8-3) in the amount of \$60,677.20, and Debtor incorrectly lists the amount of this claim as \$30,313.67 in Class 2 of the Plan. Objection, Docket 35, ¶ 8.
2. Creditor has a separate claim in the amount of \$114,505.65 (POC 7-3).
3. Debtor incorrectly lists Creditor's claim 7-3 in Class 4 of the Plan which suggests that Debtor is not in default. *Id.* at ¶ 12. As of the date of the Petition, Debtor is in default in the amount of \$4,069.76 as to claim 7-3. *Id.*

Tri Counties Bank (“Creditor”) submits the Declaration of Robert S. McWhorter to authenticate the facts alleged in the Objection. Decl., Docket 37.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Correctly Provide for a Secured Claim

Creditor asserts a claim of \$60,677.20 secured by Debtor’s business assets in this case. Proof of Claim No. 8-3. However, Debtor’s Schedule D estimates the amount of Creditor’s claim as \$30,313.67. Schedule D, Docket 21, p. 16 § 2.5. Additionally, Debtor’s Plan provides for treatment of this as a Class 2 claim, and states that the amount claimed by the objecting Creditor is \$30,313.67. Plan, Docket 22, § 3.08 (d). Therefore, it appears that Debtor’s Plan does not accurately list the amount owed to the Creditor on its secured claim.

The fact that this Plan does not correctly provide for objecting Creditor’s secured claim raises doubts about the Plan’s feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Creditor’s Objection.

Failure to Cure Arrearage of Creditor

The objecting Creditor also holds a deed of trust secured by Debtor’s real property located at 5711 Eastside Road, Redding, California, 96001. Exhibit B, Docket 38; POC 7-3. Creditor has filed a timely proof of claim in which it asserts \$4,069.76 in pre-petition arrearage. Proof of Claim No. 7-3, § 9. The Plan does not propose to cure those arrears.

Debtor incorrectly lists the objecting Creditor’s claim in Class 4 of the Plan, which is for claims that are not in default. Plan, Docket 22, § 3.10. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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

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

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

The Objection to the Chapter 13 Plan filed by Tri Counties Bank (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2024. By the court’s calculation, 40 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 Second 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 Second Amended Plan is denied.

The debtor, Amanda Wilson (“Debtor”), seeks confirmation of the Second Amended Plan. The Second Amended Plan provides for plan payments in the amount of \$665.00 per month for 12 months, then the plan payment will increase to \$1,151.00 per month for the remaining 48 months. Second Amended Plan, Docket 47, § 7.

In order to afford the increase in plan payments, Debtor will either find a renter for one of her rooms located at 693 Stringtown Ave., Weed, California, 96094 (“Property”), or will put the Property on the market for sale. *Id.*

If Debtor is unable to sell the Property within 4 months of putting the Property on the market, then Debtor understands that she will need to surrender the Property. *Id.* The Second Amended Plan also correctly states the Class 1 creditor with ongoing payments in the amount of \$451.33 and arrears in the total amount of \$21,696.39. *Id.* at § 3.07(c). 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, 2024. Opposition, Docket 56. Trustee opposes confirmation of the Second Amended Plan on the basis that:

- A. Debtor is unable to afford to make either the \$665.00 or the \$1,151.00 monthly plan payments because Debtor has a monthly net income of \$626.00. Objection, Docket 56, p. 2:19-25.
- B. Debtor's Second Amended Plan proposes that she will either rent out a room or sell the Property in order to afford the \$1,151.00 plan payment. *Id.* at 2:1-18. However, the Second Amended Plan does not provide any details on how Debtor is seeking a roommate, the date when the Property would be put on the market, or a deadline of when the sale of the Property would occur. *Id.*

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Second Amended Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule J shows that her monthly net income is \$626.00. Schedule J, Docket 1, p. 30 § 23. Debtor's Second Amended Plan proposes a plan payment of \$665.00 for 12 months, and then an increase in the plan payment to \$1,151.00 for the remaining 48 months. Second Amended Plan, Docket 47 § 7. Therefore, it is unclear how the Debtor will afford to make either of the plan payments with her current income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Insufficient Information

Debtor has supplied insufficient information relating to the Property to assist the Chapter 13 Trustee in determining the feasibility of the Second Amended Plan. Debtor proposes that she will find a roommate to rent one of the rooms of the Property. Second Amended Plan, Docket 47, § 7. However, neither the Second Amended Plan, nor the Debtor's Declaration state what steps the Debtor will take to find a renter. Furthermore, the Second Amended Plan states that if the Debtor is unable to find a renter, she will then list the Property for sale. *Id.* Again, Debtor does not provide any details regarding when the Property will be listed for sale, or a deadline for when the Property will be sold. Without more information, the court cannot determine whether the Second Amended Plan is confirmable.

At the hearing, **XXXXXXX**

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

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

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

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

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

FINAL RULINGS

20. [15-20002-E-13](#)
[FF-13](#)

BRIAN SANCHEZ
Gary Fraley

CONTINUED MOTION FOR
EXAMINATION AND FOR PRODUCTION
OF DOCUMENTS
6-16-23 [\[217\]](#)

Final Ruling: No appearance at the March 26, 2024 Hearing is required.

The Order for Examination and for Production of Documents has been continued to 2:00 p.m. on August 6, 2024.

March 26, 2024 Hearing

The court continued the Order to allow Debtor to locate and serve Judgment Debtor Ahmed Mami. A review of the Docket on March 12, 2024 reveals that nothing new has been filed with the court.

Counsel for the Debtor filed a request for an extension of time for this Ordered examination, citing to specific impediments to proceeding on March 26, 2024. Mtn.; Dckt. 230.

The court has continued the date for the Examination and production of documents to 2:00 p.m. on August 6, 2024. Order; Dckt. 232.

REVIEW OF THE ORDER

The Order to Appear and Examination of Judgment Debtor Ahmed Mami was issued on June 20, 2023. The court issued the Order based on Debtor Brian Sanchez's *ex parte* application for Judgment Debtor Ahmed Mami to appear and furnish information to aid in enforcement of two money judgments entered on October 5, 2022 and January 26, 2023. Additionally, Debtor Sanchez requests Judgment Debtor Mami produce documents identified in Exhibit B, Dckt. 218.

August 8, 2023 Hearing

At the hearing, counsel for the Judgment Creditor reported that they had been unable to serve the order for examination and requested that the hearing be continued and seek to locate the Judgment Debtor.

November 7, 2023 Hearing

At the hearing, counsel for the Debtor reported that they still have not been able to locate the person they seek to serve. Debtor requested that the hearing be continued to **2:00 p.m. on March 26, 2024.**

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

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

The Order to Appear and Examination of 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 Order For Examination and for Production of Documents has been continued to 2:00 p.m. on August 6, 2024.

21. [22-21817-E-13](#) **GARY SPARKS** **MOTION TO CONFIRM PLAN**
[MET-2](#) **Mary Ellen Terranella** **2-6-24 [80]**

Final Ruling: No appearance at the March 26, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 6, 2024. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Gary Duane

Sparks (“Debtor”), has filed a Modified Plan, Docket 83. Debtor has filed evidence in support of confirmation. Declaration, Docket 82. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on March 8, 2024. Dckt. 91. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on February 6, 2024, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 26, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on February 15, 2024. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Sergey Zhuk (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on March 6, 2024. Dckt. 48. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on February 15, 2024 at Docket 46, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

23. [24-20173-E-13](#)
[DPC-1](#)

LISA O’GUINN
Thomas Amberg

**OBJECTION TO DISCHARGE BY DAVID
CUSICK**
2-15-24 [16]

Final Ruling: No appearance at the March 26, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on February 15, 2024. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, (“Objector”) objects to Lisa O’Guinn’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on July 18, 2022. Case No. 22-21777. Debtor received a discharge on December 12, 2022. Case No. 22-21777, Dckt. 21.

The instant case was filed under Chapter 13 on January 17, 2024.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on December 12, 2022, which is less than four years preceding the date of the filing of the instant case. Case No. 22-21777, Dckt. 21. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Debtor filed a statement of non-opposition on February 15, 2024.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 24-20173), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 24-20173, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the March 26, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) and parties requesting special notice on February 26, 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Objection to Confirmation of Plan is sustained, this bankruptcy case having been dismissed by prior Order of the court. Dckt. 35.

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

1. Debtor has used an incorrect Chapter 13 Plan form. Objection, Docket 26, p. 2:3-8.
2. Debtor does not have sufficient income to make the payments called for in the Plan. *Id.* at p. 2:9-13. Debtor's Schedule J shows that Debtor has a negative monthly net income of (\$9,474.00). *Id.*
3. Debtor has failed to provide the Trustee with all of the required 521 documents. *Id.* at p. 2:14-28. Trustee still has not received Debtor's proof of income for the 60 days prior to the filing of the Petition or a copy of her federal tax return for the most recent pre-petition tax year. *Id.*
4. Debtor's name listed on the Petition does not match the name on the identification provided to the Trustee. *Id.* at p. 3:5-9. Debtor's identification lists her name as "Margarita Veronica Blanco", whereas,

Debtor's Petition lists the name "Margarita V. Blanco". *Id.*

5. Debtor has failed to list of all of her creditors in her Schedules. *Id.* at p. 3:10-13.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 28.

DISCUSSION

Trustee has already filed a Motion to Dismiss this case that is set to be heard on March 20, 2024. Motion, Docket 22. The Trustee's filed this Objection if the case is not dismissed at the March 20, 2024 Hearing.

Wrong Plan Form

Debtor did not use the correct Chapter 13 Plan form required in the Eastern District of California. Local Rule 3015-1 (a) requires that Form EDC 3-080 be used when proposing a Chapter 13 Plan. Here, Debtor used Official Form 113, which is not used in the Eastern District of California. Plan, Docket 13. Using an incorrect form is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03. Failure to file a plan on the current form is a delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Inaccurate Information

Debtor's Petition contains inaccurate information. The name listed on Debtor's Petition is "Margarita V. Blanco". Petition, Docket 1. However, the name listed on the identification provided to the Trustee is "Margarita Veronica Blanco". Objection, Docket 26, p. 3:3-9. Thus, there is a discrepancy between the name listed on the Petition and the name listed on Debtor's identification.

Missing Information

Debtor admitted at the First Meeting of Creditors that she has not listed all of her creditors in her Schedules. Objection, Docket 26, p. 3:10-13. As of March 19, 2024, Debtor has not filed an Amended Petition that includes the missing creditors. Without an accurate picture of Debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED.

R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is further cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule J shows that Debtor receives \$889.00 in monthly income and has \$10,363.00 in monthly expenses. Schedule J, Docket 15, p. 40 § 23. This leaves Debtor with a negative monthly net income of \$9,474.00. Therefore, it is unclear as to how Debtor will afford to make the proposed \$600.00 plan payments. Plan, Docket 13, p. 1 § 2.1.

This Bankruptcy Case was dismissed on March 22, 2024, by prior order of the court. Dckt. 33.

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.