

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

April 8, 2025 at 2:00 p.m.

1. [25-21077](#)-E-13
[JGD-1](#)

ANNE WEBER
John Downing

MOTION TO EXTEND AUTOMATIC
STAY
3-24-25 [\[14\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on March 24, 2025. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Anne Marie Weber ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 25-20498) was dismissed on March 5, 2025, after Debtor did not include the proposed Plan with the other required documents. *See* Order, Bankr. E.D. Cal. No. 25-20498, Dckt. 21, March 5, 2025. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor's attorney, John Downing, explains that it was his error that the proposed Plan was never filed in the previous case. Decl. ¶ 3, Docket 16. Mr. Downing explains he has had more time to review the facts of this case and are able to prepare and file a confirmable Plan, so the case has been filed in good faith. *Id.* at ¶ 4.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay. The error leading to the dismissal in the previous case was Debtor's attorney's error, and Mr. Downing assures the court that the error will be corrected moving forward.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by Anne Marie Weber (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

2. [24-23271-E-13](#) **BARBARA DODGE**
[CCR-1](#)

Item 2 thru 4

**CONTINUED STATUS CONFERENCE RE:
OBJECTION TO CONFIRMATION OF
PLAN BY KRISTOFER ORRE AND
SARAH ORRE
9-12-24 [23]**

Debtor’s Atty: Eric John Schwab

Notes:

Continued from 2/25/25. Counsel for the Debtor reported that the appraisal has been obtained and exchanged. They are reviewing the appraisals and continuing in their discussions to resolve this matter.

The Objection to Confirmation is xxxxxxx
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APRIL 8, 2025 STATUS CONFERENCE

At the Status Conference, xxxxxxx

REVIEW OF OBJECTION

Kristofer Orre and Sarah Orre (“Creditor”) holding a secured claim oppose confirmation of the Plan on the basis that:

1. Debtor Barbara Ann Dodge (“Debtor”) did not file this Plan and case in good faith, in violation of 11 U.S.C. § 1325(a)(3) and (7). Debtor has engaged in hiding assets prepetition by transferring money to avoid paying Creditor’s claim, as well as misrepresenting costs on Debtor’s Schedule J in the present case. Docket 23.

Creditor submits the Declaration of Sarah Orre to authenticate the facts alleged in the Objection. Decl., Docket 25.

DEBTOR’S REPLY

Debtor filed a Reply on October 2, 2024, asking the court continue the hearing on this Objection to November 5, 2024 at 2:00 p.m. to be heard in conjunction with the related Motion to Avoid Judicial Lien. Docket 32.

DISCUSSION

Good Faith Requirement of 11 U.S.C. § 1325(a)(3)

11 U.S.C. § 1325(a)(3) states:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

...

(3) the plan has been proposed in good faith and not by any means forbidden by law;

The Ninth Circuit has ruled “[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner” in ruling on whether a Plan was proposed in bad faith. *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

The evidence before the court in this case shows that Debtor owed Creditor \$252,581.56 resulting from an arbitration award entered by the Superior Court of California, County of Santa Cruz, case no. 23CV01407. Decl. ¶ 6, Docket 25. Creditor argues that Debtor closed certain accounts prepetition and moved funds from the closed accounts in order to frustrate collection attempts. If true, the court could infer the plan has been filed in bad faith.

At the hearing, the parties requested that the hearing be continued to 2:00 p.m. on November 5, 2024. The hearing on the Debtor’s Motion to avoid the judicial lien of Creditor has been continued to that time and date.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 5, 2024.

November 5, 0224 Hearing

By prior Order of the Court, Dckt. 44, the hearing has been continued to 2:00 p.m. on December 10, 2024.

January 14, 2025 Hearing

The court continued the hearing on this Objection by order granting the *Ex Parte* Motion for a continuance. Docket 54. A review of the Docket on January 9, 2025 reveals nothing new has been filed with the court.

On January 10, 2025, Creditor and Debtor filed an *Ex Parte* Joint Motion to continue the hearing to 2:00 p.m. on February 25, 2025.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on February 25, 2025, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

February 25, 2025 Hearing

The court continued the hearing on this Objection by order granting the *Ex Parte* Motion for a continuance. Docket 67. A review of the Docket on February 21, 2025 reveals nothing new has been filed with the court.

As part of the court continuing this matter, opposition was to be filed by February 11, 2025, and replies were to be filed and served on or before February 18, 2025.

At the hearing, counsel for the Debtor reported that the appraisal has been obtained and exchanged. They are reviewing the appraisals and continuing in their discussions to resolve this matter.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on April 8, 2025, for a Status and Scheduling Conference.

3. 24-23271-E-13 DPC-1	BARBARA DODGE	CONTINUED STATUS CONFERENCE RE: OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-11-24 [19]
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Debtor's Atty: Eric John Schwab

Notes:

Continued from 2/25/25. Counsel for the Debtor reported that the appraisal has been obtained and exchanged. They are reviewing the appraisals and continuing in their discussions to resolve this matter.

The Objection to Confirmation is XXXXXXX
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APRIL 8, 2025 STATUS CONFERENCE

At the Status Conference, XXXXXXX

REVIEW OF OBJECTION

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

1. Debtor Barbara Ann Dodge’s (“Debtor”) Plan relies on a Motion to Avoid Judicial Lien, and if the Motion is not granted, the Plan is not confirmable because it will fail the liquidation test. Obj. 2:3-14, Docket 19.

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

DISCUSSION

Debtor’s Reliance on Motion to Avoid Judicial Lien

Debtor’s Plan relies on avoiding the judicial lien of Kristofer Orre and Sarah Orre (“Creditor”). If Debtor succeeds on that Motion and the claim is placed in the general unsecured class of creditors, then Debtor’s Plan passes the liquidation test. However, if the Motion does not succeed and Creditor’s claim stays secured, Debtor’s Plan will not provide unsecured creditors with more than what they would receive under a Chapter 7. 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.”

At the hearing, the parties requested that the hearing be continued to 2:00 p.m. on November 5, 2024. The hearing on the Debtor’s Motion to avoid the judicial lien of Creditor has been continued to that time and date.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 5, 2024.

November 5, 2024 Hearing

The court continued the two related matters to December 10, 2024. Dockets 43, 44. Therefore, the court continues the hearing on Trustee’s Objection to the same time and date to be heard in conjunction with the related matters at 2:00 p.m. on December 10, 2024.

January 14, 2025 Hearing

The court continued the hearing on this Objection to be heard with the related Objection and Motion to Avoid Lien. A review of the Docket on January 9, 2025 reveals nothing new has been filed with the court.

February 25, 2025 Hearing

The court continued the hearing on this Objection to be heard with the related Creditor’s Objection to Confirmation and Motion to Avoid Lien. As part of the court continuing this matter, opposition was to be filed by February 11, 2025, and replies were to be filed and served on or before February 18, 2025. A review of the Docket on February 21, 2025 reveals nothing new has been filed with the court.

At the hearing, counsel for the Debtor reported that the appraisal has been obtained and exchanged. They are reviewing the appraisals and continuing in their discussions to resolve this matter.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on April 8, 2025, for a Status and Scheduling Conference.

4. [24-23271-E-13](#) **BARBARA DODGE** **CONTINUED STATUS CONFERENCE RE:**
[EJS-1](#) **MOTION TO AVOID LIEN OF**
KRISTOFER ORRE & SARAH ORRE
8-13-24 [10]

Debtor's Atty: Eric John Schwab

Notes:

Continued from 2/25/25. Counsel for the Debtor reported that an appraisal was obtained and has been transmitted to counsel for Creditor. Creditor's counsel reported that she has received it and the Parties are continuing in their negotiations to resolve this matter.

The Motion to Avoid Lien is XXXXXXX

APRIL 8, 2025 STATUS CONFERENCE

At the Status Conference, XXXXXXX

REVIEW OF THE MOTION

The Motion was continued multiple times. In the most recent continuance, the court granted a Stipulation filed by the parties requesting the continuance. Order, Docket 53. In the Order, creditors Kristofer Orre and Sarah Orre were to obtain a valuation and file opposition to the Motion on or before December 31, 2024. No oppositions were ever filed.

This Motion requests an order avoiding the judicial lien of Creditor against property of the debtor, Barbara Ann Dodge ("Debtor") commonly known as 9021 Braden Way, Sacramento, Ca 95826 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$255,416.56. Exhibit D, Dckt. 13. Debtor has not properly filed the Abstract of Judgment with the court as it lacks recorder information. The court is unable to determine where and when the judgment was recorded.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$528,100 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$0 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 20, Docket 1. However, Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$532,000 on Schedule C. Schedule C at 17, Docket 1.

JANUARY 14, 2025 HEARING

On January 10, 2025, the Debtor and Creditors Kristofer and Sarah Orre filed an *Ex Parte* Joint Motion requesting that the hearing be continued to 2:00 p.m. on February 25, 2025, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

February 25, 2025 Hearing

The court continued the hearing on this Motion to be heard with the related Objections to Confirmation. As part of the court continuing this matter, opposition was to be filed by February 11, 2025, and replies were to be filed and served on or before February 18, 2025. A review of the Docket on February 21, 2025 reveals nothing new has been filed with the court.

At the hearing, counsel for the Debtor reported that an appraisal was obtained and has been transmitted to counsel for Creditor. Creditor's counsel reported that she has received it and the parties are continuing in their negotiations to resolve this matter.

The hearing on the Motion to Avoid Judicial Lien is continued to 2:00 p.m. on April 8, 2025, for a Status and Scheduling Conference.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 18, 2025. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

1. Debtor Timothy Carl Guinn and Sara Nikole Guinn (“Debtor”) have misclassified their mortgagee, PennyMac (“Creditor”), in Class 4. Debtor admitted they are delinquent in mortgage payments at the 341 Meeting. Obj. 2:3-13.

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

DISCUSSION

Misclassified Claims

Debtor has classified Creditor in Class 4 of their Plan, which Class only deals with claims that “mature after the completion of the plan, are not in default, and are not modified by this plan.” Plan § 3.10, Docket 7. Trustee reports Debtor is delinquent regarding this claim. 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.

6. 25-20518-E-13 DPC-1	MASARU JACKSON Mary Ellen Terranella	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-18-25 [19]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 18, 2025. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

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

1. Due to a calendaring issue, Trustee was unable to conduct the 341 Meeting. The continued Meeting was held on March 27, 2025. If all issues are not resolved, Trustee requests the hearing on the Objection be continued. Obj. 1:1-8.

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

DISCUSSION

341 Meeting

Trustee was unable to conduct the Meeting of Creditors held pursuant to 11 U.S.C. § 341 due to a calendaring error. The court cannot confirm a Plan when a debtor has not been questioned by Trustee. *See* 11 U.S.C. § 521(a)(3).

On March 27, 2025, the Trustee made a report that the 341 Meeting was conducted on March 27, 2025 and concluded. March 27, 2025 Docket Entry Report.

At the hearing, **XXXXXXX**

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 4, 2025. By the court’s calculation, 35 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, Taishawn Khairi Mitchell and Catherean Bobbie Cheronn Mitchell (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid \$0 through month three with payments of \$4,800 per month to commence on March 25, 2025 for 57 months. Amended Plan, Docket 88. 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 Response on March 17, 2025. Docket 113. Trustee responds and states that:

- A. The Plan needs to provide what payment amount is due for February, 2025, even if \$0.00. *Id.* at 2:2-3.
- B. The plan may not be the Debtor’s best efforts, (11 U.S.C. §1325(b)). Form 122C-2 shows involuntary deductions in the amount of \$16,598.00. Debtor deducts this amount and arrives at a negative monthly disposable income of \$7,498.78; if Debtor cannot prove involuntary deductions, Debtor appears to have a positive \$9,099.22 that should be paid to unsecured claims. *Id.* at 2:8-11.

- C. Debtors' failed to disclose a previous bankruptcy filing. Debtor's Petition asks "Have you filed for bankruptcy within the last 8 years". Debtors checked the box "No". The Trustee's records, as verified on Pacer, show Debtors filed case no. 24-25700 on December 20, 2024. *Id.* at 2:17-20.

DEBTOR'S REPLY TO TRUSTEE'S RESPONSE

Debtor filed a Reply to Trustee's Responds on March 25, 2025. Docket 117. Debtor states:

- A. The Plan should read: "paid a total of \$0.00 through February 25, 2025" and "plan payments of \$4,800.00 per month will commence on March 25, 2025." This change would address Trustee's concern over Plan language. *Id.* at 1:24-26.
- B. Debtor has corrected and amended the Current Monthly Income to address Trustee's concerns. *Id.* at 2:2.
- C. Debtor has corrected and amended the Voluntary Petition to disclose the previous bankruptcy case filing. *Id.* at 2:4.

CREDITOR'S OPPOSITION

T.D. Bank, N.A. ("Creditor") holding a secured claim filed an Opposition on March 6, 2025. Docket 103. Creditor opposes confirmation of the Plan on the basis that:

- A. The Plan improperly reduces Creditor's interest rate. The rate should be 9.5%, which is the prime rate of 7.5% plus a 2% risk adjustment. The Plan only proposes to pay Creditor's claim in the amount of 5%.

DEBTOR'S REPLY TO CREDITOR'S OPPOSITION

Debtor filed a Reply to Creditor's Opposition on March 25, 2025. Docket 118. Debtor states they have no opposition to the proposed interest rate of 9.5%, in an Order Confirming Plan for the Creditor, T.D. Bank. *Id.* at 1:23-25.

DISCUSSION

Trustee opposed confirmation based on language of the Plan being unclear, Debtor not properly describing their involuntary deductions, and Debtor not disclosing their prior bankruptcy case.

Debtor has offered to clear up the language of the Plan to specify that debtor will pay 0\$ in February of 2025.

Debtor filed an Amended Petition on March 25, 2025 at Docket 116. The Amended Petition properly discloses the prior bankruptcy case.

Regarding Trustee's concern over the involuntary deductions, Trustee was concerned that they were business deductions. Debtor's Amended Form 122C-1 confirms this suspicion, showing the deductions as business deductions. Debtor has supplemented the Schedule I and J with an attachment to detail the business deduction. Docket 120. The attachment shows expenses of taxes, payroll, repairs and maintenance, benefits, inventory, and other customary expenses.

In determining if the deductions are reasonable, at the hearing, **XXXXXXX**

Debtor and Creditor have resolved Creditor's objection, agreeing to an interest rate of 9.5%.

~~The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Taishawn Khairi Mitchell and Catherean Bobbie Cheronn Mitchell ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on March 4, 2025, is confirmed, as amended to state the payment in February of 2025 is 0\$ and creditor T.D. Banks's claim shall be provided for with 9.5% interest. 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.~~

Item 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)(3) Motion—Hearing Required.

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

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

The Motion to Dismiss is XXXXXXX.

April 8, 2025 Hearing

The court continued the hearing as the Parties filed a Stipulation with the court on March 4, 2025, explaining that the Parties were engaged in negotiations surrounding this Motion. Docket 65. A review of the Docket on April 2, 2025 reveals nothing new has been filed with the court.

At the hearing, XXXXXXX

REVIEW OF THE MOTION

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

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

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

February 11, 2025 Hearing

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

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

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

March 11, 2025 Hearing

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

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

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

The Motion to Dismiss the Chapter 13 case filed by James D. Walthoff ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion 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.

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

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

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

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

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

The Objection to Exemptions is XXXXXXX.

April 8, 2025 Hearing

The court continued the hearing as the Parties filed a Stipulation with the court on March 4, 2025, explaining that the Parties were engage din negotiations surrounding this Motion. Docket 65. A review of the Docket on April 2, 2025 reveals nothing new has been filed with the court.

At the hearing, XXXXXXX

REVIEW OF OBJECTION

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

- A. Debtor claims to hold title to as a joint tenant and approximate value of \$400,000.00. The Debtor further states that the Property is community property. Obj. 2:10-11, Docket 20.
- B. Debtor’s Schedule C asserts an exemption in the amount of \$600,000.00 against the Property pursuant to Cal. Code Civ. Pro. § 704.730.
- C. Debtor Schedules Creditor’s counsel, Huber Fox, as an unsecured creditor with a claim in the amount of \$1,226,052.51. On August 21, 2024, Creditor filed POC 2-1 for \$1,446,922.50 (“POC 2-1”) on account for her judgment against the Debtor for financial abuse of an elder, inclusive of attorney’s fees and costs and interest awarded by the Superior Court. *Id.* at 2:16-18.
- D. During its efforts to enforce the Judgment prepetition, Creditor’s counsel determined from public records that the Debtor and his spouse had transferred their interest in the Property to MRDC, LLC, on or about May 13, 2023, and recorded on May 18, 2023—shortly after the bench trial that would result in entry of the Judgment on July 10, 2023. *Id.* at 2:19-22.
- E. Property records reveal that, on June 19, 2024, MRDC, LLC, and an individual named Rachelle Carr, executed a grant deed in favor of the Debtor and spouse, which was recorded on June 25, 2024. *Id.* at 2:23-25.
- F. Debtor’s schedules do not disclose any interest in MRDC, LLC, and a search of California Secretary of State records show no entity operating under that name in California. *Id.* at 2:26-27.
- G. Here, the Debtor does not appear to have had either a legal or equitable interest in the Property on the petition date either directly or through MRDC, LLC. In fact, the Debtor appears to have transferred his interest in the Property with the intent to hinder, delay, or defraud the Judgment Creditor in the aftermath of the bench trial that ultimately resulted in the Judgment, only to promptly reverse the transfer postpetition. *Id.* at 3:13-17.

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

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

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

Disclaimer: This report: (i) is **not an insured product or service or an abstract, legal opinion or a representation of the condition of title to real property**, and (ii) is issued exclusively for the benefit of First American Data Tree LLC (Data Tree) customers and may not be used or relied upon by any other person. Estimated property values are: (i) based on available data; (ii) are not guaranteed or warranted; (iii) do not constitute an appraisal; and (iv) should not be relied upon in lieu of an appraisal. Data Tree does not represent or warrant that the information is complete or free from error, and expressly disclaims any liability to any person or entity for loss or damage caused by errors or omissions in the report. If the "verified" logo {(3t-)} is displayed, or a record is designated "verified; Data Tree's algorithm matched fields from two or more data sources to confirm source data.

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

DEBTOR'S OPPOSITION

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

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

DISCUSSION

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

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

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

(b) Objecting to a Claim of Exemptions.

(1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after

any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Computation of Deadline For Filing Objection to Exemption

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

July 26 - July 31.....6 days
August 1 - August 24.....24 days

Thirty days expires, by the Debtor's calculation on August 24, 2024.

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

Rule 9006. Computing and Extending Time; Time for Motion Papers [Effective until December 1, 2024]

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period stated in days or a longer unit. When the period is stated in days or a longer unit of time:

(A) **exclude the day of the event that triggers the period;**

(B) **count every day**, including intermediate Saturdays, Sundays, and legal holidays; and

(C) **include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.**

...

(4) "Last day" defined. Unless a different time is set by a statute, local rule, or order in the case, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) “Next day” defined. The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

. . . .

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

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

ISSUES OUTSTANDING

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

Possible Transfers of Property

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

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

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

§ 11930. Transfer by inter vivos gift or by death

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

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

In response to paragraph 18 of the Statement of Financial Affairs Debtor states under penalty of perjury that within two years before the filing of this Bankruptcy Case the Debtor did not “sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs.” Dckt. 13 at 25. The is not consistent with the allegations of Creditor that in May 2023 title to the Property was transferred to MRDC, LLC.

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

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

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

October 8, 2024 Hearing

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

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

December 10, 2024 Hearing

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

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

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

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

Debtor's Supplemental Pleadings

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

1. The transfer does not constitute a change in ownership because the transfer did not result in the beneficial use of the Property. *Id.* at 2:22-3:1.
2. The transfer was more akin to a transfer into a revocable trust, which holding arrangement can be declared a homestead. *Id.* at 3:4-9.
3. There was no reassessment charged by the County, so there was no ownership change. *Id.* at 3:15-22.

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

DISCUSSION

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

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

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

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

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

§ 11930. Transfer by inter vivos gift or by death

Any tax imposed pursuant to this part shall not apply to any deed, instrument, or other writing which purports to grant, assign, transfer, convey, divide, allocate, or

vest lands, tenements, or realty, or any interest therein, **if by reason of such inter vivos gift or by reason of the death of any person**, such lands, tenements, realty, or **interests therein are transferred outright to, or in trust for the benefit of, any person or entity.**

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

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

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

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

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

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

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

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

(c) “Homestead” means the principal dwelling (1) in which the judgment debtor or the judgment debtor’s spouse resided on the date the judgment creditor’s lien attached to the dwelling, and (2) in which the judgment debtor or the judgment

debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

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

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

No requirement that legal title be continuously owned. The statutory definition of "homestead" requires only that the judgment debtor reside in the property claimed to be exempt as his or her principal dwelling at the time the judgment lien attaches to the property, and continuously thereafter.¹⁹ Neither the declared homestead exemption nor the automatic homestead exemption requires that the judgment debtor continuously own legal title to the property, but in any case the judgment debtor must continue to reside at the property as his or her principal dwelling during any period while he or she does not own legal title, at least in the case of the automatic exemption.²⁰

20

Tarlesson v. Broadway Foreclosure Investments, LLC, 184 Cal. App. 4th 931, 937, 109 Cal. Rptr. 3d 319 (1st Dist. 2010) (automatic exemption); *In re Miffed*, 107 B.R. 255, 260 (Bankr. C.D. Cal. 1989), *aff'd*, 119 B.R. 201 (B.A.P. 9th Cir. 1990), *aff'd*, 959 F.2d 740 (9th Cir. 1992) (automatic exemption). In *Tarlesson*, the court expressly did not address whether an ownership interest is required for the declared homestead.

See § 43:26 (equitable interests).

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

§ 43:26. Equitable interests

Equitable interests in property may be homesteaded. A party may homestead "any interest in real property."¹ An equitable title that supports a right of occupancy is sufficient to enable the owner to claim a homestead of the premises.²

Vendee under installment contract of sale. A vendee in possession of property pursuant to a contract of sale under which the vendor retains legal title can declare

a homestead upon his or her equitable interest in the property.³ This interest is subordinate to the rights of the vendor, but superior to any third-party claim to the property that accrues after the declarant records the declaration of homestead.⁴

1

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

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

2

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

3

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

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

4

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

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

Case Example:

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

5

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

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

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

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

Comment:

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

11

Civ. Proc. Code, § 704.710.

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

12

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

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

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

In its findings, filed on August 12, 1952, the [trial] court found . . . that on April 9, 1951, Robert Smith conveyed all his right, title and interest in this property to Stanley

Smith without consideration and with intent to defraud his creditors; that the property was then worth \$ 8,000; that Stanley Smith accepted and received this deed with the intent to hold the property "as a secret trust for said Robert Smith"; "that since said conveyance the title to the above described real property has remained in the name of" Stanley Smith; that despite such conveyance Robert Smith and his wife remained in exclusive possession of said property until January 1, 1952, . . . As conclusions of law, it was found that on February 15, 1951, Breeden became a creditor of the senior Smiths; that said conveyance was fraudulent as to creditors, and the senior Smiths became insolvent by reason thereof; and that the plaintiffs were entitled to a judgment decreeing that this conveyance was fraudulent as to Breeden, and should be set aside and annulled "insofar as it affects the rights of" Breeden. Judgment was entered on August 12, 1952, adjudging solely that this conveyance was fraudulent as to Breeden, and "hereby is set aside and annulled insofar as it affects the rights of the plaintiff Joseph W. Breeden." No appeal was taken from that judgment.

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

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

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

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

The court having found that the full interest in this property, other than the bare legal title, was in Robert Smith all the time, nothing appears in the record which would adversely affect the validity of the homesteads filed before judgment was entered. In the absence of any showing that the respondents were entitled to a sale of the property on execution it was error to refuse the restraining order asked for. While the respondents could have proceeded under sections 1245 to 1259 of the Civil Code, if the circumstances warranted, no such procedure is involved in this appeal.

Id., at 66.

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

Courts “adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor.” (*Amin v. Khazindar*, *supra*, 112 Cal.App.4th at p. 588.) . . .

. . .

Several California cases recognize that judgment debtors who continuously reside in their dwellings retain a sufficient equitable interest in the property to claim a homestead exemption even when they have conveyed title to another. (*Breeden v. Smith* (1953) 120 Cal.App.2d 62, 66; *Putnam Sand & Gravel Co. v. Albers* (1971) 14 Cal.App.3d 722, 726; *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 81.) Such a result is consistent with the purpose of California’s homestead exemption to protect one’s dwelling against creditors. (*Amin v. Khazindar*, *supra*, 112 Cal.App.4th at p. 588; *accord*, *Wells Fargo Financial Leasing, Inc. v. D & M Cabinets*, *supra*, 177 Cal.App.4th at p. 67.)

. . .

(5) *Broadway* does not dispute that the property was Tarlesson’s principal residence when it acquired its judgment lien. Nor does it dispute that she has continuously resided in the home since 1984, and there is no evidence that rebuts Tarlesson’s claim that, “At all times I retained the beneficial interest in my home, which was acknowledged by Peola [Lane].” In the circumstances, Tarlesson’s continuous occupancy of her home qualifies it as her “homestead” under section 704.710, subdivision (c). We will not also read a requirement into section 703.020 or 704.710 that Tarlesson must have held continuous title to her home to claim the homestead exemption.⁶

6

In its reply brief, *Broadway* refers to a separate statutory definition of a “declared homestead owner” in section 704.910, subdivision (b)(1). But this case deals solely with an automatic homestead exemption claim rather than a declared homestead. We will not further address an argument raised for the first time in a reply brief.

(Reed v. Mutual Service Corp. (2003) 106 Cal.App.4th 1359, 1372, fn. 11 [131 Cal. Rptr. 2d 524].)

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

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

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

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

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

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

January 28, 2025 Hearing

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

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

February 11, 2025 Hearing

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

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

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

March 11, 2025 Hearing

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

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

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

The Objection to Claimed Exemptions filed by Crystal Rista (“Creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Exemptions is **XXXXXXX**.

10. [25-20234-E-13](#)
[PGM-1](#)

JOHN BARNWELL
Peter Macaluso

**MOTION TO VALUE COLLATERAL OF
GREENSTATE CREDIT UNION
2-28-25 [36]**

Item 10 thru 11

Item 2 on the 1:30 Calendar

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

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

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

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

<p>The Motion to Value Collateral and Secured Claim of GreenState Credit Union (“Creditor”) is XXXXXXX.</p>

The Motion filed by John Michael Barnwell (“Debtor”) to value the secured claim of GreenState Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Docket 39. Debtor is the owner of a 2019 Dodge Ram 1500 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$12,200.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the

asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor testifies to the following damage to the Vehicle:

- A. Damage to front bumper
- B. Needs right headlight
- C. Dents and needs paint
- D. Dent on drivers side rear door
- E. Tailgate has deep dents

Decl. ¶ 6, Docket 39.

The Chapter 13 Trustee filed a Non-Opposition on March 25, 2025. Docket 62.

Creditor Opposition

Creditor filed an Opposition on March 24, 2025. Docket 53. Creditor states:

- A. The value of the vehicle is \$18,450.00. *Id.* at 2:6.
- B. A copy of the Manheim Market Report Value is attached to this Opposition. *Id.* at 2:8.

Debtor filed a Reply on April 1, 2025. Docket 78. Debtor requests the court confirm the Motion as the evidence Creditor submits is unauthenticated, or in the alternative the court conduct a speedy evidentiary hearing.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on February 10, 2022, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$29,519.97. Proof of Claim, No. 11-1.

Creditor argues the valuation should be higher, submitting an unauthenticated market report to show the Vehicle should be valued at \$18,450.00. The unauthenticated Manheim Market Report (Ex. 1; Dckt. 54) states an estimated retail value of \$18,450.

The court has not previously been presented with a "Manheim Market Report" ("MMR") as evidence of value from other creditors. Looking at the report it has a "MMR Range" of \$14,000-\$17,050, "Adjusted MMR" of \$15,550, and an "Estimated Retail Value" of \$18,450. Dckt. 54 at 2. This "Estimated Retail Value" is stated to be "Based on Cox Automotive Retail Transactions." *Id.*

While taking the mileage into account, the MMR makes no adjustment for condition, notwithstanding the Debtor identifying the following:

- A. Damage to front bumper
- B. Needs right headlight
- C. Dents and needs paint
- D. Dent on drivers side rear door
- E. Tailgate has deep dents

The difference between Debtor's valuation of \$12,200.00, with the above repairs identified, is (\$6,400) less than Creditor's **\$18,450** "retail showroom floor ready" valuation for which no adjustments are made for damage to the vehicle.

It would not be surprising for such damage to the vehicle to bring the retail value lower and into the range stated by Debtor.

At the hearing, **XXXXXXX**

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

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

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

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

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

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

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

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

The Motion to Value Collateral and Secured Claim of GreenState Credit Union (“Creditor”) is XXXXXXX.

The Motion filed by John Michael Barnwell (“Debtor”) to value the secured claim of GreenState Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Docket 43. Debtor is the owner of a 2014 Dodge Charger (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$4,800.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor testifies to the following damage to the Vehicle:

- A. Back bumper is coming off
- B. Back bumper needs paint
- C. Dent on passenger door
- D. Doors need paint
- E. Front bumper needs paint
- F. Overall condition is poor

Decl. ¶ 6, Docket 39.

The Chapter 13 Trustee filed a Non-Opposition on March 25, 2025. Docket 56.

Creditor filed an Opposition on March 24, 2025. Docket 56. Creditor states:

- A. The value of the vehicle is \$13,325.00. *Id.* at 2:.
- B. A copy of the J.D. Power Value Report is attached to this Opposition. *Id.* at 2:7.

Debtor filed a Reply on April 1, 2025. Docket 77. Debtor requests the court confirm the Motion as the evidence Creditor submits is unauthenticated, or in the alternative the court conduct a speedy evidentiary hearing.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on December 7, 2021, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,819.32. Proof of Claim, No. 10-1.

Creditor argues the valuation should be higher, submitting an unauthenticated market report to show the Vehicle should be valued at \$13,325.00.

In support of the \$13,325.00 valuation, Creditor has provided an unauthenticated J.D. Power valuation report. Exhibit 1; Dckt. 57. It states that the average retail price paid a dealer is \$13,325.00. It further states that the range for retail purchases from dealers is from \$12,486 to \$14,459.

However, it does not appear to take into account the damage to the Vehicle that Debtor identified above:

- A. Back bumper is coming off
- B. Back bumper needs paint
- C. Dent on passenger door
- D. Doors need paint
- E. Front bumper needs paint
- F. Overall condition is poor

Creditor has included as part of Exhibit 1 the trade in values from dealers. This type of vehicle in clean condition has a trade in value of \$7,925, which one in rough condition the trade in value is only \$5,550, a 30% reduction in value. Using that reduction from the \$13,325 retail value cited by Creditor, a rough adjustment to that retail value would reduce it to \$9,327.50, less than the \$11,819.32 stated by Debtor.

At the hearing, **XXXXXXX**

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

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

The Motion to Value Collateral and Secured Claim filed by John Michael Barnwell (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

12. [23-23735](#)-E-13
[SMJ](#)-4

MARY JAYNE MCINTYRE
Scott Johnson

MOTION TO MODIFY PLAN
2-19-25 [50]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors that have filed claims, and Office of the United States Trustee on February 19, 2025. 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 granted.

The debtor, Mary Jayne McIntyre (“Debtor”) seeks confirmation of the Modified Plan to lower the monthly payment, and to adjust the dividends paid on attorney’s fees and the secured claims. The Plan also cures a payment default that exists under the current plan. Declaration ¶ 7, Docket 52. The Modified Plan provides Debtor having paid a total of \$5,200.00 through January 2025. Commencing February 2025 Debtor shall pay \$390.00 per month for the remainder of the Plan. Modified Plan, Docket 53. 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 25, 2025. Docket 59. Trustee identifies the issue that it appears Debtor has not filed the Supplemental Schedules I and J with the Plan in violation of Local Bankruptcy Rule 3015-1(d)(2).

DISCUSSION

Service of Supplemental Schedules

Local Bankruptcy Rule 3015-1(d)(3) states, in the event of a default in plan payments:

Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor’s financial condition has materially changed, **amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.**

(Emphasis added). Debtor’s Certificate of Service at Docket 54 does not show that the Schedules were served with this Motion.

Supplemental Schedules I and J were filed on February 19, 2025. Dckt. 55. Based on those the Debtor has \$398 a month of monthly net income.

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 19, 2025, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Item 13 thru 14

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 13, 2025. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

April 8, 2025 Hearing

The court continued the hearing on this Objection as Debtor's Plan relied on a Motion to Value Creditor's collateral. The Motion to Value was heard on March 25, 2025 at which the court continued the Motion to June 24, 2025, for the Parties to conduct discovery and file supplementary evidence.

At the hearing, XXXXXXX

REVIEW OF OBJECTION

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

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

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

DEBTOR'S OPPOSITION

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

DISCUSSION

Interest Rate

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

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

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Creditor. Debtor has filed a Motion to Value the Secured Claim to be heard on March 25, 2025.

At the hearing, the Parties agreed to continue the hearing on this Objection to 2:00 p.m. on April 8, 2024.

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

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

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

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

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

14. [25-20052-E-13](#)
[DPC-1](#)

TAMMI KELLER
Peter Macaluso

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK**
2-12-25 [17]

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

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

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

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

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

The Objection to Confirmation of Plan is **XXXXXXX.**

April 8, 2025 Hearing

The court continued the hearing on this Objection as Debtor's Plan relied on a Motion to Value Creditor's collateral. The Motion to Value was heard on March 25, 2025 at which the court continued the Motion to June 24, 2025, for the Parties to conduct discovery and file supplementary evidence.

At the hearing, **XXXXXXX**

REVIEW OF OBJECTION

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

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

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

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Creditor. Debtor has filed a Motion to Value the Secured Claim to be heard on March 25, 2025.

At the hearing, the Parties agreed to continue the hearing on this Objection to 2:00 p.m. on April 8, 2024.

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

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

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

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

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

Item 15 thru 16

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

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

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

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

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

The Objection to Confirmation of Plan is XXXXXXX.

April 8, 2025 Hearing

The Objection was continued in light of the pending Motion to Value. That Motion was heard and granted on March 25, 2025. Docket 67. On April 1, 2025, Trustee filed a Status Report with the court. Docket 38. Trustee states:

1. Tax returns may still not be filed, (IRS Claim 7).
2. The motion to value has been granted, (DN 37).
3. Debtor has paid \$1,428.00 and is now delinquent \$1,422.00.

At the hearing, XXXXXXX

REVIEW OF OBJECTION

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

1. Debtor Marshaun Keith Tate (“Debtor”) admitted at the First Meeting of Creditors, held on February 6, 2025, that he has not filed 2022 and 2023 tax returns, but was doing so in the next few days. The Trustee requested the Debtor upload the returns to the secure website at www.bkdocs.us once they have been filed. To date, the Debtor has failed to provide a copy of either return. Obj. 2:1-7, Docket 23.
2. Debtor’s Plan relies on the Motion to Value Collateral of Ally, which is set for hearing on March 11, 2025, the same day as this motion. If the motion to value is not granted, Debtor’s Plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation. *Id.* at 2:8-11.
 - a. The court would note that the hearing on the Motion to Value is actually set for March 25, 2025. Notice, Docket 19.

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

DISCUSSION

Failure to File Tax Returns

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

Debtor’s Reliance on Motion to Value Secured Claim

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Ally Bank. The hearing on that Motion is not until March 25, 2025. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

In light of the pending Motion to Value and the ongoing discussions between Debtor and Creditor, the Parties agreed to continue the hearing on the Objection.

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

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

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

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

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

16. [24-25872-E-13](#)
[JCW-1](#)

MARSHAUN TATE
James Keenan

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY ALLY
BANK
1-31-25 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 31, 2025. By the court’s calculation, 39 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

April 8, 2025 Hearing

The Objection was continued in light of the pending Motion to Value. That Motion was heard and granted on March 25, 2025. Docket 67. On April 1, 2025, Trustee filed a Status Report with the court. Docket 38. Trustee states:

1. Tax returns may still not be filed, (IRS Claim 7).

2. The motion to value has been granted, (DN 37).
3. Debtor has paid \$1,428.00 and is now delinquent \$1,422.00.

At the hearing, **XXXXXXX**

REVIEW OF OBJECTION

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

1. Debtor Marshaun Keith Tate (“Debtor”) has proposed a Plan that relies on a Motion to Value Creditor’s collateral. However, Creditor disputes Debtor’s valuation. Obj. 1:17.
2. The Plan does not pay the proper prime interest rate on Creditor’s claim. *Id.* at 2:22-3:6.

DISCUSSION

Debtor’s Reliance on Motion to Value Secured Claim

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

Interest Rate

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

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

The Debtor now having filed a Motion to Value the Secured Claim and the ongoing discussions between Debtor and Creditor, the Parties agreed to continue the hearing on the Objection.

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

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

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

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

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

17. [25-20474-E-13](#)
[CCR-1](#)

OWEN BRADLEY / SHARECE
BRIDGES VAN MEURS
Thomas Amberg

**OBJECTION TO CONFIRMATION OF
PLAN BY BARRY L. MONBLATT AND
ELLEN C. MONBLATT, TRUSTEES OF
THE MONBLATT TRUST DTD 9-3-87
3-19-25 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 19, 2025. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

Barry L. Monblatt and Ellen C. Monblatt, Trustees of the Monblatt Trust DTD 9-3-87 (“Creditor”) holding a secured claim oppose confirmation of the Plan on the basis that:

1. Creditor’s claim is secured by a second position deed of trust on the real property of Debtor Owen Powell Bradley and Sharece Bridges Van Meurs (“Debtor”) commonly known as 19148 Connie Drive, Grass Valley, CA 95949 (“Property”).
2. Per the bankruptcy schedules, the Property is valued at \$560,000 and is encumbered by a first deed of trust in the amount of \$115,000.00. Secured Creditor’s debt is \$180,662.09, with monthly interest only payments of \$1,865.33. The Note in favor of Secured Creditors becomes due on February 1, 2027. Obj. 1:26-2:3.
3. Despite this being a 15 month plan, Secured Creditors’ claim is treated as a Class 2(A) claim rather than a Class 1 claim. Further, Debtors propose a reduced interest rate of 6%, with a \$300 per month adequate protection payments for 15 months. Therefore, it is Secured Creditors’ position that their claim has been misclassified, the loan is being improperly modified, and the plan is not feasible. *Id.* at 2:4-8.

Creditor submits the Declaration of Barry L. Monblatt to authenticate the facts alleged in the Objection. Decl., Docket 22.

DISCUSSION

Misclassified Claims

Debtor has classified Creditor in Class 2(a) of their Plan, which Class deals with “all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed.” Plan § 3.08, Docket 3. The clear language of the Plan would permit a secured claim to be placed into Class 2(a), even if it matures after completion of the Plan, if the claim is modified. The record shows the claim is modified under the version of this Plan as to the interest that will be paid on the claim. The contractual rate of interest on the claim is 13.99% according to Creditor, and the Plan proposes to modify this amount. This objection is without merit.

Providing for a Secured Claim

Creditor asserts a claim of \$180,662.09 in this case. Debtor’s Schedule D estimates the amount of Creditor’s claim as \$160,000.00 and indicates that it is secured by a second deed of trust on Debtor’s residence. Schedule D, Docket 1 p. 22. The Plan provides for treatment of this as a Class 2 claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it does not fully provide for payment of Creditor’s entire obligation, and at the proper interest rate, which is secured by Debtor’s residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future

income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a claim secured only by the debtor's primary residence, but may modify other secured claims (11 U.S.C. § 1322(b)(2)). Notwithstanding the forgoing limitation, 11 U.S.C. § 1322(b)(3) authorizes the curing of any default on a secured claim—including a home loan. In addition, the Plan may provide for maintaining ongoing contract installment payments on a secured claim while curing default on such secured claim. 11 U.S.C. § 1322(b)(5).

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

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

11 U.S.C. § 1322(c) states:

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

Of note, 11 U.S.C. § 1322(c) would allow Debtor to modify the claim secured by the principal residence, but only if the claim matures before the completion of the Plan. There may be some solution available where Debtor extends the term of this Plan but includes in Plan provisions a tight deadline to achieve the refinance.

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 6%. Creditor's claim is secured by the Property and is only permitted to be modified pursuant to 11 U.S.C. § 1322(c), if applicable here.

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. Creditor notes that its claim is in default, but it conveniently omits the relevant fact that Creditor is highly oversecured as there is substantial equity in the Property. Therefore, the court does not include any risk adjustment in the prime rate of interest, in the event this claim is modified pursuant to 11 U.S.C. § 1322(c).

At the hearing, **XXXXXXX**

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

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

The Objection to the Chapter 13 Plan filed by Barry L. Monblatt and Ellen C. Monblatt, Trustees of the Monblatt Trust DTD 9-3-87 ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 18, 2025. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

<p>The Objection to Confirmation of Plan is sustained.</p>

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

1. The Plan payment may not be Joshua David Meenach and Whitney Elizabeth Meenach’s (“Debtor”) best effort under 11 U.S.C. § 1325(b). Mot. 1:23-27, Docket 17. Debtor received a tax refund in the amount of \$9,867.00 from their 2023 federal tax return. *Id.* The tax refund, however, is not listed in Schedule I as additional income, and the Trustee argues the refund should have been added to the Plan as additional payment. Mot. 2:3-8, Docket 17; Schedule I at 30, Docket 1.
2. Debtor’s Plan is not in compliance with Local Bankruptcy Rule 9004-1(c)(1)(B) because Debtor did not attach a signature. Mot. 2:11-16, Docket 17.
3. Debtor did not provide Trustee with 60 days of employer payment advices prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

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

DISCUSSION

Failure to Provide Disposable Income / Not Best Effort

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

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

According to Trustee, Debtor received tax refunds in excess of \$2,000.00, which should have been added to the Plan. Debtor's 2023 federal tax return shows that Debtor was entitled to a tax refund in the amount of \$9,867.00. Yet none of it appeared in Debtor's Schedule I.

The Plan proposes to pay a 0 percent dividend to unsecured claims, which total \$1,091.00, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals \$9,867.00. Thus, the court may not approve the Plan.

Debtor's Signatures

Local Bankruptcy Rule 9004-1(c) provides:

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

Here, Debtor did not comply with Local Bankruptcy Rule 9004-1(c)(1)(B) because Debtor's Plan does not contain an original wet signature nor an electronic signature. The Trustee however, concedes that should Debtor sign the plan and file it with the court, the matter can be resolved.

At the hearing **XXXXXXX**.

Failure to Provide Pay Stubs / Pay Advices

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

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.

19. [24-24898-E-13](#)
[DPC-1](#)

LYNETTE LISTER
Peter Macaluso

**CONTINUED MOTION TO DISMISS
CASE
12-20-24 [39]**

Item 19 thru 20

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

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 (*pro se*) and Office of the United States Trustee on December 20, 2024. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is denied without prejudice.

April 8, 2025 Hearing

The court continued the hearing on this Motion to afford new counsel time to come in and propose a Plan of reorganization. Trustee filed a Status Report on April 1, 2025. Docket 90.

Trustee notes Debtor is current and requests the Motion to Dismiss be denied, it appearing Debtor is not engaging in unreasonable delay.

Therefore, the Motion is denied without prejudice.

REVIEW OF THE MOTION

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

1. The debtor, Lynette Michelle Lister (“Debtor”), has filed a blank plan (with only a signature, date, and the Debtor’s name on the front), and the plan form is also the wrong form, being Official Form 112, and not EDC.003-080. Mot. 1:24-26, Docket 39.
2. Debtor failed to attend the meeting of creditors. *Id.* at 2:2-3.
3. Debtor has not provided photo identification, proof of social security, pay advices, or the last filed federal tax return to the Trustee as required under 11 U.S.C. §521(h). *Id.* at 2:4-6.
4. Debtor has not paid the Court for amending the master address list and has not paid any filing fees but has an order extending only the time to pay the filing fees. *Id.* at 2:7-9.
5. Debtor does not include reasonable living expenses on her budget. *Id.* at 2:10-13.
6. 12 proofs of claim have been filed where Debtor is not acting to move this case forward. *Id.* at 2:14-15.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 41.

DEBTOR’S RESPONSE

Debtor filed a Response on January 7, 2025. Docket 49. Debtor states she has paid an installment filing fee, she has filed a correct Plan, and she has now provided a copy of her drivers license and social security card.

DISCUSSION

Blank Plan

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor initially proposed a plan that did not provide the required information and Plan terms.

Debtor filed an Amended Plan twice on January 14, 2025. Dockets 50, 51. Reviewing the last Amended Plan filed, Dckt. 51, it provides:

- A. Monthly Plan payments of \$516 for 60 months. Plan, ¶¶ 2.01, 2.03.

- B. No payments on the Class 1 Secured Claim for which it is stated there is an \$8,000 arrearage. *Id.*; ¶ 3.07.
- C. No other payments to creditors are provided for in the Plan.

There are seventeen proofs of claim that have been filed in this Case, the one secured claim and sixteen unsecured claims.

Debtor has proposed a plan payment of \$516 but has not proposed any other terms in the Plan, including payments to Classes 1–6 or a dividend amount to Class 7. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

Failure to Appear at 341 Meeting

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

Failure to Authenticate Identification Prior to Meeting of Creditors

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

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

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

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

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

Here, Debtor has not complied with this rule as Trustee informs the court she did not provide the required identification. That is cause for dismissal.

Debtor is delinquent based on the Amended Plan.

At the hearing, Debtor addressed the court, identifying some special issues that she is having to deal with in prosecuting this Case. The Debtor stated that she will seek out legal assistance, when through a consumer services program, like the Mc George Bankruptcy Clinic, or seeking out counsel to represent her.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on March 5, 2025.

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

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

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

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

20. [24-24898-E-13](#)
[PGM-1](#)

LYNETTE LISTER
Peter Macaluso

MOTION TO CONFIRM PLAN
3-1-25 [78]

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 and all creditors and parties in interest on March 1, 2025. By the court’s calculation, 38 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.
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The debtor, Lynette Michelle Lister (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid of total of \$0.00 thru January 2025 with plan payments of \$660.00 per month to commence February 25, 2025 for 57 months. Amended Plan, Docket 80. 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 18, 2025. Docket 87. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent one plan payment in the amount of \$660. *Id.* at 2:1-7.
 - 1. On this point, it appears Debtor has cured the delinquency.
- B. Debtor’s bankruptcy history of three cases in the previous year show this case is not feasible. *Id.* at 2:10-15.
- C. Debtor may be homeless, and Trustee is concerned Debtor living out of her vehicle is not sustainable. *Id.* at 2:17-21.
- D. Debtor is missing information other Schedules. For example, she has not disclosed items such as clothing in her Schedule A/B. Moreover, Debtor has not corrected the errors in her previous Schedules that misclassify some creditors as priority and fail to accurately describe others. *Id.* at 2:26-3:8.
- E. Finally, Debtor has not submitted her 11 U.S.C. § 521 documents, including pay stubs and tax returns. *Id.* at 3:10-18.

DEBTOR REPLY

Debtor filed a Reply on April 1, 2025. Docket 91. Debtor states:

- 1. Counsel subbed in on February 11 on a *pro bono* basis. *Id.* at 1:21-23.
- 2. Debtor files the case to keep her vehicle, in which she lives. She is current and has stable employment. *Id.* at 1:26-2:2.
- 3. Debtor will file the necessary Amendments before the hearing on this matter. *Id.* at 2:5-6.

DISCUSSION

Inaccurate or Missing Information

Debtor’s Schedules contain outdated or inaccurate information. 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). Debtor asserts these documents will be properly amended, but as of the court’s review of the Docket on April 3, 2025, no such amendments have been filed.

At the hearing, **XXXXXXX**

Failure to Provide Pay Stubs / Pay Advices

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P.

4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Tax Returns

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

The court recognizes Debtor's and her counsel's efforts in seeing this case succeed. At the hearing, **XXXXXXX**.

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

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

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

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

FINAL RULINGS

21. [23-21937-E-13](#) SHAUN/GENEVIEVE-MARIE DE MOTION TO MODIFY PLAN
[MET-1](#) FRANCIA 2-19-25 [\[30\]](#)
Mary Ellen Terranella

Final Ruling: No appearance at the April 8, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and other parties in interest, and Office of the United States Trustee on February 19, 2025. 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 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.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Shaun Emil De Francia and Genevieve-Marie Canseco De Francia (“Debtor”), have filed evidence in support of confirmation. *See Decl.*, Docket 32.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on March 25, 2025, simply requesting the amount paid to date through the Plan be clarified in the Order confirming the Modified Plan. Docket 41. Debtor filed a Reply on April 1, 2025, indicating they will clarify the amount paid in the Order confirming. Docket 44. 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, Shaun Emil De Francia and Genevieve-Marie Canseco De Francia (“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 19, 2025, is confirmed, as amended to state Debtor has paid a total of \$14,900 through February of 2025, month 28. 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.

22. 24-24151 -E-13 SLH-2	ERICK/DANIELLE HUTTON Seth Hanson	CONTINUED MOTION TO MODIFY PLAN 1-9-25 [35]
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Final Ruling: No appearance at the April 8, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on January 11, 2025. By the court’s calculation, 45 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.
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REVIEW OF MOTION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Erick Hernan Hutton and Danielle Hutton (“Debtor”), has filed evidence in support of confirmation. *See* Decl., Docket 37; Ex., Docket 38.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on February 11, 2025. Docket 40. Trustee states he does not oppose confirmation, but it appears Debtor did not serve the Plan as an independent document on the interested parties.

Trustee notes that Debtor did serve the Plan as an Exhibit to the Motion on interested parties. Debtor has noticed the hearing for April 8, 2025, to allow time to serve the Plan as independent document.

Debtor having provided notice of the April 8, 2025 hearing and notifying Creditors that they can file written opposition to the Motion to Confirm up to 14 days before April 8, 2025, the hearing is continued.

April 8, 2025 Hearing

The court continued the hearing as Debtor failed to file the Plan as a separate docket item entry and serve it on interested parties. The Docket reflects Debtor filed the Modified Plan as a separate docket item entry on February 13, 2025, and served it on interest parties. No parties objected.

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, Erick Hernan Hutton and Danielle Hutton (“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, 2025, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the April 8, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 19, 2025. 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Benjamin Arthur Ahlson and Brandee Renae Ahlson ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 22; Exhibits, Docket 23. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on March 24, 2025. Docket 27. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on February 12, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form,

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

24. [24-21190](#)-E-13
[BLG](#)-3

JOSE CORTES
Chad Johnson

**MOTION TO EMPLOY BANIQUED
REALTY, INC AS BROKER(S)
2-18-25 [\[42\]](#)**

Final Ruling: No appearance at the April 8, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on February 18, 2025. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Employ is granted.

Jose Arimas Cortes (“Debtor”) seeks to employ Baniqued Realty, Inc. (“Broker”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to market and sell the real property commonly known as 80 Gloria Court, Vallejo, CA 94590 (“Property”).

Ron S. Baniqued, a realtor at the firm, testifies that he has agreed to market and sell the Property. Mr. Baniqued testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl. ¶ 10, Docket 44.

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 employ Baniqued Realty, Inc. as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 45. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Jose Arimas Cortes (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, effective April , 2025, and Debtor is authorized to employ Baniqued Realty, Inc. (“Broker”) for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 45.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

Item 25 thru 26

Final Ruling: No appearance at the April 8, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 27, 2024. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss 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 Dismiss is denied without prejudice.

April 8, 2025 Hearing

The Motion was continued to be heard in conjunction with Debtor’s Motion to Confirm Amended Plan. Trustee filed a Status Report on March 14, 2025. Docket 81. Trustee requests this Motion be denied without prejudice, Trustee having filed a new Motion to Dismiss that more clearly seeks dismissal based on the events of this case. Therefore, the Motion is denied without prejudice.

REVIEW OF MOTION

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

1. The debtor, Wlodzimierz Jan Litwin (“Debtor”), is delinquent \$420 in plan payments. Mot. 1:25, Docket 30.

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

DEBTOR’S RESPONSE

Debtor filed a Response on January 7, 2025. Docket 40. Debtor acknowledges the delinquency but does not provide for curing the delinquency.

TRUSTEE’S REPLY

Trustee file a Reply on January 9, 2025. Docket 43. Trustee states Debtor's Response is ambiguous with no evidence in support. Trustee recommends dismissal, noting Debtor has not filed a new Plan since the court denied confirmation of the previous Plan.

DISCUSSION

Delinquent

Debtor is \$420 delinquent in plan payments, which represents less than a month of the \$2,100 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In confirming if Debtor has cured the delinquency, at the hearing, the Trustee reported that Debtor is current through January 2025.

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 6, 2025. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, the Trustee concurred with Debtor's request for a continuance so the new Plan can get promptly filed.

The hearing Motion to Dismiss is continued to 9:00 a.m. on March 5, 2025.

March 5, 2025 Hearing

The court continued the hearing on this Motion so Debtor could have a Plan filed. On February 26, 2025, Trustee filed a Status Report with the court requesting the Motion be granted. Docket 60. Trustee states Debtor is again delinquent, and Debtor has not filed an Amended Plan.

However, on February 27, 2025, Debtor filed the Amended Plan with supporting evidence and a Motion to Confirm. Dockets 63-66. At the hearing, counsel for Debtor has the confirmation hearing set for April 8, 2025.

The hearing Motion to Dismiss is continued to 2:00 on April 8, 2025 (Specially Set Day and Time), to be conducted in conjunction with the hearing on the Motion to Confirm the Chapter 13 Plan in this Case.

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

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

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

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

26. [24-24598-E-13](#)
[PGM-1](#)

WLODZIMIERZ LITWIN
Peter Macaluso

MOTION TO CONFIRM PLAN
2-27-25 [63]

Final Ruling: No appearance at the April 8, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on February 27, 2025. 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 Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Amended Plan is denied.

The debtor, Wlodzimierz Jan Litwin (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid of total of \$630.00 through January 2025 with plan payments of \$420.00 per month to commence February 25, 2025 for 57 months. Amended Plan, Docket 65. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on March 14, 2025. Docket 74. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan cannot be confirmed. The proposed payment of \$420 from business income is not supported by the evidence. There is no business

budget provided in support of the Motion, no showing of gross receipts and ordinary expenses. The Plan cannot be confirmed. *Id.* at 2:1-16.

DEBTOR’S REPLY

Debtor filed a Non-Opposition on April 1, 2025. Docket 84. Debtor acknowledges the Plan cannot be confirmed and a new Amended Plan will be on file shortly.

DISCUSSION

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, Wlodzimierz Jan Litwin (“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.