UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 9, 2024 at 2:00 p.m.

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1. 19-25167-E-13 PGM-9 | **TANYA NORFLES** / **Peter Macaluso** | **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)** **3-11-24 [169]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2024. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Therefore, service was 6 days late to provided sufficient notice. At the hearing, **xxxxxxx**

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

The Motion for Allowance of Professional Fees is ~~denied.~~

Peter G. Macaluso, the Attorney ("Applicant") for Tanya Norfles, the Chapter 13 Debtor ("Client"), makes a Request for the Allowance of Additional Fees in this case.

Fees are requested for the period December 7, 2022, through March 10, 2024. Applicant requests fees in the amount of $1,500.00. Motion, Docket 169, p. 1:22-26. Applicant is seeking a reduced amount of $1,500.00 when the total amount earned was actually $2,340.00. *Id.* at p. 2:11-15.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a non-opposition on March 25, 2024 at Docket 185. However, Trustee notes that Debtor's attorney has not included the level of detail regarding hours worked, or the fact that the court previously already granted a Motion for Additional Fees in the amount of $960 at Docket 123.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate were necessary in addressing issues that were not foreseeable at the time of filing, which include Applicant responding to Motions to Dismiss due to the Debtor missing plan payments, and working to get a Modified Plan confirmed due to Debtor's change in circumstances. Under the old Local Rule 2016-1 (c)(3), applicable in this case, the court will approve additional compensation to attorneys representing Chapter 13 debtors "in instances where substantial and unanticipated post-confirmation work is necessary." The court finds the services were substantial and unanticipated, and were beneficial to Client and the Estate.

FEES REQUESTED

Fees

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

General Case Administration: Applicant spent 7.8 hours in this category. Applicant reviewed and responded to multiple Motions to Dismiss, prepared and filed multiple Motions to Modify Plan, and had multiple meeting with the Debtor regarding the case.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter G. Macaluso	7.8	$300.00	$1,500 (discounted)
Total Fees for Period of Application			$1,500.00

Pursuant to a prior Motion for Allowance of Additional Fees filed on June 9, 2021, the court approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 fees in the amount of $900. This court approved that Motion on July 21, 2021, which covered the additional work Applicant performed up until April 21, 2021. Order, Docket 123.

Application	Interim Approved Fees	Interim Fees Paid
Motion for Allowance of Fees and Expenses	$960.00	$960.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$960.00	

The Motion provides the detail in the body of the Motion of the services provided and billing data. These hours worked related to addressing the Trustee's Motion to Dismiss, putting together a Modified Plan, filing the Motion to Modify the Plan and "Amended" Schedules, and getting the Plan Confirmed.

Debtor Has Filed Amended Schedule I
Which Corrects Her Income Information
As of the Filing of This Case.

Debtor filed Amended Schedules on March 13, 2024. Dckt. 180. In the Amended Schedule I, Debtor appears to correct an error in prior Schedule(s) I and correctly reports that since the August 16, 2019 filing of this case Debtor's actual monthly take-home pay has been $3,918, and not the $3,225 that was originally reported. That is an additional $700 a month for the past fifty plus months, which would equal an additional $35,000 for the funding of the Plan that has not been paid..

On Amended Schedule J Debtor states under penalty of perjury that her monthly net income to fund a plan has been only $700 a month and not the $2,160.00 she stated under penalty of perjury on Schedule J, Dckt. 1 at 44.

Clearly Debtor, as she now states under penalty of perjury, has not had the monthly net income to fund the confirmed Plans in this case, and must either be having someone else under the table fund the plans or has other undisclosed sources of income.

In reviewing the Docket, Debtor has defaulted on the monthly plan payments numerous times in this case. This may indicate that Debtor does not have "under the table monies" funding the Plan, but has significantly misstated her income to confirm Plans that Debtor and counsel knew were doomed to failure.

FEES ALLOWED

Fees

In considering this fee request, due to the incorrect financial information provided by Debtor during the past fifty (50) months of this Case, all the prior plans were based on incorrect financial information.

Given the less than ten months remaining in this case, it appears that no modified Plan is possible and the services rendered in connection with the one now before the court provide no value for the administration of this Case.

~~Thus, the court denies the Application for Fees.~~

While the court does not disallow the prior fees awarded applicant, no more fees are approved pursuant to this Application

~~**Reduced Rate**~~

~~Applicant seeks to be paid a single sum of $1,500.00 for its fees incurred for Client, a discount from the earned amount of $2,340. Additional Fees in the amount of $1,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.~~

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

~~Fees $1,500.00~~

~~pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney for Tanya Norfles, the Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that the Motion is~~ granted/denied ~~and Peter G. Macaluso is allowed the following fees as a professional of the Estate:~~
>
> ~~Peter G. Macaluso, Attorney employed by the Chapter 13 Debtor~~
>
> ~~Fees in the amount of $1,500.00~~

~~as the final allowance of additional fees pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor~~.

2.	**20-21969-E-13 TLA-3**	**CHRISTIAN/MACIE KIEFER Thomas Amberg**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG HARVEY FOR THOMAS L. AMBERG, DEBTORS ATTORNEY(S) 3-7-24 [75]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 7, 2024. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

At the hearing, **xxxxxxx**.

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

The Motion for Allowance of Professional Fees is granted.

Thomas L. Amberg Jr., the Attorney ("Applicant") for Christian Kiefer and Macie Kiefer, Debtor, ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Debtor was represented by a prior attorney, Lucas Garcia, who was paid all of his fees in relation to the case. Applicant has not accepted any fees to date in helping the Debtor finish their case. The Applicant asks that the fees be paid directly by Debtor as their Plan has been fully funded and the addition of these attorney's fees would extend it several months. Motion, Docket 77, ¶6.

Fees are requested for the period December 11, 2023, through March 7, 2023. Declaration, Docket 77, p. 1:15-18. Applicant's Disclosure of Compensation of Attorney for Debtor states that Applicant has agreed to accept $1,500.00 to perform limited services. Disclosure, Docket 56, ¶1. This disclosure is dated December 11, 2023.

Chapter 13 Trustee, David Cusick ("Trustee"), filed a non-opposition on March 20, 2024. Non-Opposition, Docket 83. Trustee states that they believe the fees to be fair and reasonable.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the

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

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

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

A review of the application shows that Applicant's services for the Estate include preparing and filing Debtor's property and helping the Debtor complete their Chapter 13 Plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant does not provide a task billing, as Applicant and Debtor agreed on a flat fee of $1,500.00 for the services provided. Applicant provides the declaration of Christian and Macie Kiefer to authenticate the assertions. Debtor considered Applicant's services to be actual and necessary for their case to conclude, including Applicant's communication with Debtor, and preparation and approval of a motion to sell. Declaration, Docket 78, ¶1.

Trustee filed a Notice to Debtor of Completed Plan Payments and of Obligation to File Documents on March 8, 2024. Notice, Docket 80.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $1,500.00 as fees for providing limited services to Client. First and Final Fees in the amount of $1,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid directly by the Debtor.

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

Fees $1,500.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Thomas L. Amberg Jr. ("Applicant"), Attorney for Christian and Macie Kiefer, the Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Thomas L. Amberg Jr. is allowed the following fees and expenses as a professional of the Estate:
>
> Thomas L. Amberg Jr., Professional employed by Chapter 13 Debtor:
>
> Fees in the amount of $1,500.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor. Debtor is authorized to pay this sum to Applicant directly with no further action by the Chapter 13 Trustee required.

3.	23-23572-E-13 CJK-1	**DUSTIN/MICHELLE PETRIE** **Candace Brooks**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY NEW RESIDENTIAL MORTGAGE, LLC** **11-27-23 [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, Chapter 13 Trustee, and Office of the United States Trustee on November 7, 2023. By the court's calculation, 15 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 9, 2024 Hearing

This matter was continued to allow the Debtor to complete the trial period on the loan modification.

Debtors filed an *Ex Parte* Motion to Approve a Trial Loan Modification with accompanying Declaration and Exhibits on February 14, 2024. On February 14, 2024, the Court issued an Order authorizing Debtors, retroactively, to enter into the Loan Modification Agreement. Exhibit A, Docket 31.

At the hearing, xxxxxxx.

REVIEW OF THE OBJECTION

New Residential Mortgage, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

> 1. Creditor has a secured interest in Debtor's real property commonly known as 3626 Indian Creek Rd, Placerville, California 95667-8923 ("Property"). Debtor is currently in an active forbearance under the terms of the mortgage beginning September 2023, which is expected to end on November, 2023, totaling approximately $8,768.88 in deferred payments. Debtor proposes to make payments under the forbearance agreement at the end of Debtor's mortgage loan. Plan, Dckt. 3 ¶ 7.01. Creditor objects to this provision of the Plan, arguing this modification is improper.

Dckt. 17.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of $440,586.77 in this case. POC 4-1. Debtor's Schedule D estimates the amount of Creditor's claim as $437,625.00 (Schedule D, Dckt. 1 p. 22) and indicates that it is secured by a deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 4 claim, but proposes to pay the Claim at the end of the mortgage loan, not during the life of the Plan.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it does not properly address repayment of the loan forbearance period of its Claim, 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.

Review of Specific Plan Terms for Creditor's Claim

The Chapter 13 Plan is funded by Debtor with monthly payments of $200. Plan, ¶ 2.0-1; Dckt. 3. The Additional Provisions, Section 7 of the Plan, provide:

> 7.01 Valon Mortgage Inc, successor to Caliber Home Loans Secured Claim.
>
> Class 4
>
> Valon Mortgage Inc., successor to Caliber Home Loans secured claim shall be treated as a Class 4 Claim as Debtors are current with their mortgage payments pursuant to the terms of a forbearance agreement with Valon Mortgage Inc., successor to Caliber Home Loans.

> Valon Mortgage Inc., successor to Caliber Home Loans claim is secured by a first deed of trust recorded against the real property commonly known as 3626 Indian Creek Road, Placerville, CA 95667 ("Collateral").
>
> For the first month of Debtors Chapter 13 plan (November 2023), Debtors shall pay $00.00 per month to Class 4 Creditor, Valon Mortgage Inc., successor to Caliber Home Loans, followed by Debtors' contractual mortgage payments of $2,922.96 per month, commencing in December 2023,and continuing for the remaining duration of the Debtors' Chapter 13 plan.
>
> Debtors mortgage payments for September, October and November 2023 in the amount of $2,922.96 are suspended pursuant to the terms of the forbearance agreement. The payments under the forbearance agreement shall be applied to the end of Debtors' mortgage loan.

Dckt. 3 at 7.

Creditor states that under the terms of the Forbearance Agreement, "[a]t the end of the forbearance, the arrears are due payable. Debtors have not been approved by New Residential to add the forbearance arrears to the end of the loan as such, the proposed cure is purely speculative." Objection; p. 2:20-22; Dckt. 17. The Declaration of Monica Hargrove is provided, in which she testifies that the forbearance amounts are due at the end of the forbearance, not the end of the loan.

The court could not identify a copy of the Forbearance Agreement in the record. Under the terms of the Note upon which the claim is based, it states that the last payment is due on this claim in May of 2052. Exhibit 2; Dckt. 19.

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

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

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

December 12, 2023 Hearing

At the hearing, the Parties agreed to continue the hearing in light of their efforts to get the amount of the claim clearly identified and provided for in the Plan.

January 23, 2024 Hearing

A review of the Docket on January 18, 2024 reveals that no new documents have been uploaded with the court. At the hearing, counsel for the Creditor says that a trial loan modification is in process and that the last payment to be made on the trial loan modification is in March 2024. Counsel for the Trustee does not oppose a continuance.

The hearing is continued to 2:00 p.m. on April 9, 2024.

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

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

4. 23-24590-E-13 DPC-2 — JON FENTON — D. Randall Ensminger — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS — 3-5-24 [34]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on March 5, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in any amount in excess of $1,686.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Jon Wesley Fenton's ("Debtor") claimed exemption of $2,977.59 in the Wells Fargo Bank Account ending in 1879 because under California law, Cal. Code Civ. P. § 704.070(b)(2) only allows an exemption of up to 75% of Debtor's paid earnings.

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.*

Trustee states that the Debtor may not claim the entire asset value as exempt as only 75% of the paid earnings that can be traced into deposit accounts are exempt. Docket 34, p. 1:26-28; *see Ford Motor Credit Co. V. Waters*, 83 Cal. Rprt. 3d 826, 827 (Cal. App. 2008) (holding under the previous law that "as a matter of law, when a judgment creditor opts to levy on a bank account to enforce a judgment, the judgment debtor is entitled to claim an exemption for 75 percent of the paid earnings that remain in the

deposit account on the date of the levy, as that balance is the paid earnings that are levied upon within the meaning of the exemption statute.")

It appears to the Trustee and to the court that Debtor does not earn paid earnings as defined by Cal. Code Civ. P. §§ 704.070(b)(2), 706.011 because he is CEO of the company Ultimate Video and Security Systems and receives dividend payments. Paid earnings are statutorily defined as:

> [E]arnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy. For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.

Cal. Code Civ. P. § 704.070(a)(2). Earnings as defined in Cal. Code Civ. P. § 706.011 are "compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise." CEO dividend payments do not appear to fit this statutory definition of paid earnings, not being compensation payable by an employer to an employee.

Debtor's non-filing spouse, however, earns paid earnings of $2,248 per month (Amended Schedule I, Docket 46 p. 1 line 4), so her salary can be exempt up to $1,686.

Debtor filed an Amended Schedule C on March 19, 2024, amending the exemption and claiming $1,686 as exempt pursuant to Cal. Code Civ. P. § 704.070, consenting to Trustee's Objection. Amended Schedule C, Docket 48 p. 10.

The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed in any amount in excess of $1,686.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemptions for the Wells Fargo Bank Account ending in 1879 under California Code of Civil Procedure § 704.070 are disallowed in any amount in excess of $1,686.

5. 20-22006-E-13 TLA-3 | BROOKS PARFITT Thomas Amberg | MOTION TO MODIFY PLAN 3-5-24 [81]

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 5, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx.

The debtor, Brooks Parfitt ("Debtor") seeks confirmation of the Third Modified Plan because he reports he has been struggling with increased costs and household expenses. Declaration, Dckt. 83 ¶ 5. The Third Modified Plan provides that $221,746.40 has been paid from May 2020 though February 2024, with payments of $6,443 per month for the remainder of the Plan. Modified Plan, Dckt. 84 § 7.01. 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 20, 2024. Dckt. 90. Trustee opposes confirmation of the Plan on the basis that:

A. There appears to be a post-petition mortgage arrearage delinquency in the amount of $887 for February of 2024. The Third Modified Plan specifies curing the post-petition mortgage arrearage in the amount of $1,774 for the months of December 2023 and February 2024. Trustee cannot fully assess feasibility without this number clarified. *Id.* at ¶ 1.

B. Debtor's proposed modified Plan no longer provides for the class 1 post-petition delinquency for Citizens Bank and Interactive Mortgage. Citizens Bank has a balance owed of $2,464.56 and Interactive Mortgage has a balance owed of $3,126.40. *Id.* at ¶ 2.

C. The Plan may not be under Debtor's best effort. The Plan proposes a payment increase from $5,400 to $6,443, but percentage to unsecured creditors remains at 4%. *Id.* at ¶ 3. Trustee calculates the percentage to unsecured creditors is actually 9.881%.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on March 31, 2024. Docket 95. Debtor states:

A. Debtor proposes to correct arrearage amounts and dates relating to the Class 1 arrears listed in the Order Confirming Plan. *Id.* at ¶ 2.

B. The Debtor does have language in Section 7.01(3) that states "All previous distributions by the Trustee are authorized." Debtor argues this allows Trustee to pay the post-petition delinquency claims of Citizens Bank and Interactive Mortgage. *Id.* at ¶ 3.

C. The Plan is in Debtor's best efforts as evidenced by the increased percentage to unsecured claims. *Id.* at ¶ 4.

DISCUSSION

Debtor having worked to address Trustee's concerns, 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, Brooks Parfitt ("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 Third Modified Chapter 13 Plan filed on March 5, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"),for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

**6. 23-20306-E-13 MRL-1 | SHIRLEY COOPER
Mikalah Liviakis | MOTION TO MODIFY PLAN
2-28-24 [45]**

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, parties requesting special notice, and Office of the United States Trustee on February 28, 2024. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Shirley Marea Cooper ("Debtor") seeks confirmation of the Modified Plan because Debtor became delinquent in her payments as she was unaware that her plan payment increased under the previously confirmed Plan. Declaration, Dckt. 47 ¶ 7. The Modified Plan provides for monthly payments of $3,025 fo 32 months with a 100% dividend to general unsecured claims. Modified Plan, Dckt. 49. 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 20, 2024. Dckt. 52. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor's Schedule I and J at Docket 30 are not marked supplemental. *Id.* at p. 1:26-28.

B. Debtor did not properly sign her Declaration at Docket 47 in accordance with Local Bankruptcy Rule 9004-1(c). *Id.* at p. 2:1-4.

DEBTOR'S REPLY

On April 1, 2024 Debtor filed a Reply to Trustee's Opposition. Docket 58. Debtor states:

A. Debtor's attorney inadvertently cut off Debtor's name under her signature; Debtor has refiled the Declaration correcting that error. *Id.* at ¶ 3.

B. Debtor has filed an amendment to the Schedules I and J with the proper box checked, indicating the Schedules are supplemental. *Id.* at ¶ 4.

DISCUSSION

Debtor has worked to address Trustee's concerns, correcting the errors in both the Declaration and Schedules.

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, Shirley Marea Cooper ("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 28, 2024 at Docket 49, 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.

7. 24-20313-E-13 DPC-1 | **KEANNA ALMEDA** / **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **3-8-24 [39]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on March 8, 2024. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. The debtor, Keanna Almeda ("Debtor"), is delinquent in plan payments to the Trustee in the amount of $470 with another $470 coming due before the Hearing. Docket 39 ¶ 1.

2. Debtor has family support obligations but has not provided Form EDC 3-088, Domestic Support Obligation Checklists. *Id.* at ¶ 3.

3. Debtor admitted she has employment, but has not filed a Supplemental Schedule I and J to update Trustee on the income. *Id.* at ¶ 4.

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

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $470 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Domestic Support Obligation

Debtor has not filled out the EDC.003-088 Domestic Support Obligation Checklist, despite indicating she has a domestic support obligation.

Inaccurate or Missing Information

Debtor's Schedules I and J contain outdated or inaccurate information because Debtor has received new employment. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

8. 23-23131-E-13 DIANE GARCIA MOTION TO CONFIRM PLAN
HDR-1 Harry Roth 2-15-24 [49]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors that have filed claims, and Office of the United States Trustee on February 15, 2024. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is ~~denied.~~

The debtor, Diane Garcia ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for a total of $9,870 having been paid for the first five months with monthly payments of $2,700 for the following 55 months. Amended Plan, Dckt. 54. The Amended Plan also calls for Debtor to make a lump sum payment no later than the end of month 59 in the amount of $2,772. *Id.* at § 7. General unsecured creditors are projected a 0% dividend. *Id.* at § 3.14. 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 26, 2024, stating that Debtor is delinquent $2,841.07 in plan payments. Dckt. 67 ¶ 1. Trustee submits the Declaration of Kristen Koo to authenticate the fact of delinquency. Decl., Docket 68.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $2,841.07 delinquent in plan payments, which represents approximately one month of the $2,700 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **XXXXXXX**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Diane Garcia ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

9. 24-20433-E-13 CAS-1 — MALLORY FOSTER — Mark Wolff — OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY, LLC — 3-18-24 [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, parties requesting special notice, and Office of the United States Trustee on March 18, 2024. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

Ford Motor Credit Company, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Mallory Foster's ("Debtor") proposed Plan will only pay 4% on Creditor's claim. This is below the prime interest rate. Docket 14, ¶ 8.

STIPULATION

On March 22, 2024 Debtor and Creditor filed a "Notice of Resolution of Objection to Confirmation" with the court. Docket 18. Debtor has increased the interest payment to 9%, which Creditor has signed and accepted.

The parties having worked constructively and diligently to resolve the Objection, the Objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Ford Motor Credit Company, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Mallory Foster's Chapter 13 Plan filed on February 2, 2024 at Docket 3, is confirmed as amended to include a 9% interest rate on Creditor's secured claim, Proof of Claim 2-1. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

10. 23-23242-E-13 PGM-3 | **BRYAN GALLINGER** Peter Macaluso | **MOTION TO EMPLOY MATTHEW V. BRADY AS ATTORNEY(S)** 3-13-24 [113]

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

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

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

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

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

The Motion to Employ is ~~granted.~~

Bryan Gallinger ("Debtor") seeks to employ Matthew V. Brady of Matthew V. Brady and Associates ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Counsel to prosecute the objection to Proof of Claim 1-1.

Debtor argues that Counsel's appointment and retention is necessary to object to Proof of Claim 1-1 as the "fees and charges are improper and violate the Law." Motion, Docket 113 ¶ 3.

Matthew V. Brady testifies that he will prosecute the objection to Proof of Claim 1-1 on behalf of the bankruptcy estate. Decl., Docket 115 ¶ 1. Matthew V. Brady 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. *Id.* at ¶¶ 10-12.

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.

In the Hourly Rate Fee Agreement filed as Exhibit A, Dckt. 116, which provides for Mr. Brady and his staff to be compensated on an hourly billing basis. Mr. Brady's is $350 an hour.

However, in his Declaration, Mr. Brady expresses his intent to request 6% of the gross proceeds from the sale of the "Property." Decl., Docket 115 ¶ 8.

Mr. Brady does not specify or otherwise define which property is to be sold in the Declaration, but the court assumes it is the real property commonly known as 9421 Fair Oaks Blvd., Fair Oaks, California, which is to be sold pursuant to the confirmed Plan at Docket 118. Moreover, Mr. Brady does not explain how he can both seek a percentage fee as well as an hourly commission in prosecuting the objection.

At the hearing, **xxxxxxx**

~~Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel 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 Matthew V. Brady as Counsel for the Chapter 13 Estate on the terms and conditions set forth in the Hourly Rate Fee Agreement filed as Exhibit A, Dckt. 116. 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 Bryan Gallinger ("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 xxxx, 202x, and Debtor is authorized to employ Matthew V. Brady of Matthew V. Brady and Associates ("Counsel") for Debtor on the terms and conditions as set forth in the Hourly Rate Fee Agreement filed as Exhibit A, Dckt. 116.
>
> **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.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

11. 24-20145-E-13 DONALD DUPONT

MOTION TO DISMISS OR CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7

11 thru 13 Pro Se

3-5-24 [51]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on March 5, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss or Convert 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 Dismiss or Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

NO DOCKET CONTROL NUMBER

Confidant Board, LLC ("Movant") is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number at all. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(c)(l).

THE MOTION

This Motion to Dismiss or Convert the Chapter 13 bankruptcy case of Donald Fred DuPont ("Debtor") has been filed by Movant, a secured creditor in the case. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor is not an eligible Debtor for relief under Chapter 13 as his debt limits exceeds the limits prescribed in 11 U.S.C. § 109(e). Docket 51, p. 3:16-4:24.

B. Debtor does not receive enough monthly income to be eligible for relief under Chapter 13. *Id.* at p. 5:1-18.

C. Debtor filed this bankruptcy case in bad faith. *Id.* at ps. 5:19-6:14.

David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on March 19, 2024, noting that Debtor is delinquent in plan payments. Docket 65.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

11 U.S.C. § 1307(c) provides:

> Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including –
>
> (1)unreasonable delay by the debtor that is prejudicial to creditors.
> . .

The list of enumerated reasons to dismiss a case does not include a case being filed or prosecuted in bad faith, but courts have decided bad faith is a valid reason to warrant dismissal or conversion. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) ("Although not specifically listed, bad faith is a 'cause' for

dismissal under § 1307(c).”); *See also In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) (“A Chapter 13 petition filed in bad faith may be dismissed ‘for cause’ pursuant to 11 U.S.C. § 1307(c).”). The following factors are considered in a bad faith analysis:

> (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner,
>
> (2) the debtor's history of filings and dismissals,
>
> (3) whether the debtor only intended to defeat state court litigation,
>
> (4) whether egregious behavior is present.

Leavitt, 171 F.3d at 1224 (internal citations omitted).

DISCUSSION

> 11 U.S.C. § 101(30) defines individual with regular monthly income, stating:
>
> The term “individual with regular income” means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker.

Creditor makes reference to the “means test” in its Motion, stating Debtor has listed discrepancies between the Schedules and the means test. As the Supreme Court has explained,

> Chapter 13 borrows the means test from Chapter 7, where it is used as a screening mechanism to determine whether a Chapter 7 proceeding is appropriate. Individuals who file for bankruptcy relief under Chapter 7 liquidate their nonexempt assets, rather than dedicate their future income, to repay creditors. *See* 11 U.S.C. §§ 704(a)(1), 726. If the debtor's Chapter 7 petition discloses that his disposable income as calculated by the means test exceeds a certain threshold, the petition is presumptively abusive. 11 U.S.C. § 707(b)(2)(A)(i). If the debtor cannot rebut the presumption, the court may dismiss the case or, with the debtor's consent, convert it into a Chapter 13 proceeding. 11 U.S.C. § 707(b)(1).

Ransom v. FIA Card Services, N.A., 562 U.S. 61, 85 at n. 1 (2011). The means test is used as a tool to determine whether a debtor may *remain* in a case under Chapter 7, not whether a debtor must be *compelled* to seek relief under Chapter 7. If a debtor fails the means test, then the debtor has disposable income that they can commit to a Chapter 13 Plan and must seek relief under Chapter 13. If a debtor passes the means test, then they may remain in Chapter 7, not having meaningful income.

That said, Debtor’s most recently filed Schedules I and J indicate Debtor has a net negative income of ($14,699.74) per month. Schedule K, Docket 23 p. 36 line 23c. Debtor cannot make meaningful plan payments with a net negative monthly income.

Moreover, Debtor's debt limits exceed those permitted under 11 U.S.C. § 109(e) (allowing individuals with a regular income having less than $2,750,000 in liquidated, noncontingent debts to seek relief under Chapter 13). Here, Debtor has estimated his debts as $3,310,509. Summary of Assets and Liabilities, Docket 23 p. 1 line 3b. There is no evidence that any of these debts are either unliquidated or contingent, and the court has seen nothing on the docket asserting these numbers are somehow higher than the actual liquidated debt or are otherwise misreported.

In considering creditor's argument that debtor has filed or prosecuted this case in bad faith, the court disagrees. Creditor mentions, among other reasons, that filing bankruptcy on the eve of a foreclosure and Debtor's inability to propose a feasible plan indicate Debtor has filed in bad faith. Docket 51, p. 6:7-11. However, a debtor filing bankruptcy to stop a foreclosure is a common motivator as to why debtors file. Often debtors bury their heads in the sand and avoid the collection efforts until it is too late, then turn to bankruptcy as a final resort to reorganize their debts. The Supreme Court has ruled only in cases of fraudulent conduct committed by an "atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor" should the court find Debtor to have prosecuted the case in bad faith. *Marram v. Citizens Bank of Massachusetts*, 549 U.S. 365, 374-75 (2007). Debtor here has not shown to be such an atypical litigant.

However, conversion is in the best interest of creditors and of the estate in this case. The debtor, although without regular monthly income, has substantial assets in this case, including a small operational winery situated on substantial real property. *See* Schedule A/B, Docket 23. It would be in the creditors' best interest to have the nonexempt equity in these assets fairly distributed in bankruptcy rather than torn apart by a multiplicity of state court lawsuits.

Therefore, the court finds there is cause to convert this case pursuant to 11 U.S.C. § 1307(c) as Debtor does not have regular monthly income to fund a Chapter 13 plan, and Debtor's debt limits do not authorize him to remain in Chapter 13. The Motion is granted, and the case is converted to a case under Chapter 7.

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 or Convert the Chapter 13 case filed by Confidant Board, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss or Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

12. 24-20145-E-13 **DONALD DUPONT**
Pro Se

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 11
1-30-24 [21]

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

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 parties of the ailing list and Office of the United States Trustee on February 23, 2024. *See* Order Setting Hearing, Docket 44. By the court's calculation, 13 days' notice was provided.

The Motion to Convert 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, Debtor requested a continuance.

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 11 is denied without prejudice, this court granting Creditor Confidant Board's Motion to Convert this case to one under Chapter 7 at the Hearing on April 9, 2024.

April 9, 2024 Hearing

Creditor Confidant Board has filed a Motion to Dismiss Case or Convert to One Under Chapter 7 which is also set for hearing at 2:00 p.m. on April 9, 2024. All Parties agreed to continue the hearing on this Motion to that same date and time to be heard together.

At the March 12, 2024 Hearing Debtor advised the court of the Chapter 11 attorneys he has contacted or who have been referred to him, and that he has not been able to engage such counsel in the past two weeks. A review of the Docket on April 3, 2024 reveals that Debtor has not hired any attorney in this case or otherwise uploaded any new filings with the court.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

This Motion to Convert the Chapter 13 bankruptcy case of Donald DuPont ("Debtor") has been filed by Donald DuPont ("Movant"), the Chapter 13 Debtor in *pro se*. Movant asserts, in his bare-bones Motion which improperly lacks a Docket Control Number (LOCAL BANKR. R. 9014-1(c)), that the case should be converted because Movant's noncontingent, liquidated debts exceed the $2,750,000 debt limit prescribed in 11 U.S.C. § 109(e). Docket 27.

However, on February 23, 2024, Movant, filed what could be a response to the Order to Show Cause why this bankruptcy case should not be dismissed. Debtor states that he has now concluded that he could remain in Chapter 13, asserting Movant will "negotiate with MCA creditors to take no more than 10 cents on the dollar and get the total secured and unsecured debt below the maximum allow of $2,750,000." Docket 47, p. 1.

With respect to the debts limits for an individual to qualify to file a Chapter 13 bankruptcy case, 11 U.S.C. § 109(e) provides:

> (e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than $2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than $2,750,000 may be a debtor under chapter 13 of this title.

As the court addressing in greater detail below, the debt limitations required that the individual must have less than $2,750,000 as of the date of filing the bankruptcy case that are:

1. Noncontingent,

2. Liquidated

debts. The individual cannot reduce the amount of the noncontingent (meaning that there are no remaining conditions for the creditor to assert the debt against the debtor) and liquidated (the amount being claimed are for damages that have occurred and not future, potential damages) "merely" because the debtor disputes the debt, no judgment has been entered, or that debtor believes that some basis to exist to reduce the amount of the debt (such as offsetting a counterclaim).

When the court continued the prior hearings, the court and debtor discussed the need for knowledgeable bankruptcy attorneys when someone has business debt, debts that are more complex than consumer credit card and other similar debts.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

Eligibility for Chapter 13 depends on the debt limits prescribed in 11 U.S.C. § 109(e), which states,

> Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than $2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than $2,750,000 may be a debtor under chapter 13 of this title.

Importantly, "the date of filing of the petition" determines eligibility. 11 U.S.C. § 109(e); *In re Scovis*, 249 F.3d 975, 985 (9th Cir. 2001).

Noncontingent debt is debt that is "based on and arises from events that occurred entirely pre-petition." *In re Aparicio*, 589 B.R. 667, 675 (Bankr. E.D. Cal. 2018) (internal citations omitted). If a debt will be triggered upon the occurrence or happening of an extrinsic event that occurs postpetition, the debt is contingent. *Id.* A debt is liquidated if "the amount of the debt is readily determinable," regardless if there are outstanding disputes regarding liability. *In re Slack*, 187 F.3d 1070, 1073 (9th Cir. 1999).

Debt limits as asserted on Schedules at the time of filing the bankruptcy petition determine eligibility. *In re Scovis*, 249 F.3d 975 (9th Cir. 2001). In *Scovis*, debtors initially scheduled their general unsecured debt in the amount of $40,499.83. Debtors then attempted to reduce that amount to $22,919.85 during the pendency of the case. The Bankruptcy Appellate Panel used the $22,919.85 number to calculate the general unsecured debt, and the Ninth Circuit Court of Appeals overturned that decision, holding instead the originally scheduled $40,499.83 number should be used in the calculation. *Scovis*, 249 F.3d at 985 ("Since we determine eligibility from the time the petition is filed, and since ordinary events occurring subsequent to the filing (e.g. paying down debt) do not affect the eligibility determination, the correct amount of general unsecured debt is $40,499.83.").

DISCUSSION

Movant has not provided the court with any legal analysis or persuasive authority in his Motion describing why the debts scheduled are either contingent or unliquidated. Movant has simply asserted he plans to negotiate down his debts, so he should stay in Chapter 13. The court disagrees. The Ninth Circuit

case law is clear; debt limits for eligibility purposes are determined at the time of filing the petition. Movant fails to address this fact in any of his Motions.

Movant's Schedules, filed on January 30, 2024, assert his noncontingent, liquidated debts in the amount of $3,310,509. Docket 23, p.1 line 3b. Any dispute over liability does not render this number unliquidated. Any attempt to reduce this number during the pendency of the case will not affect this number for purposes of determining Chapter 13 eligibility. By the court's calculation, this number exceeds the debt limits allowed under 11 U.S.C. § 109(e) by approximately $560,000.

At the March 12, 2024 hearing Debtor advised the court of the Chapter 11 attorneys he has contacted or who have been referred to him, and that he has not been able to engage such counsel in the past two weeks since the prior hearing in this case where the need for counsel were discussed.

Creditor Confident Board has filed a Motion to Dismiss Case or Convert to One Under Chapter 7 which is set for hearing at 2:00 p.m. on April 9, 2024. All Parties agreed that continue the hearing on this Motion to that date and time is proper.

The hearing is continued to 2:00 p.m. on April 9, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert the Chapter 13 case filed by Donald DuPont ("Movant"), the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 11 is denied without prejudice, this court granting Creditor Confidant Board's Motion to Convert this case to one under Chapter 7 at the hearing on April 9, 2024.

13. 24-20145-E-13 **DONALD DUPONT**
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY CONFIDANT BOARD, LLC
3-5-24 [54]

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 not Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on March 5, 2024. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

Creditor improperly noticed this Objection as a Local Rule 9014-1(f)(1) Motion. Notice, Docket 56. Creditor has also not set a Docket Control Number for this Matter. However, pursuant to Local Bankruptcy Rule 3015-1(c)(4), Creditor must set an Objection to Plan pursuant to Local Bankruptcy Rule 9014-1(f)(2), as well as assign a Docket Control Number for the Objection. Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(c)(l). At the hearing, **xxxxxxx**

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

The Objection to Confirmation of Plan is sustained.

Confidant Board, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Plan does not comply with 11 U.S.C. § 1322(b)(5) because it does not provide for any payment to Creditor on monthly obligations or on the arrearage. Docket 54, ¶ 1.a.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Supposed Arrearage of Creditor

Creditor has filed a timely proof of claim in which it asserts $0 in pre-petition arrearage. POC 14-1 ¶ 9. The court does not see how Debtor can fail to provide for the arrearage of Creditor if Creditor has not asserted any arrearage amount.

Failure to Provide for a Secured Claim

Creditor asserts a claim of $1,254,147.50 in this case. Debtor did not schedule Creditor's claim. *See* Schedule D, Docket 23. The Plan does not provide for this claim at all. *See* Plan, Docket 36.

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

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

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

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

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 Confidant Board, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

14. 22-21163-E-13 MRL-1 | **ALBERTO LEIVA** Mikalah Liviakis | **MOTION TO MODIFY PLAN** 2-23-24 [31]

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

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, parties requesting special notice, and Office of the United States Trustee on February 23, 2024. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Alberto Jose Leiva ("Debtor") seeks confirmation of the Modified Plan because Debtor's income and expenses have changed since the time he filed his Petition. Declaration, Docket 33, ¶ 6. The Modified Plan provides for a $788.33 monthly payment to be paid through the first 21 months, and $1,100.00 payments to be paid through the next 15 months, and a 12% percent dividend to unsecured claims totaling $64,029.00. Modified Plan, Docket 35. 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 26, 2024. Opposition, Docket 37. Trustee opposes confirmation of the Plan on the basis that:

A. The Trustee cannot determine the feasibility of the Modified Plan. *Id.* at p. 1:22-24.

B. According to Trustee's records, Debtor has paid a total of $17,330.00 into their Plan, whereas the Debtor's Modified Plan is proposing that $16,554.93 has been paid into their Plan. *Id*. at p.1:25-28. Trustee requests that the Debtor clarify the actual amount paid into the Plan. *Id.* at p. 2:1-7.

C. Debtor's Modified Plan proposes no less than 12% to unsecured creditors, but the Trustee calculates that the Modified Plan will pay approximately 15.737% to unsecured creditors. *Id.* at p. 2:8-12.

D. Trustee notes that Debtor's Schedule I and J are not marked supplemental. *Id.* at p. 2:17-19.

E. Debtor's Declaration is not properly signed because Debtor's name is not written under the signature line. *Id.* at p. 2:20-24.

DEBTOR'S RESPONSE TO TRUSTEE'S OPPOSITION

Debtor filed a Response to Trustee's Opposition on April 2, 2024. Response, Docket 40. Debtor responds to the Trustee's Opposition on the following basis:

A. Debtor requests that the total amount paid into the Plan is $16,554.93, and that the remaining 15 months will consist of payments in the amount of $1,100.00. *Id.* at ¶ 3.

B. The Debtor would like to agree to pay the Class 7 creditors no less than 15.737%, as opposed to the 12% proposed in the Modified Plan. *Id.* at ¶ 4.

C. Debtor's Attorney apologizes for failing to list Debtor's name underneath the signature line on Debtor's Declaration, and has since re-filed Debtor's Declaration. *Id.* at ¶ 5.

D. Debtor has filed an amendment to Debtor's Schedule I and J with the proper box checked that indicates that Schedules are supplemental. *Id.* at ¶ 6.

DISCUSSION

Amount Paid Into Plan

The Trustee opposes confirmation of the Modified Plan on the basis that it is unclear as to what amount the Debtor has paid into the Plan through February 2024. Opposition, Docket 37, p. 2:3-7. The Trustee's records show that the Debtor has paid $17,330.00 through February 2024, but the Debtor's Modified Plan is proposing that the Debtor has only paid $16,554.93 through February 2024. *Id.* at p. 2:1-2. Debtor has filed a Response, and in that Response the Debtor requests that the total amount to be paid through February 2024 be $16,554.93, which will be followed by payments of $1,100.00 for the remaining 15 months of the Plan.

At the hearing, **xxxxxxx**

Percentage to Unsecured Creditors

The Trustee opposes confirmation because the Modified Plan proposes to pay unsecured creditors no less than 12%. Opposition, Docket 37, p. 2:8-12. However, the Trustee calculates that the Modified Plan will pay approximately 15.737% to unsecured creditors. *Id.* Debtor's Response states that the Debtor would like to agree to pay no less than 15.737% to unsecured creditors as opposed to the 12% that the Modified Plan proposes, resolving this concern. Response, Docket 40, ¶ 4.

Schedule I and J Not Marked Supplemental

The Trustee notes that Debtor's Schedules I and J are not marked supplemental. Schedules, Docket 30. Debtor has since filed an amendment Schedule which has the supplemental box checked, resolving this concern. Schedules, Docket 43.

Failure to Comply With Local Rule 9004-1 (c)

The Trustee calls attention to the fact that Debtor's Deceleration does not comply with Local Bankruptcy Rule 9004-1 (c) because it is not properly signed. Declaration, Docket 33. Debtor has since re-filed his Deceleration with his name beneath the signature line and now properly complies with Local Bankruptcy Rule 9004-1 (c). Deceleration, Docket 41.

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, Alberto Jose Leiva ("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 23, 2024, as amended to provide~~ **xxxxxxx**~~, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan,~~ ~~stating the forgoing amendments,~~ ~~transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"),for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

15. 23-24065-E-13 HAW-1 MICHAEL MASTROMATTEO Helga White MOTION TO CONFIRM PLAN 2-21-24 [40]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 21, 2024. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx

The debtor, Michael Mastromatteo ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $5,000.00 monthly payments for 60 months and is 100% Plan. Amended Plan, Docket 42. 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 26, 2024. Opposition, Docket 51. Trustee opposes confirmation of the Plan on the basis that:

A. The Amended Plan is overextended. *Id.* at ¶ I.a. The Trustee calculates that the Amended Plan will take approximately 104 months to complete, which exceed the maximum length of 60 months. *Id.*

B. The total fees that Debtor's Attorney is charging appears to be greater than 25% of the retainer prior to filing which violates Local Rule 2016-1 (c)(3). *Id.* at ¶ Ib.

DEBTOR'S RESPONSE TO THE TRUSTEE'S OPPOSITION

Debtor filed a Response to the Trustee's Opposition on March 28, 2024. Response, Docket 57. Debtor responds on the following basis:

A. The Trustee's calculation improperly includes an untimely claim filed by Susan Kingsbury in the amount of $401,485.23. *Id.* at p. 1:17-21. Susan Kingsbury filed her proof of claim 43 days late and Debtor has filed an objection to the untimely proof of claim which will be heard on May 21, 2024. Motion, Docket 55. Excluding Susan Kingsbury's claim from the Amended Plan, the proposed $5,000.00 payments for 60 months will be sufficient to pay all timely filed claims, legal fees, and administrative costs. Response, Docket 57, p. 2:8-12.

B. Regarding the legal fee's in this case, the Debtor's Attorney still holds the Debtor's retainer in the Debtor's trust account, and will abide by the courts decision. *Id.* at p. 2:13-18.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Trustee asserts the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 104 months due to the fact that the Amended Plan does not account for a priority claim filed by Susan Kingsbury in the amount of $401,485.23. Claim No. 7-1. If Claim 7-1 is allowed, the Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

In this case, Debtor has filed a Motion objecting to the Claim filed by Susan Kingsbury, which will be heard by this court on May 21, 2024. Motion, Docket 55. The Debtor objects to the Claim on the basis that it was filed 43 days late. Response, Docket 57, p. 2:5-7. Debtor states that if the court grants the Motion objecting to Susan Kingsbury Claim, that the proposed $5,000.00 monthly payments for 60 months will be sufficient to fully fund the Amended Plan. *Id.* at p. 2:8-12.

At the hearing, **xxxxxxx**

Attorney Fees

Trustee objects to confirmation of the Amended Plan on the basis that it does not comply with Local Rule 2016-1(c)(3). Opposition, Docket 51, ¶ Ib. Local Rule 2016-1 (c)(3) says that an attorney cannot charge more than a 25% retainer prior to filing the Petition, but only if the attorney has opted into the no-look payment scheme. Debtor's Amended Plan states that Debtor's Attorney was paid $2,500.00 prior to the filing and is seeking additional fees of $2,500.00, but has opted out of the no-look scheme. Amended Plan, Docket 42, § 3.05. The fees that Debtor's Attorney is requesting therefore appear to comply with Local Rules, but can only be paid after the court approves such requested fees. Even still, Debtor's Attorney responded to the Trustee's Opposition by stating that they still hold Debtor's retainer in the client trust account and will abide by the court's decision.

At the hearing, **XXXXXXX**

~~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, Michael Mastromatteo ("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**

16. 24-20180-E-13 DPC-1 | **GUY ARCHBOLD** / **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **3-8-24 [23]**

16 thru 17

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2024. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor may not be able or willing to make the plan payments based on their current delinquency under the pending plan. Debtor has paid $0.00. The Debtor will have an additional payment of $1,450.00 due prior to the hearing. Debtor must pay $2,900.00 by the hearing to be current. Objection, Docket 23, ¶1,

2. Debtor has not provided the debtor's last filed federal tax return or tax transcript or a written statement that the documentation does not exist. *Id.* at ¶2. However, Trustee does concede that Debtor may not have to file tax returns where recent income is solely from Social Security.

3. Debtor may not be able to increase the payments by $870.00 in 12 months as called for by the Plan, as nothing on Debtor's schedule I indicates an expected increase in income within the year, and nothing on Debtor's Schedule J indicates an expected decrease in expenses within the year. No apparent means exist. *Id.* at ¶3.

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

Debtor has not filed Opposition to the Objection.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $1,450.00 delinquent in plan payments, which represents one month of the $1,450.00 plan payment. Declaration, Docket 25, ¶4. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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). Even if Debtor is not required to provide a tax return, Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, Debtor is already delinquent on the first payment due. Second, Debtor's proposed Plan disburses $1,450.00 per month for 12 months, and $2,320.00 per month for 48 months. Plan, Docket 13, §7. This is an increase of $870.00 per month.

Debtor's Schedule I lists $3,150.00 per month in Social Security income. Schedule I, Docket 12, line 8e. Debtor marked "No" to the question "Do you expect an increase or decrease within the year after you file this form?" *Id.* at line 13.

Debtor's Schedule J lists $1,700.00 per month in expenses. Schedule J, Docket 12, line 22. Debtor marked "No." to the question "Do you expect an increase or decrease within the year after you file this form?" *Id.* at line 24.

Debtor has not provided any evidence for how he will have an extra $870.00 a month to fund the plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan

is confirmable. 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.

17. 24-20180-E-13 JCW-1 | **GUY ARCHBOLD** / **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 3-12-24 [27]**

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

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 12, 2024. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Wells Fargo Bank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor is entitled to receive payments pursuant to a Promissory Note which matures on December 28, 2047 and is secured by a Deed of Trust on the subject property commonly known as 504 Silvaner Ct., El Dorado Hills, CA 95762 ("Property").

2. Guy Archbold's ("Debtor") Plan does not propose to pay the arrearage in full. Docket 27 ¶ 2.

3. Debtor's Plan includes a payment increase, increasing monthly payments from $1,450 to $2,320 beginning on month 13 and continuing thereafter. Debtor's schedules I and J do not predict Debtor having sufficient income for this price hike. *Id.*

4. Creditor's arrearage will only be paid beginning on month 13, but Creditor objects to this provision and requests the arrearage is paid in equal monthly payments over the life of the Plan. *Id.* at ¶ 3.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $36,308.03 in pre-petition arrearage. POC 4-1. The Plan only proposes to cure the arrearage in the amount of $36,000. Plan, Docket 13 § 3.07. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Furthermore, Debtor's Schedules I and J indicate Debtor only has monthly disposable income of $1,450. Schedule J, Docket 12 p. 21 line 23c. It appears Debtor cannot afford the payment increase to $2,320, thus being unable to pay Creditor's arrearage.

Creditor also objects on the basis that payments on its arrearage cannot be deferred to month 13 of the Plan. 11 U.S.C. § 1325(a)(5)(B)(iii)(I) states,

> (a) Except as provided in subsection (b), the court shall confirm a plan if—
> . . .
> (5) with respect to each allowed secured claim provided for by the plan—
>
> (A) the holder of such claim has accepted the plan;
>
> (B)
>
> (i) the plan provides that—
>
> (I) the holder of such claim retain the lien securing such claim until the earlier of—
>
> (aa) the payment of the underlying debt determined under nonbankruptcy law; or
>
> (bb) discharge under section 1328; and
>
> (II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

> (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and
>
> (iii) if—
>
> > (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and
> >
> > (II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or
>
> (C) the debtor surrenders the property securing such claim to such holder;

Creditor cites to this provision, as well as *In re Bea*, 533 B.R. 283 (B.A.P. 9th Cir. 2015), to support its contention that its arrearage must be paid immediately and may not be deferred. Creditor does not offer a pincite of the case to support its proposition. Upon the court's reading of *Bea*, the court has not found language that supports Creditor's contention. In fact, *Bea* posits, "the bankruptcy court has broad discretion to fix the commencement date for adequate protection payments. . . Accordingly, the timing for commencement of adequate protection payments is a fact-based determination depending on the circumstances of a particular case." *Bea*, 533 B.R. at 291. Moreover, 11 U.S.C. §1325 (a)(5)(B)(iii)(I) requires periodic payments in equal amounts, but says nothing of when the payments shall commence.

That said, the court also sees no explanation from Debtor as to why the adequate protection payments should be deferred for a year.

At the hearing, **xxxxxxx**

The court finds the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) because it fails to fully cure Creditor's arrearage and because it does not appear Debtor can afford the planned payment increase on month 13. 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 Wells Fargo Bank, N.A. ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

18. 24-20485-E-13 DPC-1 | **HARVINDER SINGH AND KULDIP KAUR** **Paul Bains** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **3-15-24 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on March 15, 2024. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. The debtor Harvinder Jeet Singh and Kuldip Kaur did not appear at the 341 Meeting of Creditors. Debtor's attorney advised Trustee that the debtor was having connection issues, and the meeting has been continued to April 18, 2024. Docket 15.

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

DISCUSSION

Trustee's objections are well-taken

Failure to Appear at 341 Meeting

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

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. 24-20391-E-13 DPC-1 — TERENCE CLARK AND KIRSTEN WASHINGTON-CLARK — Paul Bains — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 3-13-24 [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 parties requesting special notice, on March 13, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

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

1. Debtor is delinquent $3,590.00 in plan payments. Objection, Docket 16, ¶ 1. Debtor has paid $0.00 into the Plan and will need to pay $7,180.00 to bring the Plan current by the Hearing. *Id.*

2. Debtor has improperly used Cal. Code Civ. Pro. § 704.225 to claim a $1,200.00 exemption for the value of their clothes. *Id.* at ¶ 2.

The Chapter 13 Trustee, David Cusick ("Trustee"), submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 18.

DEBTOR'S RESPONSE

Debtor filed a Response to the Trustee's Objection on April 2, 2024. Response, Docket 20. Debtor responds to the Objection on the basis that:

1. Debtor made a payment to the Trustee on March 25, 2024 in the amount of $3,590.00. *Id*. at p. 1:19-21. Another payment of $3,590.00 was scheduled to be made on March 31, 2024, which the Trustee should receive by April 5, 2024. *Id.* This will bring the Debtor current on their Plan. *Id.*

2. An Amended Schedule was filed on March 12, 2024 which corrects the clothing exception. *Id.* at p. 1:23.

Debtor submits a Declaration to authenticate the facts alleged in the Response. Decl., Docket 22. Debtor states that they have made the first payment and that the second payments should be received by the Trustee on or before April 5, 2024. *Id.*

The Declaration does not provide testimony as to how Debtor had disposable income of $7,180 in March 2024 to fund the Plan. This may indicate that Debtor has such disposable income to fund the Plan in that amount every month.

At the hearing, **XXXXXXX**

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $3,590.00 delinquent in plan payments, which represents one month of the $3,590.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Here, Debtor states that the delinquency will be cured prior to the Hearing. Response, Docket 20, p. 1:20-22. Debtor submits documentation showing that a payment of $3,590.00 has been made to the Trustee, and that another payment of $3,590.00 was scheduled for March 31, 2024. Exhibit A, Docket 21.

As addressed above, counsel for Debtor addressed this large lump sum payment in one month as **XXXXXXX**

Improper Use of Exemption

Trustee objects to confirmation on the basis that Debtor improperly used Cal. Code Civ. Pro. § 704.225 to claim a $1,200.00 exemption for the value of their clothes. Objection, Docket, ¶ 2. Cal. Code Civ. Pro. § 704.225 is an exemption for money that is in a judgement debtor's deposit account for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

In this case Debtor's Attorney filed an Amended Schedule C on March 12, 2024 which now claims a $1,200.00 exemption for clothes under Cal. Code Civ. Pro. § 704.020, correcting the error. Schedule, Docket 15, p. 3.

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 overruled.

20. 24-20395-E-13 DPC-1 | **CHRYSTAL REYES** / **Carl Gustafson** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **3-13-24 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice, on March 13, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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. Trustee does not believe that the proposed plan payments are Debtor's best efforts and may not comply with the law. Objection, Docket 15, ps. 1:25-2:4.

2. Debtor lists as an expense her $913.00 monthly voluntary contribution for a retirement plan, and the Trustee believes that this monthly contribution is unfair to the unsecured creditors because the Debtor is receiving a significant amount each month at the unsecured creditors expense. *Id.* at ¶ 1.

3. Schedule J shows that Debtor is making direct payments on a 457 Loan, but the Debtor does not clearly identify the total amount of the loan and when the loan will be paid in full. *Id.* at ¶ 2.

4. There are inconsistencies as to the number of dependents the Debtor is claiming based on the various forms Debtor has submitted. *Id.* at ¶ 3.

The Chapter 13 Trustee, David Cusick ("Trustee"), submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 17.

DEBTOR'S RESPONSE

Debtor filed a Response to the Trustee's Objection on April 1, 2024. Response, Docket 19. Debtor responds to the Objection on the basis that:

1. The Debtor does not understand under which law the Trustee is basing its argument that the Debtor is not using their best efforts. *Id.* at ps. 1:17-2:21.

2. The Debtor's mother allows her to pay a lower rent on the condition that she make monthly payments into a retirement account. *Id.* at ps. 1:26-2:3.

3. The Debtor's loan repayment will not last for 60 months and was correctly listed on Debtor's Schedule J. *Id.* at p. 3:4-13.

4. The Debtor does not list her boyfriend as a dependent, but does list him as a household member. *Id.* at p. 3:14-19.

Debtor submits the Declaration of Esperanza Reyes, who is the mother of the Debtor, which states that Debtor's mother allows the Debtor to pay a lower rent on the condition that the Debtor makes a monthly contribution to a retirement plan. Decl., Docket 20. Debtor did not file a Certificate of Proof of Service to show her Response has been properly served.

DISCUSSION

Insufficient Plan Payments

Trustee alleges that the Plan is not feasible under 11 U.S.C. § 1325(a)(6) because the Debtor is not making their best effort in the proposed plan payment. Objection, Docket 15, p. 1:25-26. The Trustee believes that the Debtor should be paying a higher amount to the unsecured creditor, as opposed to the 8% that is proposed in the Plan. *Id*. at ps. 1:27-2:4. Debtor has a monthly disposable income of $372.45 yet proposes to pay $217.03 to unsecured creditors. *Id.* The Trustee believes this amount should be higher.

The Debtor responds to the Trustee by stating that the term "best effort" is absent from 11 U.S.C. § 1325. Response, Docket 19, ps. 1:22-2:21. Debtor states that the payment required to unsecured creditors is determined by 11 U.S.C. § 1325(b)(2), and that the Plan proposes to pay the sum determined by that section. *Id.*

The question here appears to be whether the retirement contribution renders the plan payments in violation of 11 U.S.C. § 1325(b)(2) by not committing all of Debtor's monthly disposable income.

In reviewing Schedule I, Debtor has a substantial gross monthly income of $8,807.00. Dckt. 1 at 32. From this Debtor lists the following necessary payroll deductions:

Taxes, Social Security, and Medicare.....($2,202.00) This is a 25% tax/withholding

Mandatory Retirement Plan Contribution...($546)

Voluntary Retirement Contribution.....($913) This is almost 100% more than the mandatory contribution and in addition to the Social Security withholding.

Insurance.....($304)

On Schedule I Debtor lists a $1,100 a month contribution by her Partner for household expenses. There is also a contribution from Debtor's Partner of $900 a month for a second car lease, insurance, and taxes.

The Retirement Contributions

The Trustee objects to the Plan because the Debtor has listed a $913.00 monthly contribution for a retirement plan in their Schedule I. Objection, Docket 15, ¶ 1. The Trustee believes that this monthly contribution comes at the expense of the unsecured creditors because the Debtor is paying herself a significant amount each month, while the unsecured creditors are receiving 8%. *Id.*

Debtor responds to the Trustee's Objection by stating that there is no allegation as to how this monthly contribution to a retirement plan prevents confirmation of the Plan under 11 U.S.C. § 1325. Response, Docket 19, ps. 1:25-2:3. Additionally, Debtor submits the Declaration of her mother, Esperanza Reyes, which says that the mother allows the Debtor to pay a lower rent on the condition that she makes this monthly contribution to the retirement plan. Decl., Docket 20. The mother does this so that the Debtor will invest in her future and will hopefully have the ability to achieve financial independence in the future, which will allow her to buy her own home. *Id.*

Congress provides that the Debtor must pay their projected monthly income into the Plan if the Plan does not provide for payment of 100% of the claims. 11 U.S.C. § 1325(b)(2). Congress then provides a statutory definition for "disposable income" for this computation, stating:

> (2) For purposes of this subsection, the term "**disposable income"** means current **monthly income received by the debtor** (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—
>
> (A)
>
> (i) **for the maintenance or support of the debtor** or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(3) **Amounts reasonably necessary to be expended under paragraph (2**), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; . . .

11 U.S.C. § 1325(b)(2), (b)(3).

On her Statement of Current Monthly Income Debtor states that her average monthly income is $10,094. Dckt. 1 at 45-47. This results in her having annual income of $121,131.72. *Id*. at 47. Debtor further states that the median annual income in California for a family unit as hers is $92,781.

Debtor's annual income is 130% of the California median income for a family unit as Debtor's.

This moves the consideration of Debtor's expenses to be computed as set forth in 11 U.S.C. § 707(b)(2)(A) and (B), which provide:

(2)
(A)

(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter], the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $9,075, whichever is greater; or

(II) $15,150.

(ii)

(I) **The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides**, as in effect on the date of the

order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor. **Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts**. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 302 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses. Such monthly expenses may include, if applicable, contributions to an account of a qualified ABLE program to the extent such contributions are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986) and if the designated beneficiary of such account is a child, stepchild, grandchild, or stepgrandchild of the debtor.

(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $2,275 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why

such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of—

(I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the filing of the petition; and

(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;
divided by 60.

(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

(B)

(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

(I) documentation for such expense or adjustment to income; and
(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

> (iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.
>
> (iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—
>
> > (I) 25 percent of the debtor's nonpriority unsecured claims, or $9,075, whichever is greater; or
> >
> > (II) $15,150.

Thus, it may be that this is a much more complicated Chapter projected disposable income computation that is based on the Internal Revenue expense amounts and not just what the Debtor and court may believe are reasonable and necessary.

With respect to expenses, while the court often echoes the testimony of Debtor's Mother that saving for retirement is important (Declaration, ¶ 3; Dckt. 20), the court notes several things in this situation.

First, Debtor's Mother threatens (both the Debtor and the court) that if the Daughter refuses to make the additional voluntary retirement contributions, Debtor's Mother and Father will raise the rent.

No information is provided as to the property being rented from Debtor's parents and if such property is consistent with someone in Debtor's dire financial straits. It may be that while Debtor's Mother may choose to have Debtor live in the property, such is too large and extensive of a structure then is reasonable for Debtor, her Partner, and one child.

Additionally, if a higher rent is appropriate, then it may be that the additional amounts should properly be paid by Debtor's Partner who jointly occupies the house.

Second, Debtor's Mother appears to have no fiscal concerns regarding a person (here the Debtor, her daughter) who has been driven to seek the extraordinary relief provided in Chapter 13 and flush away many of Debtor's obligations, that the Mother has no issues with Debtor and Debtor's partner each finding it necessary to lease late model Mercedes Benz at the following monthly costs:

1. Mercedes Benz GLE 350.....$870.38, which if leased for the 60 month term of the plan totals $52,222.

2. Mercedes Benz GL 250.....$642.24 which if leased for the 60 month term of the plan totals $38,534.

Through the proposed plan Debtor finds it not only reasonable, but necessary, to spend $90,756 to be able to drive around in two Mercedes Benz vehicles while not paying any significant portion of the ($162,773) of unsecured Debtor that Debtor has accrued.

The court also notes that Debtor's mother misses that Debtor has a 401(a) account with a balance of $101,242.48 and a 457(b) account with a balance of $61,385. Clearly Debtor has been saving for retirement while being unable to pay her debts.

Mercedes Benz Leases

Proof of Claim 4-1 has been filed for Mercedes-Benz Vehicle Trust. This claim is filed in the amount of ($6,582.92). POC 4-1; § 7. This is listed as an unsecured claim for a "Motor Vehicle Lease." *Id.*; ¶¶ 6, 7.

A copy of the thirty-six month lease is attached to Proof of Claim 4-1. It states that the lease ends on June 18, 2024, which is approximately two (2) months from the date of the hearing on the Trustee's Objection to Confirmation.

The Lease, § 2, states that the monthly lease payments are ($863.41). The vehicle being leased is identified as a 2021 Mercedes GLE350W4. Lease, p. 1; POC-4 at 4. This matches up with Debtor listing a 2021 Mercedes GLE 350 as Debtor's vehicle on Schedule A/B, § 3.1 (Dckt. 1). The value of this vehicle as listed on Schedule A/B is stated by the Debtor to be only $4,702.00. On Schedule I Debtor lists the monthly payment for this lease to be ($870.38).

The Lease Proof of Claim 4-1 states that at the end of the lease in June of 2024, there will be a turn in fee of ($595.00). Lease, § 3. The Lease further provides that Debtor will pay an excessive Wear and Use Charge of $0.25 per mile for the mileage during the lease that exceeds 36,000 miles. Lease, § 8. On Schedule A/B Debtor states that this vehicle had 37,928 miles on it as of the filing of this Bankruptcy Case on January 31. 2024. Dckt. 1 at 10.

For the first thirty two and one half months of the lease Debtor has averaged 1,167 miles a month (37,928 miles/32.5 months). For the remaining four months four and one half months of the lease, it is projected that Debtor will add another 5,251.5 miles to the vehicle, for a total of 7,179.50 overage miles for which an additional ($1,794.88) that will be owed Mercedes-Benz.

With Mercedes-Benz asserting a claim for only ($6,582.92), and with lease payments of ($863.41), as computed by this Creditor, and taking into account the turn in fee and over-mileage fees, this shows the balance due for the remaining term of the lease that expires in 2024.

Boyfriend's/Partner's
Mercedes Benz Lease
Consigned by Debtor

On March 12, 2024, Proof of Claim 8-1 was filed for Mercedes-Benz Trust for the lease of a 2021 Mercedes CLA250C. POC 8-1, Lease attached. The "Lessee" on this lease is Chrystal Jamille Reyes, the Debtor, and the "Co-Lessee" is William Arnett Broughton. The claim is stated to be an unsecured claim of ($4,550.70), "plus any other amount that ay be due at lease termination.

A copy of the lease is attached, and it states that the thirty-six month lease terminates on May 29, 2024. POC 8-1, p. 4. The monthly payment is stated on the lease to be $637.09. Lease, § 2. An additional charge of $0.25 per mile will be charged for mileage over 45,000 miles during the lease. Lease, ¶ 8. On Schedule A/B, ¶ 3.2 (Dckt. 1), Debtor states that this vehicle has only 24,000 miles on it.

On Schedule A/B the Mercedes CLA250 is listed, with a value of $6,808.00. Dckt. 1 at 10.

Lease Payments End

By June 2024 the substantial lease payments for two Mercedes-Benz vehicles will end for both the Debtor and the Debtor's Boyfriend/Partner. Debtor will be able to seek authorization from the court to incur debt for the purchase of a "debtor reasonable" vehicle and Debtor's Boyfriend/Partner will be able to slash his car expenses as well.

Payment to Mother

The court notes that on Schedule J Debtor lists that she "contributes" $100 a month to her 72 year old mother." This appears to be the same Mother that is threatening the Debtor and the court with raising Debtor's rent if Debtor is not allowed to make additional voluntary retirement plan payments of just under $1,000 a month.

At the hearing, **xxxxxxx**

Loan Repayment

Trustee notes that the Debtor lists in their Schedule J that she is making a direct monthly payment of $283.33 for a "457 Loan Direct Payment". Petition, Docket 1, p. 35. The Trustee takes issue with this because the Debtor does not clearly identify the total amount of the loan and when the loan will be repaid in full. Objection, Docket 15, ¶ 2. At the First Meeting of Creditors, the Debtor indicated that this loan would be paid off by September 2025, and the Trustee believes based on this information that the Debtor may have incorrectly deducted this on the means test. *Id.*

Debtor responds by stating that *In re Egebjerg*, 574 F.3d 1045 (9th Cir. 2009), the case Trustee cites for its position, actually directly supports Debtor's position. Debtor argues *Egebjerg* held that Congress gave Chapter 13 debtors the ability to deduct these type of payments from their disposable income calculation. Response, Docket 19, p. 3:4-14.

While both parties make reference to the *Egebjerg v. Anderson (In Re Egebjerg)* Decision, neither cites to or quotes the Bankruptcy Code provisions at issue. The court begins with 11 U.S.C. § 1322, which addresses the Contents of a Chapter 13 Plan, and specifically § 1322(f) which relates to the repayment of certain loans, which states:

> § 1322. Contents of plan
> . . .
>
> (f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute "disposable income" under section 1325.

As Congress directs, the court now cites to and quotes the provisions of 11 U.S.C. § 362(b)(19) which states [emphasis added]:

> (b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—
> . . .
> (19) under subsection (a), of **withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding** and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section **401**, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—
>
> > (A) to the extent that the **amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974** or is **subject to section 72(p) of the Internal Revenue Code of 1986**; or
> >
> > (B) **a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5**, that satisfies the requirements **of section 8433(g) of such title**;
>
> but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

In the Opposition Debtor's counsel argues that there is a 401k loan repayment being made and that pursuant to § 1322(f) allows the payment to be made. In paragraph 2 of the Opposition, Debtor's counsel states that the payments for the 401k loan are not by withholdings, but will be made by the Debtor. Debtor's counsel states:

> The Debtor's loan repayment deduction amount was averaged over the five years of the plan. $299.17 is deduction from the Form 122-2 line 41 but $283.33 is the amount included in the Debtor's schedule J at line 21 and explained at line 24 as **"The 401k loan is not deducted from Debtor's paystub. The amnt listed herein is the 60 mo. amortized pmnt."** Dkt. 1. The 401 (k) deductions were listed appropriately

Opposition, p. 3:10-14; Dckt. 19.

It is unclear how if there are no withholdings for the repayment of the loan, how the statutory requirement that there is a withholding of income from the Debtor's wages can be satisfied.

Additionally, no evidence has presented of this obligation to be repaid.

On a third point, on Schedule J Debtor states that there is a "457 Loan Direct Repayment." Dckt. 1 at 35. In the comments in ¶ 24 of Schedule J there is a reference to a 401k loan that is not deducted from

Debtor's wages/earnings. The court does not see on Schedule J any provision for the repayment of a 401k loan.

At the hearing, **xxxxxxx**

Inconsistency of Dependents Listed

Trustee states that there are inconsistencies between Form 122C-1 and 122C-2. Objection, Docket 15, ¶ 3. Form 122C-1 states that Debtor has 2 people in the household. Petition, Docket 1, p. 47. And Form 122C-2 states that the number of people that Debtor used to determine deductions from income is 3. *Id.* at p. 49. The Trustee states that the Debtor has a 5 year old daughter, and that she also has a boyfriend that contributes $1,100.00 per month to the household. Objection, Docket 15, ¶ 3. The Trustee is concerned that the Debtor is claiming her boyfriend as a dependent.

Debtor responds to the Trustee's Objection by stating that the Debtor does not list her boyfriend as a dependent, but does list him as a household member. Response, Docket 19, p. 3:14-20. Therefore, the Debtor believes that the forms were properly completed.

At the hearing, **xxxxxxx**

Contributions of Boyfriend/Partner of Debtor

On Schedule I and then Schedule J it states that Debtor's "boyfriend" pays $1,100 a month for his share: (1) of the rent, (2) food, and (3) utilities. On Schedule J Debtor lists there being only $800 a month in housekeeping supplies and food for these two adults and one child. Dckt. 1 at 35. If $100 a month is spent on "supplies," that leaves only $700 for the two adults and one child. If $150 a month is allocated to the child – which only allows for $1.50 per meal for the child; then that leaves only $250 a month for each adult – which allows only $2.77 per meal.

Moving to the rental contribution, it appears to be a very minor amount, and Debtor's Partner pays for half the electricity and gas, (the electricity and gas charges having been increased substantially going forward), water, sewer and garbage. If Debtor's Motion believes that the rent must be higher and will increase it if the Debtor and court do not allow the $913 a month voluntary retirement contribution, it appears that Debtor's Partner is the one who should be paying the increased amount. There is no reason why the Debtor, and more specifically her creditors, should be subsidizing the rent for her "Boyfriend"/Partner.

Thus, it appears that Debtor's Boyfriend/Partner is contributing very little for the lease, food, and utilities when compared to the reality of such expenses.

RULING

The court also notes that the person conspicuously absent in providing Testimony in opposition to the Objection and in support of confirming the Plan is the Debtor herself. From the way Debtor has chosen to present the opposition, it appears that Debtor's Mother, Esperanza Ryes, is running the "Reorganization Show."

As reviewed above, there appear to be several substantial financial inconsistencies in what the Debtor has presented to the court under penalty of perjury.

There is also some positive financial light for Debtor. By June 2024 Debtor will no longer be obligated on the two Mercedes-Benz leases which total ($1,513) a month. For the Debtor alone, for ($870.39) a month, that will be $10,444 a year freed up. If a reasonable amount of the monthly payment for the purchase or lease of a vehicle is half the Mercedes-Benz lease amount, that would free up $4,000 to $5,000 a month (allowing for registration and maintenance) a year to fund the Plan (which would provide over the remaining four and one-half (4 ½) years of the Plan at least an additional $18,000 in Plan payments (assuming only $4,000 a year is freed up after no longer having to pay for Debtor's Mercedes-Benz lease).

It appears that both the Debtor and the Trustee have their work cut out for them in addressing the Plan in this Case.

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**

21. 24-21358-E-13 PGM-1 | **CHARMAYNE SHULTZ** / **Peter Macaluso** | **MOTION TO IMPOSE AUTOMATIC STAY** / **O.S.T.** / **4-3-24 [11]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 3, 2024. By the court's calculation, 6 days' notice was provided. The court set the hearing for April 9, 2024, shortening the notice period. Dckt. 18.

The Motion to Impose the Automatic Stay 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. At the hearing ----------.

The Motion to Impose the Automatic Stay is granted.

Charmayne Lee Shultz ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 24-20386 and 24-20918) were dismissed on February 20, 2024, and March 25, 2024, respectively. *See* Order, Bankr. E.D. Cal. No. 24-20386, Dckt. 13, February 20, 2024; Order, Bankr. E.D. Cal. No. 24-20918, Dckt. 13, March 25, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed due to bad information given by her prior attorney. Although Debtor appeared in *pro se* in the prior cases, she testifies that she actually consulted a law group, Peter Law from Sky Country Services, to assist in the filings. Decl., Docket 13 ¶ 5. Apparently this Peter Law group charged her $2,400, directing her to file twice and handing her certain documents, without providing meaningful assistance in prosecuting the case. *Id.* at ¶¶ 5-6. She now has competent counsel to aid her in this process.

Further, her partner passed away recently who was contributing to the expenses. *Id.* at ¶ 2. Her home is facing foreclosure. *Id.* at ¶ 9. She has disposable income to effectively reorganize her debts and make meaningful payments. *Id.* at ¶ 10.

APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
>
> (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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.

DISCUSSION

Debtor's prior cases were dismissed after Debtor failed to timely file documents. However, Debtor explains why she was unable to prosecute her previous cases. It is understandable for a debtor to take advice from a group claiming to help with bankruptcy to stop a foreclosure sale. Even though prior counsel may have been unhelpful, Debtor has retained competent counsel in the present matter to diligently prosecute her case.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

The Motion is granted, and the automatic stay is imposed 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 Impose the Automatic Stay filed by Charmayne Lee Shultz ("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 imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

FINAL RULINGS

22. 24-20203-E-13 DPC-1 | **KRISTA GEDDES** **Douglas Jacobs** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 3-8-24 [17]**

22 thru 23

Final Ruling: No appearance at the April 9, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on March 8, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Krista Geddes ("Debtor") is $2,750 delinquent in plan payments and will need to have paid $5,500 to be come current by the hearing date. Obj., Docket 17 ¶ 1.

2. Debtor's attorney is seeking to front load some of his attorney's fees, contrary to Local Bankruptcy Rule 2016-1(c)(4)(B) which requires equal distributions during the life of the Plan. *Id.* at ¶ 2.

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

Debtor filed a non-opposition on March 22, 2024, agreeing the Plan should not be confirmed and stating her intent to file an Amended Plan. Docket 24.

DISCUSSION

Trustee's objections are well-taken

Delinquency

Debtor is $2,750 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Attorney's Fees

Local Bankruptcy Rule 2016-1(c)(4)(B) states, "[a]fter confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received." Where the Plan proposes to pay $217.61 per month, the Plan violates this rule because it will front load plan payments, thereby not paying attorney's fees in equal monthly installments over the term of the most recently confirmed Plan.

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.

23. 24-20203-E-13 KMB-1 | **KRISTA GEDDES** **Douglas Jacobs** | **OBJECTION TO CONFIRMATION OF PLAN BY CONSUMER PORTFOLIO SERVICES, INC.** **3-13-24 [21]**

Final Ruling: No appearance at the April 9, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 13, 2024. By the court's calculation, 22 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.

The Objection to Confirmation of Plan is sustained.

Consumer Portfolio Services, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Krista Geddes ("Debtor") fails to provide for Creditor's claim in her proposed Plan. Obj., Docket 21 p. 2:15-18.

Debtor filed a non-opposition on March 22, 2024, agreeing the Plan should not be confirmed and stating her intent to file an Amended Plan. Docket 26.

DISCUSSION

Creditor holds a secured claim in this case in the amount of $16,814.92 against a vehicle. POC 1-1. Debtor is not obligated to provide for this secured claim in her Plan. *See* 11 U.S.C. § 1322(b)(2) (explaining that a plan may modify the rights of a holder of a secured claim, but does not need to provide for a secured claim).

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

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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 Consumer Portfolio Services, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

24. 24-20346-E-13 DPC-1 | **RENEE ROSALES** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-13-24 [17]**

Final Ruling: No appearance at the April 9, 2024 Hearing is required.

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

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

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

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on April 23, 2024, to be conducted with the hearing on the Motion to Value Secured Claim.

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

1. Debtor's schedules contain inaccurate or missing information. Debtor admitted at the 341 Meeting that her son helps out in rent, contributing $500 per month, but this income is not scheduled. Debtor reports $0 for phone and internet, but she admitted at the 341 Meeting that she pays $19.95 per month for internet and $100 per month for her cell phone. Finally, it is unclear whether Debtor will receive a tax refund or end up owing taxes. Docket 17, p. 2:1-19.

2. The Plan relies on valuing collateral. If the Motion to Value is not granted, Debtor's Plan is underfunded. *Id.* at p. 2:20-26.

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

DEBTOR'S REPLY

Debtor filed a Reply on April 1, 2024. Docket 29. Debtor states she has filed Amended Schedules, and she requests a continuance of this Objection to April 23, 2024 to be heard in conjunction with the Motion to Value on which this Plan depends.

DISCUSSION

Debtor has filed Amended Schedules I and J at Docket 26, adding rent income and phone / internet expenses.

The court continues this Motion to April 23, 2024 at 2:00 p.m. to be heard in conjunction with the Motion to Value on which this Plan depends.

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 hearing on the Objection to Confirmation is continued to **April 23, 2024 at 2:00 p.m.**

25. 23-24048-E-13 TLA-1 | **SCOTT HINKLE AND JOSEPH WILCOX** | **MOTION TO MODIFY PLAN**
Thomas Amberg | **3-4-24 [21]**

Final Ruling: No appearance at the April 9, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 4, 2024. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Scott Hinkle and Joseph Wilcox ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 23; Exhibits, Docket 24. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on March 20, 2024. Dckt. 28. 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, Scott Hinkle and Joseph Wilcox ("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 March 4, 2024 at Docket 25, 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.

26. 23-23959-E-13 CRG-2 | **LASHUNDA PHILLIPS** / **Carl Gustafson** | **OBJECTION TO CLAIM OF VW CREDIT INC., CLAIM NUMBER 27** / **2-15-24 [40]**

Final Ruling: No appearance at the April 9, 2024 Hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, creditors that have filed claims, and Office of the United States Trustee on February 15, 2024. By the court's calculation, 54 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 27-1 of VW Credit Inc. d/b/a Audi Financial Services is sustained, and the claim is disallowed in its entirety.

Lashunda Kelly Phillips, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of VW Credit Inc. d/b/a Audi Financial Services ("Creditor"), Proof of Claim No. 27-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $62,115.27. Objector asserts that this claim is an exact duplicate of Claim 26-1; the same Creditor asserting the same amount against the same collateral, and Claim 27-1 was entered in the Docket on the same day.

David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition, agreeing that Claim 27-1 looked like an inadvertent duplicate of Claim 26-1. Docket 56.

DISCUSSION

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

Based on the evidence before the court, Creditor's Claim 27-1 is disallowed in its entirety as an inadvertent duplicate of Claim 26-1. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of VW Credit Inc. d/b/a Audi Financial Services ("Creditor"), Proof of Claim No. 27-1 ("Claim"), filed in this case by Lashunda Kelly Phillips, the Chapter 13 Debtor, ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 27-1 of Creditor is sustained, and the claim is disallowed in its entirety. Sustaining this Objection is without prejudice to Proof of Claim 26-1 filed by Creditor.

27. 23-23696-E-13 EVW-1 | **JARED GOODREAU** / **Eric Wood** | **MOTION TO CONFIRM PLAN** / **2-27-24 [45]**

Final Ruling: No appearance at the April 9, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 27, 2024. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Jared Goodreau ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 47. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a response indicating non-opposition on March 19, 2024. Dckt. 58. 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, Jared Goodreau ("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 27, 2024 at Docket 48, 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.

28. 24-20297-E-13 AP-1 | **LORELL LEAL** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY CITIBANK, N.A. 2-22-24 [12]**

Final Ruling: No appearance at the April 9, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on February 22, 2024. By the court's calculation, 47 days' notice was provided. 14 days' notice is required.

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

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Objection to Confirmation of Plan is sustained, Debtor having filed a subsequent amended Plan.

Citibank, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor has failed to utilize the correct form for his Chapter 13 Plan, and Creditor is unable to evaluate the treatment of its claim until the Debtor re-files the Plan utilizing the correct form. Objection, Docket 12, p. 2:20-24.

DISCUSSION

Creditor's objection is well-taken.

Wrong Plan Form

Creditor argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Creditor asserts that it is a secured claim. Debtor's form does not clearly identify Creditor's claim. The form therefore does not allow Creditor to determine if its claim is provided for in full over the course of the plan.

Debtor filed an Amended Plan on March 5, 2024, using the correct plan form. Plan, Docket 17. However, Debtor has not filed a corresponding Motion to Confirm Plan.

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

Unauthorized Practice of Law

The court is concerned here that Debtor's attorney in fact, Lisa Schlein, may be committing an unauthorized practice of law by representing Debtor in this bankruptcy case without an attorney at law. As the court has previously explained,

> While a power of attorney may allow a person other than the debtor appear in the case rather than the debtor, it does not allow the person who receives the power of attorney to act as the debtor's attorney. For someone participating in federal court to appear, the recipient must be represented by a licensed attorney. *See* 10 Collier on Bankruptcy ¶ 9010.02, which states:
>
> > A party may also appear through an authorized agent, attorney in fact, or proxy. However, these entities cannot perform any act that would constitute the unauthorized practice of law.

Civil Minutes, Docket 22 p. 2.

Filing of Amended Plan

On March 5, 2024, Debtor filed an Amended Chapter 13 Plan (Dckt. 17), which effectively withdraws the prior objection to plan from confirmation.

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 Citibank N.A. ("Creditor") holding a secured claim having been presented to the court, the Debtor having subsequently filed an Amended Plan (Dckt. 17), and upon review of the pleadings, files in this Case, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan (Dckt. 5) is not confirmed.