UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 22, 2025 at 2:00 p.m.

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1. 21-23880-E-13 DWL-1 | **PAUL/JANI BERIGTOLD** **Patricia Wilson** | **MOTION TO VACATE DISMISSAL OF CASE** **3-20-25 [36]**

DEBTORS DISMISSED: 03/07/25

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 creditors that have filed claims on March 21, 2025. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 Vacate is granted, and the order dismissing the case (Dckt. 33) is vacated.

Paul Stephen Berigtold and Jani Arlene Berigtold ("Debtor") filed the instant case on November 12, 2021. Docket 1. A plan was confirmed on January 20, 2022. Docket 13.

On January 17, 2025, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to plan payment delinquency. Docket 28. On March 5, 2025, a hearing on the Motion to Dismiss was held, and the Motion was granted. Docket 32. The ruling was final because Debtor did not file any opposition.

On March 20, 2025, Debtor filed this instant Motion to Vacate. Docket 36. Debtor explains that their attorney's office incorrectly informed them they had paid their Plan in full, and then due to a calendaring issue, Debtor's attorney failed to oppose the Motion to Dismiss. Mot. 2:3-6; 2:15-17.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

The Chapter 13 Trustee filed a Non-Opposition on April 8, 2025.

APPLICABLE LAW

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

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

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

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

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

DISCUSSION

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

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument. Counsel for the Debtor consistently files pleadings on time and this is a very unique occurrence which indicates the cause being a mistake or excusable neglect.

In the Motion it is stated that 33 of the 36 monthly payments had been made by the Debtor. The Motion states that the error occurred when Debtor's counsel's staff communicated to the Debtor in November 2024 that they were "'paid up' and not to send any more money." Motion, p. 2:1-4; Dckt. 36.

When the Motion to Dismiss was served, Debtor met with counsel and the error was identified. Then, a second error occurred due to calendaring issues and Debtor's counsel did not get an opposition filed. *Id.*; p. 2:15-17.

In this Case, Debtor is on the verge of having the Plan completed, there being only a 36 month Plan. The error is not asserted to have been due to an "economic calamity," but human error. The court recognizes that we are all human and all can err.

With Debtor being able to complete the Plan payments, the error having been due to a mistake or excusable neglect, and the Debtor having performed the Plan up to when the error occurred, cause exists to vacate the order dismissing this Case.

Therefore, in light of the foregoing, the Motion is granted, and the order dismissing the case (Docket 33) is vacated.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Paul Stephen Berigtold and Jani Arlene Berigtold ("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 court will enter an order vacating the prior Order dismissing this Case (Docket 33).

SEPARATE ORDER VACATING ORDER DISMISSING CASE

DCN: DPC-1

ORDER VACATING ORDER DISMISSING BANKRUPTCY CASE
AND
DISMISSING WITHOUT PREJUDICE
MOTION TO DISMISS BANKRUPTCY CASE

The court entered an Order on March 7, 2025, granting the Chapter 13 Trustee's Motion to Dismiss this Bankruptcy Case. Order; Dckt. 33. The Debtor promptly filed a Motion to Vacate the Order Dismissing the Bankruptcy Case in which the cause of the dismissal, default and failure to file an opposition, were explained as being caused due to mistake or excusable neglect. The court has granted the Motion to Vacate the Order Dismissing this Bankruptcy Case. The court has also reviewed the grounds for the dismissal, the Debtor having only three monthly payments remaining to complete the Plan, and that it does not appear that there are any financial impediments to the Debtor making those payments.

THEREFORE, upon review of the Motion to Vacate Dismissal and Order entered thereon, and good cause appearing;

IT IS FURTHER ORDERED that the Order of this Court Dismissing this Bankruptcy Case (Dckt. 33) is vacated in its entirety.

IT IS FURTHER ORDERED that the Trustee's Motion to Dismiss this Bankruptcy Case is dismissed without prejudice, this Bankruptcy Case to proceed in this court.

2.	**25-20559-E-13** **DPC-1**	**MELINDA MADIGAN** **Mikalah Liviakis**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** **4-3-25 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 3, 2025. By the court's calculation, 19 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.~~

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

1. Debtor did not sign the Plan. Opp'n 1:25-27.

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

Debtor's Opposition

Debtor filed pleadings in opposition on April 9, 2025. Dockets 17-19. Debtor states that the version of the Chapter 13 Plan was inadvertently filed without a signature. Debtor has filed the corrected signature page as Exhibit A at Docket 19.

DISCUSSION
Debtor's Signatures

Local Bankruptcy Rule 9004-1(c) provides:

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

Debtor inadvertently filed the unsigned version of the Plan. This mistake has been corrected, debtor filing the corrected signature page to be incorporated by reference to Debtor's Chapter 13 Plan on April 9, 2025. Docket 19.

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 is overruled, and Melinda Sue Madigan's ~~("Debtor") Corrected Chapter 13 Plan filed on April **xxxxxxx**, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court~~.

3. 24-20015-E-13 NATHANAEL PALAFAX MOTION TO MODIFY PLAN
TLA-2 Thomas Amberg 3-17-25 [46]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on March 17, 2025. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Nathanael Ronnie Palafax ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 48; Ex., Docket 49. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on April 8, 2025. Docket 53.

In his Response, Trustee simply asks the Debtor clarify the language in the Plan, changing the language in Section 7.01 to state: "Debtor shall pay a total of $7,062.00 from February 2024-March 2025, then $618.00 per month for the remainder of the Plan." Resp. 2:3-6.

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, Nathanael Ronnie Palafax ("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 17, 2025, is confirmed as amended in Section 7.01 to state: "Debtor shall pay a total of $7,062.00 from February 2024-March 2025, then $618.00 per month for the remainder of the Plan." 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.

4. 24-21910-E-13 DWL-4 **TAMMY ANDREWS** **Patricia Wilson** **MOTION TO VALUE COLLATERAL OF SISKIYOU CENTRAL CREDIT UNION 3-17-25 [75]**

Item 4 thru 6

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

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

Sufficient Notice not Provided. There has been no Certificate of Service filed with the Motion. The court is unable to determine which parties were served and when. At the hearing, **xxxxxxx**.

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

The Motion to Value Collateral and Secured Claim of Siskiyou Central Credit Union ("Creditor") is denied without prejudice.

The Motion filed by Tammy Marie Andrews ("Debtor") to value the secured claim of Siskiyou Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 77. Debtor is the owner of a 2017 Dodge Ram 1500 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $15,413 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 8, 2025. Docket 91. Trustee opposes on the following bases:

1. The Motion and the Plan provide conflicting valuations, the Plan providing a valuation of $15,000 in Class 2B. *Id.* at 2:4-5.

2. The loan is purchase money and was obtained in less than 910 days prior to the petition being filed. If. At 2:1-3.

3. There is no certificate of service. *Id.* at 2:6-7.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 18, 2023, which is less than 910 days prior to filing of the petition. Proof of Claim 4-1 at 5.

Improper Modification of Creditor's Secured Interest

According to the hanging paragraph of 11 U.S.C. § 1325(a)(9),

> For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

The Vehicle was purchased within the 910-day period preceding filing, and the Vehicle appears it was acquired for personal use. Therefore, the court agrees that the Plan improperly limits the value of Creditor's secured claim. At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Tammy Marie Andrews ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is denied without prejudice.

5. 24-21910-E-13 DWL-5 — TAMMY ANDREWS — Patricia Wilson — MOTION TO CONFIRM PLAN — 3-17-25 [79]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 18, 2025. By the court's calculation, 35 days' notice was provided. 28 days' notice is required (Fed. R. Bankr. P. 2002(b)(3).

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, Tammy Marie Andrews ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid $16,362 as of March of 2025 with monthly payments of $2,805 to commence for the remainder of the Plan. Amended Plan, Docket 83. 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 April 8, 2025. Docket 88. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor failed to include in the Notice required language of Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). Opp'n at 1:25-2:6.

B. Debtors' Plan relies on a Motion to Value Collateral being filed for Siskiyou Central Credit Union ("Creditor"), listed in Class 2(B), to lower the claim from $35,996.65 to $15,000.00.

C. Debtor failed to attach a business income and expense statement to the supplement and the Trustee is concerned that the monthly net income of

$2,805.06 does not accurately reflect the Debtor's monthly net monthly income. *Id.* at 2:22-25.

D. There are issues with the attorney fees provisions. The Plan only reflects attorney's fees of $500, but the Disclosure of Attorney Compensation form reflects fees of $8,500. *Id.* at 3:3-11.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Creditor. Debtor has filed the Motion to Value being heard in conjunction with this Motion, and the court tentatively denied that Motion to Value. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Failure to File Business Documents Required by Schedule I

Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Local Rules Discussion

Local Bankruptcy Rule 9014-1(d)(3)(B)(iii) states:

> (iii)The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Debtor's Notice of Hearing at Docket 80 does not include this required language. At the hearing, **xxxxxxx**

Attorney's Fees

In clarifying the amount of attorney's fees in the case, 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, Tammy Marie Andrews ("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.

6. 24-21910-E-13 KMM-1 | **TAMMY ANDREWS** **Patricia Wilson** | **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **1-10-25 [56]**

CITIBANK, N.A. VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 10, 2025. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is xxxxxxx .

April 22, 2025 Hearing

The court continued the hearing on this Motion as the Parties at the prior hearing requested this Motion be heard in conjunction with the Motion to Confirm the Amended Plan. A review of the Docket on April 17, 2025 reveals nothing new has been filed with the court under this Docket Control Number.

At the hearing, xxxxxxx

REVIEW OF MOTION

Citibank, N.A., not in its individual capacity but solely as Owner Trustee of New Residential Mortgage Loan Trust 2020-RPL1 as serviced by NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Movant") seeks relief from the automatic stay with respect to Tammy Marie Andrews' ("Debtor") real property commonly known as t 230 N 14th Street, Montague, California 96064 ("Property"). Movant has provided the Declaration of Justin Alexander to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 58.

Movant argues Debtor has not made at least approximately three post-petition payments, with a total of $1,463.77 in post-petition payments past due. Declaration ¶ 7, Docket 58.

The Chapter 13 Trustee filed a Nonopposition on February 5, 2025. Docket 66.

DEBTOR'S OPPOSITION

Debtor filed a Declaration in opposition on January 28, 2025. Docket 64. Debtor explains the reason for the post-petition delinquency. Specifically, Debtor states that she spoke with Movant in November to make her post-petition payments to Movant. Resulting from that conversation, there was some miscommunication, and Debtor ended up not making payments for October or November. *Id.* at ¶ 6.

Debtor will be proposing a Modified Plan to address Movant's arrearage and to provide adequate protection. *Id.* at ¶ 9.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $115,747.13 (Declaration ¶ 4, Docket 58), while the value of the Property is determined to be $81,804.00, as stated in Schedules A/B filed by Debtor. Schedule A/B at 11, Docket 1.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

In this case, Debtor has explained the reason for her delinquency and noted that the post-petition arrearage will be cured going forward.

At the hearing, the Parties agreed to continue the hearing.

The hearing Motion for Relief from the Automatic Stay is 1:30 p.m. March 25, 2025.

March 25, 2025 Hearing

The court continued the hearing on this Motion to allow Debtor to cure the post-petition delinquency. Nothing new has been filed under this Docket Control Number as of the court's March 19, 2025 review of the Docket. Debtor has filed a Modified Plan, Motion to Confirm, and a Motion to Value on March 17, 2025.

At the hearing, counsel for creditor reported that she has spoken with Debtor's counsel and requests that the hearing be continued to be conducted in conjunction with the hearing on the Motion to Confirm Plan.

The hearing on the Motion for Relief from the Automatic Stay is continued 2:00 p.m. April 22, 2025, to be conducted in conjunction with the hearing on the Motion to Confirm Chapter 13 Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Citibank, N.A., not in its individual capacity but solely as Owner Trustee of New Residential Mortgage Loan Trust 2020-RPL1 as serviced by NewRez LLC d/b/a Shellpoint Mortgage Servicing ("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 for Relief from the Automatic Stay is **xxxxxxx**.

7. 25-20612-E-13 DPC-1 | **DAVID/JENNIFER OROZCO** | **Scott Johnson** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **4-3-25 [18]**

Item 7 thru 8

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 3, 2025. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor David Orozco and Jennifer Solange Orozco's ("Debtor") Plan relies on a Motion to Value Collateral being filed for USAA FSB, listed in Class 2(B), (Page 4), to lower the claim from $18,562 to $11,756. No such Motion has been filed. Opp'n 1:26-2:3.

2. Creditor Navy Federal Credit Union is misclassified in Class 4 where Debtor admitted at the 341 Meeting they were delinquent on that claim. *Id.* at 2:10-14.

3. The Plan likely fails a liquidation analysis where Trustee's review of the statements provided shows $104,371.42 in deposits into Debtor's personal account and various wire transfers that may or may not be part of the answers on the Statement of Financial Affairs. *Id.* at 3:5-8.

a. Some of these transfers appear avoidable, including the transfer of real property to Ana Aguilar.

4. Trustee still seeks the following business documents:

A) Six (6) individual months of Profit and Loss Statements for One Speed Ventures, LLC;

B) 2024, or if not filed, 2022 individual tax returns;

C) Two (2) most recent years tax returns for One Speed Ventures, LLC; and

D) Six (6) months of any financial statements not previously provided, such as Bank of America (acct #4467).

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 20.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of USAA FSB. Debtor has failed to file a Motion to Value the Secured Claim of USAA FSB, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Misclassified Claims

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

At the hearing, **xxxxxxx**

Liquidation Analysis

Trustee argues that Debtor fails a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." Here, General unsecured creditors will receive a 4% distribution, Plan, Docket 3 § 3.12, but Trustee estimates Debtor has at least $104,371.42 in non-exempt equity in assets of the estate.

At the hearing, **xxxxxxx**

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

A) Six (6) individual months of Profit and Loss Statements for One Speed Ventures, LLC;

B) 2024, or if not filed, 2022 individual tax returns;

C) Two (2) most recent years tax returns for One Speed Ventures, LLC; and

D) Six (6) months of any financial statements not previously provided, such as Bank of America (acct #4467).

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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. **25-20612-E-13 NLG-1** | **DAVID/JENNIFER OROZCO** | **Scott Johnson** | **OBJECTION TO CONFIRMATION OF PLAN BY NEW AMERICAN FUNDING, LLC** **3-12-25 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 12, 2025. By the court's calculation, 41 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.

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

1. Debtor David Orozco and Jennifer Solange Orozco's ("Debtor") Plan fails to cure the arrearage on Creditor's secured claim, and it improperly attempts to modify Creditor's secured claim by failing to provide for ongoing post-petition payments. Opp'n 3:1-12.

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 $8,128.93 in pre-petition arrearage. The Plan does not propose to cure that arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim.

See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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 New American Funding, 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.

9. 23-22540-E-13 SATINDER SINGH
Ryan Wood

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF $ 27269.24 WITH SONIA MADAAN; 3-13-25 [355]

DEBTOR DISMISSED: 09/13/24

The Motion is granted.

Sonia Madaan moves the court for payment of unclaimed funds in this case in the amount of $27,269.24. Application, Docket 355. Ms. Madaan seeks an Order from the court distributing the funds to her as the debtor-decedent, Satinder Singh, is deceased.

The Application for Unclaimed Funds includes an Affidavit for Collection of Personal Property pursuant to California Probate Code §13100 stating that Ms. Madaan; her two minor children, Shabd Madaan and Shivam Madaan; and her adult son Humas Madaan are the successors to Satinder Singh's estate. *Id.* at 13. The Affidavit also declares that the property of the decedent's estate does not exceed $184,500.00 and can therefore pass to the successors without need of probate proceedings. *Id.*

With respect to the Affidavit for Collection of Personal Property, California Probate Code §13100 states:

> Excluding the property described in Section 13050 and any property included in a petition filed under Section 13151, if the gross value of the decedent's real and personal property in this state does not exceed one hundred sixty-six thousand two

hundred fifty dollars ($166,250), as adjusted periodically in accordance with Section 890, and if 40 days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to one or more particular items of property:

(a) Collect any particular item of property that is money due the decedent.

(b) Receive any particular item of property that is tangible personal property of the decedent.

(c) Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

Ms. Madaan, mother of the decedent's minor children, and Humas Madaan testify that they are the successors to the estate as defined in California Probate Code §13006 in the Affidavit. California Probate Code §13006 states:

"Successor of the decedent" means:

(a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeeded to a particular item of property of the decedent under the decedent's will. For the purposes of this part, a trust is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.

(b) If the decedent died without a will, the sole person or all of the persons who succeeded to the particular item of property of the decedent under Sections 6401 and 6402 or, if the law of a sister state or foreign nation governs succession to the particular item of property, under the law of the sister state or foreign nation.

The Affidavit further contains the following language:

1. When properly filled Out, this form meets California requirements under Probate Code 13100-13117. You are required to transfer the described property to the affiant/declarant. You must pay the claimant's attorney fees if a lawsuit is necessary because you refuse. Cal. Prob. C. 13105.

2. You are discharged from all liability for the money or property when you transfer it based on good faith reliance on this affidavit. Cal. Prob. C. 13106.

3. When you rely in good faith on the affidavit, you have no duty to inquire into the truth of the statements in it. Cal. Prob. C. 13106.

Application at 13. California Probate Code § 13106 expressly provides such protection to a transferee, stating (emphasis added):

§ 13106. Protection of transferor from liability

(a) If the requirements of Sections 13100 to 13104, inclusive, are satisfied, **receipt by the holder of the decedent's property of the affidavit** or declaration **constitutes sufficient acquittance for the payment of money**, delivery of property, or changing registered ownership of property pursuant to this chapter **and discharges the holder from any further liability with respect to the money or property**. The **holder may rely in good faith on the statements in the affidavit or declaration and has no duty to inquire** into the truth of any statement in the affidavit or declaration.

(b) If the requirements of Sections 13100 to 13104, inclusive, are satisfied, the holder of the decedent's property is not liable for any taxes due to this state by reason of paying money, delivering property, or changing registered ownership of property pursuant to this chapter.

The requirement in California Probate Code §§ 13100 to 13104 are summarized by the court as follows:

A. Cal. Prob. § 13100

1. States the dollar limitation for property to which an Affidavit for Collection of Personal Property. Here, the Affidavit states that the property of the deceased debtor does not exceed $184,500. Affidavit, ¶ 4: Dckt. 35 at 13.

B. Cal. Probate § 13100.5.

1. Provides statutory definitions of "Transferee," "Transferred property," and "Unsecured debts."

C. Cal. Probate § 13101.

1. States the required information for an Affidavit for Collection of Personal Property, which are provided in the Affidavit for Collection of Personal Property attached to the Application for Payment of Unclaimed Funds.

D. Cal. Probate § 13102

1. Addresses when evidence of ownership by the decedent is required. Here, this was the Decedent Debtor's Bankruptcy Case which he funded with his own monies.

E. Cal. Probate § 13103.

1. Addresses when real property is the subject of the decedent's estate. Here, there was no real property in the bankruptcy case and the Affidavit for Collection of Personal Property affirmative states under penalty of perjury that there is no real property.

F. Cal. Probate § 13104.

1. Reasonable proof of identity of the persons executing the Affidavit for Collection of Personal Property is required. Here, relatively legible copies of driver's licenses are provided for Sonia Madaan and Humas Madaan. Dckt. 355 at 9-10. Both of these persons have been involved in prior bankruptcy court proceedings or represented by counsel in the bankruptcy court proceedings.

Also included in the Application is evidence that Ms. Madaan holds power of attorney over her adult son Humas Madaan specifically to act on his behalf regarding payment of these unclaimed funds. Application at 11.

Ms. Madaan has presented evidence she is entitled to the funds. The court has in good faith relied on the Affidavit submitted pursuant to California Probate Code §13100, finding Ms. Madaan, on behalf of herself and her children, is entitled to the funds. Therefore, the Application is granted, and the Clerk of the Court is ordered to pay Sonia Madaan unclaimed funds in the amount of $27,269.24.

ORDER FOR PAYMENT OF UNCLAIMED FUNDS

This matter comes before the Court pursuant to 11 U.S.C. §347(a), 28 U.S.C. §2042, and the application of Sonia Madaan, seeking payment of funds previously unclaimed in the above-entitled case. It appears from the application and supporting documentation that Sonia Madaan is entitled to the funds paid into Court.

Therefore,

IT IS ORDERED, the court relying on the Affidavit submitted with this Application in good faith pursuant to California Probate Code §13100, that the Clerk is directed to pay $27,269.24, plus any interest thereon, from the Clerk of the Court to:

Sonia Madaan.

The funds may be disbursed only after 14 calendar days from the entry of this court's order to allow for the appeal period to pass.

IT IS FURTHER ORDERED that the payment of the $27,269.24, plus interest, (the "Unclaimed Monies") is made to Sonia Madaan: (1) individually for her interest the Unclaimed Monies, (2) as the representative of her two minor children Shabd Madaan and Shivam Madaan, and (3) pursuant to a power of attorney for her adult son Humas Madaan. The Clerk of the Court may make the disbursement to "Sonia Madaan," with no additional language concerning her representative capacities.

10. 24-21762-E-13 LC-16 | **LINDA CATRON, Pro Se** | **CONTINUED MOTION TO SET ASIDE DISMISSAL OF CASE 1-21-25 [86]**

DEBTOR DISMISSED: 01/06/25

Item 10 thru 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.

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

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

Notice was not provided and Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

The Motion to Vacate Order Dismissing the Case is xxxxxxx.

April 22, 2025 Hearing

The court continued the hearing on this Motion and ordered Debtor to appear as Debtor missed the prior hearing due to medical conditions. A review of the Docket on April 17, 2025 reveals nothing new has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

Linda Catron ("Debtor") filed the instant case on April 29, 2024. Docket 1. No Plan was ever confirmed in the case, and the court sustained Trustee's Motion to Dismiss for various reasons, including failing to get a Plan on file and failure to provide documents related to the case. Order, Docket 84.

On January 21, 2025, Debtor filed this instant Motion to Vacate, claiming the following:

1. Creditor Shellpoint Mortgage ("Creditor") broke into her home and damaged it and did not rectify the damage.

2. Without the residence fixed, Debtor has been unable to prosecute state court litigation or the bankruptcy case.

3. Debtor is attempting to prosecute various other avenues of litigation.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

The Chapter 13 Trustee filed an Opposition on February 11, 2025. Docket 88. Trustee argues Debtor has not met her burden in requesting the court vacate its order, and Debtor has not prosecuted the case in any other meaningful way.

APPLICABLE LAW

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

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

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

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

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

DISCUSSION

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

Debtor has not presented any facts or argument that would permit the court to vacate its order dismissing the case. Debtor has explained some issues she is experiencing in prosecuting the case, including trying to work out various related lawsuits with Creditor. However, Debtor has not presented the court with any facts that would apply to Fed. R.. Civ. P. 60(b). There is no evidence of any mistakes, no new evidence uncovered, no fraud by any opposing party, etc.

At the hearing, the Chapter 13 Trustee notified the court that the Debtor possibly was not in attendance at the February 25, 2025 hearing due to medical issues.

The hearing on the Motion is continued to 2:00 p.m. on April 22, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Linda Catron ("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 Vacate is **XXXXXXX**.

11. 24-21762-E-13 LINDA CATRON CONTINUED MOTION TO SET ASIDE
LC-8 Pro Se 7-29-24 [40]

DEBTOR DISMISSED: 01/06/25

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. Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

The Motion to Vacate Relief From Stay Order is xxxxxxx.

April 22, 2025 Hearing

The court continued the hearing on this Motion and ordered Debtor to appear as Debtor missed the prior hearing due to medical conditions. A review of the Docket on April 17, 2025 reveals nothing new has been filed with the court. At the hearing, **xxxxxxx**

REVIEW OF MOTION

Linda Catron ("Debtor") files this Motion seeking an order of this court vacating the court's prior order issued on July 21, 2024, at Docket 36. The court's July 21, 2024 order confirmed that the automatic stay was not in effect in this case pursuant to 11 U.S.C. § 362(c)(4) and also granted creditor NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor") relief from stay pursuant to 11 U.S.C. § 362(d)(4). That order also granted relief from the co-debtor stay of 11 U.S.C. § 1301(a), and waived the fourteen-day stay of enforcement.

On July 29, 2024, Debtor filed this instant Motion to Vacate, re-alleging many of the same facts and arguments put forward in her Opposition to the Motion for Relief. *See* Opp'n, Docket 24. Debtor seeks to vacate the portion of the July 21, 2024 pertaining to relief granted pursuant to 11 U.S.C. § 362(d)(4).

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b). Debtor filed this Motion in pro se. The court summarizes the grounds upon which the relief is based as follows:

A. Debtor is an elder and Shellpoint has inflicted harm upon her. Motion, p. 2; Dckt. 40.

B. The judge was unable to have the Debtor explain the stress and confusion from being an elder and Debtor's medical condition. *Id*.

C. Debtor has demanded that the bank fix the vandalism they caused. *Id*.

D. Lender Bank of New York Mellon is part of a scheme that was conducting espionage on Debtor and violated bankruptcy stay orders. *Id*.

E. Lender has also been involved in hacking and stealing trade secrets and tampering with legal proceedings. *Id*.

F. Lender has been framing people after they violated the automatic stay, and then attempt to retroactively seek relief. *Id*.

G. Lender's misconduct includes violation of the Espionage Act, theft of trade secrets, and violation of privacy through illegal hacking and monitoring in violation of Computer fraud abuse act. *Id*.

H. The Attorney General is investigating this issue, which led to a murder to cover of the Lender's scheme. Debtor is a victim in this matter. *Id*.

I. If the order granting relief is not set aside, it will violate Debtor's settlement agreement, and put Debtor in violation of the agreement. *Id*.

J. Debtor is working on obtaining a loan modification. *Id*.

K. Debtor's loan was paid off in 2023 through a loan modification. *Id*.; p. 3.

L. The asset management company and it attorneys are framing and misrepresenting the trusts as coverup of crimes dating back 17 years which were uncovered. *Id*.

M. The Lender is part of an asset management company that has been fraudulently concealing their intentions and part of a conspiracy of cover up their crimes of violation of the bankruptcy automatic stay. *Id*.; p. 3-4. This includes using tactics as tools to conduct espionage and elder abuse and framing partners for the lender scheme to conduct crimes and illegal conversion of assets and equity using these methods through the bankruptcy court. *Id*.

N. The court should deny the for relied. *Id*.; p. 4.

Court's Prior Order

On July 21, 2024, the court entered an order granting relief from the automatic stay determining that there is no automatic stay in effect in this Bankruptcy Case pursuant to 11 U.S.C. § 362(c)(4). Order; Dckt. 36. 11 U.S.C. § 362(c)(4)(A) is the statutory provision enacted by Congress which provides that if

an individual has had pending and dismissed two prior bankruptcy cases in the one year preceding the bankruptcy case subsequently filed, then no automatic stay goes into effect in the subsequently filed case.

Prior to the current case before the court filed on April 29, 2024, Debtor had pending and dismissed the following cases:

1. Case 23-22522.....Dismissed October 19, 2023

2. Case 24-21762.....Dismissed April 11, 2024

These dismissals are within the one-year period preceding the filing of the current Bankruptcy Case on April 29, 2024.

It is Congress which has written the law to state that no automatic stay has gone into effect in this Bankruptcy Case. Congress also provides in 11 U.S.C. § 362(c)(4)(B), that a debtor may seek to impose (create) an automatic stay in a case where 11 U.S.C. § 362(c)(4)(A) prevents it from automatically going into effect.

The court also impose relief pursuant to 11 U.S.C. § 362(d)(4)(A), providing that no automatic stay would go into effect for a two year period after the entry of the above over in this case. However, such does not preclude a debtor from requesting that the stay be imposed in a subsequently filed case, as provided in 11 U.S.C. § 362(d)(4)(B).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on September 9, 2024. Docket 46. Creditor recounts the facts of this case and the facts surrounding their Motion for Relief, then states:

> 1. All of the arguments set forth by the Debtor in her instant Motion can and should be disregarded as they all could have been alleged in Debtor's Opposition to Relief Motion and/or at the time of the hearing on the relief Motion as such arguments are based on documents, theories or events that existed and/or occurred prior to the entry of the In Rem Order. *Id.* at 9:20-23.
>
> 2. Debtor's attempt to re-hash these arguments here simply cannot stand as Debtor is well aware that these arguments failed to pose any challenge to the Motion for Relief. *Id.* at 9:25-26.

DEBTOR'S REPLY

Debtor filed a Reply to the Opposition on October 15, 2024. Docket 52. Debtor makes no legal arguments and cites not law in support of the Reply. Debtor states:

> 1. Here, while not objecting to the relief as to Bruce Chadbourne, Mohammad Mahmood Khan, and Ayesha Khan, the Debtor seeks one last chance of redemption, be it a Loan Modification which was unjustly denied, or monthly payments. *Id.* at 3:7-10.

Debtor then states: "Debtor requests that the Trustee's Motion be granted." *Id.* at 3:11-12.

Debtor filed an additional Declaration on October 16, 2024. Docket 55. Debtor states she requests a continuance, stating she has recently relieved Mr. Macaluso as her counsel in this case. Debtor states she will have new counsel by November 15, 2024.

APPLICABLE LAW

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

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

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

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

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

DISCUSSION

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

In this case, Debtor has not offered any justifiable grounds to vacate the July 21, 2024 order. Debtor has not presented any facts that would justify Federal Rule of Civil Procedure Rule 60(b) relief. Instead, Debtor is rehashing the arguments that were used during the prosecution of the Motion for Relief. For example, Debtor again states Creditor engaged in vandalism of the Property, Creditor has engaged in espionage, and Creditor has violated the automatic stay. Those arguments were extensively addressed by the court in the Civil Minutes at Docket 34 and will not be readdressed in this present Motion.

At the October 22, 2024 hearing, the court addressed with the Debtor the legal issues presented relating to 11 U.S.C. § 362(c)(4) and there being no automatic stay. The Debtor noted that she is interviewing counsel and would be seeking to engage counsel.

The court continued the hearing in light of Debtor not having yet obtained counsel.

The hearing on the Motion to Vacate is continued to 2:00 p.m. on December 17, 2024.

February 25, 2025 Hearing

The court continued the hearing on this Motion to allow Debtor time to obtain counsel. Since then, Debtor obtained the counsel of Peter Macaluso, who shortly thereafter withdrew as counsel, which the court granted. Order, Docket 81. Debtor has not obtained replacement counsel.

At the hearing, the Chapter 13 Trustee notified the court that the Debtor possibly was not in attendance at the February 25, 2025 hearing due to medical issues.

The hearing is continued to 2:00 p.m. on April 22, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Linda Catron ("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 Vacate Order Granting Relief From the Stay is **xxxxxxx**.

12. 24-24264-E-13 CK-1 RACHEL BAGWELL Catherine King MOTION TO CONFIRM PLAN 3-4-25 [42]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on March 4, 2025. By the court's calculation, 49 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 without prejudice.

The debtor, Rachel Leilani Bagwell ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid $11,448 into the Plan as of February, 2025, with monthly payments of $2,872 to commence for 31 months, resulting in all claims being paid in full. Amended Plan, Docket 46. Debtor also specifies in her Amended Plan that she has already paid all delinquent real property taxes in full, and if Siskiyou County Tax Collector does not withdraw its claim, Debtor will file an Objection to Claim. *Id.* 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 April 7, 2025. Docket 54. Trustee appears to have mistakenly filed the same opposition pleadings twice. Dockets 57-59. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has proposed the Plan not in good faith. Debtor's original Plan and First Amended Plan proposed to pay Siskiyou County through the Plan. Now Debtor reports Siskiyou County has been paid in full in the amount of $27,100 with no explanation. Opp'n 1:22-2:2, Docket 54.

B. There is no business statement attachment in response to Debtor stating she has income from rental property or a business in Schedule I, Question #8a. *Id.* at 2:3-10.

C. Debtor has not listed her businesses on her Statement of Financial Affairs ("SOFA"). *Id.* at 2:2:25-3:2.

D. Debtor has improperly stated on her Schedule A/B her interest in Klamath Botanicals, Inc., is valued at 0$, when the real property that that business sits on is currently listed for $129,000. *Id.* at 3:3-9.

E. Trustee has disbursed $1,806.46 to Fifth Third Bank Claim 3 filed 11/12/2024 which was classified as Class 2(B) with a purchase money security interest in personal property; the second amended Plan does not authorize this prior disbursement. *Id.* at 3:10-14.

F. Trustee requires the following business documents:

A) Business Questionnaire for the landscape business and the corporation.

B) 2022 personal tax returns.

C) 2022 and 2023 corporate tax returns.

D) Cash Apps statements from March 2024 through May 2024.

E) Six (6) months of Profit and Loss statements for the landscape business and corporation.

DISCUSSION

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

11 U.S.C. § 1325(a)(3) states:

(a) Except as provided in subsection (b), the court shall confirm a plan if—
. . .
(3) the plan has been proposed in good faith and not by any means forbidden by law;

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

Here, Debtor's previous Plans paid Siskiyou County through the Plan. Debtor ignored those version of the Plan and appears to have made a lump sum payment of $27,100 to Siskiyou County without

any explanation. There is also the matter of the current version of the Plan not authorizing Trustee's disbursement to creditor Fifth Third Bank.

At the hearing, **xxxxxxx**

Failure to File Business Documents Required by Schedule I

Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Inaccurate or Missing Information

Debtor's Schedules A/B and Statement of financial Affairs contain outdated or inaccurate information. Debtor has not properly valued her interest in Klamath Botanicals, Inc., and Debtor has not listed her businesses on her SOFA. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

A) Business Questionnaire for the landscape business and the corporation.

B) 2022 personal tax returns.

C) 2022 and 2023 corporate tax returns.

D) Cash Apps statements from March 2024 through May 2024.

E) Six (6) months of Profit and Loss statements for the landscape business and corporation.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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, Rachel Leilani Bagwell ("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.

13. 24-22192-E-13 EJS-3 | **CHRISTOPHER TULLY** **Eric Schwab** | **OBJECTION TO CLAIM OF HEATHER TULLY, CLAIM NUMBER 2** **3-4-25 [69]**

Item 13 thru 16

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

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, and Office of the United States Trustee on March 4, 2025. By the court's calculation, 49 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 2-1 of Heather Tully is sustained, and the claim is disallowed for spousal support in the amount of $8,236.80 and for any secured status in the amount of $90,000.

Christopher Tully, Chapter 13 Debtor, ("Debtor," "Objector") requests that the court disallow the claim of Heather Tully ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be partially secured, partially unsecured entitled to priority treatment, and

a general unsecured claim for equalization of the division of community property in the amount of $95,000. Objector asserts that there are no documents attached to the Proof of Claim supporting any aspect of the claim.

Creditor's claims derive from a divorce and accompanying Marital Settlement Agreement ("Agreement") between Debtor and Ms. Tully. Debtor has attached a copy of the Agreement with this Objection, filed as Exhibit A, Docket 72.

According to the Agreement, Debtor was awarded the Stolkraft boat named the "Charisma," valued at $90,000. Ex. A at 5. The superior court then applied a *Watts* charge to Debtor's use and enjoyment of the Charisma, and ordered Debtor pay Ms. Tully $20,635.00. *Id.* It was also ordered that Debtor pay Ms. Tully spousal support in the amount of $156 per month pending further order of the court, the marriage being of a long duration. *Id.* at 9. An order was issued by the superior court on December 11, 2024, denying Creditor's request for spousal support and spousal support arrearages. Ex. C at 20. The order also ceased any ongoing spousal support payments. *Id.*

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.

Review of Proof of Claim 2-1
(Exhibit B in Support of Objection; Dckt. 72

Proof of Claim 2-1 appears to have been prepared and completed by Creditor in *pro se*. In response to Question 4 on Proof of Claim 2-1 as to whether it amends a prior Proof of Claim, Creditor states yes, and then cites to "Claim Number" "FL-2020-15." POC 2-1, § 4. This appears to be the Family Law Case number for the Yolo County Dissolution Proceedings. See Dissolution Judgment, Exhibit A; Dckt. 72.

Creditor states that there is a claim for $95,000.00, the basis of which is "Active Divorce Case # FL-2020-15 Mr. Tully Disregarded All Orders Filed on, 7-30-2022." POC 2-1, § 8.

Under § 9 of Proof of Claim 2-1 for a secured claim, when stating the claim is secured, Creditor has struck out the term "~~a lien on~~" property, then states that the vessel Charisma has a value of $90,000, that Creditor has a claim in the amount of $90,000 that is secured, and that the amount necessary to secure a default is $45,000.

Under § 9 of Proof of Claim 2-1 Creditor states that $8,236.80 of the Claim 2-1 is a priority domestic support obligation.

The only attachments to Proof of Claim 2-1 is a Mortgage Proof of Claim Attachment, in which the dollar amounts are show as "∅" and the balance is left blank. No court orders or other documents showing such obligations are attached.

Exhibit A filed in support of the Objection is a copy of the State Court Dissolution Judgement, to which property division and attorney's fees judgments/orders are attached. For the Judgment After Court Trial addressing the property division, it provides:

A. For Community Property

1. The boat "Charisma" was awarded to Debtor, with the State court finding that it had a value of $90,000 as part of Debtor's community property division. Exhibit A, Judgement, p. 2:11-15; Dckt. 72 at 5

2. Because Debtor has exclusive possession of the "Charisma" from January 1, 2020, through the date of the Judgment, Debtor owes Creditor $20,625.00 for such exclusive use during that period. *Id.*; p. 2:16-12. The Judgment concludes this paragraph with all capital bold letters that Debtor owes nothing else to Creditor relating to the "Charisma" after the last day of the dissolution trial.

3. The court approved the Stipulation for Partial Settlement of Community Property which identifies specific property. See Attachment 5 to Judgment; *Id*. at 12-13.

4. The Judgment then provides for the equal sharing of the community property value of Debtor's specified retirement benefits. Judgment, ¶ 6; *Id*. at 6.

5. The Judgment then divides specified community property assets to Debtor and to Creditor. Judgment, ¶¶ 7, 8, 9; *Id*. at 7-8..

B. Separate Property.

1. The Debtor's and the Creditor's separate property is specifically identified in the Judgment. Judgment, p. 8:23-9:7; *Id*. at 8-9.

C. Support Obligation.

1. The Judgment provides for $156.00 a month in Spousal Support to continue pending further order of the State court. Judgment, ¶ 12; *Id*. at 9.

D. Attorney Fees

1. Creditor was ordered to pay Debtor $6,000.00. Judgment, p. 6:18-23; *Id*. at 9.

Exhibit C is a copy of the State court "Minute Order," dated December 11, 2024, in the Dissolution Action which states that:

A. The "Motion Denied for SPOUSAL SUPPORT and/or ARREARAGES [RESP] Argued and submitted." Exhibit C; Dckt. 72 at 20 (emphasis in original).

1. The Respondent, the "RESP," is identified as Creditor.

B. "Spousal Support to be paid by [Debtor] is "TERMINATED." *Id*. (emphasis in original).

C. Motion for Sanctions and Attorney's Fees is granted and Creditor is ordered to pay Creditor $5,000. *Id*.

Debtor provides his testimony in a Declaration filed in support of the Objection to Claim. Dec.; Dckt. 71. In the Declaration, Debtor cites the court to the State Court Judgment and Settlement Agreement, referencing parts thereof. However, Debtor provides the court with little personal knowledge testimony. The Declaration does not state that he has paid all of the $156.00 monthly support obligation payments to Creditor. However, the Minute Order states that Creditor's Motion for Arrearages was denied, indicating that there were none owing as of the termination of the Debtor's support obligation.

Here, Creditor has not supported her claim with any of the required documentation. Claims based on writing must be submitted with the proof of claim. *See* Fed. R. Bankr. P. 3001(c). If the claim is secured, it would survive bankruptcy. But there is no evidence the claim is secured.

Here, Debtor has provided the court with testimony and evidence from the State Court Dissolution Action. The record reflects Creditor has no interest in the boat, Charisma, and so her claim is not secured by that asset. Rather, it reflects that there is a property division equalization obligation owed by Debtor to Creditor. The record further reflects that Creditor is not owed an spousal support arrearages or ongoing spousal support payments. Finally, as to the equalization payment of $20,635.00, Debtor has provided for this portion of the claim in the general unsecured claims in the proposed Plan. *See* Am. Schedule E/F at 14, Docket 39.

Based on the evidence before the court, Creditor's claim is disallowed as to any claimed amounts for spousal support in the amount of $8,236.80 and for any secured claim. Creditor's claim is allowed in the amount of $47,000.00 as a general unsecured claim.

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 Heather Tully ("Creditor"), filed in this case by Christopher Tully, Chapter 13 Debtor, ("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 2-1 of Creditor is sustained, and the claim is disallowed in its entirety as a priority claim and in its entirety as a secured claim. Creditor's claim is allowed as a $47,000.00 general unsecured claim.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

14. 24-22192-E-13 EJS-4 | **CHRISTOPHER TULLY** **Eric Schwab** | **OBJECTION TO CLAIM OF FIRST NATIONAL BANK OF OMAHA, CLAIM NUMBER 9** **3-4-25 [74]**

Final Ruling: No appearance at the April 22, 2025 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, and Office of the United States Trustee on March 4, 2025. By the court's calculation, 49 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 9-1 of First National Bank of Omaha a/k/a AmeriFirst Home is sustained, and the claim is disallowed as a secured claim and is allowed in the amount of $8,272.39 as a general unsecured claim.

Christopher Tully, Chapter 13 Debtor, ("Debtor," "Objector") requests that the court disallow the claim of First National Bank of Omaha a/k/a AmeriFirst Home ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim was originally asserted to be secured in the amount of $8,272.30. Objector asserts that there are no documents attached to the Proof of Claim supporting its secured status.

Indeed, Creditor amended its proof of claim on March 13, 2025, changing to unsecured status in the amount of $8,272.39. *See* POC 9-2.

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.

Here, Creditor has not supported its claim with any of the required documentation to show it was secured. Claims based on a writing must be submitted with the proof of claim. *See* Fed. R. Bankr. P. 3001(c). Creditor amended its proof of claim to match the relief requested in this Objection, there being no recorded abstract to secure this claim. Therefore, the Objection to Proof of Claim Number 9-1 of First National Bank of Omaha a/k/a AmeriFirst Home is sustained, and the claim is disallowed as a secured claim and is allowed in the amount of $8,272.39 as a general unsecured claim.

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 First National Bank of Omaha a/k/a AmeriFirst Home ("Creditor"), filed in this case by Christopher Tully, Chapter 13 Debtor, ("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 9-1 of Creditor is sustained, and the claim is disallowed as a secured claim and is allowed in the amount of $8,272.39 as a general unsecured claim.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

15. 24-22192-E-13 EJS-5 | **CHRISTOPHER TULLY** **Eric Schwab** | **MOTION TO CONFIRM PLAN** **3-4-25 [62]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on March 4, 2025. By the court's calculation, 49 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 granted.

The debtor, Christopher Allen Tully ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 60 monthly plan payments of $365 per month with a 10% dividend to general unsecured claims. Amended Plan, Docket 66. 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 April 8, 2025. Docket 81. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan does not provide for the secured portion or priority portion of creditor Heather Tully's claim. *Id.* at 2:1-12.

B. Debtor did not indicate the notice is being served pursuant to Local Bankruptcy Rule 9014-1(f)(1), and where the motion is required under LBR 9014-1(d)(3)(A) to set forth the legal grounds, Debtor should consider whether the basis of the notice should be provided to assist the parties, including the Court. *Id.* at 2:14-18.

DISCUSSION

The Opposition to confirmation is based on the fact that Ms. Tully's claim is not being provided for. However, the court has sustained Debtor's Objection to the claim of Ms. Tully. It appears the plan is property funded with this Objection to Claim being sustained.

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, Christopher Allen Tully ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on March 4, 2025, is confirmed. 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.

16. 24-22192-E-13 DPC-2 — CHRISTOPHER TULLY — Eric Schwab — CONTINUED MOTION TO DISMISS CASE — 2-5-25 [52]

Final Ruling

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed an Ex Parte Motion to Dismiss the pending Motion on April 11, 2025, Docket 84; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Christopher Allen Tully ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Docket 84, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is denied without prejudice, and the bankruptcy case shall proceed in this court.

FINAL RULINGS

17.	**23-21331-E-13** **DPC-2**	**RAKESH/ASHIKA REDDY** **Mark Wolff**	**MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7** **3-14-25 [88]**

THE CHAPTER 13 TRUSTEE MAY REQUEST THAT THIS MOTION MAY BE DISMISSED WITHOUT PREJUDICE RATHER THAN THE COURT CONTINUING THE HEARING

Final Ruling: No appearance at the April 22, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 14, 2025. By the court's calculation, 39 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The hearing on the Motion to Dismiss or Convert is continued to 2:00 p.m. on May 20, 2025, to be conducted in conjunction with the hearing on Debtor's Motion to Confirm Modified Plan.

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

1. The debtor, Rakesh Reddy and Ashika Reddy ("Debtor"), is delinquent $40,000.00 in plan payments. Conversion is in the best interest of creditors as there is $301,484.00 in various assets listed on Schedules A/B. Mot. 1:20-2:6, Docket 88.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 90.

DEBTOR'S RESPONSE

Debtor filed a Response on April 8, 2025. Docket 92. Debtor states they have a filed a Modified Plan and Motion to Confirm that addresses the delinquency. The Motion to Confirm is being heard on May 20, 2025.

DISCUSSION
Delinquent

Debtor is $40,000 delinquent in plan payments, which represents multiple months of the $9,000 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on April 8, 2025. Dockets 93, 96. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Docket 95. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Based on the foregoing, the court continues the hearing on the Motion to Dismiss to 2:00 p.m. on May 20, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss or Convert the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Dismiss or Convert is continued to **2:00 p.m. on May 20, 2025,** to be conducted in conjunction with the hearing on Debtor's Motion to Confirm Modified Plan.

18. 24-21046-E-13 TLA-1 LINELL WALKER Thomas Amberg MOTION TO MODIFY PLAN 3-17-25 [22]

Final Ruling: No appearance at the April 22, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on March 17, 2025. 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, Linell Letroy Walker ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 25; Ex., Docket 24. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on April 8, 2025. Docket 31. 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, Linell Letroy Walker ("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 17, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

19. 24-20463-E-13 DPC-1 | **ALLISON JOHNSON** **Gabriel Liberman** | **MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE** **3-14-25 [33]**

Final Ruling: No appearance at the April 22, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 14, 2025. By the court's calculation, 39 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). 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 Dismiss or Convert is granted, and the case is converted to one under Chapter 7.

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

1. The debtor, Allison Natalie Johnson ("Debtor"), is delinquent $22,470.00 in plan payments. Conversion is in the best interest of creditors as there is $130,858.00 in equity in rental real property located at 2638 Shasta Court, Fairfield, CA 94533 listed on Schedules A/B. . Mot. 1:20-2:6, Docket 33.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 35.

DISCUSSION
Delinquent

Debtor is $22,470.00 delinquent in plan payments, which represents multiple months of the $11,690.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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).

As Trustee has indicated there is substantial equity in the case in the event of conversion in this case, the court finds conversion is in the best interest of creditors and the estate.

Based on the foregoing, cause exists to convert this case. The Motion is granted, and the case is converted to one 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 The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss or Convert is granted, and the case is converted to one under Chapter 7.

20. 23-23865-E-13 ROBERT MAYER MOTION TO MODIFY PLAN
AB-1 August Bullock 3-5-25 [30]

Final Ruling: No appearance at the April 22, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors holding allowed secured claims on March 5, 2025. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Robert Vernon Mayer ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 32; Ex., Docket 34. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on April 4, 2025. Docket 37. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Robert Vernon Mayer ("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 5, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

21.	**20-20571-E-13 BLG-3**	**GEMIE/JULIETA BACANI Chad Johnson**	**MOTION FOR COMPENSATION FOR CHAD M JOHNSON, DEBTORS ATTORNEY(S) 3-14-25 [50]**

Final Ruling: No appearance at the April 22, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on March 14, 2025. By the court's calculation, 39 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).

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

The Motion for Allowance of Professional Fees is granted

Chad M Johnson, the Attorney ("Applicant") for Gemie Nabung Bacani and Julieta Mejia Bacani, the Chapter 13 Debtors ("Client"), makes a request for final approval of interim fees and expenses already awarded in the case in the amount of $3,774. Applicant does not seek an award of any additional fees or costs. The fees are requested for the period July 19, 2019, through June 18, 2020.

The Chapter 13 Trustee filed a Non-opposition on April 4, 2025. Docket 55.

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 General Case Administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 10.5 hours in this category. Applicant reviewed documents, prepared the plan, communicated extensively with client, prepared and sent documents to Trustee, and prepared client for and attended Trustee meeting.

The fees requested previously approved and now on final review 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**
Patricia Hadfield	5.0	$400.00	$2,000.00
Tina Perez	2.9	$185.00	$536.50
Chad M. Johnson	2.1	$400.00	$840.00
Jennifer Walden	0.5	$85.00	$42.50
Total Fees for Period of Application			$3,419.00

Costs & Expenses

Applicant also seeks the final allowance and recovery of costs and expenses in the amount of $355 pursuant to this application.

The costs requested approved on a final basis in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Credit Report Fee		$45.00
Court Filing Fee		$310.00
Total Costs Requested in Application		$355.00

FEES AND COSTS & EXPENSES ALLOWED
Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $3,419.0 are approved on a final basis 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.

Costs & Expenses

First and Final Costs in the amount of $355.00 are approved on a final basis 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 professional in this case:

Fees	$3,419.00
Costs and Expenses	$355.00

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 Chad M Johnson, the Attorney ("Applicant") for Gemie Nabung Bacani and Julieta Mejia Bacani, the Chapter 13 Debtors ("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 Chad M Johnson is allowed the following fees and expenses as a professional of the Estate:
>
> Chad M Johnson, Professional employed by the Chapter 13 Debtor

Fees	$3,419.00
Costs and Expenses	$355.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor. As the Chapter 13 Trustee has paid these fees in full through the completed Plan, there are no further payment distributions to be made.

22. 24-25191-E-13 JLK-1 — DORINDA MILLER, James Keenan — MOTION TO CONFIRM PLAN — 2-27-25 [24]

Final Ruling: No appearance at the April 22, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on February 27, 2025. 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 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 ,Dorinda Marie Miller ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 26. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on April 3, 2025. Docket 29. 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, Dorinda Marie Miller ("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, 2026, 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.