UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 7, 2024 at 2:00 p.m.

1.	**24-20297-E-13** **DPC-2**	**LORELL LEAL** **Pro Se**	**OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **4-2-24 [27]**

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

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 (*pro se*), parties requesting special notice, and Office of the United States Trustee onApril 2, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety, without prejudice to Debtor filing a further amended Schedule C. Debtor's Amended Schedule C at Docket 38 still fails to specify dollar amounts claimed exempt.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Lorell Leal's ("Debtor") claimed exemptions under California law because Debtor failed to provide specific exemption code sections or a

specific dollar amount claimed exempt. California Code of Civil Procedure §§ 704.020, 704.080, 704.110. 704.020, and 704.040 do not allow claiming 100% of fair market value and require the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed. Docket 1 p. 21.

On April 19, 2024, Debtor filed an Amended Schedule C, that still has not resolved Trustee's objection. Docket 38. Specifically, Debtor has still not claimed real dollar amounts in almost every claimed exemption besides the homestead exemption, in violation of California law.

The Trustee has filed an Objection to Claim Exemption for the Amended Schedule C. Obj.; Dckt. 52.

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

Here, Trustee's objection to Debtor's original Schedule C is sustained. Debtor has filed the Amended Schedule C on April 19, 2024, which does not survive this Objection for the same reasons as the original Schedule C. Debtor cannot claim "100% of fair market value" and must instead specifically mention a specific dollar amount claimed exempt.

The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed in their entirety.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by the Chapter 13 Trustee, David P. Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety, Debtor having filed an Amended Schedule C at Docket 38 that still fails to specify dollar amounts claimed exempt.

2. 15-27115-E-13 PLC-1 — DAVID/DARLENE SANDOVAL — Peter Cianchetta — MOTION TO AVOID LIEN OF DISCOVER BANK — 4-22-24 [50]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on April 22, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted, and the lien is avoided in its entirety.

This Motion requests an order avoiding the judicial lien of Discover Bank f/k/a Greenwood Trust Company ("Creditor") against property of the debtor, David Elliot Sandoval and Darlene Isabell Sandoval's ("Debtor") real property commonly known as 6 Datoro Ct. Sacramento, California 95833 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,216.23. Exhibit 2, Docket 53. An abstract of judgment was recorded with Sacramento County on August 7, 2015, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $194,000 as of the petition date. Docket 1 p. 12. The unavoidable consensual liens that total $104,742 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* at p. 19. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000 on Schedule C. *Id.* at p. 17.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by David Elliot Sandoval and Darlene Isabell Sandoval's ("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 judgment lien of Discover Bank f/k/a Greenwood Trust Company, California Superior Court for Sacramento County Case No. 04AM08548, recorded on August 7, 2015, Book 20150807and Page 0898, with the Sacramento County Recorder, against the real property commonly known as 6 Datoro Ct. Sacramento, California 95833, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3.	**24-20024-E-13 BLG-1**	**JEFFREY FERNANDEZ Chad Johnson**	**OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM NUMBER 8 3-19-24 [26]**

Final Ruling: No appearance at the May 7, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on March 19, 2024. 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 8-1 of Quantum3 Group LLC as agent for Aqua Financial Inc. is sustained, and the Claim is disallowed in its entirety.

Jeffrey Fernandez, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Quantum3 Group LLC as agent for Aqua Financial Inc. ("Creditor"), Proof of Claim No. 8-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $38,678.05. Objector asserts that the Claim should be rejected because there is no proof that the Claim is secured, and that the debt became unenforceable due to the statute of limitations as prescribed in California Code of Civil Procedure §§ 335 & 337. Mot., Docket 26 p. 3:5-21.

Objector also moves this court for attorney's fees in the amount of $800. Movant states that although the Revolving Credit Slip submitted by Creditor in the Claim does not list an attorney's fees provision, such provisions are standard and would likely be present here if the Claim included the Revolving Credit Agreement that the Slip refers to. Mot., Docket 30 p. 4:3-8.

The Chapter 13 Trustee, David Cusick ("Trustee"), stating that if the Claim is allowed as unsecured, it would receive no more than 6%. Trustee does not oppose the Objection. Docket 36.

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.

California Code of Civil Procedure § 337 states in relevant part:

> (b) An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that if an account stated is based upon an account of one item, the time shall begin to run from the date of the item, and if an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The California Legislature made a substantive amendment to California Code of Civil Procedure § 337 in 2018, which became effective January 1, 2019, that moves the expiration of the statute of limitations on a contract action from an affirmative defense to affirmative bar on a creditor seeking to enforce the obligation.

> (d) When the period in which an action must be commenced under this section [contract, instrument, book account, account stated, open account, rescission of a written contract] has run, a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt. The period in which an action may be commenced under this section shall only be extended pursuant to Section 360.

Cal. C.C.P. § 337(d).

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of--**

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

Here, the only documentation Creditor has attached to the Proof of Claim is a Revolving Credit Slip, but nothing showing the Claim was secured. Objector presents its own evidence that on May 3, 2018 Creditor filed a UCC-1 Financing statement, listing Objector as the debtor and listing the collateral as "Home Improvements Landscaping." Exhibit B, Docket 30. Objector properly points out that a UCC-1 Financing Statement would expire on May 3, 2023, without a UCC-3 Continuation Form filed. There is no evidence a Continuation Form has been filed. Objector also did a search in the Placer County online real estate recorders and also found that no lien is filed by Creditor. Exhibit A, Docket 30.

No payment or other transaction occurred after October 31, 2018. POC 8-1. Thus, the four-year statute of limitations expired on October 31, 2022, and the debt ceased to exist. The court does not make any determination as to the existence of a lien, but because California law provides the lien extinguishes when the debt extinguishes, the Claim is excluded in its entirety.

This bankruptcy case was filed on January 1, 2024—after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

Attorney's Fees

Debtor's attorney requests this court grant attorney's fees, suggesting that attorney's fees are appropriate as the omitted Revolving Credit Agreement likely would have contained an attorney's fees provision.

Reviewing Proof of Claim 8-1, agents of Aqua Finance, Inc. state under penalty of perjury the following information about Creditor's Claim:

A. Proof of Claim 8-1.

1. The amount of the Claim is $38,678.05. POC 8-1; ¶ 7.

2. The basis for the Claim is "Money Loaned."

3. A purchase money security interests is to be claimed in "Household Good(s)/Fixture Lien(s).

a. The basis for perfection of the lien is stated to be "PMSI" (which the court presumes means purchase money security interest).

4. The interest rate is 21%.

B. 1st Attachment to Proof of Claim 8-1 – Statement of Account Information which includes the following information:

a. The last payment date was October 31, 2018.

C. 2nd Attachment to Proof of Claim 8-1 – Revolving Credit Sales Slip

1. This slip states that it is the Agreement by which the credit was extended.

2. The goods and services provided were "Landscape."

3. This is signed both by the Debtor and the person extending the credit in providing the Landscaping Services and related Goods.

4. The interest rate is 12.99%. No provision is made for increasing the interest rate in the event of a default.

The Debtor requests that the court infer that contracts like these relating to credit extended include attorney's fees provisions, which are reciprocal as a matter of law. Cal. Civ. 1717.
The court is not at liberty to make such an inference.

However, Fed. R. Bankr. P. 3001(c)(2)(D)(ii) states:

> (D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:
>
> . . .
>
> (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

The court finds awarding Debtor's attorney's fees is appropriate in this case. Creditor filed what it claimed to be a wholly secured Claim, yet Creditor did not attach any required documentation showing the Claim was secured in violation of Fed. R. Bankr. P. 3001(c)(2)(B), giving rise to the Objection.

Additionally, the Revolving Credit Sales Slip makes reference it being part of a greater Revolving Credit Agreement, stating the first paragraph of page to of the Revolving Credit Sales Slip, stating:

> THIS SALES SLIP IS IN ACCORDANCE WITH THE TERMS OF YOU REVOLVING CREDIT AGREEMENT, WHICH CONTAINS THE FEDERAL TRUTH-IN-LENDING DISCLOSURES, PAYMENT TERMS, AND OTHER IMPORTANT INFORMATION ABOUT YOUR ACCOUNT WITH US.

POC 8-1, p. 6. This is another missing essential document to Creditor's Proof of Claim. The court draws the inference that this Revolving Credit Agreement contains standard creditor provisions, including attorney's fees for enforcing rights under and pursuant to the contract.

As such, the court awards Debtor's Attorney's fees in the amount of $800 for the two hours of work spent on the Objection.

The court also authorizes the request for attorney's fees to be included in the Objection to Claim. This will substantially reduce the amount of fees to be awarded, rather then requiring an entirely separate motion for fees for Creditor. Debtor's counsel has clearly been very professionally responsible in minimizing such fees for Creditor.

Based on the evidence before the court, the Objection to the Proof of Claim is sustained Creditor's claim is disallowed in its entirety, and Debtor is awarded $800.00 in attorney's fees.

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 Quantum3 Group LLC as agent for Aqua Financial Inc. ("Creditor"), filed in this case by Jeffrey Fernandez, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 8-1 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> **IT IS FURTHER ORDERED** that the prevailing party, Objector, is awarded attorney's fees in the amount of $800 for work related to prosecuting this Objection pursuant to Fed. R. Bankr. P. 3001(c)(2)(D)(ii).

4. 24-20837-E-13 DPC-1 — TERRI AND JOSE PALACIOS — Leo Spanos — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 4-11-24 [14]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on April 11, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. The Plan is overextended as proposed. Trustee calculates the Plan will take approximately 74 months to complete. Docket 14 p. 2:2-3. Much of the overextension issue is caused by the Proof of Claim of the IRS and Arizona Department of Revenue.

2. Trustee requests the refunds for the tax year 2023. The refunds were significant in 2022, and if the trend continues, the money from 2023 should be contributed to the Plan. *Id.* at p. 2:14-21.

3. There is a secured claim (POC 4-1) not mentioned in Debtor's Schedules or provided for in the Plan. *Id.* at p. 2:22-26.

4. Debtor is repaying a retirement loan in the amount of $610.62 per month. Trustee requested and has not received documentation of the retirement loan. *Id.* at ps. 2:27-3:4.

5. Debtor's attorney opted into the no-look fees provision provided for by Local Bankruptcy Rule 2016-1(c), but Debtor's attorney is attempting to front-load attorney payments, contrary to the Rule. *Id.* at p. 3:5-11.

6. After the 341 Meeting has concluded, Trustee suggests Debtor may not have listed all of their assets in their Schedules. *Id.* at p. 3:17-23.

7. Debtor is claiming exemptions under Cal. Code Civ. P. § 704.730, but because one Debtor lived in Arizona in 2022, Trustee is not clear if Debtors are allowed to use the California exemptions based on only one of them being domiciled in the State of California 730 days immediately preceding the day of filing. Trustee is filing an Objection to Claimed Exemption. *Id.* at p. 3:24-28.

8. Trustee is unable to determine if Debtor Jose Palacios's net monthly income is accurate. Debtor appears to be on medical leave but has rental income, not monthly wage income, but it is not clear. *Id.* at p. 4:1-9. Similarly, regarding Debtor Terri Cook Palacios, on Question #4 for Debtor 2 the box for "Wages, commissions, bonuses, tips" has been checked; however, the line is blank. Question #5 for Debtor 2 shows in 2022 and 2023 that Social Security was received; however, for 2024 that line is blank. *Id.* at p. 4:10-16.

9. Debtor may fail the liquidation test. The Plan proposes to pay 43% to unsecured creditors in the amount of $81,139.98, but Trustee calculates in a hypothetical Chapter 7 case that unsecured creditors would receive $266,956.44. *Id.* at ps. 4:17-5:5.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 16.

DISCUSSION

Trustee brings to light many issues with this Plan and case in general. As proposed, the Plan is overextended beyond the time period permitted in 11 U.S.C. § 1322(d)(1)(C), which states, "the plan may not provide for payments over a period that is longer than 5 years." This is reason to deny confirmation.

Debtor did not provide either a tax transcript or a federal income tax return with attachments for 2023, likely because that return is pending. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). However, Debtor should comply with Trustee in providing the return as the record indicates the returns may be substantial, Debtor having earned $7,779 from 2022's tax return, and should be contributed to the Plan.

The Plan cannot be confirmed without the discrepancy in attorney's fees resolved. Local Bankruptcy Rule 2016-1(c)(4)(B) states, "[a]fter confirmation of the debtor(s)' plan, the Chapter 13 trustee

shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received." Where the Plan proposes to pay $2,000 per month toward fees, the Plan violates this rule because it will front load plan payments, thereby not paying attorney's fees in equal monthly installments over the term of the most recently confirmed Plan.

Trustee raises the concern that Debtor may not be accurately scheduling of their assets, including omitting household goods. If Debtor has submitted their Schedules inaccurately, subject to the penalty of perjury, they may be subject to Rule 9011 corrective sanctions. Failing to Schedule all assets could also amount to dismissal for bad faith prosecution. The list of enumerated reasons to dismiss a case in 11 U.S.C. § 1307(c) does not include a case being filed or prosecuted in bad faith, but courts have decided bad faith is a valid reason to warrant dismissal or conversion. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) ("Although not specifically listed, bad faith is a 'cause' for dismissal under § 1307(c)."); *See also In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) ("A Chapter 13 petition filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."). The following factors are considered in a bad faith analysis:

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

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

At the hearing, **xxxxxxx**

Discussion surrounding claiming the homestead exemption under Cal. Code Civ. P. § 704.730 when one Debtor lived in Arizona in 2022 will be reserved for Trustee's Objection to Claimed Exemption. A review of the Docket on May 1, 2024 reveals Trustee has not yet filed that Objection.

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 43% to unsecured creditors in the amount of $81,139.98, but Trustee calculates in a hypothetical Chapter 7 case that unsecured creditors would receive $266,956.44.

At the hearing, **xxxxxxx**

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

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

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

5. 21-23841-E-13 PGM-5 | **DENNIS FRAZIER** / **Peter Macaluso** | **MOTION TO APPROVE LOAN MODIFICATION** / **3-28-24 [175]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 28, 2024. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Dennis A. Frazier ("Debtor") seeks court approval for Debtor to incur post-petition credit. U.S. Bank National Association, not in its individual capacity but solely as trustee for RMTP Trust, Series 2021 Cottage-TT-V, its successors and/or assigns ("Creditor") has agreed to a loan modification that will reduce Debtor's mortgage payment to $1,507.50 per

month. Exhibit A, Docket 177 p. 4. The loan duration is 40 years with the total outstanding balance being reduced by $30,739.83, and this amount will be included in a new, non-interest bearing Subordinate Note, which will not be due until the Original Note is paid off. *Id.*

The Motion is supported by the Declaration of Debtor. Docket 178. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's intent to pay this claim on the modified terms.

Creditor filed a non-opposition on April 12, 2024, specifying the Loan Modification begins on April 1, 2024, not March 1, 2024 as Debtor stated in his Motion. Docket 182.

The Chapter 13 Trustee, David Cusick, filed a Response indicating non-opposition on April 22, 2024. Docket 184. Trustee does not oppose the Motion, but requests in the Order confirming that the Modification is effective on the first of April, 2024. *Id.* at ¶ 1. Trustee also seeks clarification as to how this Creditor will be treated in a Plan. After Debtor's prior Plan was denied confirmation on February 27, 2024, Debtor has not filed a new Plan. Trustee has a balance of $3,943.05 on hand and has not distributed these funds to Creditor in an abundance of caution. *Id.* at ¶ 2.

However, Debtor did file a Modified Plan on the same day as Trustee's Response on April 22, 2024. Docket 189. Debtor treats Creditor as a Class 4 Claim in the Modified Plan, and Creditor is to be paid in accordance with the Loan Modification. Debtor filed a Reply to Trustee's Response on April 30, 2024, stating as much. Docket 193.

At the hearing, **xxxxxxx**

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Dennis A. Frazier ("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 court authorizes Dennis A. Frazier to amend the terms of the loan with U.S. Bank National Association, not in its individual capacity but solely as trustee for RMTP Trust, Series 2021 Cottage-TT-V, its successors and/or assigns ("Creditor"), which is secured by the real property commonly known as 2 Odom Court Sacramento, CA 95823, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Docket 177).

6. **24-20742-E-13 DPC-1** | **PHILLISTINE VOSLEY** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-10-24 [17]**

6 thru 7

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 (*pro se*), parties requesting special notice, and Office of the United States Trustee on April 10, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. The Debtor Phillistine Elizabeth Vosley ("Debtor") is delinquent $2,223 in plan payments. Docket 17 p. 2:1-2.

2. Section 2.03 is silent regarding the duration of the monthly Plan payments. *Id.* at p. 2:9-10.

3. Gregory Mortgage was listed in Class 1 with $0.00 amount for arrears, and $0.00 for interest rate. *Id.* at p. 2:11-12.

4. Ajax Mortgage Loan ("Creditor"), filed an objection to confirmation, (Docket 14). It appears creditor received funds in the amount of $16,948.84, which was not enough to reinstate loan obligation. The Debtor

admitted at the First Meeting of Creditors, held on April 4, 2024, that she in possession of the check that she submitted to the Creditor for the arrears, then was subsequently returned by the Creditor as an insufficient amount. Based on this admission, the Creditor appears to be in arrears at least $16,948.84, and the plan should call for the payment of this lump sum to the Trustee as the check was not listed in Schedule B, not exempted in Schedule C, and Debtor may not have the means to cure this delinquency absent this lump sum. *Id.* at p. 2:13-22.

5. Section 3.14 is silent regarding a dividend to unsecured creditors. *Id.* at p. 2:23.

6. Section 7, the non-standard provisions section, states "My proposed plan is to pay the trustee an amount equal to current monthly amounts due to each creditor." Trustee does not know what this means. *Id.* at p. 2:26-28.

7. The Plan proposes payments of $2,223.00, (Docket 5, Page 1, §2.01), where Schedule J shows the Debtor's monthly disposable as $570.00, (Docket 1, Page 45, line 23c.). Docket 17 p. 3:1-3.

8. Debtor has omitted some assets from her Schedules, including the returned check in the amount of $16,948.84 and employment income with the company K.E.G. Enterprises. Further, Debtor has not properly claimed her exemptions, not citing to any law or in any amount. *Id.* at ps. 3:14-4:6.

9. Debtor failed to provide Trustee with 60 days of employer payments advices. *Id.* at p. 4:7-11.

10. Debtor may fail the liquidation analysis test. She has non-exempt assets in the amount of $21,562, but has not provided for any amount to go to unsecured creditors in her Plan. *Id.* at p. 4:12-18.

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

DISCUSSION

Trustee raises a host of problems with this Plan and case in general. To begin, Debtor is $2,223.00 delinquent in plan payments, which represents one month plan payment. Debtor never initiated making payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). There is no term of plan payments mentioned in the Plan, and it appears from Debtor's Schedules submitted under penalty of perjury that Debtor does not have disposable income to afford these plan payments. Debtor has also not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

There is also information omitted from the Schedules and issues with how the Plan is structured. Debtor potentially has on hand a check in the amount of $16,948.84, which was returned by creditor as being insufficient to cure the delinquency, but this asset is not listed. The Plan also seems to misclassify creditors, placing creditor Gregory Mortgage in Class 1 but stating there is a 0$ in arrearage to that creditor. The Plan makes no reference as to what general unsecured creditors will be paid, instead leaving an ambiguous provision in Section 7 stating "[m]y proposed plan is to pay the trustee an amount equal to current monthly amounts due to each creditor." This term does not provide the Trustee with a reasonable basis for making payments. There are a host of issues with this Plan that Debtor must resolve before confirmation is feasible.

At the hearing, **xxxxxxx**

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

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

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

7. 24-20742-E-13 EAT-1 | **PHILLISTINE VOSLEY** | **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY AJAX MORTGAGE LOAN TRUST 2021-C** | **4-2-24 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on April 2, 2024. By the court's calculation, 35 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.

Ajax Mortgage Loan Trust 2021-C, Mortgage-Backed Securities, Series 2021-C, by U.S. Bank National Association, as Indenture Trustee ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Debtor Phillistine Elizabeth Vosley's ("Debtor") Plan fails to provide for Creditor's arrears, and fails to identify the proposed length of the Plan. Docket 14 ¶ 4.

2. Creditor indicates that non-filing borrower, Mae W. Johnson, executed the promissory note on or about June 8, 2007, which is secured by Debtor's real property known as 1925 Kentucky Street, Vallejo CA 94590 also known as 1925 L. Ellenburg Street, Vallejo, CA 94590, APN #0057-153-040 ("Property"). Either Debtor or Mae W. Johnson sent a check in the amount of $16,948.84 to Creditor to bring the loan current. The check in the amount of $16,948.84 was returned to Mae W. Johnson because it was not

enough to cure the delinquency that is in the amount of $16,951.42. Docket 14 ¶¶ 2, 6.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor is not provided for on the Plan and has not yet filed a Claim, but informs the court it has a prepetition arrearage claim. The Plan does not propose to cure those 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 Ajax Mortgage Loan Trust 2021-C, Mortgage-Backed Securities, Series 2021-C, by U.S. Bank National Association, as Indenture Trustee ("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.

8. **24-20842-E-13 DPC-1** | **WILLIAM/MARIA DE LOS SANTOS** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**

Colby LaVelle | **4-11-24 [20]**

8 thru 9

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on April 11, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. 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. William De Los Santos and Maria De Los Santos' ("Debtor") attorney opted into the no-look fee provision of 2016-1(c), but Debtor has accepted greater than a 25% retainer, potentially in violation of Local Bankruptcy Rule 2016-1(c)(3). Docket 20 ¶ 1.

2. Trustee states the following amendments must be made:

   a. The petition did not show Debtor William's middle names, or his last name suffix, or Debtor Maria's middle name.

b. The Plan is not signed in violation of Local Bankruptcy Rule 9004-1(c).

c. Venmo and Zelle accounts were not include din Debtor's Schedules A and B.

d. Debtor admitted there is no real estate income at the 341 Meeting, but Debtor's Schedule I lists $1,685 of net business income.

Id. at p. 2:3-19.

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

DISCUSSION

Trustee's objections are well-taken.

Attorney's Fees: Retainer

When opting into the no-look fee provisions of Rule 2016-1(c), "an attorney shall not seek, nor accept, a retainer greater than the sum of (A) 25% of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7); and (B) the amount of costs in subdivision (c)(2), as increased by subdivision (c)(7)." Local Bankruptcy Rule 2016-1(c)(3). The fee specified in subdivision (c)(1) for a non-business case is $8,500, but can be less if the debtor and attorney so choose. Trustee contends that, because Debtor's attorney has opted for the lesser amount, the attorney should only be able to accept a retainer in the amount of 25% of the lesser amount. However, the fee specified in Rule 2016-1(c) is $8,500, seeming to indicate an attorney may be eligible to accept 25% of that amount, regardless of whether the attorney accepts a lesser overall amount of compensation.

The court has reviewed this matter with other judges in the District, and the consensus is that the reference to the amount specified in (c)(1) is actual amount of fees that counsel has agreed to represent a debtor in the Chapter 13 case.

At the hearing, **xxxxxxx**

Debtor's Signatures

Local Bankruptcy Rule 9004-1(c) provides:

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

Here, the names of the Debtor and Debtor's attorney are not typed underneath the signatures. An amendment with the typed signatures is appropriate to comply with this Rule.

Amendments

Debtor should comply with Trustee's requests in amending the Schedules to include Venmo and Zelle accounts, as well as the proper amount of rental income, if any, on Schedule I. Debtor is required to cooperate with Trustee. 11 U.S.C. § 521(a)(3).

~~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.~~

9. 24-20842-E-13 SKI-1 — WILLIAM/MARIA DE LOS SANTOS — Colby LaVelle — OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA INC. — 4-11-24 [16]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 11, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

Santander Consumer USA Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor has listed the incorrect name of Creditor in Class 4 of the Plan, and Creditor requests an amendment to its correct name. Docket 16 p. 2:12-14.

DISCUSSION

Debtor lists the creditor as Tesla Financial in the Plan, but the Creditor's correct name is Santander Consumer USA Inc. *See* Plan, Docket 3 ¶ 3.10. An amendment is appropriate to correct the error.

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 Santander Consumer USA Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

10. 24-20649-E-13 MOH-1 | **SHANE SIEGEL** / **Michael Hays** | **MOTION TO EMPLOY C.E. MCDOUGAL REALTY, INC. AS REALTOR(S)** / **4-23-24 [22]**

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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 23, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Employ ~~is granted.~~

Shane Siegel ("Debtor") seeks to employ Nathan G. McDougal and C.E. McDougal Realty, Inc. ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330.

Debtor seeks the employment of Broker to market and sell the real property commonly known as 7391 NW 165th St, Trenton, Florida.

Debtor argues that Broker's appointment and retention is necessary to because selling the house will realize a 100% dividend to general unsecured creditors in the case. Mot., Docket 22 p. 1:22-28. The Property is a rental unit and is not Debtor's residence. Broker's requested fee is 6% of the purchase price.

No Declaration has yet been submitted by Debtor to show Broker does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Debtor states in his Motion he will have such a Declaration on the Docket before this Hearing. A review of the Docket on May 2, 2024 reveals that no Declaration has been filed.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

~~Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Nathan G. McDougal as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Exclusive Right of Listing Agreement filed as Exhibit 1, Docket 24. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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

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

~~The Motion to Employ filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Employ is granted, effective xxxx, 202x, and Debtor is authorized to employ Nathan G. McDougal and C.E. McDougal Realty, Inc. as Broker for Debtor on the terms and conditions as set forth in the Exclusive Right of Listing Agreement filed as Exhibit 1, Docket 24.~~

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

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

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

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

11. 24-20649-E-13 DPC-1 | **SHANE SIEGEL** Michael Hays | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-11-24 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on April 11, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

   a. Debtor admitted at the 341 Meeting that he had a PayPal account, but he failed to list the account on Schedules A/B.

   b. Debtor listed income from self-employment but has not filed the required attachments showing the gross income, the expenses, and the net income.

Docket 18 p. 2:3-12.

2. The following information in the Plan is either missing or unclear:

a. The Debtor states that he will pay all creditors "in full" with the sale of his real property located at 7391 NW 165th Street in Trenton, FL by September 1, 2024. There is no dollar amount listed as to the amount that will be paid into the Plan on a monthly basis and/or from the lump sum. The Plan requires the Debtors to make monthly Plan payments and there is no information as to what that amount will be.

b. There is no evidence in the record as to whether or not the Debtor can sell this property in the next 4 months. The Debtor has not filed a motion to employ professionals (real estate) or introduced any other evidence about the state of Florida's real estate market and if a sale in this time frame can be attained.

The court notes that Debtor filed a Motion to Employ a Real Estate Broker on April 23, 2024, which is set for hearing on May 7, 2024. Dckt. 22.

c. The Debtor proposes to sell his real property to pay off the Plan in full by September1, 2024, but there is no Plan length listed in the Plan or the nonstandard provisions.

Id. at ps. 2:13-3:7.

3. There may be a delinquency as the Plan does not propose a monthly payment until the real property is sold, but the Plan form requires monthly payments. *Id.* at p. 3:8-15.

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

DISCUSSION

Amendments

Debtor should comply with Trustee's requests in amending the Schedules to include the PayPal account, as well as required attachments showing the gross income, the expenses, and the net income related to debtor's business. Debtor is required to cooperate with Trustee. 11 U.S.C. § 521(a)(3).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to sell the real property commonly known as 7391 NW 165th St, Trenton, Florida, by September 1. Plan, Docket 11 § 7. However, Debtor does not propose to be making any adequate protection payments in the mean time while the sale is pending. Debtor is not entitled to sit in bankruptcy for free while a supposed sale is conducted. However, the court notes that a Motion to Employ

a Florida realtor has been filed with this court on April 23, 2024, showing there is headway being made with the sale. Docket 22. The court intends to grant that Motion being heard in conjunction with this Objection.

Debtor should comply with Trustee's requests in listing a dollar amount that will fund the Plan, as well as a projected Plan length, so Trustee is able to determine if the Plan is feasible.

At the hearing, **xxxxxxx**

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

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

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

12. 20-24158-E-13 WLG-2 | **GEORGE/DOLORES PENCE** | **MOTION TO SUBSTITUTE PARTY, AS TO BOTH DEBTORS**
Nicholas Wajda | **3-29-24 [51]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, attorney of record who have appeared in the case, creditors, and Office of the United States Trustee on March 29, 2024. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Substitute 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 Substitute is granted.

Debtor George Campbell Pence and, on behalf of himself and his deceased Debtor Dolores Mary Pence ("Debtor") seeks an order approving the motion to substitute their daughter, Nicole V. Archuletta in the place of Debtor and Joint Debtor to prosecute this case. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1004.1 and 7025.

Debtor filed for relief under Chapter 13 on August 28, 2020. On January 7, 2021, Debtor's Chapter 13 Plan was confirmed. Docket 24. On October 19, 2023, Debtor Dolores Mary Pence passed away. Exhibit 1, Docket 54. Although Debtor George Campbell Pence survives, he has been diagnosed with dementia and is unable to prosecute this case. Ms. Archuletta, ("Joint Debtor"), holds Durable Power of Attorney over Debtor George Campbell Pence and has overseen his affairs since December 29, 2023. Decl, Docket 58 ¶ 3.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Ms. Archuletta requests authorization to be substituted in for the Debtor and to perform the obligations and duties of the parties in addition to performing her own obligations and duties.

The Chapter 13 Trustee, David Cusich ("Trustee"), filed an Opposition to the Motion. Docket 63. Trustee states he does not oppose the Motion to Substitute, but does not agree that the amended and supplemental Schedules I and J are correct as they include a negative net income. *See* Docket 56 ps. 12-15.

At the hearing, **xxxxxxx**

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of

> excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Ms. Archuletta has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors even after the passing of the Joint Debtor and legal incompetence of Debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Notice of Death. Docket 40. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Ms. Archuletta, daughter of the deceased party and surviving Debtor, and as the successor's heir and lawful representative, may continue to administer the case on behalf Debtor and Joint Debtor. The court grants the Motion to Substitute Party.

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 Substitute After Death filed by 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 Nicole V. Archuletta ("Joint Debtor") is substituted as the successor-in-interest to Debtor George Campbell Pence and deceased Debtor Dolores Mary Pence ("Debtor"), and ("Joint Debtor") is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

13. 23-23959-E-13 CRG-3 | **LASHUNDA PHILLIPS** / **Carl Gustafson** | **MOTION TO CONFIRM PLAN** **3-21-24 [51]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2024. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 23, 2024. Docket 62. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor has listed the claim of VW Credit Inc. in Class 2(A) of the Plan, but also listed the monthly payment for this Creditor as an expense on Schedule J in the amount of $1,419.13 per month. That money is now essentially being double counted and should be contributed to the plan payments. *Id.* at ps. 1:25-2:10.

2. Debtor's Plan is discriminating unfairly against creditors in the same class. Specifically, Trustee argues:

   a. The Debtor is proposing to treat her general unsecured creditors and her NF-Spouse's community debt unsecured creditors differently. While the court allows different treatment of creditors within the same class according to 11 U.S.C. §1322(b)(1), that treatment cannot "discriminate unfairly." *Id.* at p. 2:10-16.

Reference is made in the Motion and Objection to this being a "community debt." The court discusses "community debts" under California law below. In the Motion citation is made to 11 U.S.C. § 1322(b)(1) as a basis for this treatment of a "community debt," however the statue states that, "however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims."

b. Unfair discrimination is "wildly debated" amongst the Circuits, so Trustee is requesting this court weigh in on the issue. *Id.*

c. The main test that has been adopted stems from 9th and 8th Circuits (*In re Wolff*, 22 B.R. 510 (B.A.P. 9th Cir. 1982) and *In re Leser*, 939 F.2d 669 (8th Cir. 1991)). *Id.* at p. 2:17-18. *Wolff* outlines the four factors a court should consider:

   i. whether the discrimination has a reasonable basis;

   ii. whether the debtor can carry out a plan without the discrimination;

   iii. whether the discrimination is proposed in good faith; and

   iv. whether the degree of discrimination is directly related to the basis or rationale for the discrimination. Restating the last element, does the basis for the discrimination demand that this degree of differential treatment be imposed?

d. The court sustained Trustee's previous Objection to Plan on the basis that NF-Spouse's debts were not listed in the Schedules, and Debtor and NF-Spouse were to pay NF-Spouse's debts in full outside the Plan while only paying 1% to Debtor's general unsecured creditors. The Debtor then amended her Schedules to include the NF-Spouse's debt, updated their budget, then filed this Amended Plan which proposes to still pay all of NF-Spouse's debt, but only 28% of Debtor's general unsecured creditors. Trustee calculates with Debtor's increased budget, as well as the payment from Trustee's Objection (1) being included into plan payments, unsecured creditors in Debtor's case could receive up to a 66% dividend, so the Plan language should state a number closer to 66%. *Id.* at ps. 2:26-3:17.

e. Trustee argues there would be unfair discrimination if Debtor's general unsecured claims were paid a 28% dividend, but also states that 66% is likely not unfair discrimination. *Id.* at p. 3: 18-21.

f. In applying the *Wolff* factors, Trustee argues:

i. Whether the discrimination has a reasonable basis: The Debtor has asserted that her NF-Spouse did not file this case jointly because he wanted to preserve his credit as required by his job. (DN 53). The NF-Spouse also filed a declaration stating that he was willing to contribute some of "his" income toward the Debtor's plan but wanted to be able to keep the rest to pay what he wanted to pay, mainly his retirement and other debt. (DN 8) California is a community property state so the concept of "mine" vs "yours" shouldn't be a factor for assets and debts that were incurred during the marriage, which it appears these all have been. There does not appear to be a rational basis to discriminate other than to pay one person's debts over the other which seems to lean more toward the "unfair" side of the argument. *Id.* at ps. 3:22-4:2.

ii. Whether the Debtor can carry out a plan without the discrimination. The Trustee believes that the plan could still be successful without the discrimination. The Trustee estimates that if all of the unsecured creditors were paid pro rata, then they would each receive 57% of their claim under the proposed plan. This percentage would be increased if the additional income in the Trustee's above first objection was added to the plan along with the annual bonuses. *Id.* at p. 4:3-8.

iii. Whether the discrimination is proposed in good faith. The Trustee believes that this treatment is not being proposed in good faith. The Debtor initially failed to completely disclose the information and now is proposing to pay significantly more to the NF-Spouse's creditors, so it does not appear to be proposed in good faith. *Id.* at p. 4:9-12.

iv. Whether the degree of discrimination is directly related to the basis or rationale for the discrimination. Restating the last element, does the basis for the discrimination demand that this degree of differential treatment be imposed? There does not appear to be anything in the evidence filed that would "demand" this degree of discrimination between the spouses. It simply appears that the NF-Spouse wants to do what he wants to do without being bound by the Bankruptcy rules. *Id.* at p. 4:13-18.

3. In conclusion, Trustee argues a dividend of 28% to Debtor's general unsecured creditors would amount to unfair discrimination. But if Debtor's

unsecured creditors are going to receive closer to 66%, Trustee is willing to recommend confirmation. *Id.* at p. 4:19-25.

APPLICABLE LAW

The section of the Code implicated here, 11 U.S.C. § 1322(b)(1), states:

(b)Subject to subsections (a) and (c) of this section, the plan may—

> (1)designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims. . .

By this language, 11 U.S.C. § 1322(b)(1) allows for treatment of unsecured claims differently, so long as the debt is consumer debt of the debtor, and an individual is also liable on such consumer debt with the debtor. No reference is made to "community debt" in the Federal Statute, but specifically that there must be personal liability of the debtor and the non-debtor.

11 U.S.C. § 1322(b)(1) did not originally contain the language allowing a debtor to treat claims for which a debtor and another person are both personally liable different from other claims in the class and not be subject to an unfair discrimination test. Prior to the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub.L. No. 98-353, 98 Stat. 333 (1984) ("BAFJA"), 11 U.S.C. § 1322(b)(1) ended with the words "so designated."

This subsequently added text, referred to as the "however clause," "has been the subject of a significant amount of debate. Neither courts nor commentators have agreed precisely on what Congress intended to accomplish by adding the 'however clause.'" *Meyer v. Renteria* (*In re Renteria*), 470 B.R. 838, 841 (B.A.P. 9th Cir. 2012). As the Bankruptcy Appellate Panel for the Ninth Circuit (B.A.P.) has explained,

> The focus is on the emphasized "however" clause. That clause - which was added to § 1322(b)(1) in 1984 - has perplexed and divided courts as to whether it obviates, or merely qualifies, the fairness requirement.
>
> Most courts hold that separately classified co-obligor debts must still clear the § 1322(b)(1) unfair discrimination hurdle. The consequence is that the "however" clause permitting co-obligor debts to be treated "differently" is more in the nature of a qualification to the application of the unfair discrimination analysis than an exemption from it. *See, e.g., Ramirez v. Bracher* (*In re Ramirez*), 204 F.3d 595, 596 (5th Cir. 2000); *Chacon v. Bracher* (*In re Chacon*), 202 F.3d 725, 726 (5th Cir. 1999); *Spokane Ry. Credit Union v. Gonzales* (*In re Gonzales*), 172 B.R. 320, 328-30 (E.D. Wash. 1994); *In re Cheak*, 171 B.R. 55, 58 (Bankr. S.D. Ill. 1994); KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY: 3D § 150.1 n.3 (2000) (gathering cases).
>
> A minority of courts, including the bankruptcy court in this appeal, conclude that the "however" clause excuses compliance with the § 1322(b)(1) ban on unfair

> discrimination. *In re Dornon*, 103 B.R. 61, 64-65 (Bankr. N.D.N.Y. 1989); LUNDIN, § 150.1 n.2 (gathering cases).
>
> A few courts think the debate of little consequence because overreaching in favor of co-obligors can be dealt with under the good faith requirement of 11 U.S.C. § 1325(a)(3). *Dornon*, at 64; *In re Hill*, 261 B.R. 495, 497-98 (Bankr. N.D. Fla. 2001).

In re Hill, 268 B.R. 548, 551-52 (B.A.P. 9th Cir. 2001). The court in *Hill* declined to answer the question surrounding the "however clause," but the B.A.P. picked back up and substantively answered the question in *Meyer*.

The B.A.P. goes through a statutory construction analysis regarding the "however clause." *Meyer* 470 B.R. at 842-44. It takes into account different statutory constructions of 11 U.S.C. § 1322(b)(1), including the plain meaning rule and the rule of the last antecedent, discussing how courts across the nation have wrestled with the "however clause." *Id.* Ultimately, the B.A.P. found that " [a]t least one thing is clear to us from the above-referenced differing interpretations and battling canons of construction: courts have been unable to derive from the text of the statute a plain and unambiguous meaning for the 'however clause.' Accordingly, we turn to the legislative history to facilitate our analysis." *Id.* at p. 844. The Senate Report accompanying the Omnibus Bankruptcy Improvements Act of 1983 ("OBIA"), the predecessor bill leading up to the BAFJA, cited in *Meyer* states:

> A number of cases have considered whether claims involving codebtors may be classified separately from other claims. Thus far, the majority of cases have refused to permit such classification on the ground that codebtor claims are not different than other claims. See, for example, *In re Utter*, 3 B.R. 369 (Bk. W.D.N.Y. 1980); *In re Montano*, 4 B.R. 535 (Bk. D.D.C. 1980).
>
> Although there may be no theoretical differences between codebtor claims and others, there are important practical differences. Often, the codebtor will be a relative or friend, and the debtor feels compelled to pay the claim. If the debtor is going to pay the debt anyway, it is important that this fact be considered in determining the feasibility of the plan. Sometimes, the codebtor will have posted collateral, and the debtor will feel obligated to make the payment to avoid repossession of the collateral. In still other cases, the codebtor cannot make the payment, and the effect of nonpayment will be to trigger a chapter 7 or chapter 13 petition by the codebtor, which may have a ripple effect on other parties as well. For these reasons, separate classification is often practically necessary.
>
> Courts under both the present Act and the former law have emphasized that plans must be realistic. For example, courts have refused to confirm plans which the debtor could not possibly perform; have insisted on realistic estimates of expenditures; and have considered debts which the debtor proposes to pay outside the plan in determining feasibility. *In re Washington*, 6 B.R. 226, 6 BCD 1094 (Bk. E.D. Va. 1980). This approach is eminently sensible. No purpose is served by confirming a plan which the debtor cannot perform. If, as a practical matter, the debtor is going to pay the codebtor claim, he should be permitted to separately classify it in a chapter 13. A result which emphasizes purity in classifying claims does so at the price of a realistic plan. Neither debtors nor creditors benefit from such a rigid approach, and

> the Committee has determined that statutory authority to separately schedule such debts will contribute to the success of plans contemplating repayment of same. Accordingly, this authority is provided for in the proposed bill by amendment to section 1322(b)(1).

S. Rep. No. 98-65 (1983). Then, discussing the cases of *In re Utter*, 3 B.R. 369 (Bk. W.D.N.Y. 1980); *In re Montano*, 4 B.R. 535 (Bk. D.D.C. 1980), the B.A.P. stated:

> In *Utter*, the joint debtors filed a chapter 13 plan separately classifying one unsecured claim, and proposing to pay that claim a 100% dividend, whereas all other unsecured creditors would receive little or nothing. *In re Utter*, 3 B.R. at 369. There was only one distinction between the preferred claim and the other unsecured claims: the sister of one of the joint debtors also was liable on that debt. *Id. Utter* denied confirmation of the debtors' plan for two reasons. First of all, according to the court, § 1122(a) (which § 1322(b)(1) incorporates by reference) did not permit the separate classification of substantially similar claims, and there was no legal distinction from the estate's perspective between the preferred claim and the other unsecured claims. *Id.* at 369-70. But the *Utter* court's second ground for denying confirmation is more important for our purposes; the *Utter* court held that the proposed preferential treatment of the codebtor claim "discriminates unfairly against the unsecured creditors who are classified in the class that does not contain co-signed debts." *Id.*
>
> *Montano* is quite similar to *Utter*. In *Montano*, the debtor had unsecured debt in the aggregate amount of roughly $30,000. *In re Montano*, 4 B.R. at 536. Of that $30,000, roughly $7,000 was owed on 'claims guaranteed by co-signors.' *Id.* The debtor's chapter 13 plan proposed a 100% dividend on the codebtor claims, and a 1% dividend on all other unsecured claims. *Id.* In denying confirmation of the debtor's plan, the *Montano* court articulated virtually identical grounds for denial as those articulated in *Utter*. *Id.* at 537. In relevant part, *Montano* held that "such classification, where cosigned debts are to be paid in full and other general unsecured debts are to be paid much less, unfairly discriminates against the latter class, and thus is [impermissible] under § 1322(b)(1)." *Id.*

Meyer, 470 B.R. at 845-46. The B.A.P. finally held that "[i]n light of the facts and holdings of *Utter* and *Montano*, and in light of Congress's citation of these two cases as exemplifying the case law it sought to address by amending § 1322(b)(1), we hold that Congress sought to permit a chapter 13 debtor to separately classify *and* to prefer a codebtor consumer claim when the facts are similar to those presented in *Utter* and *Montano*." *Meyer*, 470 B.R. at 846 (holding also that "[w]e acknowledge that our decision leaves open the issue of the precise relationship between the 'however clause' and the unfair discrimination rule. We intentionally have left unanswered the question of when (if ever) does the preferential treatment of a codebtor consumer claim violate the unfair discrimination rule.").

Not all Circuits have come to this conclusion regarding the "however clause." *See, e.g.*, *Ramirez v. Bracher* (*In re Ramirez*), 204 F.3d 595, 596 (5th Cir. 2000) (holding where debtors had failed to meet their burden of showing that the separate classification of co-signed debt did not unfairly discriminate against other unsecured creditors, the plan could not be confirmed).

The court is also aware of at least one case where, when there is evidence present to show paying a codebtor's debt in full would help the household's overall burden, a plan with different treatment of debtor's claimants and codebtor's claimants is confirmable. *See In re Linton*, Case No. 11-12258-SSM, 2011 LEXIS 2939 (Bankr. E.D. Va. 2011).

DISCUSSION

California Community Property and Debt Law

Debtor has in the Motion used the term "community debt" as being a basis for asserting that the exception to the unfair discrimination provisions of 11 U.S.C. § 1322(b)(1) do not apply to the NF-Spouse's debt for which the Debtor has no personal liability. However, neither the Trustee nor the Debtor look to California law to determine what is a "community debt."

With respect to "community liability" for debts during a marriage, California Family Code § 910 provides that it is the "community property estate" that is liable for debts of either spouse before or during the marriage, not each spouse personally liable for the debts of the other spouse (emphasis added):

> § 910. Community estate; liability for debts
> Currentness
>
> (a) Except as otherwise expressly provided by statute, **the community estate is liable** for a **debt incurred by either spouse before or during marriage**, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.
>
> (b) "During marriage" for purposes of this section does not include the period after the date of separation, as defined in Section 70, and before a judgment of dissolution of marriage or legal separation of the parties.

The plain language above does not create any personal liability merely because of the marriage for the debts of the other spouse.

The California Legislature has provided in California Family Code § 913 that the separate property of a person is not liable for a debt incurred by the person's spouse before or during the marriage.

In both of the above statutes, it is the property that is determined to be "liable" or "not liable" for a debt of the other spouse.

California Law does expressly provide for when a spouse is personally liable for debts incurred solely by the other spouse, providing in California Family Code § 914 (emphasis added):

> § 914. **Personal liability for debts incurred by spouse**; separate property applied to satisfaction of debt; statute of limitations
>
> (a) Notwithstanding Section 913, a **married person is personally liable for the following debts incurred by the person's spouse during marriage**:

(1) A **debt incurred for necessaries of life** of the person's spouse before the date of separation of the spouses.

(2) Except as provided in Section 4302, a debt incurred for common necessaries of life of the person's spouse after the date of separation of the spouses.

(b) **The separate property of a married person may be applied to the satisfaction of a debt for which the person is personally liable pursuant to this section**. If separate property is so applied at a time when nonexempt property in the community estate or separate property of the person's spouse is available but is not applied to the satisfaction of the debt, **the married person is entitled to reimbursement to the extent such property was available**.

. . .

The Witkin Treatise on California Law provides a discussion of what constitutes "necessaries of life" during a marriage for a non-debtor spouse to be personally liable for the other spouse's debts:

(2) [§ 185] Personal Liability for Debts for Spouse's Necessaries.

(1) Liability for Necessaries. Notwithstanding Family C. 913 (*supra,* § 184), a **spouse is personally liable for the following debts incurred by the other spouse during marriage**:

(a) A debt incurred for the **other spouse's necessaries of life** before the date of separation of the spouses. (Family C. 914(a)(1).)

(b) Except as provided in Family C. 4302 (support liability while spouses are living separate by agreement; see 11 Summary (11th), Marriage, § 61), a debt incurred for the other spouse's "common necessaries of life" after the date of separation of the spouses. (Family C. 914(a)(2).)

(c) For purposes of Family C. 914, "date of separation" has the same meaning as set forth in Family C. 70. (see supra, § 12). (Family C. 914(d).)

The Law Revision Commission comments as follows:

(a) Family C. 914 is an exception to the nonliability rule of Family C. 913 (supra, § 184); but the separate property of a spouse may not be reached by necessaries creditors unless the spouse is made a party for the purpose of enforcing the liability (*see, e.g., Credit Bureau of Santa Monica Bay Dist. v. Terranova* (1971) 15 C.A.3d 854, 93 C.R. 538).

(b) Family C. 914(a)(1) is consistent with Family C. 4301 (support obligation while spouses living together), but does not require exhaustion of community property before separate property of a nondebtor spouse can be reached.

(c) Family C. 914(a)(2) applies where the spouses are living separately not by agreement; e.g., where one spouse leaves.

(d) Family C. 914(a)(2) should not be deemed to limit the obligation of a spouse for support pursuant to a court order *pendente lite* or in a judgment decreeing the legal separation of the spouses. A spouse who desires to limit the liability pursuant to Family C. 914(a)(2), or a spouse who desires a greater support obligation than provided in Family C. 914(a)(2), may seek a support order, which supersedes liability under Family C. 914(a)(2).

(e) **Family C. 914(a)(2) abolished the "station in life" test of *Wisnom v. McCarthy* (1920) 48 C.A. 697, 192 P. 337, in determining what is a necessary of life**; the separate property of the nondebtor spouse is liable only for debts for the "common" necessaries of life (*see Ratzlaff v. Portillo* (1971) 14 C.A.3d 1013, 92 C.R. 722).

(2) Reimbursement. A spouse's separate property may be applied to the satisfaction of a debt for which the spouse is personally liable under Family C. 914(a), but the spouse is entitled to reimbursement to the extent that nonexempt property in the community estate or separate property of the other spouse was available but not applied to satisfy the debt. (Family C. 914(b).)

(3) Limitations Period for Statutory Actions. The 1-year limitations period of C.C.P. 366.2 applies to an action brought under Family C. 914 if the spouse for whom the married person is personally liable dies. (Family C. 914(c)(1), codifying the rule of Collection Bureau of San Jose v. Rumsey (2000) 24 C.4th 301, 308, 99 C.R.2d 792, 6 P.3d 713, 3 Cal. Proc. (5th), Actions,§ 719 [1-year period of C.C.P. 366.2 barred action against surviving spouse to recover expenses of decedent's last illness].)

There is an exception. If the surviving spouse had actual knowledge of the debt prior to the expiration of that 1-year limitations period and if the personal representative of the deceased spouse's estate fails to provide the creditor asserting the claim under Family C. 914 with a timely written notice of the probate of the estate as required by Prob.C. 9050, then the appropriate period is either the 4-year limitations period of C.C.P. 337 (action on contract founded on written instrument; see 3 Cal. Proc. (5th), Actions,§ 508 et seq.) or the 2-year limitations period of C.C.P. 339 (action on contract not founded on written instrument; see 3 Cal. Proc. (5th), Actions,§ 512 et seq.), as applicable. (Family C. 914(c)(2).)

SUPPLEMENT

(1) Liability for Necessaries. *See Direct Capital Corp. v. Brooks* (2017) 14 C.A.5th 1168, 1175, 222 C.R.3d 601, citing the text [husband was liable for debt incurred by wife for leasing computers for her law practice, because debt was for necessaries of life].

. . .

11 Witkin Summary 11th of Com Prop § 185 (2023).

The California Third District Court of Appeal addressed the 21st Century application of the statute and what constitutes "necessaries of life" in *Direct Capital Corp. v. Brooks*, 14cal.App. 5th 1168, 1174-1175 (2017) concluding:

> Thus, while common necessaries are those that all families need (e.g., food, clothing, & shelter), **what constitutes necessaries depends on the circumstances of the particular marriage**. The "station in life" test applies if the debt was incurred preseparation. (See Recommendation Relating to Liability of Marital Property for Debts, *supra*, 17 Cal. Law Revision Com. Rep. (1983) p. 35 ["Subdivision (a)(2) [applicable postseparation] abolishes the 'station in life' test of cases such as *Wisnom v. McCarthy* [(1920)] 48 Cal.App. 697, 192 P. 337"; by implication, retaining that test for preseparation debts].)
>
> The station in life test looks to the marital standard and mode of living. Thus, in *Wisnom*, the court explained: "**The plaintiff pleaded and proved that the services were necessaries of life for persons in the economic and social position of the defendants; that they were partly rendered while the husband and wife were living together**, and partly after he had deserted her without cause and was not furnishing such necessaries for her. Under such facts the husband would be liable for the expenses of his household." (*Wisnom v. McCarthy* (1920) 48 Cal.App. 697, 700, 192 P. 337, italics added; *see In re Marriage of Higgason* (1973) 10 Cal.3d 476, 488, 110 Cal.Rptr. 897, 516 P.2d 289 ["to the extent that the husband's obligations were incurred during the time the parties were living together and were reasonably necessary for his support according to the parties' station in life [citations], the wife owes a duty to provide such support," italics added], disapproved on another ground in *In re Marriage of Dawley* (1976) 17 Cal.3d 342, 346, 352, 131 Cal.Rptr. 3, 551 P.2d 323; Shebley v. Peters (1921) 53 Cal.App. 288, 293, 200 P. 364 [wrongful death damages "suitable to [decedent's] station in life"]; Bassett, Cal. Community Property Law (2017 ed.) § 9:29, pp. 970-971 ["what constitutes 'necessaries' is often broadly interpreted" and "may be measured by the income and life circumstances of the family, including vacation, entertainment, etc."].)

One court that surveyed a number of cases concluded as follows:

> "Under the rule prevailing [in California], what is a necessary of life must depend largely on the circumstances of each case and the position of the family involved. What is or what is not a necessary, must, to a considerable extent, be committed to the sound discretion of the trier of fact. Under the facts of this case and the law as it exists in California we can see no abuse of discretion in the decision rendered by the trial judge in holding that the various items of expense involved here were for necessaries of life." (*Sanker v. Humborg* (1941) 48 Cal.App.2d 205, 208 [119 P.2d 433] [in part upholding "music lessons for the children" as one of that particular family's necessaries].)

Here, no information is given as to what the NF-Spouse obtained for debts to Chase/Amazon, Navy Federal Credit Union, Chase Sapphire, Apple Credit Card, Best Buy, and Banker's Healthcare Group.

No Declaration is provided by the NF-Spouse as to these sole obligations of the NF-Spouse for which special treatment is sought to the disadvantage of other creditors.

Debtor does provide her Declaration stating under penalty of perjury her rationale for giving the NF-Spouse's creditors special treatment as follows:

> 8. My husband must pay his debt in full through the plan because otherwise the creditors will bother and grow his debt and eventually collect from my community income after the plan term is over--which income should not be within the reach of my creditors.

Declaration, ¶ 8; Dckt 53. The rationale for this special treatment to the detriment of all creditors of the Debtor is that the NF-Spouse will be bothered by creditors seeking to have him pay his debts and then collect monies from future community property. Debtor also states her "legal conclusion" that future community property income should not be subject to those separate debts of the NF-Spouse.

No citation is made to 11 U.S.C. § 524(a)(3) which addresses the specific issue of protecting future community property from enforcement of against a a non-debtor co-obligor when the debtor has obtained a discharge of the debt.

If such debts incurred by and solely owned by the NF-Spouse are so overwhelming that having to pay them from future community property is not what Debtor thinks should occur, Congress has provided an avenue for relief – Debtor and the NF-Spouse actually file a joint bankruptcy case and both this Debtor and the NF-Spouse would have all the protection and benefits to protect future community property under the Federal Bankruptcy Code as written by Congress.

A review of the Proofs of Claims filed by the following creditors of solely the NF-Spouse discloses the following:

A. Proof of Claim 32-1 for Navy Federal Credit Union.....($4,593.61).

1. States it is a Credit Card "community debt held by Debtor's husband."

2. No contract or other attachment documenting such obligation is attached to POC 32-1.

3. Proof of Claim 32-1 is signed by Debtor's counsel under penalty of perjury.

B. Proof of Claim 33-1 for Best Buy Credit Services.....($2,024.83).

1. States it is a Credit Card "community debt held by Debtor's husband."

2. No contract or other attachment documenting such obligation is attached to POC 33-1.

3. Proof of Claim 33-1 is signed by Debtor's counsel under penalty of perjury.

C. Proof of Claim 34-1 for Apple Credit Card.....($9,925.02).

1. States it is a Credit Card "community debt held by Debtor's husband."

2. No contract or other attachment documenting such obligation is attached to POC 34-1.

3. Proof of Claim 34-1 is signed by Debtor's counsel under penalty of perjury.

D. Proof of Claim 35-1 for Chase Sapphire.....($33,881.83).

1. States it is a Credit Card "community debt held by Debtor's husband."

2. No contract or other attachment documenting such obligation is attached to POC 35-1.

3. Proof of Claim 35-1 is signed by Debtor's counsel under penalty of perjury.

E. Proof of Claim 36-1 for Navy Federal Credit Union.....($7,074.85).

1. States it is for "Money Loaned" that is a "community debt held by Debtor's husband."

2. No contract or other attachment documenting such obligation is attached to POC 36-1.

3. Proof of Claim 36-1 is signed by Debtor's counsel under penalty of perjury.

F. Proof of Claim 37-1 for Chase Sapphire.....($24,743.65).

1. States it is a Credit Card "community debt held by Debtor's husband."

2. No contract or other attachment documenting such obligation is attached to POC 37-1.

3. Proof of Claim 37-1 is signed by Debtor's counsel under penalty of perjury.

G. Proof of Claim 35-1 for Chase Sapphire.....($4,593.61).

1. States it is a Credit Card "community debt held by Debtor's husband."

2. No contract or other attachment documenting such obligation is attached to POC 35-1.

3. Proof of Claim 35-1 is signed by Debtor's counsel under penalty of perjury.

Debtor fails to provide any evidence as to what these debts are, and if a "community debt" for which Debtor is personally liable, how these substantial obligations are for necessaries of life.

Review of Schedules I and J

On Amended Schedule I, Dckt. 48, Debtor provides the following information about the post-petition income information for the Debtor and NF-Spouse:

REDACTED TEXT FOR POSTING OF TENTATIVE RULING

Debtor and her NF-Spouse have [Redacted Text for Posting] a month in Monthly Income after taxes and withholdings.

On Amended Schedule J, Debtor lists having five dependant children ranging in age from 3 years to 22 years old (only one child over 18 years of age). *Id.* Debtor's compute their reasonable and necessary expenses to be [Redacted Text for Posting] a month, leaving [Redacted Text for Posting] in projected disposable income to fund a Plan.

In the First Amended Plan, Debtor computes there being ($143,730) in priority unsecured tax claims.

With the First Amended Plan Debtor will fund it [Redacted Text for Posting] for three (3) months and then [Redacted Text for Posting] for fifty-seven (57) months, for the substantial total of [Redacted Text for Posting] .

Application of 11 U.S.C. § 1322(b)(1)

Debtor's basis for justifying the 100% treatment of the NF-Spouse's debts (for which Debtor has no personal liability) is the exception written into 11 U.S.C. § 1322(b)(1), "however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;. . . ."

However, Debtor and her attorney state that Debtor has no personal liability on these debts (either as a co-obligor or for necessaries of life for the NF-Spouse). The plain language of exemption in 11 U.S.C. § 1322(b) requires that: (1) it be for a consumer debt, (2) the debtor must liable on the debt, and (3) that there is another non-debtor individual that is liable on the debt. The basic rules of statutory construction are "When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit." *Bostock v. Clayton*, U.S., 140 S.Ct. 1731, 1737 (2020).

The facts before the court present a situation different from those present in *Utter* and *Montano*. *Utter* and *Montano* where the debtor was personally obligated on the debt with a non-debtor individual. However, as discussed above, California Family Law is clear – community property is subject to enforcement of debts incurred during the marriage (even if only one spouse is personally liable on the debt).

Congress provides in 11 U.S.C. § 541(a)(2) that all interests of the debtor in community property for which the debtor has sole, equal, or joint management and control, or such community property is liable for an allowed claim of the debtor to the extent that the community property interest is so liable. Here, it appears based on the Schedules and statements of the Debtor that all community property law is property of this bankruptcy estate.

Congress further defines the term "community claim" in 11 U.S.C. § 101(7) to be:

> (7) The term "community claim" means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case.

In 11 U.S.C. § 101(10)(C) the term "creditor" is defined to include "an entity that has a community claim." Then in 11 U.S.C. § 501(a) provides that a "creditor" my file a proof of claim for the obligation owed.

Effectively, it would appear that a creditor holding a community property claim would be in similar shoes to that of a creditor for whom the debtor is liable on an obligation with a non-debtor. However, Congress has expressly provided that the debtor, not "merely" community property in the bankruptcy estate, must be liable with a non-debtor for a community debt.

Decision

The Motion is denied without prejudice. Debtor has not provided the court with evidence to establish that Debtor is personally obligated on the debts owed by the NF-Spouse. Debtor has not provided the court with any evidence that the NF-Spouse's debts are for necessaries of life. Further, Debtor has not provided the court with any evidence that the NF-Spouse's debts are consumer debts.

The court has not been presented with any evidence as to when the NF-Spouse's debts were incurred and for what were the debts incurred.

It is not for the court to speculate whether there could be personal liability of the Debtor. Nor will the court speculate that the NF-Spouse's debt were for consumer debts during the marriage with the Debtor.

The First 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, Name of Debtor ("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 without prejudice, and the proposed Chapter 13 Plan is not confirmed.

14. 24-21578-E-13 PGM-1 | **ALLEN GAMBLE** **Peter Macaluso** | **MOTION TO EXTEND AUTOMATIC STAY** **4-22-24 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is denied.

Allen Dontony Gamble ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 23-23859) was dismissed on March 22, 2024, after this court sustained the Chapter 13 Trustee's Motion to Dismiss for Debtor being delinquent in plan payments, not filing an Amended Plan, and not providing the Chapter 13 Trustee with social security number verification. *See* Order, Bankr. E.D. Cal. No. 23-23859, Docket 75, March 22, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

The instant case is Debtor's most recent in a long line of failed bankruptcy filings. Debtor's bankruptcy history includes:

A. Case No. 23-23859
   1. Date Filed: October 30, 2023
   2. Chapter: 13
   3. Date Dismissed: March 22, 2024
   4. Reason for Dismissal: this court sustained the Chapter 13 Trustee's Motion to Dismiss for Debtor being delinquent in plan payments, not filing an Amended Plan, and not providing the Chapter 13 Trustee with social security number verification.

B. Case No. 22-20668
   1. Date Filed: March 21, 2022
   2. Chapter: 13
   3. Date Dismissed: April 8, 2022
   4. Reason for Dismissal: incomplete filing, failing to file a Plan and Schedules.

C. Case No. 21-24122
   1. Date Filed: December 9, 2021
   2. Chapter: 13
   3. Date Dismissed: January 3, 2022
   4. Reason for Dismissal: incomplete filing, failing to file a Plan and Schedules.

D. Case No. 20-21676
   1. Date Filed: March 20, 2020
   2. Chapter: 13
   3. Date Dismissed: July 30, 2020
   4. Reason for Dismissal: Judge Klein sustained the Chapter 13 Trustee's Motion to Dismiss for Debtor being delinquent in plan payments and failing to confirm a Plan resulting in unreasonable delay that is prejudicial to creditors.

E. Case No. 19-22328
   1. Date Filed: April 15, 2019
   2. Chapter: 13
   3. Date Dismissed: November 26, 2019
   4. Reason for Dismissal: Judge Klein sustained the Chapter 13 Trustee's Motion to Dismiss for Debtor being delinquent in plan payments and failing to confirm a Plan resulting in unreasonable delay that is prejudicial to creditors.

F. Case No. 18-26813
   1. Date Filed: October 30, 2018
   2. Chapter: 13

3. Date Dismissed: March 1, 2019
4. Reason for Dismissal: Judge Jaime dismissed the case for Debtor failing to pay the filing fee installment of $77.

Debtor has either been appearing in *pro se* or been represented by his current attorney, Mr. Macaluso, in each of the previous cases. Here, Debtor states that the instant case was filed in good faith to stop a foreclosure sale and to recover property. Mot., Docket 21 ps. 3:26-4:2. Debtor argues he has sufficient income to fund a viable Plan. *Id.* at p. 4:2-11. Debtor explains he has a large check on hand from insurance proceeds in the amount of $70,000 which he deposited with Banner Bank and intends to pay creditors with that money. Decl., Docket 23 ¶ 6. Debtor does not address his previous cases or explain why this one can succeed where those failed.

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

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. While Debtor claims the instant case was filed in good faith, Debtor does nothing to explain how this case is different from the previous six pending cases in the last six years. Debtor testifies in his Declaration that the lock downs from Covid really hurt him financially, and that he was actually able to pay all of his bills before the government shut down. Decl., Docket 23 ¶ 2. However, the court notes Debtor was indeed not able to pay all of his bills before the shut down as Debtor had filed Chapter 13 cases as early as 2018 and again in 2019, predating the pandemic.

Debtor has not shown that this case can succeed where the previous cases have not. Debtor has not rebutted the presumption of a bad faith filing.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Allen Dontony Gamble ("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 extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

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

15 thru 16

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

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

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

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

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

The Objection to Confirmation of Plan is sustained.

May 7, 2024 Hearing

The court continued this hearing from the April 9, 2024 date as the debtor Harvinder Jeet Singh and Kuldip Kaur ("Debtor") did not appear at the 341 Meeting of Creditors. Debtor's counsel explained the cause of the failure and requested a one month continuance. The Chapter 13 Trustee, David Cusick ("Trustee"), concurred.

On April 25, 2024 Trustee filed a Status Report with the court stating:

1. Debtor is currently delinquent two plan payment sin the amount of $3,722. Debtor has paid $0 into the Plan. Docket 36 ¶ 1.

2. Debtor's son pays all of Debtor's finances, including making the Chapter 13 Plan payments. Trustee argues Debtor is likely not eligible for chapter

13 without regular monthly income and Debtor's son appearing unwilling or unable to contribute to the plan payments. *Id.* at ¶ 2.

3. Debtor has not filed their income tax returns for the tax years 2021, 2022, and 2023 all of which are past due. The Code requires that the Debtors have filed the last four years of tax returns prior to filing of the case. *Id.* at ¶ 3.

4. Finally, Trustee estimates the Plan will complete in 102 months as Debtor has estimated the IRS priority claim as $37,713.69, but the IRS filed a Proof of Claim asserting a priority claim of $123,824.06. *Id.* at ¶ 4.

Delinquent

Debtor is $3,722 delinquent in plan payments, which represents two months of the plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Further, Debtor has not shown that they are eligible for Chapter 13 relief if they do not have regular monthly income, now with their son apparently unwilling or unable to assist in expenses. 11 U.S.C. § 109(e). At the hearing, **xxxxxxx**

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the tax years 2021, 2022, and 2023 have not been filed. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is a ground to dismiss the case. 11 U.S.C. § 1307(e).

Overextended Plan

Without the IRS claim being properly provided for, the Plan would take 102 months to complete. *See* POC 2-1. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of Plan is sustained.

16. 24-20485-E-13 DPC-2

HARVINDER SINGH AND KULDIP KAUR
Paul Bains

MOTION FOR DENIAL OF DISCHARGE OF BOTH DEBTORS UNDER 11 U.S.C. SECTION 727(A)
3-27-24 [19]

Final Ruling

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, parties requesting special notice, and Office of the United States Trustee on March 27, 2024. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David P. Cusick, the Chapter 13 Trustee, ("Objector") objects to Harvinder Jeet Singh and Kuldip Kaur's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case. Debtor submitted a Response on April 29, 2024 stating that Debtor is aware they are not eligible for a discharge in this case. Docket 39.

Debtor filed a Chapter 7 bankruptcy case on March 27, 2023. Case No. 23-20949. Debtor received a discharge on July 6, 2023. Case No. 23-20949, Docket 37.

The instant case was filed under Chapter 13 on February 7, 2024.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on March 27, 2023, which is less than four years preceding the date of the filing of the instant case. Case No. 23-20949, Docket 37. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

The Objection is sustained. Upon successful completion of the instant case (Case No. 24-20485), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David P. Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 24-20485, the case shall be closed without the entry of a discharge for either debtor in this Bankruptcy Case.

17. 23-24590-E-13 DRE-2 | **JON FENTON** Randall Ensminger | **MOTION TO CONFIRM PLAN** 3-19-24 [49]

17 thru 18

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 20, 2024. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Jon Wesley Fenton ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $1,000 monthly payments for 60 month with 13% to the unsecured creditors. Amended Plan, Docket 52. 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 22, 2024. Docket 63. Trustee opposes confirmation of the Plan on the basis that:

A. Mercedes-Benz Financial Services is misclassified in Class 4 and should be placed in Class 2(A) and paid through the Plan. *Id.* at p. 2: 3-12.

B. All community debts have not been properly scheduled. Debtor admitted at the 341 Meeting that he has been married since 1988 and his spouse has a credit card not scheduled with a $19,000 balance. *Id.* at p. 2:17-22.

C. Debtor has not filed and attached a statement for business income, despite listing business income on line 8a of Schedule I. *Id.* at p. 2:23-26.

D. Debtor filed an Amended Schedule J on March 19, 2024, claiming a new expense of $561 for "non-filing spouse credit card payments." *Id.* at ps. 2:27-3:1.

E. Debtor has not provided enough business documentation. Further, Kapitus Servicing, Inc. Filed a secured claim in the amount of $62,660.18 on February 28, 2024 (POC 12), but this debt is not scheduled or provided for in the Plan. *Id.* at p. 3:2-24.

DISCUSSION

Misclassified Claims

Class 2(A) claims cannot be reduced if "the claim holder has a purchase money security interest and the claim either was incurred within 910 days of the filing of the case and is secured by a motor vehicle acquired for the personal use of Debtor, or was incurred within 1-year of the filing of the case and is secured by any other thing of value." Plan Form EDC 003-080 § 3.08(c)(1). Importantly, the Plan's standard language says "[t]hese claims must be included in Class 2(A)." *Id.* It appears that creditor Mercedes-Benz Financial Services' claim secured by the 2018 Mercedes-Benz C300 fits the description of being a Class 2(A) claim.

At the hearing, **xxxxxxx**

Insufficient Information Scheduled

Debtor has not scheduled community debts, omitting a $19,000 debt of the non-filing spouse. Debtor also added a new monthly expense of $561 on Amended Schedule J without explanation. Docket 46 p. 4 line 17c. Such an expense could be viewed as a preferential payment to unsecured creditors. Moreover, Debtor schedules earning $8,766.67 in dividend payments from his corporation, Ultimate Video and Security Systems. *Id.* at p. 2 line 8b.

Trustee reports the business has been earning approximately $50,000 to $60,000 per year over the last three years. It is not clear to the court how Debtor can earn over $100,000 per year in dividend payments from the business while the business income is scheduled as roughly half of that. Debtor should provide Trustee with the items he has requested, including an itemized breakdown of business debts, assets, and income, in order for Trustee to determine if the Plan is feasible. Without an accurate picture of debtor's financial reality, the court cannot confirm the Plan.

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 Jon Wesley Fenton ("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.

18.	**23-24590-E-13** **DPC-1**	**JON FENTON** **Randall Ensminger**	**CONTINUED MOTION TO DISMISS CASE** **2-21-24 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, persons having filed a Request for Notice, and Office of the United States Trustee on February 21, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxxxx.

May 7, 2024 Hearing

The court continued this Motion in light of Debtor having cured the delinquency and to be heard in conjunction with Debtor's Motion to Confirm. The court finding that the Plan was not confirmable at this stage, at the hearing, xxxxxxx

REVIEW OF THE MOTION

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

1. The debtor, Jon Wesley Fenton ("Debtor"), is delinquent $1,000.00 in plan payments. This case was filed on December 22, 2023, and Debtor has paid $0.00 into this plan. Prior to the hearing in this matter, Debtor's next scheduled payment of $1,000.00 will come due. Motion, Docket 30, p. 1:21-28.

2. Debtor filed a Chapter 13 Plan on January 19, 2024. Plan, Docket 23. Debtor has failed to file a Motion to Confirm the Plan and set it for confirmation. Motion, Docket 30, p. 2:6-8.

3. Debtor has failed to provide documents requested by Trustee as required by the plan. The trustee seeks:

   A. 2021 personal tax returns.

   B. 2021 and 2022 business tax returns.

   C. Four months of bank statements for Wells Fargo bank accounts #1879 and #4259.

   D. 6 months financial statements for the Ultimate Voltage & Jon. W. Fenton Biz account.

   E. Business income & expense statement.

   Id. at 2:9-22.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 32.

DEBTOR'S REPLY

Debtor filed a Reply on March 6, 2024. Docket 38. Debtor states that they have cured the delinquency. Declaration, Docket 40, p.2: 5-6.

Debtor declares that they brought the plan current on February 23, 2024. *Id.* at 2:4-5. Debtor has submitted a cashier's check in the amount of $1,000.00 addressed to Trustee, and dated February 23, 2024. Exhibit, Docket 39, Exhibit A. Due to the nature of Debtor's business and a slow holiday period, Debtor originally did not have the funds to bring the plan current. Declaration, Docket 40, p.2 at 2:3-5.

A Motion to Confirm Plan is in the final preparation stages and will be filed and served on all creditors before the Motion to Dismiss Hearing. *Id.* at 2:8-9.

The additional business documents such as 2021 personal tax returns, 2021 & 2022 business tax returns, 6 months of business bank statements, business income and expense statement, and 4 months of Wells Fargo Bank statements have been provided to Trustee. *Id.* at 2:10-15.

DISCUSSION

Delinquent

Debtor has submitted sufficient evidence that they have cured their delinquency.

Business Records

Debtor testifies that the additional business documents such as 2021 personal tax returns, 2021 & 2022 business tax returns, 6 months of business bank statements, business income and expense statement, and 4 months of Wells Fargo Bank statements have now been provided to Trustee.

At the hearing, counsel for the Trustee reported that these tax returns have been received.

No Pending Motion to Confirm Plan

Debtor filed a Chapter 13 Plan on January 19, 2024. Debtor has promised to file a Motion to Confirm Plan. Declaration, Docket 40, p. 2:8-9. A review of the docket on March 17 shows that Debtor has not yet filed a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, Debtor's counsel reported that the Amended Plan and Motion to Confirm, with supporting pleadings have been filed. See, Dckts. 49-52.

The Trustee agreed to a continuance of the hearing on this Motion to Dismiss to be conducted in conjunction with the hearing on Debtor's Motion to Confirm. The hearing on the Motion to Dismiss is continued to 2:00 p.m. on May 7, 2024, to be conducted in conjunction with Debtor's Motion to Confirm (if this Motion has not been dismissed by the Trustee prior to that time).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is **xxxxxxx**.

19. 24-20395-E-13 DPC-1 | **CHRYSTAL REYES** / **Carl Gustafson** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **3-13-24 [15]**

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

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

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

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

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

The Objection to Confirmation of Plan is xxxxxxx

May 7, 2024 Hearing

The court continued this hearing for a status conference on the issues, this case presenting a number of challenges for both Debtor and Trustee regarding good faith and best efforts of a Debtor in funding and prosecuting a viable Plan. A review of the docket on May 1, 2024 reveals that nothing new has been filed.

At the hearing, xxxxxxx

REVIEW OF THE OBJECTION

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

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

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

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

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

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

DEBTOR'S RESPONSE

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

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

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

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

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

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

DISCUSSION

Insufficient Plan Payments

Trustee alleges that the Plan is not feasible under 11 U.S.C. § 1325(a)(6) because the Debtor is not making their best effort in the proposed plan payment. Objection, Docket 15, p. 1:25-26. The Trustee

believes that the Debtor should be paying a higher amount to the unsecured creditor, as opposed to the 8% that is proposed in the Plan. *Id*. at ps. 1:27-2:4. Debtor has a monthly disposable income of $372.45 yet proposes to pay $217.03 to unsecured creditors. *Id.* The Trustee believes this amount should be higher.

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

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

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

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

Mandatory Retirement Plan Contribution...($546)

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

Insurance.....($304)

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

The Retirement Contributions

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

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

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

(2) For purposes of this subsection, the term "**disposable income"** means current **monthly income received by the debtor** (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

(A)

(i) **for the maintenance or support of the debtor** or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

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

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

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

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

11 U.S.C. § 1325(b)(2), (b)(3).

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

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

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

(2)
(A)

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

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

(II) $15,150.

(ii)

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

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

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

(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $2,275 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

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

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

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

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

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

(B)

(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional

> expenses or adjustments of current monthly income for which there is no reasonable alternative.
>
> (ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—
>
> > (I) documentation for such expense or adjustment to income; and
> > (II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.
>
> (iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.
>
> (iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—
>
> > (I) 25 percent of the debtor's nonpriority unsecured claims, or $9,075, whichever is greater; or
> >
> > (II) $15,150.

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

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

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

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

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

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

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

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

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

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

Mercedes Benz Leases

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

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

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

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

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

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

<u>Boyfriend's/Partner's</u>
<u>Mercedes Benz Lease</u>
<u>Consigned by Debtor</u>

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

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

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

Lease Payments End

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

Payment to Mother

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

At the hearing, this point was not addressed.

Loan Repayment

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

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

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

§ 1322. Contents of plan

. . .

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

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

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

. . .

(19) under subsection (a), of **withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding** and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section **401**, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

(A) to the extent that the **amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974** or is **subject to section 72(p) of the Internal Revenue Code of 1986**; or

(B) **a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5**, that satisfies the requirements **of section 8433(g) of such title**;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

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

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

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

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

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

On a third point, on Schedule J Debtor states that there is a "457 Loan Direct Repayment." Dckt. 1 at 35. In the comments in ¶ 24 of Schedule J there is a reference to a 401k loan that is not deducted from Debtor's wages/earnings. The court does not see on Schedule J any provision for the repayment of a 401k loan.

At the hearing, the parties did not present the court with their respective legal assertions.

Inconsistency of Dependents Listed

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

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

Contributions of Boyfriend/Partner of Debtor

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

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

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

At the hearing, only general references were made with respect to the reasonable living expenses and what is the Debtor's Boyfriend's/Partner's reasonable contribution (so as not to have his living expenses subsidized by Debtor's creditors).

RULING

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

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

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

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

The hearing on the Objection to Confirmation of Plan is continued to **2:00 p.m. on May 7, 2024**, for a Status Conference.

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** the Objection to Confirmation of Plan is **xxxxxxx**.

20. 24-20591-E-13 DPC-1 | **PABLO SILVA** Carl R. Gustafson | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 4-3-24 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on April 3, 2024. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx .

May 7, 2024 Hearing

This court continued the Hearing from April 23, 2024, Debtor presenting evidence at that Hearing that Debtor had resolved Trustee's Objection. The court mistakenly sustained the Objection by order on April 25, 2024. Docket 41.

Trustee diligently filed a Motion to Amend on April 26, 2024, informing the court that his objections have been resolved. Docket 42. The court continued this matter to May 7, 2024, to correct the court's clerical errors in generating the written Civil Minutes and Order on the Trustee's Objection to Confirmation.

At the hearing, **xxxxxxx**

REVIEW OF THE OBJECTION

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

1. Pablo Silva ("Debtor") has not provided Trustee with his 2022 and 2023 tax returns, or a written statement that no such documentation exists. Docket 25 ¶ 1.

2. Debtor has not provided Trustee with the following business documents: 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documentation exists, and a business questionnaire. *Id.* at ¶ 2.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 27.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Documents Related to Business

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

A. Questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements,
D. Six months of bank account statements, and
E. Proof of license and insurance or written statement that no such documentation exists.

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.

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the years 2022 and 2023. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

FINAL RULINGS

21. 24-20638-E-13 NF-1 | **DELBERT STICKLER AND LATONYA ELLSWORTH** **Nikki Farris** | **MOTION TO CONFIRM PLAN 4-2-24 [17]**

Final Ruling: No appearance at the May 7, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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, Delbert Franklin Stickler and LaTonya Darline Ellsworth ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 20. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. 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, Delbert Franklin Stickler and LaTonya Darline Ellsworth ("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 April 2, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

22. 24-20145-E-7 DONALD DUPONT
Eric Schwab

CONTINUED MOTION TO DISMISS CASE, MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
3-5-24 [51]

CASE CONVERTED: 04/23/24

Final Ruling: No appearance at the May 7, 2024 Hearing is required.

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

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

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

The Motion to Dismiss is denied without prejudice as moot, the Chapter 13 Case having been converted to one under Chapter 7 when Debtor filed his Notice of Conversion on April 23, 2024. Docket 82.

Confidant Board, LLC ("Movant") seeks to dismiss or convert Donald DuPont's ("Debtor") Chapter 13 case. This Motion was continued from the court's April 9, 2024 calendar because Debtor appeared at that hearing with counsel, and the court opted to give Debtor and counsel time to come up with a plan for the case. Order, Docket 74. In response, Debtor filed a Notice of Conversion on April 24, 2024,

exercising his option to convert the case to a proceeding under Chapter 7. Docket 82. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on April 24, 2024. *McFadden*, 37 B.R. at 521.

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 Confidant Board, LLC ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice as moot, the case having been converted to one under Chapter 7.

23. 23-24048-E-13 TLA-2 | **SCOTT HINKLE AND JOSEPH WILCOX** | **MOTION FOR COMPENSATION FOR THOMAS L. AMBERG, JR., DEBTORS ATTORNEY(S)**
Thomas Amberg | **4-2-24 [30]**

Final Ruling: No appearance at the May 7, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 2, 2024. By the court's calculation, 35 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.

Thomas L. Amberg Jr., the Attorney ("Applicant") for Scott Anthony Hinkle and Joseph Lee Wilcox, the Chapter 13 Debtor ("Client"), makes a First Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 23, 2023, through April 2, 2024. Mot., Docket 30 ¶ 8. Applicant requests fees in the amount of $3,445 and no expenses or costs. Applicant has earned $1,000 for prepetition work and has accepted that amount as a retainer. Therefore, Applicant seeks approval to withdraw that $1,000 sum from the client trust account, with the remaining $2,445 to be paid by the Chapter 13 Trustee ("Trustee") in accordance with the Plan. *Id.* at ¶ 7.

Trustee submitted a non-opposition on April 22, 2024 at Docket 38.

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:

[W]orking with Debtors to meet with clients and analyze their situation, create and review the Debtors' schedules, propose a Chapter plan, attend Debtors' 341 hearing, confirm the Debtors' plan, propose a modified Chapter 13 plan, and review claims filed in the Debtors' case.

Mot., Docket 30 ¶ 9. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Thomas L. Amberg, Jr., Attorney	10.6	$325.00	$3,445.00
Total Fees for Period of Application			$3,445.00

Costs & Expenses

Applicant does not seek reimbursement for any costs.

FEES 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 Interim Fees in the amount of $3,445 are approved pursuant to 11 U.S.C. § 330. Applicant is authorized to withdraw and retain $1,000 from the client trust account for

prepetition work. The remaining fees of $2,445 are 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	$3,445
Costs and Expenses	$0

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 Thomas L. Amberg Jr., the Attorney ("Applicant") for Scott Anthony Hinkle and Joseph Lee Wilcox, the Chapter 13 Debtor ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Thomas L. Amberg Jr. is allowed the following fees and expenses as a professional of the Estate:
>
> Thomas L. Amberg Jr., Professional employed by the Chapter 13 Debtor,
>
> Fees in the amount of $3,445
> Expenses in the amount of $0,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.
>
> **IT IS FURTHER ORDERED** that Applicant is authorized to withdraw $1,000 from the client trust account and retain those fees for work performed prepetition.

24. 24-20472-E-13 DPC-1 | **LAURA SALINAS** Harry Roth | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** 4-3-24 [16]

Final Ruling: No appearance at the May 7, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on April 3, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Chapter 13 Trustee, David Cusick, ("Trustee") objects to Laura Salinas' ("Debtor") claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. Additionally, Trustee objects on the grounds that Debtor has claimed an interest in cash with a value of $100 as exempt under Cal. Code Civ. P. § 706.050, and this section is only available for accrued and unpaid earnings, but there is no evidence the $100 is accrued and unpaid earnings.

California Code of Civil Procedure § 704.070 does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed. Docket 1, page 19. This is grounds to sustain the Chapter 13 Trustee's objection.

Further, Debtor claims an exemption in her interest in cash with a value of $100 as exempt pursuant to Cal. Code Civ. P. § 706.050. That section states:

(a) Except as otherwise provided in this chapter, the maximum amount of disposable earnings of an individual judgment debtor for any workweek that is subject to levy under an earnings withholding order shall not exceed the lesser of the following:

(1) Twenty percent of the individual's disposable earnings for that week.

(2) Forty percent of the amount by which the individual's disposable earnings for that week exceed 48 times the state minimum hourly wage in effect at the time the earnings are payable. If a judgment debtor works in a location where the local minimum hourly wage is greater than the state minimum hourly wage, the local minimum hourly wage in effect at the time the earnings are payable shall be used for the calculation made pursuant to this paragraph.

(b) For any pay period other than weekly, the following multipliers shall be used to determine the maximum amount of disposable earnings subject to levy under an earnings withholding order that is proportional in effect to the calculation described in paragraph (2) of subdivision (a), except as specified in paragraph (1):

(1) For a daily pay period, the amounts shall be identical to the amounts described in subdivision (a).

(2) For a biweekly pay period, multiply the applicable hourly minimum wage by 96 work hours.

(3) For a semimonthly pay period, multiply the applicable hourly minimum wage by 104 work hours.

(4) For a monthly pay period, multiply the applicable hourly minimum wage by 208 work hours.

(c) This section shall become operative on September 1, 2023.

Cal. Code Civ. P. § 706.050. "Disposable earnings" is defined as "the portion of an individual's earnings that remains after deducting all amounts required to be withheld by law." Cal. Code Civ. P. § 706.011(a). "Earnings" is defined as "compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise." Cal. Code Civ. P. § 706.011(b).

Debtor attempts to exempt $100 in cash pursuant to Cal. Code Civ. P. § 706.050. Schedule C, where the exemption is claimed, makes reference to line 16.1 of Schedule A/B in specifying which $100 Debtor wishes to claim exempt. Docket 1, page 19. Line 16.1 of Schedule A/B simply lists the asset as $100 of cash. Docket 1 p. 14. There is no evidence that this money is earnings or disposable earnings subject to being claimed exempt under Cal. Code Civ. P. § 706.050.

The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemptions for 100$ in cash and the 2023 State of California tax refund under California Code of Civil Procedure §§ 706.050 and 704.070 are disallowed in their entirety.

25. 24-20675-E-13 NF-1 | **EDDIE SOUVANNY** | **Nikki Farris** | **MOTION TO CONFIRM PLAN** | **4-2-24 [15]**

Final Ruling: No appearance at the May 7, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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, Eddie Souvanny ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 17. The

Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on April 24, 2024. Docket 20. 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, Eddie Souvanny ("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 April 2, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. 23-24677-E-13 CRG-1 — ARMANDO/MIRIAM RAMIREZ — Carl Gustafson — MOTION TO CONFIRM PLAN — 3-23-24 [35]

Final Ruling: No appearance at the May 7, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2024. By the court's calculation, 43 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, Armando Yalong Ramirez and Miriam Rose So Ramirez ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 37; Exhibits, Docket 38. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on April 23, 2024. Docket 41. 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, Armando Yalong Ramirez and Miriam Rose So Ramirez ("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 23, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.