UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 21, 2024 at 2:00 p.m.

1.	**20-22006-E-13** **TLA-3**	**BROOKS PARFITT** **Thomas Amberg**	**CONTINUED MOTION TO MODIFY PLAN** **3-5-24 [81]**

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

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

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

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

The Motion to Confirm the Modified Plan is granted.

May 21, 2024 Hearing

The court continued this hearing from the April 9, 2024 law and motion calendar to allow debtor, Brooks Gregory Parfitt ("Debtor"), and the Chapter 13 Trustee, David Cusick ("Trustee") an opportunity

to correct or amend the final language of this Plan, or to determine that a Final Corrected Plan be submitted to the court. The court issued the following Order after the April 9, 2024 hearing:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> > The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Brooks Parfitt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
> >
> > **IT IS ORDERED** that the hearing on the Motion to Confirm the Modified Plan is continued to **2:00 p.m. on May 21, 2024**.
> >
> > As the court stated at the hearing, once Debtor's counsel and the Trustee have the corrective language for the above finalized they:
> >
> > A. May lodge with the court a proposed order granting this Motion, which will state the amendments to be included in the order confirming the plan (or a Final Corrected Plan if appropriate);
> >
> > B. If a Final Corrected Plan is necessary, file the Final Corrected Plan; and
> >
> > C. Lodge with the court the confirmation order, either stating the amendments or expressly identifying (including docket number) the Final Corrected Plan.

Order, Docket 99. On April 15, 2024, Trustee filed with the court a Reply, recommending the Modified Plan be approved. Docket 100. In his Reply, Trustee states he no longer opposes the Motion, finding that his Objections have been resolved.

At the May 21, 2024 continued hearing, **xxxxxxx**

REVIEW OF THE MOTION

Debtor seeks confirmation of the Third Modified Plan because he reports he has been struggling with increased costs and household expenses. Declaration, Docket 83 ¶ 5. The Third Modified Plan provides that $221,746.40 has been paid from May 2020 though February 2024, with payments of $6,443 per month for the remainder of the Plan. Modified Plan, Docket 84 § 7.01. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

Trustee filed an Opposition on March 20, 2024. Docket 90. Trustee opposes confirmation of the Plan on the basis that:

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

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

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

DEBTOR'S REPLY

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

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

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

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

DISCUSSION

Debtor having worked to address Trustee's concerns, at the hearing, counsel for the Trustee reports that the language relating to the claims still needs to be finalized and concurs with Debtor's request for a further continuance.

The court specifically stated at the hearing that once Debtor's counsel and the Trustee have the corrective language for the above finalized they:

A. May lodge with the court a proposed order granting this Motion, which will state the amendments to be included in the order confirming the plan (or a Final Corrected Plan if appropriate);

B. If a Final Corrected Plan is necessary, file the Final Corrected Plan; and

C. Lodge with the court the confirmation order, either stating the amendments or expressly identifying (including docket number) the Final Corrected Plan.

The hearing is continued to 2:00 p.m. on May 21, 2024, to allow counsel for the Debtor and the Trustee to generate the final language for the amendments/Final Corrected Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Brooks Parfitt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Brooks Gregory Parfitt's ("Debtor") Modified Chapter 13 Plan filed on March 5, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. 19-24611-E-13 DPC-3 | RONALD/KIMBERLY GARNER Douglas Jacobs | MOTION FOR STATUS CONFERENCE 4-22-24 [116]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, other parties in interest, parties requesting special notice, and Office of the United States Trustee on April 22, 2024. By the court's calculation, xx days' notice was provided. 28 days' notice is required.

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

The Motion for a Status Conference is xxxxxxx.

The Chapter 13 Trustee, David P. Cusick ("Trustee"), moves this court for an Order scheduling a Status Conference in the case. Trustee makes his Motion on the following grounds:

1. A Modified Plan was confirmed on July 27, 2023. Docket 113. The Modified Plan changes the Class 1 mortgage claim of Midfirst Bank ("Creditor") for $124,816.17 to Class 2 without setting an interest rate. Trustee has already paid $130,783.59 to that claim, of which $14,029.11 had been paid toward prepetition arrears. Mot., Docket 116 p. 1:24-28.

2. Trustee received a list of taxes and insurance disbursed by the Creditor from Creditor's Counsel on March 8, 2024 showing $24,840.08 of post-petition advances to property taxes and insurance. Trustee believes these expenses were expected by Ronald William Garner and Kimberly Kay Garner ("Debtor") as all Schedules J filed show no property taxes or property insurance expense; unfortunately, no notice of postpetition charges has been filed since October 7, 2019, and the charges commence November 7, 2019. *Id.* at p. 2:14-19.

3. April 2024 is the 57th month of the plan, and while the Trustee could simply adjust his records to show the claim as paid where the plan will pay

> no less than 61.25% to unsecured, which will result in an unexpected windfall to unsecured claims, but the Trustee believes seeking a status conference was more appropriate. *Id.* at p. 2:20-24.

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 118.

Debtor filed a Response on May 7, 2024, stating that:

1. Trustee's restatement of the events of the case is accurate. Docket 123 ¶ 1.

2. However, Midfirst Bank, d/b/a Midland Mortgage, Creditor who currently holds the first mortgage on the home, claims an amount due on the mortgage of $33,671.17. *Id.* at ¶ 2.

3. Debtor requests Trustee pay any amount held on hand to Midland Mortgage and not increase the dividend to general unsecured creditors. *Id.* at ¶ 3.

Debtor submits their own Declaration at Docket 122, testifying that they wish to pay the Claim of Midland Mortgage with any funds Trustee has.

Debtor states that they have included an Exhibit A in their responsive pleadings showing Midland Mortgage's claimed amount, but a review of the Docket on May 14, 2024 reveals no such Exhibit has been filed.

DISCUSSION

11 U.S.C. § 105(d)(1) states:

(d) The court, on its own motion or on the request of a party in interest—

> (1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; . . .

Pursuant to this rule, the bankruptcy court may set a Status Conference as necessary to find an expeditious and economical resolution of a case. Here, the court finds a Status Conference would be helpful in determining how any excess amounts should be distributed. Trustee suggested in his Motion that he could pay the general unsecured creditors a higher dividend, while Debtor responded with a request to use excess funds on hand to pay Midland Mortgage.

At the hearing, **XXXXXXX**

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

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

The Motion to Set a Status Conference 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 the Motion is **xxxxxxx**.

3.	**24-20915-E-13** **DPC-1**	**SUSAN VASQUES** **Gabriel Liberman**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-24-24 [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, parties requesting special notice, and Office of the United States Trustee on April 24, 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. Debtor Susan Lynn Vasques ("Debtor") failed to appear at the 341 Meeting held on April 18, 2024, although Debtor's attorney did appear. The Meeting has been continued to May 23, 2024. Obj., Docket 16 ¶ 1.

2. The Debtor has failed to provide the Trustee with a tax transcript or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. *Id.* at ¶ 2.

3. Debtor has also failed to provide business documents to the Trustee. *Id.* at ¶ 3.

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

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

Failure to Provide Tax Returns

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

According to the proof of claim filed by the Internal Revenue Service, (POC 1-1) the Debtor has not filed tax returns for tax years 2019, 2020, 2021, 2022, or 2023. For the Debtor to be eligible to be a Debtor in a chapter 13 bankruptcy, she must have filed all required tax returns for the 4-year period prior to filing.

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 bank account statements, and
D. 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.

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.

4. 24-20024-E-13 BLG-2 — JEFFREY FERNANDEZ, Chad Johnson — MOTION TO CONFIRM PLAN 3-19-24 [20]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2024. By the court's calculation, 63 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, Jeffrey Afable Fernandez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $8,500 per month for 60 months with an estimate 6% dividend to general unsecured creditors. Amended Plan, Docket 22. 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 May 6, 2024. Docket 38. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is $17,000 delinquent in plan payments with another $8,500 plan payment due on May 25, 2024. *Id.* at ¶ 1.

B. The Plan relies on a pending Objection to Claim of Quantum3 Group LLC as Agent for Aqua Finance Inc. If the Objection is not granted, Debtor's Plan may be underfunded. *Id.* at ¶ 2.

DISCUSSION

The court sustained Debtor's Objection to Creditor's Claim by Order issued on May 9, 2024, disallowing the Claim in its entirety. Docket 43. Therefore, this Objection is rendered moot.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $17,000 delinquent in plan payments, which represents multiple months of the $8,500 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

~~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, Jeffrey Afable Fernandez ("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.~~

5. 20-21032-E-13 RJ-6 | **MARJORIE ALCANTARA** **Richard Jare** | **MOTION FOR COMPENSATION FOR RICHARD L. JARE, DEBTORS ATTORNEY(S)** **4-23-24 [165]**

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and parties in interest, and Office of the United States Trustee on April 23, 2024. By the court's calculation, 28 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). Movant is seven days late of the required notice period. At the hearing, **XXXXXXX**

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

The Motion for Allowance of Professional Fees is granted.

Richard Jare, the Attorney ("Applicant") for Marjorie Alcantara, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Applicant requests discounted fees in the amount of $2,000 related to additional work on the case, and Applicant waives all costs. Applicant's authenticated exhibits show he worked 26.6 hours on the case at a rate of $250 per our, billing $6,650 in total. Docket 168. The court approved $4,000 in fees upon confirmation at Docket 43. Applicant is reducing his rate by an additional $650, arriving at the $2,000 requested amount in fees.

David Cusick, the Chapter 13 Trustee ("Trustee"), filed a nonopposition on May 14, 2024. Docket 170.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

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)).

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). 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 [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 is obligated to consider:

> (a) Is the burden of the probable cost of legal 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 substantial and unanticipated work for the Estate include defending or prosecuting an extraordinary amount of dismissal and modification actions, mostly due to economic turmoil resulting from the Covid-19 pandemic. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Under the Local Rules prior to the August 2023 revisions, which are in effect in this case, Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, **the attorney may apply for additional fees**. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Docket 43. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. 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). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's

services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (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)).

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**
Richard Jare, Attorney	26.6	$250.00	$6,650.00
Total Fees for Period of Application			$6,650.00
Total Fees Requested at Reduced Rate			$2,000.00

As the court has already approved fees in the amount of $4,000, Applicant is reducing his requested amount by approximately $650, requesting $2,000 in additional fees.

FEES ALLOWED

The unique facts surrounding the case, including defending Trustee's Motions to Dismiss and prosecuting and confirming Modified Plans, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $2,000 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case 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 $2,000

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Richard Jare ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Richard Jare is allowed the following fees and expenses as a professional of the Estate:
>
> Richard Jare, Professional Employed by Marjorie Alcantara ("Debtor")
>
> Fees in the amount of $2,000,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

6. **24-20649-E-13 MOH-1** | **SHANE SIEGEL** | **Michael Hays** | **CONTINUED MOTION TO EMPLOY C.E. MCDOUGAL REALTY, INC. AS REALTOR(S)** **4-23-24 [22]**

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 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 xxxxxxx.

May 21, 2024 Hearing

The court continued this hearing from the May 7, 2024 calendar, granting Debtor's request for a short continuance. Debtor's counsel reported he was having some difficulty in getting a signature from Nathan G. McDougal and C.E. McDougal Realty, Inc. ("Broker") on the Declaration. Docket 28. A review of the Docket on May 19, 2024 reveals that no Declaration has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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.

On May 6, 2024, counsel for the Debtor requested a continuance of the hearing due to difficulties in obtaining the signed Declaration back from the Broker and an unrelated conflict in counsel's calender for the May 7, 2024 hearing.

The Trustee concurred in the request for a continuance. The hearing was continued to 2:00 p.m. on May 21, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 Motion to Employ is **xxxxxxx.**

7. 24-20649-E-13 DPC-1 — SHANE SIEGEL, Michael Hays — CONTINUED 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.

The Objection to Confirmation of Plan is xxxxxxx.

May 21, 2024 Hearing

The court continued this hearing from the May 7, 2024 calendar, granting Debtor's request for a short continuance in the related Motion to Employ matter.

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 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. Docket 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.

Debtor's counsel requested and was granted a continuance of the related Motion to Employ a Real Estate Broker. The Trustee concurred with continuance of the hearing on the Motion to Dismiss to 2:00 p.m. on May 21, 2024, so it could be conducted in conjunction with the Motion to Employ.

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**.

8.	**24-21051-E-13 DPC-1**	**NEERAJ BHARDWAJ / STACY MILMAN Scott Johnson**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 4-25-24 [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, parties requesting special notice, and Office of the United States Trustee on April 25, 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 debtor, Neeraj Sagar Bhardwaj and Stay Brooke Milman ("Debtor") have submitted inaccurate Schedules. In particular, Trustee states:

   a. Debtor may not have listed all their assets on Schedule A/B as Debtor testified at the 341 Meeting that there is some equipment form their business that has not been disclosed. Docket 16 p. 2:7-9.

   b. The plan payment is $6,250 a month, but Debtor does not yet have sufficient income to fund the Plan. Debtor testified he plans on selling some of his assets and old business equipment that he owns personally in order to make plan payments while he awaits projected

income from his business, but Trustee is not satisfied such sales will result in making the plan payment. *Id.* at p. 2:10-19.

2. Debtor has not filed tax returns for the years 2022 or 2023. *Id.* at p. 2:20-27.

3. In debtor's non-standard provisions of the Plan, Trustee is concerned that the adequate protection payment of $900 per month to creditor Flagstar Bank ("Creditor") is too low. Flagstar Bank's Claim appears to be in the amount of $529,988. It should not be Creditor's responsibility to subsidize escrow and property taxes /insurance on Debtor's behalf while they are trying to enter into a loan modification *Id.* at p. 3:4-17.

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

DISCUSSION

Trustee's objections are well-taken.

Inaccurate or Missing Information

Debtor's Schedules I and Schedule A / B contain outdated or inaccurate information. Specifically, Debtor has not submitted evidence that they can afford the Plan payment while Debtor awaits the income from his company. Debtor also appears to not have scheduled all assets. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Tax Returns

Debtor's federal income tax returns for the 2022 and 2023 tax years have not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file and provide the trustee with a copy of a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Lack of Adequate Protection Under the Plan

Trustee is concerned that the Plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay Creditor are insufficient to provide it with adequate protection during the period of the Plan.

United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365 (1988) interprets the meaning of the phrase "adequate protection" for purposes of 11 U.S.C. § 362. 11 U.S.C. § 361 provides that:

> [w]hen adequate protection is required under section 362, 363, or 364 . . . of this title of an interest of an entity in property, such adequate protection may be provided by (1) requiring the trustee to make a cash payment or periodic cash payments, to the

> extent that the stay under section 362 of this title . . . results in a decrease in the value of such entity's interest in such property.

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See, e.g.*, *Diaz v. Davis (In re Digimarc Corp. Derivative Litigation)*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("Accordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act.").

Upon the court's most recent review, the court is not aware whether the Ninth Circuit nor any of its sister circuits have considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325. Several bankruptcy courts that have considered the issue, however, have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. *See, e.g.*, *In re Sanchez*, 384 B.R. 574, 576 (Bankr. D. Or. 2008); *Royals v. Massey (In re Denton)*, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

As the Trustee argues, the Plan proposes to only pay adequate protection of $900 per month on Creditor's secured claim. Creditor filed Proof of Claim 4-1 in which it asserts a secured claim in the amount of $543,454.30, secured by a deed of trust in the real property commonly known as 11732 Forest View Drive, Nevada City, California 95959. None of the proposed $900 goes toward funding any escrow account, and Creditor appears to have to foot the bill for taxes and insurance on the real property as well. In the absence of any countervailing evidence, the court accepts Trustee's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II) and sustains the Objection on that basis, too.

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. 24-21054-E-13 BB-2 | **DAVID DURYEE / FELICA TORTORICI** | **MOTION TO VACATE DISMISSAL OF CASE**
Bonnie Baker | **5-3-24 [23]**

DEBTORS DISMISSED: 04/16/24

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on May 3, 2024. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Vacate 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 Vacate is granted, and the Order Dismissing the Case for Failure to Timely File Documents (Docket 21) is vacated.

David Andrew Duryee and Felicia Joseph Tortorici ("Debtor") filed the instant case on March 18, 2024. Docket 1. A Plan was never filed in this case.

On March 20, 2023, the clerk of the court filed a Motion to Dismiss the Case due to Debtor not filing a Plan or any required Schedules / forms. Docket 8. The deadline to file these documents was originally March 25, 2024, but the court granted a Motion to Extend the Filing Deadline on March 29, 2024, extending the deadline to file to April 15, 2024. Docket 15. Debtor never filed the documents, so the case was dismissed on April 16, 2024. Docket 21.

On May 3, 2024, Debtor filed this instant Motion to Vacate, claiming a series of medical emergencies arose that prevented Debtor from prosecuting their bankruptcy case.

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

APPLICABLE LAW

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

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

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

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

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

DISCUSSION

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

Here, Debtor submits compelling testimony that gave rise to the delay in filing required documents. Debtor Felicia explains that she has been the sole care giver for her husband, Debtor David, since his stroke/brain bleed on September 26, 2019. Decl., Docket 26 p. 2:2-3. Debtor Felicia informs the court of the struggles the couple have experienced since the stroke. *Id.* at p. 2:5-15. Most recently, and relevant to this case, Debtor Felicia explains she was trying to get the relevant documents and tax information together for this case when she developed a strain in the neck/shoulder and a pinched nerve in the C4-C5 vertebrae that caused her to be unable to type, sleep, drive, or use the left arm for two months. *Id.* at p. 2:17-20. Debtor Felicia has also recently been in the ER for abdominal pain for other medical ailments. *Id.* at p. 2:22-26. Debtor Felicia became sick from the antibiotics she was taking during this time as well, confine her to her bed for a two-week period. *Id.* at ps. 2:27-3:3. All of these medical issues caused her to fall behind in preparing documents for the bankruptcy case.

Debtor also submits a letter from her medical doctor, Vanessa DeMoss, corroborating Debtor Felicia's testimony of her medical ailments. Exhibit A, Docket 27.

The court appreciates real people go through real struggles. Debtor has presented evidence justifying the extraordinary relief sought in this Motion. Therefore, in light of the foregoing, the Motion is granted, and the Order Dismissing the Case for Failure to Timely File Documents (Docket 21) is vacated.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by David Andrew Duryee and Felicia Joseph Tortorici ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Order Dismissing the Case for Failure to Timely File Documents (Docket 21) is vacated.

10. 18-23358-E-13 DPC-6 | **MATTHEW/TARA HANNAH** | **David Foyil** | **OBJECTION TO CLAIM OF CORNERSTONE EDUCATION LOAN SERVICES, CLAIM NUMBER 4** | **4-3-24 [122]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, parties requesting special notice, other parties in interest, and Office of the United States Trustee on April 3, 2024. By the court's calculation, 48 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 4-1 of Cornerstone Education Loan Services on behalf of the Department of Education is overruled without prejudice.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Cornerstone Education Loan Services on behalf of the Department of Education ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured. Objector asserts that payments to Creditor are being returned as undeliverable.

Trustee has paid, and Creditor has received, $1,856.52. However, Trustee has attempted to pay an additional $3,824.07 to Creditor, but that amount has been returned as undeliverable. Trustee requests the Claim be disallowed in excess of $1,856.52. This would allow Trustee to distribute a dividend to general unsecured creditors in this case. Trustee asks that the Claim be disallowed in excess of $1,856.52 for only

purposes of this matter, and not that the court find whether the Claim has been satisfied or abandoned. Mem., Docket 125 p. 2:11-16.

DISCUSSION

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

Here, the Chapter 13 Trustee has no objection to assert that the claim does not exist or that there is a defense that renders the claim valueless. Rather, the Trustee requests that since the mailing address the Trustee has for Creditor appears to no longer be good and the payments he is trying to make to creditor are **unclaimed funds**, then the Trustee should be authorized to give Creditor's **unclaimed funds** to other creditors who have no interest in or right to the **unclaimed funds.**

Proof of Claim 4-1 states that the creditor is "CornerStone Education Loan Services on behalf of Department of Education." This language would indicate that the Department of Education, a Department of the Unites States Government, is the creditor and there is a loan servicer acting as a representative of the Unites States Government.

There are no loan documents attached to Proof of Claim 4-1 to show any basis for the claim being asserted.

If the creditor is the United States Department of Education, its attorneys are provided by the U.S. Attorney for the Eastern District of California.

Using the internet, a search regarding "CornerStone Education Loan Services disclosed the following:

> CornerStone Education Loan Services was managed by the Utah Higher Education Assistance and was previously one of eight approved federal student loan servicing agencies. Due to financial loss, however, the company also canceled its contract with the U.S. Department of Education in 2020. This, in turn, resulted in roughly 1 million loans being transferred to FedLoan Servicing from CornerStone in 2022.
>
> However, FedLoan Servicing has since ended its contract with the U.S. Department of Education. In turn, the loans that were being serviced by both CornerStone and subsequently FedLoan Servicing have been transferred to other active loan servicing companies. That can make it difficult for borrowers whose loans were with CornerStone to understand what's next for the money they borrowed. If you're

> wondering what you should know if CornerStone was your student loan servicer, here's what to expect.

https://www.bankrate.com/loans/student-loans/cornerstone-education-loan-services-overview/.

Reviewing the legal authority presented by the Chapter 13 Trustee for the court to disallow this claim, the Trustee first directs the court to Local District Rule 183(b) for the Eastern District of California, incorporated in the Local Bankruptcy Rules under Rule 1001-1, in support of his argument. Local Rule 183(b) states:

> (b) Address Changes. A party appearing in *propria persona* shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a plaintiff in *propria persona* by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty-three (63) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.

It is clear that this Rule only applies to parties appearing *pro se*, and is therefore not relevant to this Objection. A Proof of Claim has been filed, but there has not been either an adversary proceeding or contested matter in which a party appeared and then did not update an address.

The Eastern District of California Local Bankruptcy Rules do contain a rule requiring parties to keep their addresses current. Local Bankruptcy Rule 2017-1(g) states:

> (g) Change of Address. Each appearing attorney and *pro se* party is under a continuing duty to notify the Clerk and all other parties of any change of address or telephone number of the attorney or the *pro se* party. Absent such notice, service of documents at the prior address of the attorney or *pro se* party shall be fully effective. Separate notice shall be filed and served on all parties in each action in which an appearance has been made.
>
> Local Rule 182(f) is the District Court's equivalent, stating:
>
> (f) Change of Address. Each appearing attorney and pro se party is under a continuing duty to notify the Clerk and all other parties of any change of address or telephone number of the attorney or the pro se party. Absent such notice, service of documents at the prior address of the attorney or pro se party shall be fully effective. Separate notice shall be filed and served on all parties in each action in which an appearance has been made.

These merely provide that if an address was given and not updated, then service of pleadings on that address shall be effective service. But it does not state that any relief requested by a party against such person who did not update an address is automatically granted without regard whether there is legal or evidentiary basis for such relief.

The Trustee also cites to Federal Rule of Bankruptcy Procedure 9014(c) and 7014(b), for the proposition that since an objection to a claim is asserted because there are **unclaimed funds**, then the court should presume that there is no basis for such claim and disallow it, notwithstanding neither the Debtor nor

the Chapter 13 Trustee have provided the court with any evidence to overcome the prima facie evidentiary value of a Proof of Claim.

As this court has discussed in other cases, 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).

Here, the Trustee's only basis of objecting to the claim is that since the address has not been updated and there are **unclaimed funds** the court should presume that there is no claim.

It is not for the court to presume that since there are **unclaimed funds** then it would be fair and just to determine that the creditor, here the United States Department of Education, shouldn't be paid and the **unclaimed funds** diverted to others who have no interest in such funds.

No legal or evidentiary basis provided for objecting to Proof of Claim 4-1 "merely" because there are **unclaimed fund**, the Motion is denied without prejudice. [Fn.1.]

FN. 1. The court also notes that the Trustee believes that this claim of the Department of Education is a nondischargeable student loan debt. If the court were to grant the relief requested and have the **unclaimed funds** diverted to other creditors who have no interest in such funds, significant financial prejudice would be visited on Debtor. Though they are **unclaimed funds**, Debtor has paid them to the Department of Education and thereby has reduced the student loan nondischargeable debt. If those payments are not made and there are no **unclaimed funds** for the Department of Education, the Debtor would have to then pay those monies twice. Once in the Bankruptcy Case, where the **unclaimed funds** were diverted to other creditors who had no interest in them and were not entitled to the monies under the Chapter 13 Plan, and then again when the Department of Education comes knocking on the door for monies after the Bankruptcy Case has been closed.

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 Cornerstone Education Loan Services on behalf of the Department of Education ("Creditor"), filed in this case by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 4-1 of Creditor is overruled without prejudice.

11. 23-24060-E-13 MS-2 | **SHAUN DEITZEL** Mark Shmorgon | **MOTION TO CONFIRM PLAN** 3-19-24 [48]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and parties in interest, and Office of the United States Trustee on March 19, 2024. By the court's calculation, 63 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, Shaun Patrick Deitzel ("Debtor"), seeks confirmation of the Second Amended Plan. The Amended Plan provides that as of month four, Debtor has paid $3,419 into the Plan, and then payments of $3,835 will commence for months five though 60 with 0% to unsecured creditors. Amended Plan, Docket 52. The Second Amended Plan also provides for an unexpected statutory tax claim by the Franchise Tax Board ("FTB"). 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 May 6, 2024. Docket 58. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent one plan payment of $3,835. Docket 58 ps. 1:26-2:2.

2. As proposed, the Plan appears overextended by about ten months, based on the Internal Revenue Service ("IRS") filling Proof of Claim 14-1. *Id.* at p. 2:3-10.

3. Debtor has not amended Schedules A / B to include a tax refund in the amount of $2,845 for the year 2022. Debtor claims the refunds will be offset by the amounts owed to the tax authorities, but Debtor has not provided any evidence that the offset has occurred, so the refunds are assets that should be included. *Id.* at p. 2:11-21.

4. Debtor has failed to amend Schedule D to include the Franchise Tax Board, where the Plan shows the Franchise Tax Board listed in Class 2(A). *Id.* at p. 2:22-24.

DISCUSSION

Delinquency

Debtor is $3,835 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Overextended Plan

Without the IRS filing Claim 14-1, the Plan will take 70 months to complete. 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.

Inaccurate or Missing Information

Debtor's Schedule A / B does not contain the tax refund for the year 2022 in the amount of $2,845. While the FTB and IRS claims do contain a right to set off, Debtor has not shown any evidence that a set off has occurred using the 2022 tax refund. The refund should be properly scheduled if it is an asset in Debtor's possession. At the hearing, **xxxxxxx**

Debtor should also amend his Schedule D to include the Claim of the FTB, as debtor has now provided for this claim and creditor in class 2(a) of the Second Amended Plan. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

The 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 Shaun Patrick Deitzel ("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.

12. 23-24065-E-13 HAW-2 | **MICHAEL MASTROMATTEO** **Helga White** | **OBJECTION TO CLAIM OF SUSAN KINGSBURY, CLAIM NUMBER 7** **3-28-24 [54]**

12 thru 13

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors that have filed claim, attorney of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on March 28, 2024. By the court's calculation, 54 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 7-1 of Susan Kingsbury is xxxxxxx.

Michael Mastromatteo, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of his separated spouse Susan Kingsbury ("Creditor"), Proof of Claim No. 7-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $401,485.23. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is January 23, 2024. Notice of Chapter 13 Bankruptcy Case Meeting of Creditors and Deadlines Due to COVID-19 Outbreak, Docket 12 p. 2.

Similarly, any claims that 11 U.S.C. § 523(c) applies to that the Creditor wishes to have excepted from discharge must have been raised via a complaint filed by February 12, 2024. *Id.* No such complaint has been filed.

DISCUSSION
Domestic Support Obligations

The court notes that domestic support obligations are excepted from discharge pursuant to 11 U.S.C. § 523(c) regardless if any adversary proceeding has been filed. Therefore, any domestic support obligation liability will survive discharge. A domestic support obligation is broadly defined in the code as follows:

> (14A)The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—
>
> (A) owed to or recoverable by—
>
> (i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or
>
> (ii) a governmental unit;
>
> (B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;
>
> (C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—
>
> (i) a separation agreement, divorce decree, or property settlement agreement;
>
> (ii) an order of a court of record; or
>
> (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and
>
> (D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

In Ms. Kingsbury's Proof of Claim, she includes attachments of state court orders requiring Debtor to pay both child support and spousal support. Poc 7-1, p. 6. Such Claims are clearly within the

definition of domestic support obligations and would survive discharge. However, the remaining attachments to the Claim involve business debts of Debtor and Ms. Kingsbury business, 2 Grand Productions, and fall outside the definition of domestic support obligations.

The Objection

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 factual basis 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).

The deadline for filing a proof of claim in this matter was January 23, 2024. Creditor's Proof of Claim was filed on March 6, 2024. POC 7-1. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

On May 6, 2024, creditor Susan Kingsbury, separated spouse of Debtor, filed a letter with the court, which the court construes to be an Opposition. Docket 84. In her Opposition, Ms. Kingsbury states:

1. She should be paid like Debtor's other creditors.

2. She cannot afford an attorney to prosecute her claim in the case, largely due to how long the divorce and family law related matters have been ongoing. Her Claim (POC 7-1) was tardy for this reason.

3. The court should allow her to be paid through the case. It is unfair for her and the children to not receive financial assistance while the "big banks and credit card companies get paid."

4. Debtor falsely states Ms. Kingsbury and their daughters are dependents of his.

5. Both pieces of real property are not Debtor's, contrary to his assertion.

6. She has not been getting answers from Ms. Helga White, Debtor's attorney.

While Ms. Kingsbury's Claim may not be allowed in this case as untimely, it may well be that much of her Claim survives discharge as a domestic support obligation.

At the hearing, **xxxxxxx**

~~Based on the evidence before the court, Creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.~~

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

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

The Objection to Claim of Susan Kingsbury ("Creditor") filed in this case by Michael Mastromatteo, 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 7-1 of Susan Kingsbury is sustained, and the claim is disallowed in its entirety.~~

~~This disallowance of the claim in this Bankruptcy Case is without prejudice to the rights of Susan Kingsbury regarding debts that are statutorily nondischargeable. The court does not make any ruling on the substantive rights to payments on such nondischargeable claims, or any portion of the claims asserted in Proof of Claim 7-1, it being disallowed solely for not being timely filed to be a claim receiving distributions under the Chapter 13 Plan.~~

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

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

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

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

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

The Motion to Confirm the Amended Plan is xxxxxxx.

May 21, 2024 Hearing

The court continued this matter from its April 9, 2024 calendar to be heard in Conjunction with debtor Michael Mastromatteo's ("Debtor") Objection to Claim 7-1 filed by Susan Kingsbury. Feasibility of the Plan hinges on the Objection to Claim.

On May 6, 2024, creditor Susan Kingsbury, separated spouse of Debtor, filed a letter with the court, which the court construes to be an Opposition. Docket 84. In her Opposition, Ms. Kingsbury states:

1. She should be paid like Debtor's other creditors.

2. She cannot afford an attorney to prosecute her claim in the case, largely due to how long the divorce and family law related matters have been ongoing. Her Claim (POC 7-1) was tardy for this reason.

3. The court should allow her to be paid through the case. It is unfair for her and the children to not receive financial assistance while the "big banks and credit card companies get paid."

4. Debtor falsely states Ms. Kingsbury and their daughters are dependents of his.

5. Both pieces of real property are not Debtor's, contrary to his assertion.

6. She has not been getting answers from Ms. Helga White, Debtor's attorney.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The debtor, Michael Mastromatteo ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $5,000.00 monthly payments for 60 months and is 100% Plan. Amended Plan, Docket 42. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 26, 2024. Opposition, Docket 51. Trustee opposes confirmation of the Plan on the basis that:

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

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

DEBTOR'S RESPONSE TO THE TRUSTEE'S OPPOSITION

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

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

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

DISCUSSION

Failure to Complete Plan Within Allotted Time

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

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

At the hearing, counsel for the Debtor states that the Debtor's ex-wife filed her claim 34 days late, and that the hearing on the Objection to the ex-wife's Claim 7-1 is set for 2:00 p.m. on May 21, 2024.

Attorney Fees

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

At the hearing, the Parties agreed to continue the hearing so that it can be conducted in conjunction with the objection to Claim 7-1 filed by Susan Kingsbury. If the Objection is sustained, all of the Trustee's opposition is resolved.

The hearing is continued to 2:00 p.m. on May 21, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael Mastromatteo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

14. 24-20965-E-13 JCW-1 | **JOHN/BARBARA HUESTIS** | **Scott Johnson** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A 4-17-24 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 17, 2024. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Creditor is in possession of a promissory note secured by a deed of trust on debtor John Warren Huestis and Barbara Jean Heustis' ("Debtor") real property commonly known as 4525 Cameron Road, Cameron Park, Ca 95682 ("Property").

2. The loan matured on February 22, 2022.

3. Debtor proposes to pay the Claim in full but at an 8.5% interest rate. Creditor objects to this interest rate. Docket 17 ¶ 3.

4. Creditor argues the interest rate should be adjust upwards by 2%, reasoning that Debtor has defaulted on payments due two years ago and now Creditor must wait an additional five years to be paid. *Id.* at ¶ 4.

Creditor did not submit a Declaration in support of the Motion.

DISCUSSION

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 8.5%. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) and that the interest rate should be 10.5%. In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The risk adjustment this court uses has historically been 1.25%, not 2% as Creditor requests. Therefore, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.5%, plus a 1.25% risk adjustment, for a 9.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

The 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 Wells Fargo Bank, N.A. ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

15. 23-24568-E-13 CRG-3 | **SUNDREA GORDON-HACKLEY** | **MOTION TO CONFIRM PLAN**
Carl R. Gustafson | **4-9-24 [56]**

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 April 10, 2024. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Sundrea Danyelle Gordon-Hackley ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for a sale of her real property commonly known as 948 Lake Canyon Ave., Galt, Ca 95632 ("Property") no later than August 1, 2024, resulting in all creditors being paid 100%. Amended Plan, Docket 60. The court granted Debtor's Motion to Sell the Property by Order issued on April 25, 2024. Docket 88. The closing date for the sale was on May 7, 2024, according to the California Residential Purchase Agreement and Joint Escrow Instructions. Exhibit A, Docket 63. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

Roger E. Larsen and Elizabeth E. Larsen, Trustees of the Larsen Family Trust dated March 15, 2006 as to an undivided 55.804% interest and Mark Belotz and Silvia Belotz, also known as Marta Silvia Belotz, as trustees of the Belotz Family 1999 Trust, as Amended & Restated in 2014, dated July 6, 1999 as to an undivided 44.196% interest, its successors and/or assignees in interest ("Creditor") filed an Opposition on April 18, 2024, approximately one week before the Motion to Sell was granted. Docket 82. Creditor opposes confirmation of the Plan on the basis that:

A. The Amended Plan is too speculative, calling for a sale by August 1 that may or may not occur. *Id.* at ps. 3:25-4:2.

B. Debtor is not proposing to pay any adequate protection payments leading up to the sale while Debtor has disposable income to make plan payments. *Id.* at p. 4:5-11.

C. Debtor is improperly attempting to modify Creditor's claim by not paying it in full. *Id.* at p. 4:12-18.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), also filed an Opposition, but on May 3, 2024, just four days before the close of escrow of the approved sale. Docket 96. Trustee opposes confirmation of the Plan on the basis that:

A. The Amended Plan may not be proposed in good faith where it does not propose monthly plan payments leading up to the sale. *Id.* at ps. 1:24-2:12; p. 2:17-23.

B. The Amended Plan also fails to provide ongoing payments to Class 1 claims, contrary to 11 U.S.C. §§ 1322(b)(2) and 1322(b)(5).

C. A Plan calling for no monthly payments and only a lump sum payment may be contrary to existing case law. *Id.* at p. 2:17-23.

DISCUSSION

As an initial matter, Creditor's assertion that the Amended Plan is too speculative is overruled as moot, the sale having been granted with escrow having been set to close over a week ago on May 7, 2024. At the hearing, **XXXXXXX**

Creditor and Trustee argue monthly payments must be made, Creditor arguing for adequate protection pursuant to 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and Trustee arguing for maintenance payments pursuant to 11 U.S.C. § 1322(b)(5).

Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325. Several bankruptcy courts that have considered the issue, however, have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. *See, e.g.*, *In re Sanchez*, 384 B.R. 574, 576 (Bankr. D. Or. 2008); *Royals v. Massey* (*In re Denton*), 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court does typically apply this rule. However, in this case, escrow should have closed regarding the approved sale, thus paying Creditor its Claim in full (or at least Trustee having the funds to pay the Claim in full on hand). Indeed, Creditor submitted a conditional Opposition to the Motion to Sell at Docket 82, essentially acquiescing to the sale so long as it is paid in full.

By this same reasoning, with the sale and escrow having closed, Trustee should have been given the funds to pay himself and all creditors at 100%, rendering Trustee's Objection moot as all payments can

now properly be made pursuant to 11 U.S.C. § 1322(b)(5). Trustee cites to *In re Gavia*, 24 B.R. 573 (B.A.P. 9th Cir. 1982) for his position that maintenance payments must be made pending a proposed sale. The facts of *Gavia* are different from this matter as the debtors in *Gavia* did not have concrete offers for the sales of their homes. *Id.* at 574 (holding that one debtor had not made any marketing efforts, and the only marketing efforts the two remaining debtors' attorneys had made were telling the court a potential sale "might look better in a month," and that there had been some "interest in the home."). Here, Debtor has already found a purchaser, been granted authority to sell the home, and a closing date has already passed.

Neither the Bankruptcy Code nor the court permits a debtor to sit on his or her hands with some speculative sale to occur sometime in the future without making maintenance or adequate protection payments in the meantime; however, this case presents facts where the sale was completed efficiently and quickly, thus funding a 100% repayment plan in a reasonable time period.

At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Sundrea Danyelle Gordon-Hackley ("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 9, 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.~~

16. 24-20068-E-13 KMM-1 | **DIANA EVANS, Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY, 4-18-24 [39]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 18, 2024. By the court's calculation, 33 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.

Deutsche Bank National Trust Company, as Trustee for GSR Mortgage Loan Trust 2006-OA1, Mortgage Pass-Through Certificates, Series 2006-OA1 as serviced by Specialized Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor's claim is secured by the real property commonly known as 707 Daniels Avenue, Vallejo, California 94590 ("Property").

2. Creditor's Claim is secured in the amount of $535,136.39 including arrearage in the amount of $247,879.13.

3. Creditor objects to the Plan as it does not provide for Creditor's Claim in full, not proposing to pay any of the arrearage. Docket 39 ¶ 2.

Creditor did not submit a Declaration in support.

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 has filed a timely proof of claim in which it asserts $247,879.13 in pre-petition arrearage. POC 1-1. The Plan does not propose to cure those arrears. 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.

There is a Motion to Dismiss also filed in this case by David Cusick, the Chapter 13 Trustee ("Trustee"). Trustee filed a status report with the court regarding his Motion on May 14, 2024. Docket 52. Trustee informs the court that Debtor was asked about curing the arrearage omitted from the Plan by selling the Property as Debtor does not have other means to cure that arrearage, and Debtor stated she did not have a desire to sell her home to cure the arrearage. *Id.* at p. 2:3-6.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company, as Trustee for GSR Mortgage Loan Trust 2006-OA1, Mortgage Pass-Through Certificates, Series 2006-OA1 as serviced by Specialized Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

17. 24-21068-E-13 SK-1 | **DESIREE LEWIS** Sunita Kapoor | **MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS INC. 4-19-24 [36]**

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on April 19, 2024. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

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

At the hearing, **xxxxxxx**

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

The Motion to Value Collateral and Secured Claim of Real Time Resolutions, Inc. ("Creditor") is xxxxxxx.

The Motion to Value filed by Desiree Rebecca Lewis ("Debtor") to value the secured claim of Real Time Resolutions, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 39. Creditor's Claim, Proof of Claim 2-1, is asserted to be secured in the amount of $203,473.33, and in second position.

Debtor is the owner of the subject real property commonly known as 4822 Mission Beach Court, Elk Grove, Ca 95758 ("Property"). Debtor seeks to value the Property at a fair market value of $320,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor testifies that the valuation is proper because there are extensive repairs necessary to fix the Property. Declaration, Docket 39 ¶ 5. Debtor also attaches 14 Exhibits to her Declaration, each being an estimate obtained for the repairs and renovations, totaling $224,740.

The Chapter 13 Trustee, David Cusick, filed a nonopposition on May 7, 2024, also noting the Certificate of Service form issue. Docket 48.

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

OPPOSITION

Creditor filed an Opposition on May 1, 2024. Docket 48. Creditor disputes the valuation and asks this court for a continuance so it can obtain its own valuation. *Id.* at p. 3:3-7. Creditor states the websites Trulia and Zillow list a value of $597,600, and Redfin lists a value of $604,851 in the Property. *Id.* at p. 3:15-16. If these valuations are correct, there would be equity in the Property to secure Creditor's claim.

Creditor also disputes some of the invoices for repairs, arguing that some of the invoices actually constitute upgrades, not mere repairs. *Id.* at n. 2.

REPLY

Debtor filed a Reply on May 15, 2024. Docket 81. Debtor states there should not be a continuance as Creditor performed the appraisal on May 10, 2024. *Id.* at p. 5:22-28. Debtor again affirms her position that the Property is properly valued at $320,000 due to extensive repairs.

Debtor also appears to allege that Creditor's loan was part of a predatory lending practice that resulted in Countrywide Home Loans ("Countrywide") being sued for billions of dollars in 2008. According to this argument, Bank of America bought Countrywide, but Debtor's loan was modified in 2008 during the time of the lawsuit. Bank of America sent Debtor a letter in 2012 stating they had transferred Creditor's claim to Creditor. Creditor appears to be representing itself as an agent for Countrywide's RRA CP TRUST 2.

DISCUSSION

As an initial matter, if Debtor wishes to object to Creditor's Claim for being part of a predatory lending scheme, then Debtor must serve and set for hearing an Objection to Claim. Such allegations are not helpful or relevant in determining the amount of the secured claim for purposes of this Motion to Value. The Motion to Value and determination of Creditor's secured claim is based entirely on the valuation of the Property, not on any alleged predatory lending practices.

The senior in priority first deed of trust held by SPS Mortgage (Select Portfolio Services) secures a claim with a balance of approximately $325,999.22. Amended Schedule D, Docket 34. No Proof of Claim has yet been filed for SPS Mortgage's Claim. Creditor's second deed of trust secures a claim with a balance of approximately $203,473.33. *Id*. Therefore, Creditor's claim secured by a junior deed of trust would be completely under-collateralized if this Motion were granted.

With respect to Debtor's assertion that since creditor began the process on April 23, 2024 by contacting Debtor's Counsel, and does not have it done by May 15, 2024, the hearing should not be continued is without merit. The right to discovery exists in every contested matter. Fed. R. Bankr. P. 9014(c).

The court also notes that Debtor and Debtor's counsel appear to seek to blow a "simple" motion to value secured claim into nuclear litigation attacking the claim. All that is before the court is to determine the amount of the secured claim - i.e., the value that exists for Creditor's lien.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value the Secured Claim of Real Time Resolutions, Inc. filed by Debtor Desiree Lewis 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 Value is **xxxxxxx**.

18. 18-25575-E-13 MET-1 | **KATHLEEN SMITH** **Mary Ellen Terranella** | **MOTION TO CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR** **5-3-24 [27]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 3, 2024. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Substitute 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 Substitute is granted.

Christopher Smith ("Successor Representative"), deceased Debtor Kathleen Smith's ("Debtor") son, seeks an order approving the motion to substitute Christopher Smith as the Successor Representative for the deceased Debtor. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016, 9014(c), and Fed. R. Civ. P. 25.

Debtor filed for relief under Chapter 13 on September 1, 2018. On November 14, 2018, Debtor's Chapter 13 Plan was confirmed. Docket 14. On February 20, 2024, Debtor passed away. Successor Representative asserts that he is the lawful successor and representative of Debtor. Decl., Docket 29. Successor Representative also states he is aware that all plan payments have been made, and if he is appointed as her representative, he would be able to execute the 11 U.S.C. § 1328 Certificate so the estate may obtain its discharge. *Id.* at p. 2:10-14.

Pursuant to Federal Rule of Bankruptcy Procedure 1016, Successor Representative requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Certificate of Death was filed on May 3, 2024. Docket 26. Successor Representative is the son of the deceased party and is the successor's heir and lawful representative. Successor Representative states that he will continue to prosecute this case in a timely and reasonable manner. Decl., Docket 29 at p. 2:10-14.

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.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate after completion of the Plan. Form EDC3-190 has not been filed in this case.

At the hearing, **xxxxxxx**

Local Bankr. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Christopher Smith has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor, especially as the plan payments have been completed. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Certificate of Death. 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 Successor Representative, Christopher Smith, as the son of the deceased party and as the successor's heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Kathleen Smith. 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 Christopher Smith is substituted as the successor-in-interest to Kathleen Smith and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

19. 24-21075-E-13 DPC-1 | **RUDY/ROBERTA GONZALEZ** **Thomas Amberg** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-24-24 [19]**

19 thru 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 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 24, 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 xxxxxxx.

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

1. The debtor, Rudy Guillermo Gonzalez and Roberta Leaa Gonzalez ("Debtor"), has filed three cases in the last five years, and Debtor has not explained how this case will be different from the last two. Docket 19 p. 2:1-7.

2. The nonstandard provisions of the Plan propose monthly payments of $6,000 for 18 months, then a lump sum payment to all creditors at a 100% dividend after receiving a refinance on the real property commonly known as 240 Thresher Avenue, Vallejo, California 94591 ("Property"). Waiting until month 19 to refinance is too long, and Trustee argues a refinance should come within 12 months. *Id.* at p. 2:8-23. The nonstandard provisions must also provide an amount that will be paid into the Plan upon a refinance of the Property.

3. Debtor stated at the 341 Meeting held on April 18, 2024, that they are unable to secure financing because of their prior bankruptcy. Trustee argues the Plan is not feasible as there is insufficient evidence Debtor can obtain a refinance. *Id.* at ps. 2:26-3:4.

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

DEBTOR'S RESPONSE

On May 7, 2024, Debtor filed a Response. Docket 29. Debtor states "[as] the [three] objections are substantially similar, Debtors will file one response to address all of the objections." *Id.* at ¶ 2. Debtor argues:

1. This is the Debtors' third bankruptcy since 2019, and they understand that additional explanations are needed as to their intentions, their ability to pay and their ability to demonstrate their good faith efforts. *Id.* at ¶ 3.

2. Debtors filed their first case on February 20, 2019 (19-20995). That case was confirmed on August 22, 2019 and eventually dismissed on June 13, 2022. In that case, the Debtors paid in a total of $197,988.60. Of relevance to today's proceedings, objecting creditors received the following payments in the 2019 case:

    a. Dolores Chong (principal and interest): $42,831.07

    b. US Bank (via Rushmore Loan Servicing) Principal: $118,151.86

    c. US Bank (via Rushmore Loan Servicing) Arrears: $15,656.12

Id. at ¶ 4.

3. Mrs. Gonzalez experienced a change in employment that resulted in plan payments falling behind and plan modification not being feasible. Unfortunately, that meant the Debtors' case was dismissed. *Id.* at ¶ 5.

4. In the second case, the Debtors sought to pay both Chong and US Bank in full. The Debtors paid a total of $42,575.00 into their plan. Objecting creditors received the following payments in the 2022 case:

    a. Dolores Chong (principal and interest): $2,764.05

    b. US Bank (via Rushmore Loan Servicing) Principal: $31,390.61

    c. US Bank (via Rushmore Loan Servicing) Arrears: $2,790.22

Id. at ¶ 9.

5. Debtors' plan ultimately collapsed because the ongoing monthly payments proved to be too high, and Mrs. Gonzalez had another change of employment. That case was dismissed on September 5, 2023. *Id.* at ¶ 10.

6. Previously, Debtors sought to use a 60-month plan to pay their Class 1 Creditor (US Bank) their ongoing mortgage and their arrearage claim, along with the Chong's ever increasing claim. This proved untenable. To that end, the Debtors have proposed an 18-month plan that calls for the refinance of their property within that timeframe. *Id.* at ¶ 13.

7. The question that is common throughout this proceeding (from the Trustee and objecting creditors) is: why will a refinance work now when it did not in the past? The reason for optimism here is because the Debtors are proposing a lower monthly payment ($6,000 per month), which covers the ongoing mortgage to US Bank, as well as adequate protection payments to US Bank and Chong. The adequate protection payments as proposed are $300.00 per month to US Bank and $1,000 per month to Chong (which is more than the normal monthly payment called for in the hard money loan agreement). *Id.* at ¶ 14.

8. Additionally, Mrs. Gonzalez has secured stable employment with an increased salary compared to her prior positions. *Id.* at ¶ 15.

9. Debtors have reached out to 10+ lenders and they are constantly told the same thing: show 12 months of on-time bankruptcy plan payments and they will then be considered for a refinance. The 18- month term allows the Debtors to make 12 months of plan payments (they have made all required plan payments to date), and it then allows them a commercially reasonable time to complete the refinance of their home. The Debtors certainly hope to conclude this process sooner than 18 months, but they believe this will give them time to make 12 on-time payments, then procure and have approved a motion to incur debt and pay off their plan. *Id.* at ¶ 16.

10. Debtors have paid over $230,000 between their two previous case. *Id.* at ¶ 17.

11. Debtors are open to amending the Plan in the Order confirming that a lump sum payment of $225,000 from the refinance would be sufficient to pay the balance of all claims. *Id.* at ¶ 18.

12. Debtor continue to diligently contact loan companies and lending officers relating to a refinance. *Id.* at ¶ 19.

13. Creditor US Bank mentions that the Debtors' mortgage payment has increased to $3,182.56 per month, up from the $3,121.21 listed when the Debtors filed the case. Debtors listed US Bank in Class 1 and understand that their ongoing mortgage payment will fluctuate due to their escrow account. *Id.* at ¶ 20.

14. Creditor Chong's objections largely fall along the same lines as those mentioned above. However, one specific point that the Debtors do wish to address is the interest rate on the Chong claim. The Debtors' plan proposed a 6% interest rate and Chong has asked for the contract rate of 12%. Debtors are amenable to paying a *Till* rate on the Creditor's claim, which they believe would be approximately 9.25%. *Id.* at ¶ 21.

Debtor submits their own Declaration in support, authenticating the facts alleged in the Motion. Docket 30. Debtor states that they earnestly wish to pay all creditors in full via a good faith bankruptcy plan. *Id.* at ¶ 4. Debtor tried to negotiate with Creditor Chong outside of bankruptcy when a notice of foreclosure was issued, but the parties could never reach a deal. *Id.* at ¶ 10. A list of some of the lenders Debtor has spoken to (which is not an exhaustive list, but what we can find) includes: Rocket Mortgage, California Mortgage Relief Program, Loan Tap, New American Funding, and Kappel Mortgage Group. *Id.* at ¶ 11. Debtor is routinely being told that they need to show 12 on-time payments in the case before they will be considered for a refinance. *Id.* Debtor believe they can afford the plan payments. Mr. Gonzalez has had the same employment for over 37 years, and Mrs. Gonzalez now has a stable job with a higher salary. *Id.* at ¶ 14.

DISCUSSION

The court is presented with a unique Plan and a case with atypical facts. Trustee's Objection is not without merit, but Debtor has presented compelling argument and testimony that this Plan may be feasible through a refinance. It is understandable that Trustee would rather the refinance occur earlier. However, Debtor has presented testimony that such a refinance is only possible after lenders have seen consistent bankruptcy payments. Debtor is providing for continuing mortgage payments to the secured creditors in the case while also offering adequate protection payments on top until the refinance is completed. Such a provision seems reasonable and to comport with the law as provided in 11 U.S.C. § 1322 and 11 U.S.C. § 1325(a).

However, Debtor has not submitted any authenticated exhibits showing that they have had offers from lenders that a refinance is possible after 12 months of bankruptcy payments. If Debtor cannot obtain

the refinance, then Creditor's arrearage will not be paid in full, and Debtor's case will be dismissed like the previous two. Failure to cure arrearage is cause to deny confirmation. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). Debtor shows an honest desire to obtain the refinance and complete this case, but Debtor has not submitted evidence showing a refinance is truly possible within the 18 months as proposed.

At the hearing, **xxxxxxx**

Feasibility of Plan

Much of the discussion and concern centers on Debtor having two prior Chapter 13 cases that have been dismissed. Though substantial monies were paid through those Chapter 13 Plan prior to the dismissal of the cases, the debts are growing.

In the current Bankruptcy Case, the Schedules provided by Debtor under penalty of perjury include the following information.

On Amended Schedule I, Debtor shows $15,583 in gross monthly wage income. Dckt. 1 at 35-36 (the "Amended Filing" box is checked, however, this is the first Schedule I filed in this Bankruptcy Case). After deductions for taxes, Social Security, Medicare, medical insurance, and other specified items, Debtor' Monthly Take Home Income is $10,436.00. *Id.*

On Amended Schedule J, Debtor lists having no dependants and for their family unit of two adults monthly expenses of ($4,436). *Id.* at 38-39. This does not include any amounts for mortgage, property taxes or insurance. Looking at the other expenses listed on Amended Schedule J, they generally do not look unreasonable, but do not leave much for reduction for unexpected expenses.

Debtor computes the monthly projected disposable income to be $6,000.00, which can be used to fund the Chapter 13 Plan.

The court re-reviews the information stated above concerning the Chapter 13 Plan. The proposed Chapter 13 Plan requires monthly Plan payment from the Debtor of $6,000.00 for 18 months. Plan, ¶ 2.01; Dckt. 3. For the U.S. Bank, N.A., Trustee, Claim secured by a first deed of trust on Debtor's residence, the monthly Plan disbursement is to be:

1. Post-Petition Regular Monthly Payment.....$3,121.21

2. ($55,000.00) Arrearage Payment.....$ 300.00

3. Claim paid in full with proceeds of October 2025 refinance.

Id.; ¶ 3.07, Additional Provisions ¶ 7.01(2), (3).

For the secured claim of D&A Chong, which is secured by a second deed of trust on Debtor's residence, the monthly Plan disbursements are to be:

1. Class 2(A) Payment, with 6% Interest (reduced from 12%).....$1,000

2. Claim paid in full with proceeds of October 2025 refinance.

Id., ¶ 3.08, Additional Provisions ¶ 7.01(2), (4).

On Schedule A/B Debtor lists the Residence as having a value of $700,000. U.S. National Bank has filed Proof of Claim 13-1, asserting a ($408,503.58) secured claim. Dolores Chong has filed Proof of Claim 2-1, asserting a secured claim of ($177,315.00). Doing very simple math:

A. Value of Residence Property.....$700,000.00

B. Costs of Sale.....8%.....($ 56,000.00)

C. U.S. Bank, N.A., Trustee, Secured Claim.....($408,503.58)

D. Dolores Chong Secured Claim.....($177,315.00)

==========

Projected Net Value/Equity Cushion.....$58,181

It would appear that if Debtor's valuation is correct, then there is a 32% equity cushion protecting Dolores Chong's Secured Claim. If Debtor's are modestly optimistic and the value was $50,000 less, the equity cushion would evaporate.

If the Debtor can consummate a refinance with a value of $700,000 for the Residence Property, an 80% loan to value ratio would support a refinance loan of $560,000. That is just short of the ($585,818.58) owed on the two secured claims.

The court appreciates the desire of a homeowner to retain their residence. Many are able to do so, and some are financially unable to save the home. The real question is whether such an attempt is economically feasible.

At the hearing, **xxxxxxx**

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

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

20. 24-2107-5-E-13 DVW-1 | **RUDY/ROBERTA GONZALEZ** **Thomas Amberg** | **OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION** **4-24-24 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 24, 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 xxxxxxx.

U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The debtor, Rudy Guillermo Gonzalez and Roberta Leaa Gonzalez ("Debtor") does not have sufficient income to pay all creditors. Docket 23, ps. 3:28-4:1.

2. The proposed refinance in month 19 is speculative and illusory. *Id.* at p. 4:1-2.

3. The proposed plan adequate protection payment of $300 for 18 months does not cure Creditor's arrearage in the amount of $54,292.66. *Id.* at p. 4: 12-20.

4. The Plan and the case have not been filed in good faith. *Id.* at p. 4:23-27.

5. The Plan does not provide for equal monthly installments as required by 11 U.S.C. § 1325(a)(5)(B)(iii). *Id.* at p. 5:3-7.

Creditor did not submit a Declaration in support.

DEBTOR'S RESPONSE

On May 7, 2024, Debtor filed a Response. Docket 29. Debtor states "[as] the [three] objections are substantially similar, Debtors will file one response to address all of the objections." *Id.* at ¶ 2. Debtor argues:

1. This is the Debtors' third bankruptcy since 2019, and they understand that additional explanations are needed as to their intentions, their ability to pay and their ability to demonstrate their good faith efforts. *Id.* at ¶ 3.

2. Debtors filed their first case on February 20, 2019 (19-20995). That case was confirmed on August 22, 2019 and eventually dismissed on June 13, 2022. In that case, the Debtors paid in a total of $197,988.60. Of relevance to today's proceedings, objecting creditors received the following payments in the 2019 case:

    a. Dolores Chong (principal and interest): $42,831.07

    b. US Bank (via Rushmore Loan Servicing) Principal: $118,151.86

    c. US Bank (via Rushmore Loan Servicing) Arrears: $15,656.12

Id. at ¶ 4.

3. Mrs. Gonzalez experienced a change in employment that resulted in plan payments falling behind and plan modification not being feasible. Unfortunately, that meant the Debtors' case was dismissed. *Id.* at ¶ 5.

4. In the second case, the Debtors sought to pay both Chong and US Bank in full. The Debtors paid a total of $42,575.00 into their plan. Objecting creditors received the following payments in the 2022 case:

    a. Dolores Chong (principal and interest): $2,764.05

    b. US Bank (via Rushmore Loan Servicing) Principal: $31,390.61

    c. US Bank (via Rushmore Loan Servicing) Arrears: $2,790.22

Id. at ¶ 9.

5. Debtors' plan ultimately collapsed because the ongoing monthly payments proved to be too high, and Mrs. Gonzalez had another change of employment. That case was dismissed on September 5, 2023. *Id.* at ¶ 10.

6. Previously, Debtors sought to use a 60-month plan to pay their Class 1 Creditor (US Bank) their ongoing mortgage and their arrearage claim, along with the Chong's ever increasing claim. This proved untenable. To that end, the Debtors have proposed an 18-month plan that calls for the refinance of their property within that timeframe. *Id.* at ¶ 13.

7. The question that is common throughout this proceeding (from the Trustee and objecting creditors) is: why will a refinance work now when it did not in the past? The reason for optimism here is because the Debtors are proposing a lower monthly payment ($6,000 per month), which covers the ongoing mortgage to US Bank, as well as adequate protection payments to US Bank and Chong. The adequate protection payments as proposed are $300.00 per month to US Bank and $1,000 per month to Chong (which is more than the normal monthly payment called for in the hard money loan agreement). *Id.* at ¶ 14.

8. Additionally, Mrs. Gonzalez has secured stable employment with an increased salary compared to her prior positions. *Id.* at ¶ 15.

9. Debtors have reached out to 10+ lenders and they are constantly told the same thing: show 12 months of on-time bankruptcy plan payments and they will then be considered for a refinance. The 18- month term allows the Debtors to make 12 months of plan payments (they have made all required plan payments to date), and it then allows them a commercially reasonable time to complete the refinance of their home. The Debtors certainly hope to conclude this process sooner than 18 months, but they believe this will give them time to make 12 on-time payments, then procure and have approved a motion to incur debt and pay off their plan. *Id.* at ¶ 16.

10. Debtors have paid over $230,000 between their two previous case. *Id.* at ¶ 17.

11. Debtors are open to amending the Plan in the Order confirming that a lump sum payment of $225,000 from the refinance would be sufficient to pay the balance of all claims. *Id.* at ¶ 18.

12. Debtor continue to diligently contact loan companies and lending officers relating to a refinance. *Id.* at ¶ 19.

13. Creditor US Bank mentions that the Debtors' mortgage payment has increased to $3,182.56 per month, up from the $3,121.21 listed when the Debtors filed the case. Debtors listed US Bank in Class 1 and understand

that their ongoing mortgage payment will fluctuate due to their escrow account. *Id.* at ¶ 20.

14. Creditor Chong's objections largely fall along the same lines as those mentioned above. However, one specific point that the Debtors do wish to address is the interest rate on the Chong claim. The Debtors' plan proposed a 6% interest rate and Chong has asked for the contract rate of 12%. Debtors are amenable to paying a *Till* rate on the Creditor's claim, which they believe would be approximately 9.25%. *Id.* at ¶ 21.

Debtor submits their own Declaration in support, authenticating the facts alleged in the Motion. Docket 30. Debtor states that they earnestly wish to pay all creditors in full via a good faith bankruptcy plan. *Id.* at ¶ 4. Debtor tried to negotiate with Creditor Chong outside of bankruptcy when a notice of foreclosure was issued, but the parties could never reach a deal. *Id.* at ¶ 10. A list of some of the lenders Debtor has spoken to (which is not an exhaustive list, but what we can find) includes: Rocket Mortgage, California Mortgage Relief Program, Loan Tap, New American Funding, and Kappel Mortgage Group. *Id.* at ¶ 11. Debtor is routinely being told that they need to show 12 on-time payments in the case before they will be considered for a refinance. *Id.* Debtor believe they can afford the plan payments. Mr. Gonzalez has had the same employment for over 37 years, and Mrs. Gonzalez now has a stable job with a higher salary. *Id.* at ¶ 14.

DISCUSSION

Payments in Equal Monthly Installments

Creditor alleges that the Plan violates 11 U.S.C. § 1325(a)(5)(B)(iii) because it does not provide for equal monthly plan payment installments under a Plan that uses periodic payments. Creditor misses the mark with this objection. 11 U.S.C. § 1325(a)(5)(B)(iii) provides:

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

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii)if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan;. . .

This subsection requires equal monthly payments, only if property to be distributed pursuant to this subsection is in the form of periodic payments. Here, the Plan provides for ongoing mortgage payments and adequate protection payments with a lump sum payout on or before month 19. This type of Plan structure is permissible under the code and does not require equal monthly payments.

Bad Faith

11 U.S.C. § 1325(a)(3) provides:

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

The 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.

In re Leavitt, 171 F.3d 1219, 1224 (9th Cir. 1999) (internal citations omitted).

Here, Creditor states the Plan was not filed in good faith because Debtor does not have ability to fund and complete the Plan. This is not a reason to find a bad faith filing or Plan, especially as Debtor is presenting evidence that they may be able to fund the Plan. Debtor has provided testimony and evidence

to show that their Plan has been proposed in good faith in an earnest attempt to repay their debts. This court finds that the case and Plan have not been filed in bad faith.

Possible Refinance

Debtor's Plan hinges on a speculative refinance. The court finds this Objection to have merit. Debtor has not submitted any authenticated exhibits showing that they have had offers from lenders that a refinance is possible after 12 months of bankruptcy payments. If Debtor cannot obtain the refinance, then Creditor's arrearage will not be paid in full, and Debtor's case will be dismissed like the previous two. Failure to cure arrearage is cause to deny confirmation. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). Debtor shows an honest desire to obtain the refinance and complete this case, but Debtor has not submitted evidence showing a refinance is truly possible within the 18 months as proposed.

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 U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is **XXXXXXX**.

21. 24-21075-E-13 MMG-1 | **RUDY/ROBERTA GONZALEZ** | **Thomas Amberg** | **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DOLORES CHONG** **4-24-24 [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 not Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 24, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

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

INSUFFICIENT NOTICE

Federal Rules of Bankruptcy Procedure 7004(b)(9) requires service on the Debtor and their attorney; service on the Debtor's attorney alone is insufficient to require the Debtor to answer and defend. *In re Cossio*, 163 B.R. 150, 154 (B.A.P. 9th Cir. 1994)), aff'd, 56 F.3d 70 (9th Cir. 1995); *In re Bloomingdale,* 137 B.R. 351, 354 (Bankr.C.D.Cal.1991); *In re Cole*, 142 B.R. 140, 143 (Bankr. N.D. Tex. 1992); *In re Love*, 242 B.R. 169, 171 (E.D. Tenn. 1999), aff'd, 3 F. App'x 497 (6th Cir. 2001); *In re Hall*, 222 B.R. 275, 277 (Bankr. E.D. Va. 1998).

Service here was made solely on Debtor's counsel, Thomas Amberg. Docket 18.

At the hearing, **xxxxxxx**

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

unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is xxxxxxx.

Dolores Chong ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The debtor, Rudy Guillermo Gonzalez and Roberta Leaa Gonzalez ("Debtor") are in their third bankruptcy case. They have never been able to refinance in the past, and they have never been able to complete their plans in the past. Docket 16 ¶¶ 1, 3, 4.

2. Debtor Roberta Gonzalez had three different jobs during the course of the first two bankruptcies. *Id.* at ¶ 2.

3. The case was filed in bad faith "based on debtors' inability to make their monthly payments in the two previously filed cases. The present bankruptcy is a further attempt to continue living in the Real Property that debtors have not demonstrated they can afford." *Id.* at p. 3:22-25.

Creditor did not submit a Declaration in support.

DEBTOR'S RESPONSE

On May 7, 2024, Debtor filed a Response. Docket 29. Debtor states "[as] the [three] objections are substantially similar, Debtors will file one response to address all of the objections." *Id.* at ¶ 2. Debtor argues:

1. This is the Debtors' third bankruptcy since 2019, and they understand that additional explanations are needed as to their intentions, their ability to pay and their ability to demonstrate their good faith efforts. *Id.* at ¶ 3.

2. Debtors filed their first case on February 20, 2019 (19-20995). That case was confirmed on August 22, 2019 and eventually dismissed on June 13, 2022. In that case, the Debtors paid in a total of $197,988.60. Of relevance to today's proceedings, objecting creditors received the following payments in the 2019 case:

    a. Dolores Chong (principal and interest): $42,831.07

    b. US Bank (via Rushmore Loan Servicing) Principal: $118,151.86

    c. US Bank (via Rushmore Loan Servicing) Arrears: $15,656.12

Id. at ¶ 4.

3. Mrs. Gonzalez experienced a change in employment that resulted in plan payments falling behind and plan modification not being feasible. Unfortunately, that meant the Debtors' case was dismissed. *Id.* at ¶ 5.

4. In the second case, the Debtors sought to pay both Chong and US Bank in full. The Debtors paid a total of $42,575.00 into their plan. Objecting creditors received the following payments in the 2022 case:

    a. Dolores Chong (principal and interest): $2,764.05

    b. US Bank (via Rushmore Loan Servicing) Principal: $31,390.61

    c. US Bank (via Rushmore Loan Servicing) Arrears: $2,790.22

Id. at ¶ 9.

5. Debtors' plan ultimately collapsed because the ongoing monthly payments proved to be too high, and Mrs. Gonzalez had another change of employment. That case was dismissed on September 5, 2023. *Id.* at ¶ 10.

6. Previously, Debtors sought to use a 60-month plan to pay their Class 1 Creditor (US Bank) their ongoing mortgage and their arrearage claim, along with the Chong's ever increasing claim. This proved untenable. To that end, the Debtors have proposed an 18-month plan that calls for the refinance of their property within that timeframe. *Id.* at ¶ 13.

7. The question that is common throughout this proceeding (from the Trustee and objecting creditors) is: why will a refinance work now when it did not in the past? The reason for optimism here is because the Debtors are proposing a lower monthly payment ($6,000 per month), which covers the ongoing mortgage to US Bank, as well as adequate protection payments to US Bank and Chong. The adequate protection payments as proposed are $300.00 per month to US Bank and $1,000 per month to Chong (which is more than the normal monthly payment called for in the hard money loan agreement). *Id.* at ¶ 14.

8. Additionally, Mrs. Gonzalez has secured stable employment with an increased salary compared to her prior positions. *Id.* at ¶ 15.

9. Debtors have reached out to 10+ lenders and they are constantly told the same thing: show 12 months of on-time bankruptcy plan payments and they will then be considered for a refinance. The 18- month term allows the Debtors to make 12 months of plan payments (they have made all required plan payments to date), and it then allows them a commercially reasonable time to complete the refinance of their home. The Debtors certainly hope to conclude this process sooner than 18 months, but they believe this will give

them time to make 12 on-time payments, then procure and have approved a motion to incur debt and pay off their plan. *Id.* at ¶ 16.

10. Debtors have paid over $230,000 between their two previous case. *Id.* at ¶ 17.

11. Debtors are open to amending the Plan in the Order confirming that a lump sum payment of $225,000 from the refinance would be sufficient to pay the balance of all claims. *Id.* at ¶ 18.

12. Debtor continue to diligently contact loan companies and lending officers relating to a refinance. *Id.* at ¶ 19.

13. Creditor US Bank mentions that the Debtors' mortgage payment has increased to $3,182.56 per month, up from the $3,121.21 listed when the Debtors filed the case. Debtors listed US Bank in Class 1 and understand that their ongoing mortgage payment will fluctuate due to their escrow account. *Id.* at ¶ 20.

14. Creditor Chong's objections largely fall along the same lines as those mentioned above. However, one specific point that the Debtors do wish to address is the interest rate on the Chong claim. The Debtors' plan proposed a 6% interest rate and Chong has asked for the contract rate of 12%. Debtors are amenable to paying a *Till* rate on the Creditor's claim, which they believe would be approximately 9.25%. *Id.* at ¶ 21.

Debtor submits their own Declaration in support, authenticating the facts alleged in the Motion. Docket 30. Debtor states that they earnestly wish to pay all creditors in full via a good faith bankruptcy plan. *Id.* at ¶ 4. Debtor tried to negotiate with Creditor Chong outside of bankruptcy when a notice of foreclosure was issued, but the parties could never reach a deal. *Id.* at ¶ 10. A list of some of the lenders Debtor has spoken to (which is not an exhaustive list, but what we can find) includes: Rocket Mortgage, California Mortgage Relief Program, Loan Tap, New American Funding, and Kappel Mortgage Group. *Id.* at ¶ 11. Debtor is routinely being told that they need to show 12 on-time payments in the case before they will be considered for a refinance. *Id.* Debtor believe they can afford the plan payments. Mr. Gonzalez has had the same employment for over 37 years, and Mrs. Gonzalez now has a stable job with a higher salary. *Id.* at ¶ 14.

DISCUSSION

Bad Faith

11 U.S.C. § 1325(a)(3) provides:

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

The 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.

In re Leavitt, 171 F.3d 1219, 1224 (9th Cir. 1999) (internal citations omitted).

Again, the court does not find that the Plan was filed in bad faith. Creditor states the Plan was not filed in good faith because Debtor could not make the payments in their previous cases. If this were a reason for a bad faith filing, then almost every debtor who had their first case dismissed would be dismissed in subsequent cases for bad faith. Such an outcome was not Congress' intention. Debtor has provided testimony and evidence to show that their Plan has been proposed in good faith in an earnest attempt to repay their debts. This court finds that the case and Plan have not been filed in bad faith.

Bankruptcy History

Creditor hinges much of its argument on Debtor's history in bankruptcy, specifically a history of failed cases. The court finds this argument is not particularly compelling under these facts. Debtor has had three cases in five years, but Debtor has paid substantial sums into those Plans, totaling over $230,000. Debtor has proposed a Plan now that would pay Creditor's claim in full by month 19, so long as the refinance materializes. Again, Debtor has not submitted information on actual refinance possibilities.

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 Dolores Chong ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is **xxxxxxx**.

22. 24-20884-E-13 **RAKESH/BALJIT BAINS** **OBJECTION TO CONFIRMATION OF PLAN BY DAIMLER TRUCK FINANCIAL SERVICES USA LLC**
Mark Wolff
22 thru 24
3-26-24 [40]

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

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 134 Trustee, and Office of the United States Trustee on March 27, 2024. By the court's calculation, 55 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.

NO DOCKET CONTROL NUMBER

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

THE OBJECTION TO CONFIRMATION

Daimler Truck Financial Services USA LLC, assignee of Mercedes-Benz Financial Services USA LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Rakesh Kumar Bains and Baljit Kaur Bains' ("Debtor") Plan is not presented in good faith in violation of 11 U.S.C. § 1325(a)(3) because the Plan proposes to pay the debts of a nondebtor third party, Red Wing Carrier, Inc. ("Red Wing"). Docket 40 p. 2:4-15.

2. Debtor Rakesh is a guarantor of Red Wing's indebtedness, but the guarantee is unsecured. Debtor does not have any ownership interest in the collateral listed as : (1) a 2021 Freightliner Cascadia truck with the VIN 3AKJHHDR7MSMD9925; (2) A 2022 Freightliner Cascadia Truck with the VIN 3AKJHHDR3NSNC2110; and (3) a 2018 Great Dane Trailer with the VIN 1GRAP062XJJ110550 ("Vehicles"). *Id.* at p. 3:1-5.

3. The proposed Plan attempts to treat Red Wing's secured indebtedness as Debtor's own secured indebtedness by modifying the secured obligations. *Id.* at p. 3:14-15.

4. Creditor states, "By way of their Chapter 13 case, the Debtors seek to reorganize the finances of Red Wing without the concomitant obligations that would be imposed on Red Wing if it was to file its own reorganization case and without any of the transparency as to Red Wing that would accompany such a case. *Id.* at p. 4:11-14.

Creditor submits the Declaration of Jose Teran in support of the Objection. Decl., Docket 41. Creditor also includes a list of Exhibits attached to the Declaration, Exhibits A-J. Docket 41. Exhibits C-E are the California Retail Installment Contracts for the purchase of the Vehicles. In each contract, the buyer is listed as Red Wing and signed by Debtor Rakesh Bains as president on behalf of Red Wing. Debtor Rakesh Bains is also the guarantor in his personal capacity in each contract.

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

11 U.S.C. § 1325(a)(3) states:

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

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

Here, the evidence shows that Debtor does not own the Vehicles. Debtor's connection with the Vehicles is limited to him being a personal guarantor. Red Wing is the actual owner of the vehicles, as depicted in the California Retail Installment Contracts included as Exhibits C-E. Docket 41. Therefore, Debtor's liability on the Vehicles is unsecured by virtue of Debtor Rakesh Bains' position as personal guarantor. Yet, Debtor is attempting to modify the rights of Creditor as if Debtor's interest in the Vehicles

were Red Wing's ownership interest. *See* Plan, Docket 19 § 7. Debtor cannot use the bankruptcy code to impermissibly modify the rights of Creditor in this way.

On the other side of the coin, Debtor could be seen as attempting to release Red Wing from its liability through this Chapter 13 case by taking on the debt and obligation of Red Wing. However, the Bankruptcy Code does not allow this type of third party release. *See In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995) (holding "Section 524 does not. . . provide for the release of third parties from liability; to the contrary, § 524(e) specifically states that 'discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.'"). Such an attempted modification is not permitted by law and is in violation of 11 U.S.C. § 1325(a)(3).

On Schedule A/ B, Debtor states:

> "Red Wing Carrier, Inc. - no longer operating - debts exceeded assets - vehicles are co-signed and are listed as assets in this case"

Docket 16 p. 6.

The court is concerned by this statement. Debtor does not appear to be co-signor, but rather a mere guarantor. If Red Wing dissolved, as this statement implies, Debtor Rakesh, as president, owes duties to the corporation and its creditor for the proper handling of the corporation's asset. Instead, it appears as though Debtor has consumed the Vehicles and other assets of Red Wing as if Debtor owned them outright alongside Red Wing. The contracts show that Debtor does not own the Vehicles as Red Wing does. These facts present a situation where Debtor may be breaching his fiduciary duties as president of Red Wing and attempting to use bankruptcy to impermissibly modify the rights of third parties.

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

23. 24-20884-E-13 DPC-1 | **RAKESH/BALJIT BAINS** | **Mark Wolff** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **4-16-24 [69]**

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 16, 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.

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

1. Debtor Rakesh Kumar Bains and Baljit Kaur Bains' ("Debtor") Plan relies on Motions to Value which have not been filed. Docket 69 ps. 1:25-2:2.

2. The Debtor's Plan calls for "U.S. Bank" to be paid as Class 2(B) with a $5,000.00 value, (Docket 19 p. 7 § 2.01). No claim has been filed to date where the bar date is May 14, 2024. Docket 69 p. 2:7-9. The court notes U.S. Bank filed a claim on May 14, 2024, so this grounds for Objection is rendered moot. POC 49-1.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 71.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of multiple creditors listed in Class 2(B), including Daimler Truck Financial Services USA LLC. Plan, Docket 19 § 7. Debtor has failed to file a Motion to Value the Secured Claim of any creditors. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

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

24. 24-20884-E-13 SKI-1 | **RAKESH/BALJIT BAINS** | **Mark Wolff** | **OBJECTION TO CONFIRMATION OF PLAN BY AMERICREDIT FINANCIAL SERVICES, INC.** **4-11-24 [63]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, other parties in interest, and Office of the United States Trustee on April 11, 2024. By the court's calculation, 40 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.

Americredit Financial Services, Inc., d/b/a GM Financial ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. On April 11, 2022, Red Wing Carrier, Inc. ("Red Wing") entered into a Retail Installment Sales Contract and a Commercial Addendum to Retail Installment Contract to purchase a 2022 GMC Sierra, vin ending in 5658 ("Vehicle").

2. Debtor Rakesh Kumar Bains and Baljit Kaur Bains' ("Debtor") has scheduled the Vehicle and provided for it in Class 2(A) of the Plan, but Debtor has no ownership interest in the Vehicle at all. Debtor is not even a guarantor of the Vehicle. Docket 63 p. 2:21-28.

Creditor submits the Declaration of Aaron Rangel to authenticate the facts alleged in the Objection. Decl., Docket 65. Creditor submits as an authenticated Exhibit the Retail Installment Sales Contract and a Commercial Addendum to Retail Installment Contract that shows Red Wing as the buyer. Docket 66 p. 10. Debtor does not appear on the document as a co-buyer or in any other capacity. Creditor also submits as an authenticated Exhibit a copy of the Certificate of Title that shows Red Wing as the owner. *Id.* at p. 19.

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

11 U.S.C. § 1325(a)(3) states:

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

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

Here, the evidence shows that Debtor does not own the Vehicle. Red Wing is the actual owner of the Vehicle, as depicted in the California Retail Installment Contracts included as an Exhibit. Docket 66. Therefore, the Vehicle is not a part of this bankruptcy estate in any capacity. Yet, Debtor is attempting to modify the rights of Creditor as if Debtor's interest in the Vehicles were Red Wing's ownership interest. *See* Plan, Docket 19 § 7. Debtor cannot use the bankruptcy code to impermissibly modify the rights of Creditor in this way.

On the other side of the coin, Debtor could be seen as attempting to release Red Wing from its liability through this Chapter 13 case by taking on the debt and obligation of Red Wing. However, the Bankruptcy Code does not allow this type of third party release. *See In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995) (holding "Section 524 does not. . . provide for the release of third parties from liability; to the contrary, § 524(e) specifically states that 'discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.'"). Such an attempted modification is not permitted by law and is in violation of 11 U.S.C. § 1325(a)(3).

On Schedule A/ B, Debtor states:

> "Red Wing Carrier, Inc. - no longer operating - debts exceeded assets - vehicles are co-signed and are listed as assets in this case"

Docket 16 p. 6. The court is concerned by this statement. Debtor does not appear to be co-signor or even a mere guarantor regarding the Vehicle. If Red Wing dissolved, as this statement implies, Debtor Rakesh, as president, owes duties to the corporation and would need to follow proper dissolution procedures. Instead, it appears as though Debtor has assumed the Vehicle and other assets of Red Wing as if Debtor owned them outright alongside Red Wing. The contract shows that Debtor does not own the Vehicle as Red

Wing does. These facts present a situation where Debtor may be breaching his fiduciary duties as president of Red Wing and attempting to use bankruptcy to impermissibly modify the rights of third parties.

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 Americredit Financial Services, Inc., d/b/a GM Financial ("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.

25. 24-21091-E-13 DPC-1 | **KIANA ZAMORA** **Joshua Sternberg** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **4-24-24 [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, parties requesting special notice, and Office of the United States Trustee on April 24, 2023. 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, Kiana Calica Zamora's ("Debtor") Schedules, Plan, and Forms contain the following missing or inaccurate information:

   a. Class 1 lists Sunpower, which is secured by solar panels on the home located at 107 Zamora Court in Vallejo, CA. It appears that Debtor has misclassified this creditor in Class 1. Since the loan is current, was not delinquent when the case was filed, Sunpower should be listed in Class 4 and is not properly listed in Class 1. Docket 16 p. 2:7-12.

b. Class 4 lists Mechanics Bank Auto Finance secured by a 2014 Acura RDX. According to the creditor's Proof of Claim, Debtor owes $15,354.23, and the debt will be paid in full by December 2027, which is prior to the completion of the Plan. This should be listed in Class 2(A) and be paid through the Plan, instead of outside the Plan in Class 4. *Id.* at p. 2:13-18.

c. At the Meeting of Creditors, the Debtor testified that she has filed a wage claim with the Department of Industrial Relations in the amount of $70,000.00. The Trustee requested that Schedule A/B be amended to disclose this claim. *Id.* at p. 2:19-21.

d. Debtor admitted that she receives $400.00 each month from her employer for health insurance. The Trustee requested that Schedule I be amended to correctly list the Debtor's income and deductions and Schedule J be amended to show how much Debtor spends each month on her health insurance. *Id.* at p. 2:22-26.

e. Debtor listed her car payment on Schedule J. Since the vehicle will be paid in full by December 2027, which during the life of the plan, the Trustee has requested this creditor be removed from Schedule J and included in Class 2(a) of the Plan. *Id.* at p. 3:1-4.

f. The Debtor failed to attach a statement for property or business income. The Debtor has disclosed on Line #8a on Schedule I that she earns $9,725.00 a month for her business income. The form requires the Debtor to disclose the net income. However, without the required attachment, it is unclear if that income is the gross or net proceeds. At the First Meeting of Creditors, Debtor admitted that she receives rental income as well as income as a freelance accountant. *Id.* at p. 3:4-11.

g. Question #4 on the Statement of Financial Affairs is missing information regarding Debtor's business income. Debtor admitted at the first meeting of creditors that she received net business income for the year 2023 in the amount of $35,866 as an independent contractor. *Id.* at p. 3:12-15.

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

DISCUSSION

Inaccurate or Missing Information

Debtor's Schedules I and J, Statement of financial Affairs, and Forms 122C-1 and 122C-2 contain outdated or inaccurate information. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Business Documents Required by Schedule I

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

Misclassified Creditors

Trustee also raises the Objection that Debtor has misclassified Creditors in her Plan. Form EDC-003-080, our District's standard Chapter 13 Plan form, states the following:

> (1) Class 2 claims that cannot be reduced based on value of collateral. Debtor is prohibited from reducing a claim 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. These claims must be included in Class 2(A).
>
> . . .
>
> Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

Trustee raises the point that certain creditors have not been classified correctly, including creditors Sunpower and Mechanics Bank Auto Finance. Debtor should comply with the language of Form EDC-003-080 in properly classifying creditors.

Debtor filed an Amended Plan and Amended Schedules on May 17, 2024 at Docket 20. There is not yet any Motion to Confirm or supporting evidence on file. Debtor has properly reclassified Sunpower and Mechanics Bank Auto Finance in the Amended Plan.

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.

26. 24-20297-E-13 LORELL LEAL MOTION TO CONFIRM PLAN
Pro Se 4-16-24 [36]

26 thru 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—Hearing Required.

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Aldridge Pite, LLP, and Office of the United States Trustee on April 16, 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).

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

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

At the hearing, **xxxxxxx**

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.

NO DOCKET CONTROL NUMBER

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but Movant is reminded that not

complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

PLEADINGS FILED AS ONE DOCUMENT

Debtor filed the Notice of Hearing the Motion in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

THE MOTION TO CONFIRM

The debtor, Lorell Jo Leal ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for three monthly payments of $4,404.63, 54 monthly payments of $5,513.07, and three monthly payments of $6,621.51 with an estimated 0% dividend to general unsecured creditors. Amended Plan, Docket 35. 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 a lengthy Opposition on May 1, 2024. Docket 49. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor has failed to comply with the procedural requirements of this District. Debtor has not provided proper Notice, not provided a Docket Control Number, not used the proper Certificate of Service Form, and has improperly combined multiple documents. *Id.* at ps. 1:22-2:5.

2. The Plan has not been served on all creditors in the case in violation of LBR 3015-1(d), Fed. R. Bankr. P. 2002(a)(9), Fed. R. P. 2002(b) and LBR 9014-(f)(1). *Id.* at p. 2:6-14.

3. There is no Declaration or evidence in support of confirmation. *Id.* at p. 2:15-21.

4. Debtor is $4,404.63 delinquent in Plan payments to the Trustee. The next scheduled payment of $5,513.00 is due on May 25, 2024. *Id.* at p. 3:3-6.

5. The Plan is overextended, taking 75 months to complete by Trustee's calculations. *Id.* at p. 3:7-13.

6. Shellpoint, on Behalf of 1st Tennessee, was listed twice as a Class 1 claim, (Page 3, § 3.07(c)). The first claim shows $67,196.42 as an arrearage, with no arrearage dividend stated, and a Post-Petition Monthly Payment of $1,119.49. The second claim states arrearage as "regular payment" with the Interest Rate on Arrears and Arrearage Dividend left blank and Post-Petition Monthly Payments as $4,259.11, (Page 3, § 3.07(c)). The Trustee is not clear how these two claims should be paid. NewRez LLC, d/b/a Shellpoint Mortgage Servicing, has filed one Proof of Claim, (Claim 3-1), which shows prepetition arrearage amount of $67,169.43 and a monthly payment of $4,259.11. *Id.* at p. 3:14-21.

7. The Plan is underfunded, so Trustee is unable to make adequate protection payments to creditors. *Id.* at ps. 3:22-4:5.

8. The following errors are present in the Schedules and Forms:

   A. The Debtor checked the "No" box regarding any priority and/or unsecured creditors on Schedule E/F. LVNV Funding, LLC has filed a Proof of Claim showing the Debtor owes an unsecured claim of $676.1, (Claim 1-1) and Jefferson Capital Systems, LCC has also filed a Proof of Claims showing an unsecured claim for $5,417.11, (Claim 2-1). The Debtor has failed to amend the Schedule E/F to include these creditors. The last day for creditors to object to the discharge was on April 4, 2024, and is July 23, 2024 for governmental entities. The Trustee is concerned whether the Debtor has listed all creditors in the Schedules and if the creditors have received proper notice of the Bankruptcy. *Id.* at p. 4:6-15.

   B. Schedule J appears to be inaccurate as it includes $3,371.03 for a mortgage payment, and $980.05 real estate taxes. It appears that mortgage payment is listed as a Class 1 claim in the Plan and will be paid through the Plan. Additionally, Form 122C-2 shows the property taxes are paid through an escrow account included in the mortgage payment. *Id.* at p. 4:16-20.

   C. There are numerous discrepancies between Schedule I, J and Form 122C. The forms are required to be filled out honestly, under penalty of perjury. The Trustee would request that these Schedules either be amended, or an explanation as to why there are vast amounts of inconsistencies between the documents. *Id.* at p. 4:21-25.

   D. FORM 122C-1, (Docket 1 ps. 58-60), claims 3 dependents for computations of the means test, where on Schedule J, the Debtor has stated there are no dependents. Schedule J expenses seems

consistent with a household of 1 person, where the Debtor has previously advised the Court of the many health issue challenges she faces, (*See* Ex Parte Motion for Special Power of Attorney, Docket 26). The Trustee is not clear whether the Debtor is solely supporting herself, or if she has 2 dependents she is supporting, and if all the expenses adequately reflect 3 people, given the Debtor's current health conditions. *Id.* at ps. 4:26-5:4.

E. FORM 122C-2, (Docket 1 ps. 61-68): The Debtor is also using deductions for three people. Currently the Trustee is also questioning if the following deductions are accurate:

(a) "Out-of-pocket heath care" expenses, for 2 people under 65, of $387.00.

(b) "Taxes" of $877.96. There are no tax deductions listed on Schedules I, Docket 1 ps. 36-37, or Schedule J.

Id. at p. 5:5-9.

F. "Involuntary deductions" of $1,760.40. A review of Schedules I and J, the Trustee is not able to determine what involuntary deductions the Debtor is claiming. The Trustee seeks explanation of the deduction and if the $1,760.40 is accurate. If the deduction is accurate, the Trustee requests that Schedule I and/or J be amended to reflect these deductions.

G. "Life Insurance" of $600.00. A review of Schedules I and J shows that the only expense for life insurance is listed on Schedule J, for $50.00 per month. The Trustee is requesting proof that the $600.00 monthly expense is accurate and, if so, the Trustee requests that the Debtor amend Schedule J to show a more accurate picture of the Debtor's life insurance expense.

H. "Optional telephones and telephone services" of $3,388.36. A review of Schedule J, shows the Debtor's telephone, internet, satellite and cable services total $300.00 per month. The Trustee is requesting additional information as to why the Debtor's additional telephone expense was $3,388.36 per month, for the last six months.

I. STATEMENT OF FINANCIAL AFFAIRS, (Docket 1 p. 45): The Debtor has failed to disclose all income for the past two years. Question #5 shows the Debtor has not had income in 2024, 2023 or 2022. Schedule I shows that the Debtor is retired and is collecting monthly Social Security income of $1,569.06, pension or retirement income of $4,107.99, and, household contributions by household members of $4,000.00. The Debtor has failed to identify any of this

income. The Trustee is not clear if the rest of the Statement of Financial Affairs has been completed accurately and would request that it be amended to include the include the income, and any other information that has been omitted.

DISCUSSION

This case involves a myriad of problems that the Trustee has raised. There is a payment delinquency, procedural errors, service errors (the record showing most creditors likely have not even been served this Motion and related pleadings), inaccurate information subject to the penalty of perjury on the Schedules and required Forms, all while Debtor has avoided appearing before this court despite the court ordering Debtor to do so. There is no evidence in support of confirmation. Debtor's Schedules I and J, Statement of financial Affairs, and Forms 122C-1 and 122C-2 contain inconsistent and inaccurate information. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6). The Plan is also overextended. 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. Debtor is required to cooperate with Trustee in correcting these matters. 11 U.S.C. § 521(a)(3).

At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Lorell Jo Leal ("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.

27. 24-20297-E-13 **LORELL LEAL**
Pro Se

CONTINUED MOTION FOR SPECIAL POWER OF ATTORNEY
3-28-24 [26]

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 Debtor, in *pro se*, filed her first Motion for Special Power of Attorney on March 1, 2024. Docket 15. This court entered an Order setting the hearing on this matter for March 12, 2024 at 1:30 p.m. Docket 16. Neither Debtor nor her attorney in fact, Lisa Schlein, appeared at the March 12 Hearing and instead filed a second Motion for Special Power of Attorney on March 28, 2024. Docket 26. The court issued an Order on April 11, 2024, setting the Hearing for April 23, 2024 at 1:30 p.m. and ordering Debtor and her Attorney in Fact to appear.

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, no appearance was made by Debtor.

The Motion for Special Power of Attorney is xxxxxxx.

May 21, 2024 Hearing

The court continued the hearing from the April 23, 2024 calendar to be conducted in conjunction with the hearing on the Debtor's Motion to Confirm the Chapter 13 Plan.

A review of the Docket on May 17, 2024 reveals that Debtor has not filed anything new with the court. At the hearing, **xxxxxxx**

REVIEW OF MOTION FOR COURT
TO ALLOWING SPECIAL POWER OF ATTORNEY

Lorell Leal ("Debtor") moved the court to grant her attorney-in-fact, Lisa Schlein, power of attorney to act on Debtor's behalf in her bankruptcy case. With her Motion, Debtor submits unauthenticated

Exhibits showing that Ms. Schlein has been authorized to act as attorney-in-fact. Docket 26 ps. 2-3. Debtor informs the court that she truly is sick and unable to prosecute the case on her own behalf. She states:

> 1. Debtor has chronic physical ailments, such as chronic obstructive pulmonary disease ("COPD"), migraines, and gastrointestinal disease that lead to vomiting, weakness, breathing difficulty, anxiety and panic.
>
> 2. It would be unfair to all involved to have frequent or prolonged absences or continually rescheduling due to physical health limitations.
>
> 3. For these reasons, Debtor respectfully requests the Motion be granted to allow for assistance or substitution, and to otherwise act on Debtor's behalf, if, and as needed, or may be necessitated from time to time during the course of the case, including carrying out the duties and responsibilities as debtor in this case.

Docket 26 p. 1. With this Motion, Debtor submits Exhibits showing she has had Covid-19, and informing the court of some complications related to COPD.

Fed. R. Bankr. P. 9010, titled "Representation and Appearances; Powers of Attorney," states,

> (a) Authority To Act Personally or by Attorney. A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.
>
> (b) Notice of Appearance. An attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record.
>
> **(c) Power of Attorney**. The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. §459, §953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.

There is no "granting" of a power of attorney by the court. If the debtor seeks to have another person to have a power of attorney and act in the name of the debtor (rather than the debtor) in a case, the debtor may do so. But a power of attorney is not a device to create "multiple debtor entities" in a bankruptcy case.

While a power of attorney may allow a person other than the debtor appear in the case rather than the debtor, it does not allow the person who receives the power of attorney to act as the debtor's attorney. For someone participating in federal court to appear, the recipient must be represented by a licensed attorney. *See* 10 Collier on Bankruptcy ¶ 9010.02, which states:

> A party may also appear through an authorized agent, attorney in fact, or proxy. However, these entities cannot perform any act that would constitute the unauthorized practice of law.

If a debtor (or other party in a federal court case) is not legally competent to participate in such proceeding, then Federal Rule of Civil Procedure 25(b) and Federal Rules of Bankruptcy Procedure 7025 and 1016, which provides:

> Rule 1016. Death or Incompetency of Debtor
>
> Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is 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.

It may be that this Debtor, acting in *pro se*, is working to prosecute this case in a clear and transparent manner.

Remarks from the Court's Order
Dated April 11, 2024

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. 380, 384 (Bankr. E.D. Cal. 1991).

From the Prior *Ex Parte* Motion and current *Ex Parte* Motion, the court interprets the relief requested to be as provided in Federal Rule of Bankruptcy Procedure 1016 and 2025, and Federal Rule of Civil Procedure 25 to substitute Lisa Schlein in as the personal representative for Debtor Lisa Schlein, with Lisa Schlein, the personal representative, real party in interest, of the Debtor.

Alternative Prosecution Pursuant to
Power of Attorney

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, a representative of a debtor may file a bankruptcy petition for an incompetent person. Federal Rule of Bankruptcy Procedure 1004.1 was enacted to bring the Federal Rule of Civil Procedure 17 provisions relating to a personal representative to engage in District Court litigation in the name of the person who has granted the authority to the representative.

Thus, it may be that the relief requested is to designate Lisa Schlein, pursuant to the power of attorney, as the person who "filed this Case and is prosecuting this Case in the place of the Debtor

personally." As noted by several courts, when a power of attorney is used in such a way, the court must take steps to scrutinize the facts and circumstances (as do the U.S. Trustee and Trustee) to prevent abuse and ensure that the Debtor is aware of the proceedings. *See, In re Spurlin*, 664 F.3d 954, 959 (5th Cir. 2011); and *In re Matthews*, 516 B.R. 99 (Bankr. N.D. Tex. 2014).

Personal Representative or Successor Representative Must be Represented by Counsel

Whether the court appoints a successor representative due to Debtor being legally incompetent (due to her physical disabilities) or designate Lisa Schlein, holder of the Special Power of Attorney, as the person who is the person who is exercising Debtor's rights and responsibilities in the prosecution of this case, Lisa Schlein must be represented by an attorney.

A power of attorney or appointment as a successor representative does not make Lisa Schlein the Debtor, nor authorize her to represent the Debtor in place of an attorney. This is well-established law, which includes *The People ex rel. v. Malone et al.*, 232 Cal. App. 2d 531, 536-537 (1965).

> An attorney in fact is thus defined in 2 Corpus Juris Secundum, Agency, section 4, page 1037: "An attorney in fact is one who is given authority by his principal to do a particular act not of a legal character. The term 'attorney in fact' is, in loose language, used to include agents of all kinds, but in its strict legal sense it means an agent having a special authority created by deed."
>
> . . .
>
> In 3 American Jurisprudence Second, Agency, section 23, page 433, the basic conceptions of attorney at law and attorney in fact are thus contrasted: "... the person holding a power of attorney is known and designated as an 'attorney in fact,' thus distinguishing such person from an attorney at law."
>
> (2) A power of attorney does not permit an agent to act as an attorney at law. If the rule were otherwise, the State *537 Bar Act could be relegated to contempt by any layman who secured from his principal an ordinary power of attorney, for the purpose of representing him in pending litigation.
>
> (3, 4) An attorney at law is different from an attorney in fact by definition and by general customary treatment; Carroll Malone had no right whatsoever to act as attorney for his absent brother. This fact alone requires us to say that we cannot uphold the judgment as to Paul T. Malone. The short sentence appearing in Campbell v. Jewish Committee for Personal Service, 125 Cal.App.2d 771, at page 772 [271 P.2d 185] is appropriate: "Not being a lawyer, Campbell cannot appear as attorney for his brother."

This was more recently discussed by the Bankruptcy Appellate Panel for the Ninth Circuit in *Foster v. Sligar* (*In re Foster*), 2012 Bankr. LEXIS 5779, *15-18 (B.A.P. 9th Cir. 2012), which includes:

> The leading California case on this issue is *Drake v. Superior Court*, 21 Cal.App.4th 1826, 26 Cal.Rptr.2d 829 (Cal.Ct.App.1994). . . The California Court of Appeals

disagreed [with the holder of the power of attorney asserting that he could prosecute litigation in exercising the powers and rights given in the power of attorney], noting that the unlicensed practice of law is categorically prohibited in California, and the Power of Attorney Act did not provide an exception to this rule:

> Long before passage of the Power of Attorney Act, the law distinguished between an attorney in fact and an attorney at law and emphasized that a power of attorney is not a vehicle which authorizes an attorney in fact to act as an attorney at law. If the rule were otherwise, the State Bar Act could be relegated to contempt by any layman who secured from his principal an ordinary power of attorney, for the purpose of representing him in pending litigation.

Id. (internal citations and quotations omitted). Therefore, the court concluded, Drake could not "use the statutory form power of attorney as a device to practice law for his principal." *Id.* at 832–33. *See In re Marriage of Caballero*, 27 Cal.App.4th 1139, 33 Cal.Rptr.2d 46, 52 (Cal.Ct.App.1994)("Despite broad statutory language of the power of attorney with respect to claims and litigation, the attorney in fact may not act as an attorney at law on behalf of his principal, even though the principal could appear in propria persona...."). *See Ryan v. Hyden*, 2012 WL 4793116 (S.D.Cal. Oct.9, 2012)(nonlawyer son with power of attorney for parents could not draft pleadings and pursue claims on their behalf as it constituted the unauthorized practice of law under California law; complaint dismissed); *Lomax*, 2011 WL 4345057, at *3–4 (uninjured father acting as attorney-in-fact for injured son lacked standing to bring complaint on behalf of son and other family members for their injuries; power of attorney did not permit father to engage in the unauthorized practice of law; motion to dismiss complaint granted); *Hughes v. Laguna Honda Hosp.*, 2000 U.S. Dist. LEXIS 10855 (N.D.Cal. Aug. 1, 2000)(daughter with power of attorney for mother authorizing her to act on mother's behalf regarding "claims and litigation" did not allow daughter to sign and file complaint for mother's claims on her behalf; complaint dismissed without prejudice); 6A Cal. Jur.3d, Attorneys at Law § 135 (3d ed.2012) (one may not act as an attorney for another by virtue of a special power of attorney; power of attorney is not a vehicle for acting as an attorney at law).

Chapter 13 Plan

On March 5, 2024, Debtor filed an Amended Plan. Dckt. 17. No Motion to Confirm, with Notice of Hearing and supporting evidence, has been filed. Reviewing Schedule I, Debtor lists having substantial monthly income, of which approximately 40 percent are contributions by household members. It appears that Debtor has substantial monthly income to fund a Plan, prosecute this case, and cure the pre-petition default on her home mortgage.

The Bankruptcy Plan makes provisions for only paying the one secured claim for which there is a default to be cured.

Debtor filed an Amended Plan on April 16, 2024, with payments as follows: $4,404.63 for three months, $5,513.07 for 54 months, and $6,621.51 for three months. Docket 35 § 2.01. General unsecured claims will receive a 0% dividend.

Objection to Exemptions

On April 2, 2024, the Chapter 13 Trustee filed an Objection to the Exemptions that Debtor has claimed in this Case. Dckt. 27. The objections are based on Debtor having failed to cite statutory provisions for the exemptions and that Debtor has failed to state the amount claimed as exempt (having just checked the box for "100% of fair market value up to the amount of the exemption"), which is not the method for claiming exemptions under applicable California Law. For the Statutory Basis Debtor only stated "Exemption Set 1 704." Schedule C; Dckt. 1 at 21. California Civil Code § 704 was repealed in 1983.

Review of Schedules

On Schedules D and E/F, the Debtor lists only one creditor, that being the one holding the secured claim to be cured through the Chapter 13 Plan.

On Schedule A/B Debtor lists the property securing the claim as having a value of $500,000, but that Debtor's interest has a value of only $150,000. Dckt. 1 at 11. Debtor states that at least one other person has an interest in this property. *Id.*

On Schedule D Debtor lists the creditor having a lien on the property as having a secured claim of only ($65,271.50). Id. at 23. However, in the Amended Plan, § 3.07, (Dckt. 17) Debtor states that there is a $65,271.50 pre-petition arrearage to be cured and there are still regular monthly payments of ($4,189.46) going forward, which indicates that the debt secured by the Property is much greater.

Proof of Claim 3-1 has been filed by NewRez LLC d/b/a Shellpoint Mortgage Servicing for Citibank, N.A., as trustee of the New Residential Mortgage Loan Trust 2019.4. The total amount of the claim is ($455,090.91), for which there is stated to be an arrearage of ($67,169.42).

If Debtor values the Property at $500,000.00 and asserts her interest in the property has a value of $150,000, then Debtor's interest appears to be approximately 30%.

Debtor filed Amended Schedule C on April 19. 2024. Docket 38.

April 23, 2024 Hearing

The court issued its Order on April 11, 2024 setting the Debtor's *Ex Parte* Motion for the court to allow a Special Power of Attorney for hearing at 1:30 p.m. on April 23, 2024. Order; Dckt. 32. In that Order the court reviews a number of legal issues relating to the use of a power of attorney to file and prosecute a bankruptcy case, the authority of the court to appoint a personal representative for a debtor who is not able to prosecute the bankruptcy case after it has been filed, and if such representative is appointed or replace the debtor via a power of attorney, then that third-party must be represented by counsel. *Id*.

On March 28, 2024, the day before the hearing as set and noticed by the court on April 11, 2024, the court received a letter, which the court deems to be a motion, from Debtor requesting the court continue

the April 23, 2024 hearing because neither the Debtor nor Lisa Schlein, the person designated as having the power of attorney, are unable to appear on April 23, 2024. Debtor requests that the court set a date in the future for the hearing so that they may attend. Mtn. to Cont.; Dckt. 40.

The Motion to Continue does not state the reason why neither Debtor nor Lisa Schlein are unable to attend the April 23, 2024 hearing. It does not state a reason why the request for a continuance is being made less than 24 hours before the April 23, 2024 hearing.

Counsel for the Debtor was present at the First Meeting of Creditors.

At the April 23, 2024 hearing, the Trustee noted that Debtor has set a Motion for Confirmation of a Chapter 13 Plan, which is set for hearing at 2:00 p.m. on May 21, 2024. If the court was not going to deny without prejudice the present Motion, counsel for the Trustee suggested that continuing the hearing on the Motion to Confirm would be appropriate.

Motion to Confirm

The Motion to Confirm states several legal conclusions, but does not state with particularity the grounds upon which the requested relief is based. See, Fed. R. Bankr. P. 9013 for the requirements for a Motion in this federal court. No evidence is filed in support of the Motion.

The proposed Second Amended Plan provides for Debtor to make substantial monthly payments for sixty months. It provides for the claim of one creditor, "Shellpoint on Behalf of 1st Tennessee," with a regular post-petition payment of $4,259.11 and an arrearage payment of $1,119.49.

The hearing on Debtor's Motion is continued to 2:00 p.m. on May 21, 2024.

The court shall issue a minute 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 Special Power of Attorney having been presented to the court, and upon review of the pleadings, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **XXXXXXX**

FINAL RULINGS

28. 19-20115-E-13 TLA-1 | **IAN/KARLA COEN** | **Thomas Amberg** | **MOTION TO MODIFY PLAN** | **4-4-24 [27]**

Final Ruling: No appearance at the May 21, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties in interest, and Office of the United States Trustee on April 4, 2024. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Ian Michael Coen and Karla Coen ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 30. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 6, 2024. Docket 32. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on April 4, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

29. 21-23539-E-13 DPC-3 | **DEREK WOLF** / **Peter Macaluso** | **CONTINUED MOTION TO DISMISS CASE** **3-8-24 [280]**

29 thru 30

Final Ruling: No appearance at the May 21, 2024 Hearing is required.

IT IS ORDERED that the hearing on the Chapter 13 Trustee's Motion to Dismiss is continued to 2:00 p.m. on June 4, 2024. No appearance at originally scheduled May 21, 2024 to be made, the court having continued that hearing.

30. 21-23539-E-13 PGM-5 | **DEREK WOLF** / **Peter Macaluso** | **MOTION TO MODIFY PLAN** **4-10-24 [287]**

Final Ruling: No appearance at the May 21, 2024 Hearing is required.

IT IS ORDERED that the hearing on the Debtor's Motion to Confirm the Modified Plan is continued to 2:00 p.m. on June 4, 2024. No appearance at originally scheduled May 21, 2024 to be made, the court having continued that hearing.

31. 23-23152-E-13 MOH-2 | **MELANIE JOHNSON** / **Michael Hays** | **MOTION TO CONFIRM PLAN** / **3-4-24 [62]**

Final Ruling: No appearance at the May 21, 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 that have filed claims, parties requesting special notice, and Office of the United States Trustee on April 8, 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, Melanie Megan Johnson ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 65. The Chapter 13 Trustee, David Cusick ("Trustee"), originally filed an Opposition on April 29, 2024, based on delinquency. Docket 67. Trustee later withdrew that Opposition and recommended confirmation on May 7, 2024. Docket 74. 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, Melanie Megan Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on April 8, 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.

32. 24-20654-E-13 DPC-1 | **MICHAEL BETTENCOURT** **Peter Cianchetta** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **4-19-24 [25]**

Final Ruling: No appearance at the May 21, 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 19, 2024. By the court's calculation, 32 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 exemption is disallowed in its entirety.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Michael Joseph Bettencourt's ("Debtor") claimed exemption of a Utility Trailer under Cal. Code Civ. Pro. § 704.010. *See* Schedule C, Docket 1 p. 17. Trustee argues Cal. Code Civ. Pro. § 704.010 only permits an exemption in a motor vehicle as defined under Cal. Vehicle Code § 415(a), and the Utility Trailer does not fit within this statutory definition.

Cal. Code Civ. Pro. § 704.010 states in relevant part:

(a) Any combination of the following is exempt in the amount of seven thousand five hundred dollars ($7,500):

(1) The aggregate equity in motor vehicles.

(2) The proceeds of an execution sale of a motor vehicle.

(3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

Cal. Vehicle Code § 415(a) defines "motor vehicle" and states,

(a) A "motor vehicle" is a vehicle that is self-propelled.

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, the court finds Debtor's claimed exemption in the Utility Trailer is improper as it is not a self-propelled vehicle. The claimed exemption is not permitted under Cal. Code Civ. Pro. § 704.010. The Chapter 13 Trustee's Objection is sustained, and the claimed exemption is 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 the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the claimed exemption for a Utility Trailer under California Code of Civil Procedure § 704.010 on Michael Joseph Bettencourt's ("Debtor") Schedule C, Docket 1 p. 17, is disallowed in its entirety.

33. 24-20876-E-13 DPC-1 | **GUSTAVO ORTEGA** Peter Macaluso | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** 4-16-24 [24]

33 thru 34

Final Ruling: No appearance at the May 21, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on April 16, 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.

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

The Objection to Confirmation of Plan is sustained.

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

1. The debtor, Gustavo Lomeli Ortega ("Debtor"), has not filed all tax returns for the four years prior to filing the case. Docket 24 ¶ 1.

2. The Claim of creditor Unifund CCR, LLC is not scheduled or provided for in the Plan. *Id.* at p. 2:8-13.

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

Debtor submitted a nonopposition to the Objection on May 14, 2024, stating he has no opposition to the Objection and he will file an Amended Plan soon. Docket 32. However, Debtor also states he prays that the Plan be confirmed. The court assumes this to be a clerical error.

The Debtor having filed a non-opposition, no hearing on this Objection is required.

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.

34. 24-20876-E-13 RDW-1 | **GUSTAVO ORTEGA** / **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY GOLDEN 1 CREDIT UNION 4-11-24 [21]**

Final Ruling: No appearance at the May 21, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 11, 2024. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

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

The Objection to Confirmation of Plan is sustained.

Golden 1 Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The debtor, Gustavo Lomeli Ortega ("Debtor"), has not shown he can afford to make plan payments. Docket 21 p. 3:9-16.

2. Debtor has proposed an interest rate below the prime rate. *Id.* at ps. 3:19-4:4.

Creditor did not submit a Declaration in support.

Debtor submitted a nonopposition to the Objection on May 14, 2024, stating he has no opposition to the Objection and he will file an Amended Plan soon. Docket 30. However, Debtor also states he prays that the Plan be confirmed. The court assumes this to be a clerical error.

The Debtor having filed a non-opposition, no hearing on this Objection is required.

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 Golden 1 Credit Union ("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.

35. 24-20888-E-13 DPC-1 | **JASMINE GAINES** Pro Se | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 4-22-24 [33]

35 thru 36

Final Ruling: No appearance at the May 21, 2024 Hearing is required.

IT IS ORDERED that the hearing on the Chapter 13 Trustee's Objection to Confirmation of the Debtor's Chapter 13 Plan is continued to 2:00 p.m. on July 2, 2024. No appearance at originally scheduled May 21, 2024 to be made, the court having continued that hearing.

36. 24-20888-E-13 SKI-1 | **JASMINE GAINES** Pro Se | **OBJECTION TO CONFIRMATION OF PLAN BY AVID ACCEPTANCE LLC** 4-12-24 [28]

Final Ruling: No appearance at the May 21, 2024 Hearing is required.

IT IS ORDERED that the hearing on Creditor Avid Acceptance LLC's Objection to Confirmation of the Debtor's Chapter 13 Plan is continued to 2:00 p.m. on July 2, 2024. No appearance at originally scheduled May 21, 2024 to be made, the court having continued that hearing.

37. 24-20591-E-13 DPC-2 | **PABLO SILVA** / **Carl R. Gustafson** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** / **4-16-24 [29]**

Final Ruling: No appearance at the May 21, 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 16, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Pablo Efrain Silva'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 nonopposition on May 7, 2024, stating he does not oppose the Objection. Docket 44.

Debtor filed a Chapter 7 bankruptcy case on October 27, 2023. Case No. 23-23838. Debtor received a discharge on February 12, 2024. Case No. 23-23838, Docket 27.

The instant case was filed under Chapter 13 on February 16, 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 February 12, 2024, which is less than four years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 24-20591), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 24-20591, the case shall be closed without the entry of a discharge.