

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Sacramento, California

**June 4, 2024 at 2:00 p.m.**

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1. [24-20297-E-13](#)  
[DPC-3](#)

**LORELL LEAL**  
**Pro Se**

**OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS**  
**5-3-24 [52]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, and Office of the United States Trustee on May 3, 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.**

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Lorell Leal's ("Debtor") claimed exemptions on the Amended Schedule C, filed April 19, 2024, on account of Debtor's improper statement of citation code C.C.P. §704 and failure to claim a specific dollar amount of equity for exemption. Obj. to Exemption, Docket 52.

Trustee argues that Debtor improperly listed the exemption code as 704.40. *Id.*, 1:27-28. Trustee further argues that Debtor erred in improperly claiming a home, personal property, and cash accounts as

exempt for “100% of fair market value, up to any applicable statutory limit,” where the relevant sections of the Code of California Civil Procedure require a claim of a specific dollar amount of equity. *Id.*, 2:1-7. No opposition to the Trustee’s Objection was filed.

### **Previous Objection to Exemption Sustained**

Trustee similarly filed an Objection to Exemption to the original Schedule C for nearly identical reasons on April 2, 2024. Obj to Exemption, Docket 27. Trustee noted Debtor’s improper statement of citation code and failure to claim a specific dollar amount of equity for exemption. *Id.* 1:27-28. The Court sustained this objection on May 9, 2024. Order, Docket 58. The Court holds similarly here, as the Amended Schedule C still fails to specify dollar amounts and properly cite exemption code. The Chapter 13 Trustee’s Objection is sustained, and the claimed exemptions are disallowed.

### **Second Amended Schedule Filed**

Following Trustee’s filing of the Objection to Exemption, Debtor filed a Second Amended Schedule C on May 20, 2024. Docket 63. The Second Amended Schedule C corrects some of the errors brought forth in Trustee’s Objection, as it does claim a specific dollar amount of equity for exemption. It also cites to specific Code Sections, which one (at least in California) recognizes as being the California Code of Civil Procedure exemption sections. However, the Amended Schedule C does not identify them as being in the California Code of Civil Procedure.

The Debtor, *in pro se*, has been addressing issues in the prosecution of this case, including getting the dollar amount of the exemptions stated. Little productive benefit would be served from requiring the Debtor to file yet another amended Schedule C.

The Objection to the Exemptions is overruled, the exemptions now being stated in Amended Schedule C filed on May 20, 2024 (Dckt. 63), without prejudice. If the Trustee has further objections to the claimed exemptions on Amended Schedule C, for grounds other than Debtor not having expressly identified the California Code of Civil Procedure, such may be filed within thirty (30) days of the entry of the Order overruling this Objection.

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

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

The Objection to 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 overruled without prejudice, the Debtor having filed Amended Schedule C on May 20, 2024 (Dckt. 63). The Debtor’s exemptions are claimed pursuant to the California Code of Civil Procedure, with the specific Code sections identified on Amended Schedule C.

**IT IS FURTHER ORDERED** that the deadline for filing an objection to the Amended Schedule C is thirty days from the entry of this Order.

The court adjusts the time period provided in Federal Rule of Bankruptcy Procedure 4003(b)(1) because this Ruling is based on the Original Schedule C filed, with the Amended Schedule C, upon which this Ruling is based, having been filed after that time and before the hearing on this Objection to Exemptions.

2. 24-21404-E-13  
DPC-1

**JAMES/SARAH STAFFORD**  
**Seth Hanson**

**OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE DAVID P. CUSICK  
5-15-24 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 15, 2024. By the court's calculation, Debtor 20 days' notice was provided. 14 days' notice is required.

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

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

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

A. The Debtors failed to appear and were not examined at the First Meeting of Creditors held on May 9, 2024. Decl. 2:3-4, Docket 15.

- B. The Trustee does not have sufficient information to determine if the Plan is suitable for confirmation under 11 U.S.C. §1325. Obj. 1:27-28, Docket 13.

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

## **DISCUSSION**

Trustee's objections are well-taken.

### **Failure to Appear at 341 Meeting**

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

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

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

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

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

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

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 30, 2024. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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).

<p><b>The Motion to Confirm the Amended Plan is denied.</b></p>
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The debtor, Denae Lou Bennett (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$400 for month one through seven, then monthly payments of \$676 for months eight through sixty with an estimated 25% dividend to unsecured creditors. Amended Plan, Docket 93. 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 21, 2024. Docket 100. Trustee opposes confirmation of the Plan on the basis that Debtor is delinquent in plan payments. According to Trustee, Debtor has missed two monthly payments in the amount of \$400 each with another plan payment of \$676 due before this hearing. Opp., Docket 100 ps. 1:27-2:3.

## DISCUSSION

### Delinquency

Debtor is \$800 delinquent in plan payments, which represents multiple months of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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 Denae Lou Bennett (“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.

**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.

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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 April 30, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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~~ and the Plan is not confirmed.**

The debtor, Tema Kay Robinson ("Debtor"), seeks confirmation of the Third Amended Plan. The Amended Plan provides for Debtor having paid a total of \$8,126 to the Chapter 13 Trustee through April 2024 with monthly payments of \$350 to begin from May, 2024 for the remaining 54 months of the Plan. Amended Plan, Docket 89. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

Debtor and creditor U.S. Bank National Association ("Creditor") filed a Stipulation with the court on May 22, 2024, clarifying the language surrounding Creditor's treatment under the Plan. Docket 97. Creditor and Debtor propose the following language is appropriate in addressing how Creditor's Claim is to be treated:

Due to payment by payment to Creditor under the California Mortgage Relief program ("HAF"), Creditor states that the subject loan is contractually current through April 30, 2024 due to receipt of \$71,698.12 from HAF and \$4,672.74 from the Chapter 13 Trustee for post-petition payments; no payments have been received from the Chapter 13 Trustee for pre-petition arrears. Creditor shall timely amend the

pre-petition arrears amount stated in its Proof of Claim, filed as Claim No. 2 on the Claims Register herein (the “POC”), to the amount of \$4,672.74 which represents the amounts already paid by the Chapter 13 Trustee as this was included when calculating the HAF proceeds such that Creditor remains entitled to retain the funds.

*Id.* at p. 2:7-13.

## CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on May 21, 2024. Docket 94. Trustee opposes confirmation of the Plan on the basis that:

1. The Plan was not proposed in good faith in violation of 11 U.S.C. § 1325(a)(3). The case was filed in October of 2023 without a Plan having been confirmed. Trustee has issued a check for the ongoing mortgage payment dated on April 30, 2024, in the amount of \$1,557.58 pursuant to the prior Plan. Trustee does not believe either Trustee nor Creditor can determine how that payment is now to be treated. Additionally, Debtor has filed new Schedules marked as amended, not supplemental, which appears to be in error. *Id.* at ps: 1:23-2:5.
2. Debtor may have not filed her 2022 federal tax return in violation of 11 U.S.C. § 1325(a)(9). *Id.* at p. 2:6-8.
3. Debtor has filed “Amended” Schedules I and J, which correct the errors in the original Schedules dating back to the October 12, 2023 filing of this Bankruptcy Case.

Trustee submits the Declaration of Teryl Wegemer in support of his Opposition. Docket 95.

## DISCUSSION

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

11 U.S.C. § 1325(a)(3) states:

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

...

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

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



Here, Debtor has had problems confirming a Plan, but Debtor has been making monthly payments leading up to this potential confirmation. There is not enough evidence before the court that the Third Amended Plan has not been proposed in good faith.

The evidence does to show Debtor is misrepresenting facts on the Plan, unfairly manipulating the code, or otherwise proposing this Plan in an inequitable manner.

Debtor has also entered into a Stipulation with Creditor that may resolve Trustee's concern over having made the \$1,557.58 payment pursuant to the prior Plan.

At the hearing, **XXXXXXX**

### **Amended or Supplemental Schedules**

Debtor here (and Debtor's attorney in other cases) is checking the box indicating subsequently filed Schedules are "amended" when the Schedules may actually be supplemental, and vice versa. Amended Schedules seek to amend the originally filed Schedules, correcting any information that may have been misreported. Information in the Amended Schedules will date back to the date of the originally filed Schedules. There is no change of circumstances when Amended Schedules are filed as the Amended Schedules seek to correct errors relating to the originally filed Schedules.

Supplemental Schedules on the other hand indicate a later change of circumstances, whether it be Debtor has received new employment or otherwise needs to update the court on new information that has occurred sometime after the original Schedules were filed. Supplemental Schedules do not date back to the originally filed Schedules.

Here, Debtor has checked the box for "amended" regarding the most recently filed Schedules at Dockets 91, 92, and 93. If the Schedules are actually amended, then any information in the Amended Schedules would relate back to the original Schedules, so information regarding any previous pleadings Debtor filed under penalty of perjury would have been misreported.

On Original Schedule I (Dckt. 22 at 28-29), Debtor reports having monthly take-home income of \$6,089.76. On original Schedule J Debtor states having monthly expenses of only (\$2,988.90) for her family unit of three, the Debtor and two dependents - her 75 year old mother and her minor child. Dckt. 22 at 30-31. On Original Schedules I and J, the court does not see any provision for Debtor's non-employment business income of \$2,150 a month. On Original Schedule J, there are no expenses for rent or mortgage payment, property insurance, and property taxes. Debtor does list only (\$10) a month for home maintenance, upkeep, and repairs.

On Amended Schedule I, correcting the errors on Original Schedule I, the accurate income information for Debtor as of the October 12, 2023, is that the Debtor has only \$5,011.76 in monthly take-home income. Dckt. 91 at 5. For expenses, Amended Schedule I states that since October 12, 2023, the Debtor's monthly expenses are (\$4,661.33), leaving only \$350.43 a month in projected disposable income to fund a plan. *Id.* at 6-7.

One reason for a decrease in income is that Debtor's Mother is reducing her contribution for housing and living expenses from \$1,900 a month (Dckt. 22 at 29) to only \$822 a month (Dckt. 91 at 5).

No declaration is provided by the Motion to state her income, her ability to contribute to the housing expenses, and for food, housekeeping, and other expenses for which she is a dependent of the Debtor.

On Amended Schedule I, Mother lower contribution of \$822 (which was stated to be \$1,900 on original Schedule I) is identified as “Social Security.”

With Debtor’s Mother only contributing \$822 a month, apparently choosing to reduce the \$1,900 she has available when the Original Schedule I was filed, an issue arises whether she is actually a dependent of the Debtor or whether the Debtor and her Mother are seeking to have Debtor’s creditors subsidize Debtor’s Mother’s living expenses.

These changes in the Schedules require that financial information from the Mother be provided and whether Mother is a dependent of the Debtor and whether Mother is fairly contributing to her living expenses.

Debtor has increased her expenses adding a home mortgage expense of (\$1,557.58) and has seen a need to increase the home maintenance expense to (\$110), from the originally stated (\$10).

At the hearing, **XXXXXXX**

#### **Failure to File Tax Returns**

Finally, Trustee states Debtor has not filed the federal income tax return for the 2022 tax year. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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, Tema Kay Robinson (“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.

5-8-24 [\[37\]](#)

**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).**

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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 May 8, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is overruled and the Chapter 13 Plan is confirmed.**

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

1. Plan relies on pending motions. Debtor's Plan relies on the Motion to Avoid Lien of Murrieta Crossings Property, LLC, (DN 32), which is set for hearing on June 4, 2024, the same day as this motion. If the Motion to Avoid Lien is not granted, Debtor's Plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation. Obj. 1:25-2:3, Docket 37.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 39.

## DISCUSSION

The Motion to Avoid the Lien of Murrieta Crossing Property, LLC was granted by final ruling for the June 4, 2024 hearing.

That lien having been avoided, the basis for the Trustee's Objection has been resolved in the Debtor's favor.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan 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 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 is overruled, and Debtor's Chapter 13 Plan filed on March 21, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors and parties in interest, and Office of the United States Trustee on April 30, 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).

<p><b>The Motion to Confirm the Modified Plan is <span style="color: red;">xxxxxxx</span> .</b></p>
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The debtor, Stephen Anthony Gingold and Karen Michelle Gingold ("Debtor") seeks confirmation of the Third Modified Plan to authorize Trustee to increase the payment dividend to the IRS' Claim, as well as advance the completion of the Plan to less than 60 months, aiming for completion in 58 or 59 months. Declaration, Docket 180 ¶¶ 4, 7. Debtor requests the expedited completion in order to have 45-60 days prior to the secured creditor Polycomp Trust's ("Creditor") loan coming due, giving ample time for a refinance or sale. *Id.* at p. 3:1-6. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 21, 2024. Docket 190. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is paid ahead under the proposed Modified Plan by \$281.87. Trustee requests Debtor clarify that the actual amount paid in through

month 56 (April 2024) is \$211,011.79, then \$3,845.00 beginning May 2024 for 3 months, then \$4,511.00 in month 60 (August 2024, final payment). Docket 190 ps. 1:24-2:3.

2. Debtor's Declaration requests Trustee pre-pay at least one plan payment, whereas the Modified Plan indicates Debtor's plan payment will remain at \$3,845.00 for May, June, July payments (months 57-59) and for the Trustee to use insurance funds in the amount of \$4,511.00 as the 60th and final plan payment, to be applied upon receipt of Debtor's 59th payment. However, the Debtors is over the median income which makes their applicable commitment period 60 month unless they are paying 100% to unsecured creditors. This Modified Plan proposes to pay 0% to the unsecured creditors so the Trustee would object to this language and request it be stricken. The trustee believes that the plan duration should be 60 months. *Id.* at p. 2:5-24.
3. Debtor's proposed Modified Plan does not authorize payments made by the Trustee to GM Financial and Polycomp. Since the Trustee disbursed those funds in accordance with a confirmed Plan (Dockets 52, 143), he should not be required to recover those funds and requests that those payments, or language ratifying the payments, be included in the Modified Plan. *Id.* at p. 3:1-12.
4. Debtor is proposing to pay \$4,511.00 as their last plan payment. However, Debtor is not proposing to pay the money themselves, but instead Debtor is proposing to use the money that the Trustee is holding from the insurance payout. The Court ordered the Trustee to hold these funds pending completion of the Plan or further order of the Court. Trustee can only make this payment if the Court so orders. *Id.* at p. 3:13-24.
5. No Supplemental Schedules I and J have been filed in support. *Id.* at ps. 3:25-4:3.
6. Trustee requests the total dollar amounts to be paid in additional attorney's fees be specified in the Order confirming. *Id.* at p. 4:5-15.
7. Similarly, as Debtor's attorney is requesting additional fees in the amount of \$4,200, Trustee requests a specific monthly dividend of the fee payment be included in the Order confirming. The Plan simply states the fees will be paid from Plan funds but fails to specify a dividend. *Id.* at ps. 4:15-5:2.
8. The Motion does not cite applicable code sections to support it such as 11 U.S.C. § 1329, which is required under Local Bankruptcy Rule 9014-1(d), and Fed. R. Bankr. P. 9013. *Id.* at p. 5:3-7.

## DISCUSSION

The Trustee raises concerns over specific language in the Plan. There are significant gaps in the Plan, not items for which there can be a simple one or two word amendment being stated in an order confirming the Plan.

A question created by Debtor's Declaration (Dckt. 180) and the Plan is that Debtor seeks to be able to "advance" plan payments and complete the Plan in less than 60 months. However, conspicuously absent from the testimony is where the Debtor has the financial ability to double or triple the monthly plan payment in one month. It raises the specter that Debtor actually has substantially more projected disposable income then stated under penalty of perjury on the Schedules.

Debtor filed Second Supplemental Schedules I and J on May 29, 2024. Dckt. 193. Second Supplemental Schedule I lists Debtor having \$7,946.67 in monthly take-home income. *Id.* at 4. This is \$246 more a month than listed on the prior Supplemental Schedule (Dckt. 145 at 6). On Second Supplemental Schedule J Debtor lists monthly expenses of (\$4,089), Dckt. 193 at 6, which is (\$223) higher than stated on the prior Supplemental Schedule J, Dckt. 145 at 8.

Based on Second Supplemental Schedules I and J Debtor does not have the financial ability to accelerate the plan payments and make multiple monthly plan payments in one month.

At the hearing, **XXXXXXX**

#### **Plan Term is Fewer Than 60 months**

The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months without providing full payment of all allowed unsecured claims. Debtor has proposed a plan term of 58 or 59 months, but Debtor has not proposed a dividend to unsecured claims. The court is not statutorily authorized to shorten the length of the Plan where Debtor earns over the median income and unsecured creditors are paid less than 100%.

At the hearing, **XXXXXXX**

#### **Failure to Cite Supporting Law**

Debtor requests this court grant relief without citing to almost any relevant sections of the Code or other supporting authority. Such lack of persuasive authority could be seen to violate Fed. R. Bankr. P. 9013 by failing to state with particularity the relief sought and grounds therefor.

While a party and counsel may think that the "law is obvious, so it does not need to be cited," it is the obligation of the parties and their counsel to provide the court with the grounds, evidence, and law upon which the relief is requested. Though it may be a simple citation, such as 11 U.S.C. §§ 1332, 1325, and 1329, it must be provided to the court.

At the hearing, **XXXXXXX**

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Modified Chapter 13 Plan filed by the debtor, Stephen Anthony Gingold and Karen Michelle Gingold (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

7. <a href="#">19-25021-E-13</a> <a href="#">MMP-6</a>	<b>STEPHEN/KAREN GINGOLD</b> <b>Michele Poteracke</b>	<b>MOTION FOR COMPENSATION FOR</b> <b>MICHELE M. POTERACKE, DEBTORS</b> <b>ATTORNEY(S)</b> <b>4-30-24 [182]</b>
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**Final Ruling**  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors and parties in interest, and Office of the United States Trustee on April 30, 2024. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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Michele M. Poteracke, the Attorney (“Applicant”) for Stephen Anthony Gingold and Karen Michelle Gingold, the Chapter 13 Debtor (“Client,” “Debtor”), makes a Request for the Additional Allowance of Fees and Expenses in this case.



Fees are requested for the period January, 2021, through June, 2024, regarding work related to various additional Plans and Motions over the life of this case. Applicant requests fees in the amount of \$4,200 and no additional costs. The requested fees are reduced from the actual earned fees of \$15,997.50.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a nonopposition on May 21, 2024. Docket 188.

## **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 Brunswick 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 for the Estate include filing and confirming Modified Plans and the related pleadings, as well as defending various Motions to Dismiss. 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 80. 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**

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

The Second Modified Plan: Applicant spent 42 hours in this category. Applicant prepared the Modified Plan; reviewed and responded to trustee motion to dismiss; reviewed and responded to Kraft counter motion to modified plan; fielded multiple emails and telephone conferences with trustee’s counsel, Kraft’s counsel, and IRS counsel culminating in agreement and Second Modified Plan being approved at June 8, 2021 hearing. Docket 182 p. 2:3-7.

Communications with Parties: Applicant spent 7 hours in this category. Applicant responded to news re medical diagnosis and hardship analysis; multiple communications with clients and trustee’s office, and Kraft attorney; analysis re preparing third modified plan to maximize IRS payment, review of Sunahara and preparation and filing of Third Modified Plan and motion and declaration re same. *Id.* at p. 2:8-11.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Michele M. Poteracke	49.1	\$350.00	\$15,997.50
<b>Total Fees Earned for Period of Application</b>			\$15,997.50
<b>Total Requested Fees for Period of Application</b>			\$4,200.00

## **FEES ALLOWED**

The unique facts surrounding the case, including helping Debtor keep their case on track during a period of furlough and confirming multiple 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 \$4,200 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	\$4,200
------	---------

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 Michele M. Poteracke (“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 Michele M. Poteracke is allowed the following fees and expenses as a professional of the Estate:

Michele M. Poteracke, Professional Employed by Stephen Anthony Gingold and Karen Michelle Gingold (“Debtor”)

Fees in the amount of \$4,200,

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 under the confirmed Plan.

8. [24-21423-E-13](#)  
[DPC-1](#)

**ALLISON MURPHY**  
**Candace Brooks**

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK**  
**5-14-24 [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 May 14, 2024. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXX</span> .</b>
--

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

1. Failure to Appear. The Debtor failed to appear and be examined at the First Meeting of Creditors held on May 9, 2024. The Trustee does not have sufficient information to determine if the Plan is suitable for confirmation under 11 U.S.C. §1325. Therefore, the meeting has been continued to June

20, 2024. The Trustee would like to note that Debtor's Attorney contacted the Trustee prior to the hearing and requested a continuance which the Trustee granted. Obj. 1:25-2:4, Docket 16.

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

## **DEBTOR'S RESPONSE TO OBJECTION**

Debtor filed a Response to the Objection on May 22, 2024. Dckt. 21. The Response states that Debtor was unable to attend the First Meeting of Creditors set for May 9, 2024, because Debtor's counsel was scheduled to be out of town on the date originally set. It is further argued in the Response that Debtor's counsel communicated to the Trustee's office requesting a continuance to May 23, 2024. However, there may have been a miscommunication and the First Meeting of Creditors has been continued to June 20, 2024.

Debtor and Debtor's counsel are scheduled to appear at the June 20, 2024 First Meeting and request that the hearing on the Objection to Confirmation be continued to a date after the June 20, 2024 First Meeting.

Though no declaration providing testimony under penalty of perjury has been provided by Debtor as to the facts alleged in the Response, they are consistent with what the Trustee states in the Objection to Confirmation.

## **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).

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.~~

9. [22-21528](#)-E-13      **MICHAEL CARTER / TORRIE  
GIDGET CONN  
Pro Se**      **TRUSTEE'S FINAL REPORT AND  
ACCOUNT  
4-15-24 [[239](#)]**

**DEBTORS DISMISSED: 05/11/23**

**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 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, attorneys of record who have appeared in the case, and Office of the United States Trustee on May 3, 2024. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

The Objection to Trustee's Final Report and Account was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter Attorneys<sup>13</sup> 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, -----

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<b>The Objection to Trustee's Final Report and Account is overruled.</b>
--

On April 15, 2024, the Chapter 13 Trustee, David Cusick ("Trustee"), filed the Trustee's Final Report and Account. Docket 239. On May 3, 2024, debtor Michael Anthony Carter and debtor Torrie Gidget Conn ("Debtor") filed an Objection to Trustee's Final Report and Account. Docket 242. In their Objection, Debtor objects specifically to paragraph 11 of Trustee's Report. Paragraph 11 states:

11) All checks distributed by the trustee relating to this case have cleared the bank.

Report 1 ¶ 11, Docket 239. Debtor states that the checks in the total amount of \$2,200 have not cleared the bank, Debtor having not received any refunded monies from the case. Obj. 2:22-27, Docket 242.



Trustee filed a Response on May 21, 2024. Docket 245. Trustee informs the court that when the case was dismissed on May 13, 2023, Trustee attempted to refund the total amount of \$2,200 to Debtor, but the checks were never cashed. Response 1:24-27, Docket 245. Accordingly, the Clerk of the Court is now in possession of the funds. *Id.* Debtor is authorized to collect the funds in the amount of \$2,200 from the Clerk of the Court.

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 Trustee's Final Report and Account filed by Michael Anthony Carter and Torrie Gidget Conn ("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 Objection to the Trustee's Final Report is overruled, the Trustee having turned over the \$2,200 to be refunded to the Debtor to the Clerk of the Court as unclaimed funds. The Trustee's Final Report is accurate, and Debtor may now proceed to claim those monies from the Clerk of the Court.

**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 May 8, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

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

- A. The Debtor lists a Capital One Auto Finance loan for a 2017 Chevrolet Traverse as being "in Wife's name only," with Debtor's wife having no income. Docket 1 at ps. 19, 28. The vehicle has a secured claim of \$19,000 with a value of \$15,170 and unsecured portion of \$3,290 with monthly payments of \$599.00 per month. For the loan to last 60 months, the interest rate is estimated to be 20%. Obj., Docket 18 at 2:1-3.
- B. The plan has no provision for the creditor Capital One Auto Servicing and if the creditor filed a claim as scheduled with an unsecured portion, the Trustee would need to pay the full claim under the proposed plan. Obj., Docket 18 at 2:4-6. The Trustee objects that the plan may not have been proposed in good faith due to failure to disclose the creditor. *Id.* at 2:9-10

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

## DISCUSSION

Trustee's objections are well-taken.

### Interest Rate

Trustee seems to argue the unsecured portion of Creditor's claim may be overpaid at 20% interest rate. At the hearing **XXXXXXX**

### Possible Failure to Provide for a Secured Claim

Creditor Capital One Auto Finance asserts a secured claim of \$19,000.00, secured by a 2017 Chevrolet Traverse vehicle, valued at \$15,170.00 with an unsecured portion of \$3,290.00. Obj. Docket 18 at 1:27-28. Debtor's Schedule D acknowledges the debt, but provides that the loan is "in Wife's name only." Docket 1 at 19.

Debtor's Plan does not disclose treatment of creditor Capital One Auto Finance. 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). Absent explanation from Debtor as to failure to include the loan from Capital One Auto Finance, the court believes that Debtor's projection may not be made in good faith.

If there is no delinquency or arrearage on Creditor's Claim, then it may properly be paid as a Class 4 Claim directly by the Debtor. 11 U.S.C. § 507(a)(4). However, the debtor has not listed this claim under Class 4 and it is unclear if there is any delinquency that must be addressed under Debtor's plan.

The Debtor lists the 2017 Chevrolet Traverse on Schedule A/B. Dckt. 1 at 12. On Schedule D Debtor lists Capital One Auto Finance having a secured claim in this case that is secured by the Chevrolet Traverse. *Id.* at 19. Creditor Capital One Auto Finance has a secured claim in this Bankruptcy Case as stated by Debtor on Schedule D. *See*, 11 U.S.C. § 506(a) defining a secured claim as one where the claim is secured by any property of the bankruptcy estate. It is not dependent on the debtor being a co-obligor on the debt with his non-debtor spouse.

On Schedule I, Debtor states under penalty of perjury that his non-debtor Spouse has no income. *Id.* at 29. It is only the Debtor who has income.

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”), 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.

11. [22-21037-E-13](#)      **SHANNON BUTLER**      **MOTION TO VACATE DISMISSAL OF**  
[BMV-3](#)      **Bert Vega**      **CASE**  
5-8-24 [55]

**DEBTOR DISMISSED: 05/03/24**

**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, Parties requesting special notice, and Office of the United States Trustee on May 8, 2024. By the court’s calculation, 27 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, -----.

<p><b>The Motion to Vacate is granted, and the order dismissing the case (Docket 53) is vacated.</b></p>
--

Shannon Todd Butler (“Debtor”) filed the instant case on April 26, 2022. 1. A Plan was confirmed on August 26, 2022 with the order confirming being entered. Order, Docket 41.

On April 3, 2024, the Chapter 13 Trustee, David Cusick (“Trustee”), filed a Motion to Dismiss the Case due to a delinquency in plan payments of \$511 and Debtor not providing tax returns. Mot., Docket 48. On May 1, 2024, a hearing on the Motion to Dismiss was held, and the Motion was granted. Docket 52. The ruling was final because Debtor did not file any opposition.

On May 8, 2024, Debtor filed this instant Motion to Vacate. Mot., Docket 55. In Debtor’s Motion, Debtor states:

1. Debtor has been religiously paying the monthly plan payment of \$511.00 per month. He acknowledged that he was remiss in one monthly payment for March 2024 which triggered the Motion to Dismiss filed by the Trustee on April 3, 2024 due to delinquency in the plan payments and for failure to provide copies of his 2022 and 2023 tax returns. On April 29, 2024 Debtor paid \$511.000 to his plan for the month of March 2024. *Id.* at p. 2:5-10.
2. Debtor was unaware of the Trustee’s Motion to Dismiss his case because he was at his current jobsite working as a pipe fitter and could not access his mail and had limited access to the internet. He failed to review his emails from Counsel regarding his delinquency and missing tax returns. Upon learning of Trustee’s Motion to Dismiss, Debtor again made a plan payment of \$511.00 on May 3, 2024 (Exhibit A) for the month of April 2024 to bring his plan payments to current. He provided Counsel his 2022 Federal Tax Return and Iowa Tax Return (Exhibit B) showing that he owed the IRS \$1,017.00 and a copy of the application for Extension of time to file tax return for 2023 (Exhibit C) which have been submitted to the Trustee. However, the deadline to submit a Response to the Trustee’s Motion had already lapsed and Counsel was unable to submit the said tax returns and proof of the payments to the Trustee. The court then granted the Motion to Dismiss. Mot. 2:11-21, Docket 55.

Debtor submits his own Declaration in support, authenticating the facts alleged in the Motion. Decl., Docket 57. Debtor also submits Exhibits A-C at Docket 58 showing the attempt to cure the delinquency and provide tax returns for the years 2022 and 2023.

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

#### **RESPONSE BY THE CHAPTER 13 TRUSTEE**

On May 21, 2024, the Chapter 13 Trustee filed a Response stating that he does not oppose this Motion to Vacate the dismissal. Dckt. 61.

#### **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 missed a payment and failed to file tax returns. Of note, Debtor was away at a jobsite, occupied with work, when the Trustee brought the deficiencies forward in his Motion to Dismiss. The evidence and testimony of the Debtor shows that Debtor, upon learning of the problems, immediately went to correct the errors. Debtor's corrections came just a bit too late, and then the court granted Trustee's Motion. Before this Motion to Dismiss, Debtor had been dutifully making payments on time. The Docket reflects the case has been proceeding smoothly until recently.

However, it is not explained why Debtor's counsel did not file an opposition stating that he was attempting to communicate with the Debtor who was away from home working on a remote job site. Such an opposition would have prevented there being a final ruling. Or why counsel did not communicate with the Chapter 13 Trustee's Office to request a continuance under these circumstances. While these questions exist, they do not warrant denial of this Motion.

Relief from the final order dismissing the case is warranted based on Debtor's work circumstances occupying him during Trustee's Motion to Dismiss, and debtor immediately working to rectify the mistakes with his case upon learning of the problems.

Therefore, in light of the foregoing, the Motion is granted, and the order dismissing the case (Docket 53) 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 Shannon Todd Butler ("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 (Docket 53) is vacated.

**IT IS FURTHER ORDERED** that the counsel shall enter a separate order denying without prejudice the Motion to Dismiss this Bankruptcy Case.

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

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

DCN: DPC-2

The Motion to Dismiss this Case filed by David Cusick, the Chapter 13 Trustee, was granted by final ruling on May 3, 2024. Order; Dckt. 53. No opposition was filed by the Debtor to the Motion to Dismiss. Civil Minutes; Dckt. 52. Debtor filed a Motion to Vacate the Order Dismissing this Bankruptcy Case (DCN: BMV-3) on May 8, 2024. The court granted that Motion and vacated the dismissal of this case on June 5, 2024.

The court having considered the basis of the Motion to Dismiss, the corrective action taken by Debtor, and the steps Debtor is taking going forward, and then considering them as an Opposition to the Motion to Dismiss, the court concludes that the Motion to Dismiss be denied without prejudice.

Therefore, upon consideration of the court's rulings and findings on the Motion to Vacate the Order Dismissing this Case, considering such as opposition to the Motion to Dismiss, and good cause appearing;

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

12. <a href="#">24-20837</a> -E-13 <a href="#">DPC-2</a>	<b>TERRI COOK PALACIOS AND JOSE PALACIOS</b> Leo Spanos	<b>OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS</b> 5-1-24 <a href="#">[18]</a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Parties requesting special notice, and Office of the United States Trustee on May 1, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

<b>The Objection to Claimed Exemptions is <span style="color: red;">xxxxxxx</span>.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee") objects to Terri Lashai Cook-Palacios and Jose Camacho Palacios' ("Debtor") claimed exemption in the property commonly known as 6255 N Camino Pimeria Alta #114, Tucson, Arizona 85718 ("Camino Property"). Although the Camino Property is located in Arizona, Debtor is claiming the property exempt under California's homestead exemption, Cal. Code Civ.



P. § 704.730. Trustee asserts, pursuant to 11 U.S.C. § 523(b)(3)(A), Debtor may not claim the Property exempt under Cal. Code Civ. P. § 704.730 because Debtor's domicile has not been in California for the requisite statutory length.

## DEBTOR'S OPPOSITION

Debtor submitted a late Opposition on May 27, 2024. Docket 35. Trustee's Notice required written Opposition to be presented no later than May 21, 2024.

Debtor opposes Trustee's Objection on the following grounds:

1. The Debtors, with the exceptions noted below, lived at 5228 Whitetail Run Court, Antelope, CA 95843 ("Whitetail property") from July 2007 through December 2021. *Id.* at ¶ 1.
2. In July 2019, Mr. Palacios and the Debtors' children moved into a rental property in Arizona. Mrs. Palacios continued to live and work in California. *Id.* at ¶ 2.
3. In July 2020, the Debtors purchased the Camino Property. Mr. Palacios moved into the Camino Property for work and to be close to the children. *Id.* at ¶¶ 5-6.
4. Mrs. Palacios visited the Camino Property on the weekends and stayed there on other occasions but continued to work in California and reside at the Whitetail property. *Id.* at ¶ 7.
5. The Debtors filed taxes in California in 2022 and 2023 as Nonresident or Part-Year Residents. The Debtors filed taxes in Arizona in 2022 as Nonresidents. *Id.* at ¶¶ 8-9.
6. In February 2022, the Debtors purchased real property at 5273 Cumberland Drive, Roseville, CA 95747 ("Cumberland property"). Mrs. Palacios moved to the Cumberland Property and lived there (splitting time between there and the Camino property) up to the date the Debtors filed for bankruptcy on February 29, 2024. *Id.* at ¶¶ 10-11.

Debtor Terri Lashai Cook-Palacios submits her own Declaration in support, testifying as to the authenticity of these facts alleged. Docket 36.

## APPLICABLE LAW

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.*

11 U.S.C. § 523(b)(3)(A) states:

(3) Property listed in this paragraph is—

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor’s domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor’s domicile has not been located in a single State for such 730-day period, the place in which the debtor’s domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place.

The Ninth Circuit has held that a debtor’s real property need not be located in California to be subject to the California homestead exemption. *See In re Arrol*, 170 F.3d 934, 935 (9th Cir. 1999); see also 4 COLLIER ON BANKRUPTCY ¶ 522.06 (“The combined effect of the longer 730-day period (plus the additional 180-day period) for determining the applicable exemption law and the unchanged 180-day period for determining venue is that the law of the debtor’s domicile, for purposes of section 522, may be different from the law of the forum. . . In such cases, the court must give effect to those exemptions allowed by the law of the state of domicile, and it makes no difference where the property is situated or where the petition is filed, so long as the property is exempt under the law of the domiciliary state.”). For a debtor to avail themselves of the California exemption, the operative facts must be that either a debtor has been domiciled in California for the 730 days immediately preceding filing, or , if not, then a debtor has been domiciled in California for at least the majority of a 180 days preceding the 730-day period.

## DISCUSSION

Here, it appears that Debtor Jose Camacho Palacios resided in Arizona during 730-day statutory period, but Debtor Terri Lashai Cook-Palacios did not have a single domicile during the 730-day period. Debtor Terri Lashai Cook-Palacios moved between the Cumberland Property and Camino Property during the 730-day period. Therefore, the court then inquires as to which state Debtor Terri Lashai Cook-Palacios was domiciled in for at least the majority of time during the 180 days preceding the 730-day period.

The evidence shows that, barring certain other events, Debtor Terri Lashai Cook-Palacios was domiciled in California from Monday through Friday, and then domiciled in Arizona on the weekends during the 180 days preceding the 730-day period. Debtor Terri Lashai Cook-Palacios was domiciled at the Whitetail Property from 2007 to December of 2021, then was domiciled at the Cumberland Property from February of 2022 through the present. Both of these properties are located in California. A division of time where Debtor Terri Lashai Cook-Palacios is in California from Monday through Friday and then in Arizona on the weekends would suggest that Debtor is able to avail themselves of the California homestead exemption.

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 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 **XXXXXXX**.

13. [21-23539-E-13](#)  
[PGM-5](#)

**DEREK WOLF**  
**Peter Macaluso**

**CONTINUED MOTION TO MODIFY  
PLAN  
4-10-24 [287]**

**13 thru 14**

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

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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 that have filed claims, Parties requesting special notice, and Office of the United States Trustee on April 10, 2024. By the court’s calculation, 55 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).

<b>The Motion to Confirm the Modified Plan is denied.</b>
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The debtor, Derek L. Wolf (“Debtor”) seeks confirmation of the Modified Plan. The Modified Plan provides for \$20,888.96 having been paid through April of 2024 with six monthly payments of \$900

each to commence in May of 2024 and to finish the Plan. Modified Plan, § 7; Docket 291. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Modified Plan also provides the following nonstandard provisions:

1. Debtor & Creditor's Predecessor-In-Interest entered into a Loan Modification Agreement, in 2014 which had a variable interest rate which has increased to 4.125% at the time of this bankruptcy filing.
2. The "New" Principle Balance became \$208,994.25.
3. Of the "New" Principle Balance \$36,400.00 was deferred "Deferred Principle Balance" is non-interest bearing, and remains as an outstanding principle due, and the "Interest Bearing Principle" was \$172,594.25.
4. As of November 1, 2023, Debtor's Post-Petition Mortgage Payment, subject to change pursuant to the terms of the Note and Deed of Trust, is \$792.89, which sum includes escrow of \$419.06, and principle and interest of \$373.83 at the rate of 4.25%.
5. Creditor took possession of Grant Monies Debtor received from the Ca. Housing Relief Fund ("Grant"), which were applied to Debtor's account in August of 2022.
6. As of November 1, 2023, the "Interest Bearing Principle Balance" was \$78,096.20, which is DISPUTED by the Debtor at this time.
7. Debtor's first Plan payment was due November 2021 through March 2024, or (29) twenty-nine months, due for a total of \$22,993.81 in Post-Petition Payments Due thru March of 2024.
8. While the Creditor returned \$8,893.66 of the "Grant", these funds were reissued in late 2023, and applied to (6) six monthly post-petition payments totaling \$7,572.48, and \$1,063.84, and \$257.34 corporate advances.
9. Of the \$22,993.81 that has come due, less the \$7,572.48 applied equals \$15,421.33.
10. Of the \$15,421.33 Post-Petition Payments Due, the Trustee has disbursed \$17,628.83 since November of 2021, to the Class 1 Creditor, US Bank, N.A.(1st Deed of Trust), and has \$1,976.57 "On-Hand" pending disbursement, for a total of \$19,605.40 Post-Petition Arrears.
11. As such, the Trustee has disbursed \$17, 628.83, on a \$15,421.33 class 1, which is \$2,207.50 such that the Debtor's next Post-Petition Class 1 Payment is due for May 25, 2024.

Modified Plan, Docket 291 § 7.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on May 6, 2024. Docket 300. Trustee opposes confirmation of the Plan on the basis that:

1. It is not clear how Debtor is proposing to make payments to creditor Rushmore Servicing. This creditor was in Class 1 under the previously confirmed Plan, but a postpetition delinquency in the amount of \$10,456.63 arose due to Debtor failing to make payments. It is unclear how these arrears will be cured. *Id.* at ps. 1:25-2:17.
2. The Plan is severely overextended, relying on a R.E.S.P.A. accounting that may or may not go in Debtor’s favor. *Id.* at ps. 2:21-3:10.
3. Debtor disputes how much is remaining on the new principal balance of his home mortgage loan, the same dispute that has been going on for the life of this case, and the Plan is dependent on a favorable R.E.S.P.A. accounting that may or may not occur. *Id.* at p. 3:11-21.
4. Debtor is paid ahead under the proposed modified Plan by \$900.00. *Id.* at p. 3:22.
5. Debtor has marked Schedules I and J as amended, not supplemental. *Id.* at p. 4:1-4.
6. Supplemental Schedules I and J have not been served in violation of Local Bankruptcy Rule 3015-1(d)(2). *Id.* at p. 4:5-12.

## **DEBTOR’S REPLY**

Debtor filed a Reply to Trustee’s Opposition on May 13, 2024. Docket 305. Debtor states:

1. There is no postpetition mortgage arrearage through a combination of Trustee disbursements and the application of postpetition grant funds. *Id.* at ps. 1:23-2:22.
2. Debtor is not proposing to pay the full principal balance in this Modified Plan, just cure the arrearage on his loan. Therefore, even though the principal balance is disputed, its resolution is not necessary to effectuate the Modified Plan. *Id.* at ps. 2:23-3:4.

## **CREDITOR’S OPPOSITION**

U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (“Creditor”) holding a secured claim filed an Opposition on May 14, 2024. Docket 307. Creditor opposes confirmation of the Plan on the basis that:

1. At the May 1, 2024 hearing, the Court ordered Debtor to submit a supplement to the Second Proposed Modified Plan by May 7, 2024. Creditor would then have an opportunity to respond to the supplement.

Debtor did not file any supplement to the Second Proposed Modified Plan and has not clarified how Creditor's claim would be treated under the Second Proposed Modified Plan. *Id.* at p. 1:24-27.

2. As noted in the Trustee's Opposition to the Motion to Confirm Modified Plan, filed May 6, 2024, Debtor is not current post-petition. *Id.* at p. 2:3-5.
3. Debtor is currently due for the March 2024 payment, i.e., is three months behind, contrary to Debtor's contention that he is current. Debtor's Second Proposed Modified Plan has no provision to cure the three-month post-petition arrearage. *Id.* at p. 2:7-9.
4. Debtor's pre-petition arrearage has been cured. The pre-petition arrearage was the apparent reason for Debtor's bankruptcy filing. Given the pre-petition arrearage is cured, continuation of this bankruptcy proceeding is unnecessary. While Debtor disputes the post-petition payments and the current interest-bearing principal amount, Debtor can bring such claims in a non-bankruptcy court. *Id.* at p. 2:10-13.

## DISCUSSION

### Amended or Supplemental Schedules

Debtor here (and Debtor's attorney in other cases) is checking the box indicating subsequently filed Schedules are "amended" when the Schedules may actually be supplemental, and vice versa. Amended Schedules seek to amend the originally filed Schedules, correcting any information that may have been misreported. Information in the Amended Schedules will date back to the date of the originally filed Schedules. There is no change of circumstances when Amended Schedules are filed as the Amended Schedules seek to correct errors relating to the originally filed Schedules.

Supplemental Schedules on the other hand indicate a later change of circumstances, whether it be Debtor has received new employment or otherwise needs to update the court on new information that has occurred sometime after the original Schedules were filed. Supplemental Schedules do not date back to the originally filed Schedules.

Here, Debtor has checked the box for "amended" regarding the most recently filed Schedules at Docket 293. If the Schedules are actually amended, then any information in the Amended Schedules would relate back to the original Schedules, so information regarding any previous pleadings Debtor filed under penalty of perjury would have been misreported.

If Debtor means for the Schedules to be supplemental, then new information has arisen and the previous pleadings would not be affected by the new information in the Supplemental Schedules.

At the hearing, **XXXXXXX**

Furthermore, Local Bankruptcy Rule 3015-1(g)(3) provides:

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

It does not appear that Debtor has served the Supplemental Schedules I and J in violation of this rule, which is cause for denial of confirmation.

### **Postpetition Arrearage**

Trustee and Creditor assert that Debtor has not cured the postpetition arrearage. Creditor asserts there are three months of postpetition payments in arrears. Debtor argues that he is completely current as of the filing of this Motion. 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).

In addressing this issue, at the hearing, **XXXXXXX**

### **R.E.S.P.A. Accounting**

Trustee asserts that the Plan relies on a favorable R.E.S.P.A. accounting, but Debtor asserts the principal need not be determined to complete this bankruptcy case.

At the hearing, **XXXXXXX**

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 8, 2024. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXX</span>.</b>
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#### June 4, 2024 Hearing

The court continued the hearing from the May 1, 2024 hearing date to be heard in conjunction with Debtor's Motion to Confirm Modified Plan.

At the hearing, XXXXXXX

#### REVIEW OF MOTION

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

1. The debtor, Derek Wolf ("Debtor"), is delinquent \$34,082.09 in plan payments. Debtor will need to have paid \$38,598.23 to become current by the hearing date. Docket 280 p. 1:17-23.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 282.

#### DEBTOR'S OPPOSITION



Debtor filed an Opposition and supporting Declaration on April 18, 2024. Dockets 294, 295. Debtor informs the court that he has set and served a Second Modified Plan for the court's May 21, 2024 calendar. Docket 294 ¶ 3. Debtor testifies that he is not actually delinquent because creditors in his case were paid directly by two government grants outside the bankruptcy. Decl., Docket 295 ¶ 2. Debtor requests his case not be dismissed.

## **DISCUSSION**

### **Delinquent**

Trustee reports Debtor is \$34,082.09 delinquent in plan payments, which would represent a substantial delinquency. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). However, Debtor testifies, without submitting any corroborating evidence, that he is not delinquent and as the creditors have been paid outside of bankruptcy through government grants.

### **Review of Proposed Modified Plan**

On April 10, 2024, facing this Motion to Dismiss this Bankruptcy Case Debtor filed a Proposed Second Modified Plan. Dckt. 291. Creditor's Claim is placed in Class 1 of the Plan, with Debtor to make the regular post-petition monthly payments and as stated in Class 1 and the arrearage payments as stated in the Additional Provisions. Proposed Second Modified Plan, Paragraph 3.07 and Additional Provisions; Dckt. 291.

The Additional Provisions relating to Creditor's Claim provide a historical statement of the loan transaction, a historical statement of some plan payments, an affirmative current statement that Debtor disputes Creditor's Claim, and allegations of how Debtor would "correctly" compute Creditor's Claim. These Non-Standard Provisions state:

1. Debtor & Creditor's Predecessor-In-Interest entered into a Loan Modification Agreement, in 2014 which had a variable interest rate which has increased to 4.125% at the time of this bankruptcy filing.
2. The "New" Principle Balance became \$208,994.25.
3. Of the "New" Principle Balance \$36,400.00 was deferred "Deferred Principle Balance" is non-interest bearing, and remains as an outstanding principle due, and the "Interest Bearing Principle" was \$172,594.25.
4. As of November 1, 2023, Debtor's Post-Petition Mortgage Payment, subject to change pursuant to the terms of the Note and Deed of Trust, is \$792.89, which sum includes escrow of \$419.06, and principle and interest of \$373.83 at the rate of 4.25%.
5. Creditor took possession of Grant Monies Debtor received from the Ca. Housing Relief Fund ("Grant"), which were applied to Debtor's account in August of 2022.
6. As of November 1, 2023, the "Interest Bearing Principle Balance" was \$78,096.20, which is DISPUTED by the Debtor at this time.

7. Debtor's first Plan payment was due November 2021 through March 2024, or (29) twenty-nine months, due for a total of \$22,993.81 in Post-Petition Payments Due thru March of 2024.

8. While the Creditor returned \$8,893.66 of the "Grant", these funds were reissued in late 2023, and applied to (6) six monthly post-petition payments totaling \$7,572.48, and \$1,063.84, and \$257.34 corporate advances.

9. Of the \$22,993.81 that has come due, less the \$7,572.48 applied equals \$15,421.33.

10. Of the \$15,421.33 Post-Petition Payments Due, the Trustee has disbursed \$17,628.83 since November of 2021, to the Class 1 Creditor, US Bank, N.A.(1st Deed of Trust), and has \$1,976.57 "On-Hand" pending disbursement, for a total of \$19,605.40 Post-Petition Arrears.

11. As such, the Trustee has disbursed \$17, 628.83, on a \$15,421.33 class 1, which is \$2,207.50 such that the Debtor's next Post-Petition Class 1 Payment is due for May 25, 2024.

Modified Plan, § 7 Docket 291.

Debtor then states that Creditor will be paid \$792.89 for its non-arrearage Post-Petition Monthly Payments.

#### Class 1 Claims

Debtor has placed Creditor's Claim in Class 1 under the Proposed Second Modified Plan. To be in Class 1 there must be a delinquency owing on the claim. As the first paragraph of Section C, Paragraph 3.07 in the Proposed Second Modified Plan states:

3.07. Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

*Id.* Placing Creditor's Claim in Class 1 is a statement by Debtor that an arrearage to be cured exists on Creditor's Claim.

If there is no delinquency or arrearage on Creditor's Claim, then it should properly be paid as a Class 4 Claim directly by the Debtor. Additionally, if there is no arrearage and the Claim is provided for in Class 4, then Debtor would not have to pay Chapter 13 Trustee's fees on those post-petition payments.

#### Debtor's Declaration in Support of Confirmation

Debtor states that he disputes Creditor's arrearage of \$78,096.20, but that can slide by in Bankruptcy because Debtor will be conducting in the future a "full R.E.S.P.A. accounting."

2. I am confident that I can make my payment of \$900.00 per month for the remaining 6 months. While I still am disputing how much is remaining on the "New

Principle Balance” (“NPB”) which is asserted to be approximately \$78,096.20, I understand that I must have a viable chapter 13 being prosecuted to allow me the time to conduct a full R.E.S.P.A. accounting of the NPB.

Dec., ¶ 2; Dckt. 290.

If Debtor and Debtor’s Counsel wanted to promptly and diligently prosecute resolution of a dispute concerning Creditor’s Claim, they have had two and one-half years in this Bankruptcy Case to get that promptly done and have it locked in by a final Federal Court order.

### **Debtor’s Amended Schedules I and J**

Debtor has also filed Amended, not Supplemental, Schedules I and J. Dckt. 293. Being Amended Schedules I and J, they related back to the October 12, 2021 filing of this case, correcting errors in the original Schedules which have been used by Debtor in prosecuting this Bankruptcy Case to date.

On Amended Schedule I, Debtor states that he is employed by Capital City Properties, but is paid nothing by that company. As testified to under penalty of perjury in his Declaration (Dckt. 290, ¶ 5) Debtor states that “Capital City Properties” is a mere marketing tool (not a “formal corporation”) to operate “business both as a property manager, grounds keeper, maintenance man.” It appears that “Capital City Properties” is a fictitious name used by Debtor to operate his sole proprietorship business.

On Amended Schedule I Debtor states that he has been receiving \$2,100 a month in net income from his business and an additional \$358.00 in pension or retirement. Dckt. 293; p. 4-5.

Debtor does not attach to Amended Schedule I the required statement showing gross receipts and the ordinary and necessary business expenses which go into computing the monthly net income from the business.

On Amended Schedule J Debtor lists \$35.00 a month for personal taxes. These have to include not only his state and federal income taxes, but his Social Security and Medicare self-employment taxes.

On taxable income of \$25,200 a year from his business, and the IRS Social Security, 12.4%, and the Medicare, 2.9%, requires that even before income taxes the Debtor has to pay 15.3% in these two federal taxes. <sup>Fn.1.</sup> With monthly net income of \$25,200, payment of these required non-income taxes at 15.3% totals \$3,855 a year. Divided by twelve months, this is \$321.30 a month.

Debtor’s Amended Schedule J provides for only \$35.00 a month for personal taxes. That is (\$286.00) shy of just the Social Security and Medicare taxes Debtor is required to pay.

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FN. 1.

<https://www.irs.gov/businesses/small-businesses-self-employed/self-employment-tax-social-security-and-medicare-taxes>  
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Thus, it appears that Debtor’s tax obligations are grossly underfunded.

## **Review of Creditor's Claim Filings**

On August 8, 2022, Amended Proof of Claim 2-3 was filed for Creditor's Claim. It states that the amount of the Secured Claim is (\$164,860.13) and that the amount necessary to cure any default is (\$755.64).

An Amended Notice of Mortgage Payment Change was filed on December 1, 2023, stating Debtor's post-petition monthly payments is \$792.89. This reduction occurred because Debtor's monthly post-petition principal and interest payment was reduced from \$707.80 a month to \$373.83 a month.

In the Updated Status Report filed by Creditor on March 8, 2024, that a stipulation had been reached resolving the claim, amount of the deferred principal balance, and the application of payments. Under such Stipulation Debtor's current post-petition monthly payment is \$792.89. Status Report; Dckt. 278.

However, Creditor reports in that Updated Status Report that no stipulation has been signed by the Debtor and that Debtor is not communication any disputes or additional time to execute the Stipulation. *Id.* The court's docket does not reflect any Stipulation filed with or approved by the court.

## **Prosecution of Current Bankruptcy Case**

Debtor confirmed his First Amended Plan on April 8, 2022. Order; Dckt. 88. Debtor did file an Objection to Creditor's Claim on May 2, 2022 (Dckt. 95). On August 3, 2022, Debtor's Counsel reported that all issues with Creditor had been resolved and the Objection may be overruled. Civ. Min. and Order; Dckts. 133, 134.

On February 22, 2023, the Chapter 13 Trustee filed a Motion to Dismiss this case due to Debtor being \$13,345.14 in default in Plan Payments (which were \$2,258.07 per month). Mtn Dismiss; Dckt. 146. The Motion to Dismiss was itself dismissed at the request of the Chapter 13 Trustee based on the Debtor stating the terms of a proposed Modified Plan which Debtor was intending to file and Debtor being current under the terms of the proposed Modified Plan. Civ. Minutes and Orders; 181, 182, 210.

Debtor filed the Proposed Modified Plan on July 27, 2024, which was five months after stating such proposed plan and terms were stated to and relied on by the Chapter 13 Trustee in requesting the dismissal of the Trustee's Motion to Dismiss.

Eight months later the court entered its order denying confirmation of the Proposed Modified Plan. Order; Dckt. 277. The grounds for denial included: (1) Debtor being in default on the plan payments, (2) inconsistencies regarding Debtor's income as shown on Schedule I, and (3) Debtor's failure to prosecute the Objection to Creditor's Claim. The court's Findings and Conclusions in denying confirmation of the Proposed Modified Plan include:

Creditor further states that as of February 20, 2024 Debtor has not provided a signed stipulation reflecting this agreement and has not requested any revisions to the proposed agreement. *Id.* at 2:18-19. Creditor states that the Court has provided multiple continuances to allow Debtor time to execute the stipulation, and Debtor

still has not done so, and Debtor has not articulated any factual basis as to why he believes any funds were improperly applied. Id. at 3:1-4.

As noted above, it appears that Debtor and Debtor's counsel are asserting that there is no agreement and that Debtor intends to proceed full speed to prosecute the Objection to Notice of Mortgage Payment Change.

At this juncture, it appears that the proposed Modified Chapter 13 cannot be confirmed, there being a huge claim objection proceeding to be prosecuted diligently by Debtor and Debtor's counsel.

At the hearing, the Trustee reported that the debtor is now in default for two months of Plan payments. From the reaction in the courtroom, it appears that Debtor did not advise his counsel of such defaults and work to see how such would be addressed. Debtor's counsel surmised that this may have resulted from the Debtor having direct communications with some of creditor's loan servicing representative and Debtor determining what payments he should be making, even though they were not consistent with the Plan.

The court noted at the hearing that the Debtor has done this before, and the court has made it expressly clear to Debtor that he must communicate with his counsel, rather than third-parties, and not determine on his own what he thinks is "right," without regard to the Bankruptcy Laws.

What appears to be presented to the court is not a Proposed Second Modified Chapter 13 Plan to provide for payment of creditor claims. The court, recognizing some family matters the Debtor was and is addressing, has been exceedingly generous to both Debtor and Debtor's Counsel, giving them multiple opportunities to rectify their inaction and seeming nonproductive delays, avoid dismissal, and get this Bankruptcy Case, a Plan, and any claim objection (or settlement relating thereto) diligently prosecuted.

This case has existed for two and one-half years under Plans that were not being performed. Debtor and Debtor's Counsel want this court to confirm a Proposed Second Modified Chapter 13 Plan which does not appear to provide for Creditor's Claim, but to just "let it slide" because Debtor will get to objecting to it at some later date.

It further appears that Debtor has been unable to prosecute a Chapter 13 Plan or an objection to Creditors' Claim over the past two and one-half years, and cannot prosecute to completion a Plan in this Bankruptcy Case. Debtor appears to need a new full five years of an actively prosecuted and performed Plan to address his financial obligations, and disputes, in an effort to save his home for himself and his family.

At the hearing, Debtor's counsel address the Class 1 treatment of Creditor's Claim. Though the arrearage have been cured, keeping the Claim in Class 1 keeps the automatic stay in place in the event Debtor's medical expenses should increase and be a vehicle for curing a default that may occur in the last six months of this Plan.

Debtor also stated that any remaining dispute concerning the principal balance of the claim, which will be paid after the completion of the Plan will be addressed outside of the Bankruptcy Court.

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

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

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

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

15 thru 18

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

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

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, and Office of the United States Trustee on May 5, 2024. By the court's calculation, 30 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 five days late of the required notice.

At the hearing, **XXXXXXX**

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of non-opposition. *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.

<b>The Motion for Allowance of Professional Fees is <b>XXXXXXX</b> .</b>
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Ryan C. Wood, the Attorney ("Applicant") for Satinder Singh, The Chapter 13 Debtor in Possession("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 23, 2023, through April 30, 2024. Applicant requests fees in the amount of \$25,155.00 and costs in the amount of \$246.07.

#### APPLICABLE LAW

## Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

## Lodestar Analysis

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

## Reasonable Billing Judgment

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



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

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

The Chapter 13 Trustee has submitted a non-opposition to the First Interim Application for Compensation. Docket 219.

This Chapter 13 Bankruptcy Case was filed on July 31, 2024. The Chapter 13 Plan was filed on August 25, 2023. Dckt. 30.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

Case Administration/Plan Confirmation: Applicant spent 19.9 hours in this category. Applicant administered Debtor's bankruptcy and filed Debtor's petition and Chapter 13 Plan. Decl. 2:23-3:5, Docket 214.

Claim of Exemption Objection: Applicant spent 5.5 hours in this category. Applicant responded to Placerville Investment Group's objection to Debtor's claim of tools of trade exemption. Decl. 3:6-11, Docket 214.

Motion to Value/Stipulations: Applicant spent 28.3 hours in this category. Applicant drafted and filed multiple motions to value and stipulation to reach a secured value of Debtor's business and value secured claims for Debtor's Plan. Decl. 3:12-25, Docket 214.

Fee Application: Applicant spent 3.0 hours in this category. Applicant drafted and filed application for compensation. Decl. 4:1-6, Docket 214. No Motion to Confirm was filed and the Plan was not served on creditors.

On August 28, 2024, Debtor filed a Motion to Value the Secured Claim of Placerville Investment Group, LLC. Dckt. 31. The hearing on the Motion to Value was conducted on October 3, 2024. The court ordered that the Motion to Value was denied without prejudice. Order; Dckt. 61.

As stated in the court's ruling on the Motion to Value (Civil Minutes, Dckt. 60), in which the court addresses shortcoming of both the Debtor and Creditor in presenting their sides in the Contested

Matter. The Debtor and Creditor agreed to dismiss the Motion to Value without prejudice, as they would seek to find a resolution to their dispute.

On September 28, 2024, the Chapter 13 Trustee filed a Motion to Dismiss this Bankruptcy Case. Motion; Dckt. 55. On December 13, 2024, the court denied the Motion to Dismiss without prejudice. Order; Dckt. 101.

On October 12, 2023, Creditor Placerville Investment Group, LLC filed an Objection to Exemptions claimed by Debtor. Objection; Dckt. 62. The court entered its order sustaining the Objection and disallowing a tools of the trade exemption in the amount of \$9,525.00 in a liquor license. *Id.* In the court's published Memorandum Opinion and Decision (Dckt. 108), various shortcomings of Debtor in providing legal authorities for the proposition that a liquor license is a tool of the trade under California law. The court also notes that the lay person Debtor was testifying under penalty of perjury that his legal opinion was that a liquor license was a tool of the trade. Memorandum Op and Decision, p. 3:11-12; Dckt. 108. The court afforded both the Creditor and Debtor to file supplemental points and authorities in support of their respective positions. Debtor's was filed on December 5, 2023 (Dckt. 91), and while it is long on argument, provides no legal authorities for the proposition that a liquor license was a tool of the trade. See Memorandum Opinion and Decision, Dckt. 108, for analysis of the law, statutory and common language definitions, and the statutory exclusion of liquor licenses from being exempt of enforcement of judgments.

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FN. 1. As stated in the Memorandum Opinion and Decision, as well as the court's order on the Objection to Exemption, the court agreed that the Debtor could claim a wildcard exemption of \$29,586.88 in the liquor license, with the only issue being the additional \$9,525.00 exempt as a tool of the trade. It appears that both the Debtor and Creditor spend more than \$9,525.00 each in this fight.  
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On October 12, 2023, Debtor filed a Motion to Confirm the Chapter 13 Plan. Dckt. 66. On December 13, 2023 the court denied the Motion to Confirm. Order; Dckt. 100. The oppositions to the Motion included that the Debtor had failed to file a Motion to Value Secured Claim which determination needed to be made before the Plan as proposed by Debtor could be confirmed. Another ground was that the Debtor failed to provide a proper *Till* interest rate for Creditor Placerville Investment Group LLC's secured claim.

The Debtor's counsel then advised the court that Debtor would not pursue the Plan before the court, but would file and seek to confirm an amended Plan. See Civil Minutes, Dckt. 97, for the court's ruling.

On May 22, 2024, Debtor filed an Amended Chapter 13 Plan (Dckt. 221), and a Motion to Confirm (Dckt. 222). The confirmation hearing is set for July 16, 2024. Ntc of Hrg; Dckt. 223.

On January 11, 2024, Debtor filed a second Motion to Value the Secured Claim of Creditor Placerville Investment Group LLC. Motion (DCN: RCW-9); Dckt. 127. The hearing on that Motion is set for June 4, 2024.

While much time and effort has been spent by Debtor and Debtor's counsel, much of it has ended up with dismissals and second attempts. With respect to the reasonableness and value of the services to the estate, at the hearing, **XXXXXXX**

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Ryan C. Wood	55.9	\$450.00	\$25,155.00
<b>Total Fees for Period of Application</b>			\$25,155.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$246.07 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Case Administration– Copies	\$0.20	\$14.40
Claim of Exemption Objection– Court Call		\$49.60
Motions to Value/Stipulations– Copies, Postage, and Court Call		\$118.80
Fee Application– Copies, Postage, and Court Call		\$63.90
<b>Total Costs Requested in Application</b>		\$246.07

The court does not reimburse the expense of court call. The attorney is free to make an appearance and avoid that expense. Therefore, costs of \$115.27 are allowed, which are the requested costs minus the court call appearance costs.

## FEES AND COSTS & EXPENSES ALLOWED

### Fees

~~The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Interim Fees in the amount of \$25,155.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by The Chapter 13 Debtor.~~

### Costs & Expenses

~~First and Interim Costs in the amount of \$115.27 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and are authorized to be paid by The Chapter 13 Debtor.~~

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

<del>_____ Fees _____</del>	<del>\$25,155.00</del>
<del>_____ Costs and Expenses _____</del>	<del>\$115.27</del>

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Ryan C. Wood (“Applicant”), Attorney for Satinder Singh, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Ryan C. Wood is allowed the following fees and expenses as a professional of the Estate:

~~Ryan C. Wood, Professional employed by Chapter 13 Debtor~~

<del>_____ Fees in the amount of \$25,155.00</del>
<del>_____ Expenses in the amount of \$115.27</del>

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

**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.

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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, other parties in interest, parties requesting special notice, and Office of the United States Trustee on January 11, 2024. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Placerville Investment Group, LLC ("Creditor") is XXXXXX.**

#### **June 4, 2024 Hearing**

The court continued this matter to let discovery proceed as to the value of the inventory, good will, furniture, fixtures, and equipment ("Collateral") of Wheatland 99 Cent & Liquor Store ("Business"). The court set the following discovery schedule in this Contested Matter:

1. Expert and Non-Expert Discovery Closes on May 1, 2024
2. All other discovery closes, including the hearing on discovery motions, May 14, 2024.
3. Supplemental Pleadings shall be filed by Debtor on or before May 21, 2024.
4. Supplemental Pleadings shall be filed and served by Creditor on or before May 28, 2024.

Satinder Singh (“Debtor”) did not submit any Supplemental Pleadings. Placerville Investment Group, LLC (“Creditor”) submitted its Supplemental Pleadings by its required deadline of May 28, 2024. Dockets 228-233. As Supplemental Pleadings, Creditor submitted a Supplement to its Opposition (Docket 228), two Declarations in support (Dockets 230 & 231), and supporting Exhibits (Dockets 231 & 232). Creditor makes the following assertions:

1. Debtor has materially under reported revenues of his Business. Creditor’s appraiser values the Business at \$309,000, much higher than Debtor’s valuation of \$166,000. Suppl. Opp’n 1:24-2:4, Docket 228.
2. As previously raised, Creditor reasserts that the \$166,000 appraisal is not based on an examination of any source documents in connection with revenues or expenses of the business, but is instead based entirely on inconsistent second-hand information from Debtor. *Id.* at 2:25-3:7. Debtor did not supplement the record and failed to rebut this issue.
3. Debtor frustrated Creditor’s discovery attempts by not complying with discovery requests. Specifically, Debtor did not produce bank statements for the year before the petition date or produce the register roll (the point of sale documentation) as requested. *Id.* at 3:12-6:2.
  - a. The register roll was a big point of contention. Debtor responded in discovery that he either did not keep a register roll or was unsure of what Creditor was referring to. When Debtor sent pictures to Creditor, it was apparent that Debtor did keep a register roll. *See* Exhibit E 12, Docket 232. The register roll is important here as it keeps detailed transaction information automatically as purchases are made.
4. Creditor discovered that Debtor owned a bank account that was not reported on the Schedules. This account was with Sierra Central Credit Union (“SCCU Account”). The SCCU Account was open as of the petition date but was not disclosed. *Id.* at 4:1-5.
5. Finally, by interpreting the bank statements that were provided, Creditor’s appraiser concluded that the value of the Business is \$308,000, not \$166,000. *Id.* at 6:5-13.

Creditor submits Anthony Asabedo’s Declaration in support. Decl., Docket 229. Mr. Asabedo testifies as to the facts alleged in the Supplemental Opposition, detailing the process of discovery.

Creditor also submits the Declaration of Stephen J. Goldberg, Creditor’s appraiser. Decl., Docket 230. Mr. Goldberg testifies as to the authenticity of his valuation as well as to his experience in business valuations generally.

Creditor also submits Exhibits in support. Exhibits A and B at Docket 231 are Mr. Goldberg's business valuation, valuing the business at \$399,000 (or \$309,000 less the \$90,000 liquor license). Exhibits A through G at Docket 232 include what Creditor requested and uncovered during discovery.

At the hearing, **XXXXXX**

### **REVIEW OF THE MOTION**

The Motion filed by Debtor to value the secured claim of Creditor is accompanied by the declaration's of Debtor and John Toney, professional appraiser. Declaration, Dckts. 130, 133. Debtor is the owner of a business called Wheatland 99 Cent & Liquor Store ("Business"). Creditor has a perfected secured interest in the inventory, good will, furniture, fixtures, and equipment ("Collateral") of the Business. Debtor seeks to value the Collateral at a replacement value of \$166,000 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).

The lien on the Collateral secures two separate loans, one incurred in April of 2022, and one incurred in November 2022. The court notes Debtor states the debt owed is actually \$245,000 (Mtn., Docket 127 ¶ 3); however, Creditor asserts the Claim could be in the amount of \$304,310.34. Proof of Claim, No. 6-2.

#### Debtor's Declarations and Exhibits

Debtor submits his own Declaration (Docket 130) and the Declaration of his appraiser, John W. Toney (Docket 133), in support of this Motion. Debtor testifies:

1. The testimony is rationally based on my own perception, is helpful to a determination of a fact in issue, and is not based on scientific, technical, or other specialized knowledge within the scope of federal Rule of Evidence 703. Decl., Docket 130 ¶ 3.
2. In 2022, Debtor entered into allegedly legal and enforceable loans with Creditor. *Id.* at ¶ 4.
3. As of the petition date the fair market value of the Collateral was \$166,000. *Id.* at ¶ 5.

Mr. Toney testifies:

1. He is an Accredited Senior Appraiser as designated by the American Society of Appraisers since 2007. Decl., Docket 133 ¶ 1.
2. The Appraisal analyses, opinions, and conclusions are limited only by the reported assumptions and limited conditions, and are his personal, unbiased professional analyses, opinions, and conclusions. *Id.* at ¶ 12.
3. As of August 6, 2023, the appraised value of the Business is \$256,000. This valuation includes:

- a. Inventory: \$59,644
- b. Liquor License: \$90,000
- c. Furniture, Fixtures, and Equipment: \$5,000
- d. Goodwill: \$101,356.

*Id.* at ¶ 19.

4. The valuation is based upon the Business's current physical condition, market conditions, inventory, goodwill, and other market factors. *Id.* at ¶ 20.

Debtor also filed with the court the Collateral Appraisal Report and Analysis ("Report"). Exhibit 1, Docket 132.

### **CREDITOR'S OPPOSITION**

On January 30, 2024 Creditor filed an Opposition to the Motion. Docket 137. In its Opposition, Creditor states:

1. This is Debtor's second Motion to Value, the first being denied on October 5, 2023.
2. Debtor led Creditor to believe the co-borrower on the note, Sonia Madaan, was Debtor's wife; however, it was later uncovered that they were divorced but still cohabitate and share expenses.
3. Debtor has not provided the court with reliable evidence to establish the value of the Collateral. Debtor has engaged in under the table transactions, meaning the value is higher than reported.
4. Debtor's own testimony as to value is not sufficient to establish the value of the Collateral.
5. Debtor's expert, John W. Toney of Wallace & Toney Valuation Advisors, Inc., does not provide a reliable valuation because Debtor's expert valued the Collateral based on second-hand data provided by Debtor.

Creditor submits the Declaration of Dalip Gupta in support of its Opposition. Docket 138. In his Declaration, Mr. Gupta recites the history of the loan transactions between Creditor and Debtor, and that Creditor has recently retained an appraiser to value the Collateral. *Id.* at ¶ 11.

### **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee ("Trustee"), submitted an Opposition on January 30, 2024. Docket 145. In his Opposition, Trustee states:

1. Trustee opposes the Motion to Value because Debtor has no Plan pending.



2. Debtor's Declaration in support of his Motion to Value may not be Debtor's own opinion based on personal knowledge.
3. There is a typographical error on the Notice of Hearing.

## DISCUSSION

Here, Debtor's opinion can be admissible reliable evidence the court will consider in valuing collateral. But the court is not impressed by Debtor's legal knowledge. The court is unsure whether or not the Declaration is indeed Debtor's opinion, at the hearing,

Creditor argues that Mr. Toney has not relied on proper information in forming his professional opinion of the Business's valuation in the Report. The court disagrees. Creditor states,

[T]he Appraisal Report does not clearly evidence that the Appraiser reviewed source documents to determine the Store's revenues and expenses. Rather than, for example, identify annual tax returns that were reviewed (reference is made to a tax return schedule, but no statement is included that the schedule or the relevant returns were examined) and rather than evidence a review of contemporaneous sales reports (such as "register rolls") and basic records of business expenses, the Appraisal Report refers includes a single-page summary of "Historical Income Statements," the origin of which is unclear.

Opposition, Docket 137 ps. 4:26-28–5:1-4. However, the Report explicitly details what information Mr. Toney relied on, stating,

The [Business's] historical income statements are shown in Exhibit A for the past six full operating years and the six-month period ended June 30, 2023. The data for 2017-2021 has been taken from Schedule C of Mr. Singh's personal income tax returns. The data for 2022 is based upon the compiled profit and loss statement prepared by IBS Tax Services and the data for the six-month period ended June 30, 2023, is based upon an internal profit and loss statement.

Exhibit 1, Docket 132 p. 3. Copies of the Exhibits Mr. Toney relied on are included in the Report.

Creditor focuses the court's attention on the "Assumptions and Limiting Conditions" section of the Report, suggesting the Report should not be accepted because the information Debtor submitted to Mr. Toney that founded the basis of the report has not been independently verified. Opposition, Docket 137 p. 5:5-20. However, Creditor has not filed its own valuation with the court or offered any of its own evidence to suggest why Mr. Toney's Report should be discredited.

Creditor argues that the information Debtor provided Mr. Toney is irreconcilable with the information Debtor and Ms. Madaan provided in their bankruptcy Schedules. *Id.* at p. 5:21-25. Yet Creditor acknowledges that information in the Schedules "is not precisely on the same topics as included in the Debtor's appraisal." *Id.* Creditor has provided the court with much argument but little evidence to consider its position.

However, Creditor has informed the court that it has retained an appraiser to value the Collateral.

## **CONTINUANCE OF THE FEBRUARY 13, 2024 HEARING**

The February 13, 2024 scheduled hearing is not being conducted by the judge to whom this case is assigned and has personal knowledge of the prior proceedings in this case. The court notes that there appear not only to be substantial deficiencies with respect to the Motion to Value and Motion to Confirm, but also with Creditor who cannot state a value for its collateral in its Original and Amended Proof of 6-2.

With Debtor having stated on Schedule A/B only a 50% valuation for his Sole Proprietorship, it appears that the Debtor's assets may be substantially higher.

As addressed above, it appears that there are substantial "challenges" facing the Debtor in this case, possibly greater value for assets, possible fraudulent conveyances, and possible contributions from a joint venturer.

Given the substantial history of this case, as well as the Motion to Value (DCN: RCW-9), Motion to Confirm (DCN: RCW-89), Motion to Dismiss or Convert (DCN: RLL-3), and the Motion for Relief From the Stay (DCN: RLL-2), the court continues the hearings on all of these Contested Matters to 2:00 p.m. on February 28, 2024, so the judge to whom this case is assigned can hear all such matters.

## **February 27, 2024 Hearing**

On February 20, 2024, Placerville Investment Group, LLC ("Creditor") submitted a status report with the court. Docket 173. In the Status Report, Creditor states:

1. **On February 13, 2024 Creditor served a formal Request for Production of Documents on Satinder Singh ("Debtor") to gain information related to conducting a valuation** of Debtor's business and related to objecting to confirmation of Debtor's Plan. Debtor's Response is due by March 14, 2024, under Federal Rule of Civil Procedure 34(b), made applicable by Federal Rules of Bankruptcy Procedure 7034 and 9014.
2. Creditor suggests the following time line for approximate discovery deadlines:
  - a. Expert and Non-Expert Discovery Closes May 1, 2024;
  - b. Hearing of Discovery Motions May 14, 2024;
  - c. Debtor's Supplemental Pleadings May 21, 2024; Creditor's Supplemental Opposition May 28, 2024; and
  - d. Continued Hearing June 4, 2024 at 2:00 p.m.

3. Creditor requests this time line apply to all related matters in this case (Motion to Confirm (DCN: RCW-89), Motion to Dismiss or Convert (DCN: RLL-3), and the Motion for Relief From the Stay (DCN: RLL-2)).

Docket 173, ¶¶ 2-6.

No update has been filed by Debtor.

At the hearing, counsel for Creditor provided the court with a proposed discovery schedule and continued hearing date. Dckt. 173. Debtor's counsel agreed to the schedule, and noted that he would reach out with Creditor's counsel to see if an agreed valuation could be quickly reached.

The hearing is continued to 2:00 p.m. on June 4, 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 Value Collateral and Secured Claim filed by Satinder Singh ("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 Value Collateral and Secured Claim of Placerville Investment Group, LLC is **XXXXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors that have filed claims, persons having filed a Request for Notice, and Office of the United States Trustee on January 11, 2024. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Dismiss or Convert is <span style="color: red;">XXXXXXX</span>.</b>
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#### June 4, 2024 Hearing

The Motion to Dismiss or Convert was continued from the February 27, 2024 date to be heard in conjunction with these related matters.

At the hearing, XXXXXXX

#### REVIEW OF THE MOTION

Placerville Investment Group, LLC ("Creditor"), seeks dismissal of the case on the basis that:

1. The debtor, Satinder Singh ("Debtor"), has not been diligent in prosecuting this bankruptcy case, resulting in creditor not being paid and suffering economic loss.
2. Debtor's case was filed in bad faith in a coordinated effort with Sonia Madaan to frustrate Creditor's recovery attempts.

Motion, Docket 5. Creditor submits the Declaration of Dalip Gupta to authenticate the facts alleged in the Motion. Decl., Docket 123.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 30, 2024. Docket 126. In his Opposition, Debtor states:

1. Cause does not exist to dismiss or convert this case. Debtor has been diligent in prosecuting the case. Any delay is due to Creditor not cooperating in obtaining a valuation of its secured collateral.

Debtor submits his own Declaration (Docket 159) and his counsel's Declaration (Docket 160) in support of his Opposition. In his Declaration, Debtor states:

1. The only issue in the case is the value of his business. Debtor has obtained an appraisal of the business and has tried to work with Creditor in good faith to reach an agreed value. Decl., Docket 159 ¶ 3.
2. Debtor has done everything he is supposed to do to prosecute his case. *Id.* at ¶ 5.
3. The case has been filed in good faith, including by providing the Chapter 13 Trustee with all necessary documents. *Id.* at ¶¶ 7, 8.
4. Debtor is not trying to hinder collection efforts in any way. *Id.* at ¶ 22.

Debtor's counsel, Mr. Wood, testifies that:

1. This case is all about the value of Satinder Singh's business and we have tried in good faith to reach an agreement as to the value of Satinder Singh's business with Placerville Investment Group, LLC. Decl., Docket 160 ¶ 1.
2. I/we are trying to not increase expenses in this case and that is the sole and only reason any party in this case can argue "delay." Which is supposed to be an ethical obligation of attorneys. *Id.* at ¶ 2.
3. Instead of continuing to operate in good faith, Placerville Investment Group, LLC, on January 11, 2024, communicated we are filing a motion to dismiss and motion for relief from stay. *Id.* at ¶ 6.
4. All Placerville Investment Group, LLC accomplished is unnecessarily increasing the expense of administration to arrive at a secured value of the Satinder Singh's business. *Id.* at ¶ 7.
5. I told this Court I would try to work this out in good faith informally to save money. That is the truth and up until January 11, 2024, I thought both parties were working together to accomplish this. I believe I should have been told long ago that would never happen because we can see now that is the truth. *Id.* at ¶ 8.

6. We wanted to file one more amended plan, file one more motion to confirm a plan that includes acceptable terms to all parties. That was possible with cooperation. *Id.* at ¶ 9.
7. To try and be efficient our goal was to value Placerville's secured value then file motions to value regarding the other two secured creditors, secured by the Debtors business as well. *Id.* at ¶ 19.
8. There is no cause for relief from stay or to dismiss or convert Satinder Singh's case. Satinder Singh is not the cause of delay in this case and only sought to not increase the cost of administration; it has obviously failed. *Id.* at ¶ 22.

## **CREDITOR'S REPLY**

On February 6, 2024 Creditor filed a Reply (Docket 162), stating:

1. Debtor is responsible for filing an Amended Plan and Motion to Value, not Creditor.
2. Debtor says nothing about the orchestrated bad faith filing of Debtor and Ms. Madaan.
3. Creditor is not to blame for the delay in prosecuting this case.

## **DISCUSSION**

### **Failure to Prosecute the Case / Bad Faith**

11 U.S.C. § 1307(c) provides:

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

(1) unreasonable delay by the debtor that is prejudicial to creditors.

..

Unreasonable delay includes “delay in the filing of necessary modifications of a plan, in obtaining necessary acceptances from the holders of allowed secured claims or in taking actions required under the plan are other examples of delays warranting conversion or dismissal under this paragraph.” 8 COLLIER ON BANKRUPTCY ¶ 1307.04 [1]. Further, “[a] debtor’s unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1).” *In re Ellsworth*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011).

The statutory list of enumerated reasons to dismiss a case in 11 U.S.C. § 1307(c) does not include a case being filed or prosecuted in bad faith, but courts have decided bad faith is a valid reason to warrant dismissal or conversion. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) (“Although not specifically listed, bad faith is a ‘cause’ for dismissal under § 1307(c).”); *See also In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) (“A Chapter 13 petition filed in bad faith may be dismissed ‘for cause’ pursuant to 11 U.S.C. § 1307(c).”). When deciding whether a petition has been filed in bad faith, “courts are guided by the standards used to evaluate whether a plan has been proposed in bad faith.” *Id.*

### Failure to Prosecute the Case

The court does not find that the facts of this case support a finding that Debtor has engaged in unreasonable delay that results in prejudice to creditors. Debtor has complied with the court’s extensions in filing its documents. Debtor has also cooperated with the Trustee in providing the required documents. Moreover, the record shows Debtor and Creditor originally were working together in trying to accomplish a valuation of the business, with the case taking a less agreeable disposition only in January, 2024, further explaining some of the delay. Debtor has a Plan on file as well with a Motion to Confirm, showing that Debtor may be attempting to prosecute this case.

However, as the court notes above, the Debtor provides conflicting information about the assets of the Estate. He states that the business is his sole proprietorship, but that he owns only 50% of his sole proprietorship. Debtor fails to disclose who “owns” the other 50% of Debtor’s sole proprietorship.

### Bad Faith

Creditor argues that this case may be filed in bad faith because Debtor allegedly misled Creditor about the status of his marriage with Ms. Madaan. Then, Creditor asserts Debtor and Ms. Madaan “leveraged their superficial divorce proceeding into two separate bankruptcy cases, filed months apart, so as to maximize the delay to Creditor.” Motion, Docket 121 p. 6:7-8.

Again, this argument relies on the premise that Debtor is engaging in unreasonable delay, albeit by acting in concert with Ms. Madaan to delay recovery. The record shows this may not be the case. Debtor has been making plan payments with the Trustee who is currently holding a balance on hand of \$19,970. Debtor has filed a Motion to Value Creditor’s secured claim, alongside an Amended Plan and Motion to Confirm, so the case can move forward.

Alternatively, this argument may be that Debtor is continuing in the misrepresentations and is trying to hide assets in this Bankruptcy Case.

## **CONTINUANCE OF THE FEBRUARY 13, 2024 HEARING**

The February 13, 2024 scheduled hearing is not being conducted by the judge to whom this case is assigned and has personal knowledge of the prior proceedings in this case. The court notes that there appear not only to be substantial deficiencies with respect to the Motion to Value and Motion to Confirm, but also with Creditor who cannot state a value for its collateral in its Original and Amended Proof of 6-2.

With Debtor having stated on Schedule A/B only a 50% valuation for his Sole Proprietorship, it appears that the Debtor’s assets may be substantially higher.

As addressed above, it appears that there are substantial “challenges” facing the Debtor in this case, possibly greater value for assets, possible fraudulent conveyances, and possible contributions from a joint venturer.

Given the substantial history of this case, as well as the Motion to Value (DCN: RCW-9), Motion to Confirm (DCN: RCW-89), Motion to Dismiss or Convert (DCN: RLL-3), and the Motion for Relief From the Stay (DCN: RLL-2), the court continues the hearings on all of these Contested Matters to 2:00 p.m. on February 28, 2024, so the judge to whom this case is assigned can hear all such matters.

### **February 27, 2024 Hearing**

A review of the Docket on February 22, 2024 reveals that no new documents have been filed with the court under this Docket Control Number. At the hearing, the parties requested that the court continue the hearing on the Motion to Dismiss to be conducted with the hearing on the Motion to Value Creditor’s Claim at 2:00 p.m. on June 4, 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 Dismiss the Chapter 13 case filed by Placerville Investment Group, LLC (“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 Motion to Dismiss is **XXXXXXX**.



### Final Ruling

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 26, 2024. By the court’s calculation, 39 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of LCF Group, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$0.00.**

### IMPROPERLY REUSED 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 new Docket Control Number with the Motion. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

### The Motion

The Motion filed by Satinder Singh (“Debtor”) to value the secured claim of LCF Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Decl., Docket 208. Debtor is the owner of Wheatland 99 Cents Store and Liquor (“Property”). Debtor seeks to value the Property at a replacement value of \$166,000.00 as of the motion filing date. *Id.* 1:24. 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).

The lien on the Property secures a loan perfected by a UCC-1 filing with the California Secretary of State, securing a debt owed to the Creditor with a balance of approximately \$105,547.67. Am. Claim 3, Attach. 2; Am. Claim 3, Proof of Claim 3-2. Creditor's lien is junior, however, to the senior lien in priority first UCC-1 filing, which secures a claim with a balance of approximately \$304,310.34. Claim 6, Attach. 4; Am. Claim 6, Proof of Claim 6-2. The Property having a value of only \$166,000.00, Creditor's claim secured by a junior UCC-1 is therefore under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of LCF Group, LLC ("Creditor") secured by assets described as accounts, chattel paper, inventory, equipment, instruments, investment property, documents, deposit accounts, letter of credit rights, general intangibles, supporting obligations, and their proceeds of Debtor's business Wheatland 99 Cents Store and Liquor ("Property") is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. Am. Claim 3, Attach. 2; Am. Claim 3, Proof of Claim 3-2. The value of the Property is \$166,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**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).**

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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 13, 2024. By the court’s calculation, 22 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

The Motion to Sell Property 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, -----.

<p><b>The Motion to Sell Property is <span style="color: red;">XXXXXXX</span>.</b></p>
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The Bankruptcy Code permits Bryan Gary Gallinger, Chapter 13 Debtor, (“Movant”) to sell property of the estate a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 9421 Fair Oaks Blvd, Fair Oaks, Ca 95628 (“Property”).

The proposed purchaser of the Property is Johnny Estrada and Africa Estrada of Bonic Homes LLC (“Buyer”), and the terms of the sale are:

- A. \$515,000 purchase price.
- B. There will be a five percent broker’s commission split evenly between Movant and Buyer’s brokers.
- C. This is a hard money loan.

## **OPPOSITION TO MOTION**

Douglas F. Levick and Melba J. Levick, as trustee of the Levick Family Trust, and Ron Levick, (“Creditor”) submitted an Opposition on May 20, 2024. Creditor states:

1. The sale will yield nothing for the Debtor. The sale was originally predicted to be in the amount of \$550,000, but the offer is for \$515,000. Debtor has under represented what is owed on delinquent property taxes and what is owed on creditor’s claim. Debtor also ignores the incurred attorney’s fees and costs Creditor’s attorney has earned in this case postpetition. As such, the Debtor will receive nothing from the sale of the Property and so the Motion should be denied. Opp’n 1:24-3:16, Docket 139.
2. Debtor has waived objections to Creditor’s Claim because, in his confirmed Plan, Debtor said he would object to Creditor’s Claim by April 18, 2024. Debtor filed an adversary proceeding on April 19, 2024, one day too late. Creditor asserts he gave Debtor’s special counsel two separate one day extensions to file an Objection to Claim, but Creditor did not give extensions to file an adversary proceeding. *Id.* 3:17-4:7.
3. The purchase offer is illusory so the Motion should be denied. *Id.* 4:9-22.
4. Debtor’s Notice of Motion is defective so the Motion should be denied. *Id.* 4:23-5:2.
5. No waiver of Rule 6004(h) is warranted. *Id.* 5:1-2.
6. If the court approves the sale, proceeds should be held by the Chapter 13 Trustee, not transferred to Debtor’s trust account. *Id.* 5:9-13.

Creditor also submitted its attorney’s Declaration in support. Docket 140. Mr. Kilpatrick testifies in a similar way as to what is written in the Opposition.

### **Debtor’s Reply**

Debtor filed a Reply to Creditor’s Opposition on May 28, 2024. Docket 142. Debtor states:

- A. Debtor can avoid a foreclosure on his record, and pending the adversary proceeding resolution, Debtor may yield something. *Id.* 1:22-24.
- B. Debtor has not waived any objections to the proof of claim. *Id.* 1:26-28.
- C. The sale will either complete or not. *Id.* 2:2.
- D. Sufficient notice was given here, no written opposition being required. *Id.* 2:5-13.
- E. Debtor consents to the Chapter 13 Trustee holding the sales proceeds. *Id.* 2:14-18.

## DISCUSSION

Creditor's argument that the sale should be denied because Debtor will not receive any of the profits is without merit. Creditor cites to no supporting authority that supports this position. Creditor identifies two errors in the Old Republic Title Company's Estimated Seller's Settlement Statement (Exhibit B; Dckt. 135). These are: (1) understating Creditors secured claim stated in Proof of Claim 1-1 in the amount of (\$452,675.57), which does not include post-petition legal fees and expenses Creditor seeks to assert, to be only (\$450,000) and (2) property taxes are actually (\$24,386.23) and not the (\$22,521.47) stated on the Estimated Seller's Settlement Statement.

Creditor does not provide the court with evidence of the higher property taxes, but cites the court back to other briefs filed in this case. On March 8, 2024, the Sacramento County Tax Collector filed Proof of Claim 3-1 asserting a secured real property tax claim of (\$26,621.15).

On Exhibit B, the Old Republic Title Estimated Seller Statement, as adjusted for the amount of Creditor's secured claim as of the commencement of this Case and the Tax Collector's Proof of Claim 3-1, the estimated proceeds from the sale appear to be as follows:

Sales Price	\$515,000.00
Realtor Commissions	(\$25,750.00)
Real Property Taxes	(\$26,621.15)
Home Warranty	(\$600.00)
Natural Hazzard Report	(\$99.00)
Signing/Notary Fees	(\$200.00)
Utility/Water Dist Fees	(\$1,800.00)
Old Republic Title Fees (50%)	(\$707.50)
Additional Charges	(\$45.00)
Homeowner's Policy of Title	(\$1,765.00)
Recording Fees	(\$325.00)
County Transfer Tax	(\$566.50)
	=====
<b>Net Proceeds for Creditor's Claim and Debtor/Bankruptcy Estate</b>	\$456,520.85
Creditor's Secured Claim Proof of Claim 1-1	(\$453,675.57)

	-----
<b>Balance for additional attorney's fees and costs for Creditor's Claim and for Debtor/Estate</b>	\$2,845.28

There has been no determination as to what post-petition attorney's fees and costs are added to Creditor's secured claim at this time. There is a modest \$2,845.28 that could exist for the Debtor/Estate.

### **Adversary Proceeding**

Creditor asserts that its claim for \$453,675.57 cannot now be objected to because the time for filing an objection to claim, including the extension granted by Creditor has expired and no objection has been filed.

However, as Debtor notes, on April 19, 2024, Debtor commenced an adversary proceeding in which Creditor is named as the Defendant. 14-02038. While the Complaint does not use the term "Objection to Claim," it is titled:

#### **Adversary Complaint in Opposition to Claim of Secured Creditors Levick Family Trust**

*Id.* Complaint, p. 1:14-15. It states that the "adversary Action" is "against the claim of Levick Family Trust." *Id.*, ¶ 1. It is asserted in the Complaint that the additions to the Property at issue were not properly permitted and that Defendant affirmatively misrepresented to Debtor that they had been properly permitted. *Id.*, ¶ 6.

The claims asserted against the Creditor are breach of written contract in the First Cause of Action. The Second Cause of Action is for Fraud. The prayer for relief is very general, seeking general and special damages according to proof.

The Complaint states affirmative claims against Creditor to recover money for damages. Federal Rule of Bankruptcy Procedure 7001(1) requires that any action to recover money or property must be brought as an adversary proceeding. Federal Rule of Bankruptcy Procedure 3007(b) provides that if an objection to claim includes relief for which an adversary proceeding is required, then the objection to claim may be included in the adversary proceeding.

### **Economic Realities for Debtor and Creditor**

As part of the Opposition to the present Motion, Creditor provides testimony as to what a, the court paraphrasing, "hell hole" the Property is and there is no way it can be sold for the \$515,000.00. Declaration; Dekt. 140. The testimony is included as to how challenging it will be to obtain financing from this property from a hard money lender. Further testimony that the Property is just terrible, which testimony includes:

17. The Offer is also contingent on an appraisal at \$515,000.00. I have seen the photographs of the Property that accompany its listing in the multiple listing service. Its aesthetic condition is very poor, and the garage is completely filled with various and sundry items suggesting that the Debtor suffers from the condition known as "hoarding". Frankly, the Property looks terrible, as if he had intentionally trashed the place. For these reasons, I question whether or not the Property will appraise at the purchase price.

Declaration, ¶ 17; Dckt. 140. Thus, Creditor's own testimony in opposition is that the Property is worth less than \$515,000.00.

The question then arises that if the Debtor could sell it for \$515,000.00 and then Creditor had access to that amount to pay its claim (even if not in full), then why would Creditor not support the sale? It could be that Creditor actually believes the Property is worth substantially more and is misrepresenting the value to the court. Under the facts and circumstances, and counsel representing Creditor, such would be highly unlikely.

Rather, it appears to the court that Creditor is so far down the rabbit hole with the Debtor, and Debtor's failure to perform in the past, that any agreement with the Debtor is unfathomable – even if it is to Creditor's grave financial harm.

If the sale does not occur and if the Creditor prevails in the litigation, it is still left only with the "hell hole" Property to foreclose on and then try to resell. After paying for the costs of the foreclosure sale, Creditor will then have to pay the property taxes, and pay the utilities, and pay for maintenance of the Property, and pay for the repairs to get the property marketable, and then finally pay all of the costs of sale. Accepting the "hell hole" valuation of Creditor, this would appear to result in Creditor suffering even greater losses, much of which would be monies Creditor would have to advance prior to any sale of the Property.

At the hearing, **XXXXXXX**

### **Other Opposition Points of Creditor**

Creditor asserts that the Notice of the Hearing on this Motion is Defective because it does not include the terms of the sale, the time for filing opposition, and the names of the persons to be served with any oppositions. Opposition, section 4; Dckt. 139.

Looking at the Notice of Hearing, it states that:

No written opposition is required. If you oppose this Motion you must appear at the hearing and orally state the opposition. Failure to appear may result in the granting of the Motion.

Notice of Hrg., p. 1:25-28; Dckt. 133. This is the language used when the hearing is noticed pursuant to Local Bankruptcy Rule 9014-1(f)(2), when the hearing is set on less than twenty-eight days notice (the applicable full notice period for a motion to approve sale of property of the bankruptcy estate).

Creditor then opposes the court waiving the fourteen day stay of enforcement of the order approving the sale. Creditor's argument is that since the contract provides for close of escrow twenty-five days after acceptance, and there can be no acceptance until after the court grants the Motion, then the order doesn't have to be effectively immediately.

Creditor shows not meritorious grounds for this argument. If anything, Creditor is arguing that it wants to delay the escrow for fourteen days, and extending the closing out to thirty-nine days. This could result if the court's order authorizing the Debtor to sell the Property is not effective until fourteen days expire, then Debtor could not accept the offer until that fourteen days expire.

The court cannot fathom what *bona fide* reason Creditor could have for wanting to delay the closing of escrow out to thirty-nine days.

This appears to further show that Creditor is so far down the rabbit hole with the Debtor that no financial considerations matter and Creditor is blind to trying to mitigate its losses. Or, alternatively, Creditor knows the Property is worth substantially more and wants to recover that for itself.

None of these additional Opposition grounds are a basis for denying the Motion and the relief requested.

### **Relief Requested in Motion**

The Debtor's Motion seeks relief pursuant to 11 U.S.C. § 363(b), authorization to sell property of the Bankruptcy Estate. Debtor does not seek relief pursuant to 11 U.S.C. § 363(f) for the court to authorize the sale free and clear of Creditor's lien, have the lien attach to the proceeds, and then determine any dispute as to the amount of Creditor's claim (after determination of any objection or offset of a debt owed by Creditor to Debtor). As requested, the sale must generate proceeds to pay Creditor's claim as presented to the court.

### **The Sale**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**.

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately \$25,750. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court to allow Trustee to issue a demand and fund the Plan with the proceeds of the sale.



Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by Bryan Gary Gallinger, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED~~ that ~~Bryan Gary Gallinger, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. §§ 363(b) and 1303 to Johnny Estrada and Africa Estrada of Bonie Homes LLC or nominee (“Buyer”), the Property commonly known as 9421 Fair Oaks Blvd, Fair Oaks, Ca 95628 (“Property”), on the following terms:~~

- ~~\_\_\_\_\_ A. The Property shall be sold to Buyer for \$515,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. Docket135, and as further provided in this Order.~~
- ~~\_\_\_\_\_ B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~\_\_\_\_\_ C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~\_\_\_\_\_ D. Chapter 13 Debtor is authorized to pay a real estate broker’s commission in an amount not more than five percent of the actual purchase price upon consummation of the sale. The five percent commission shall be split evenly between the Chapter 13 Debtor’s Broker (Alexis McGee Group Inc.) and Buyer’s Broker (Big Block Realty North).~~
- ~~\_\_\_\_\_ E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

~~If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee's demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.~~

~~F. After payment of the amounts provided above, including the disbursement to the Chapter 13 Trustee directly from escrow, any remaining net sale proceeds may be disbursed directly from escrow to the Chapter 13 Debtor.~~

~~G. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement.~~

~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.~~

~~**IT IS FURTHER ORDERED** that pending the resolution of Adversary Proceeding no. 24-02038, the Chapter 13 Trustee shall not distribute any monies to Douglas F. Levick and Melba J. Levick, as trustee of the Levick Family Trust, and Ron Levick ("Creditor").~~

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Parties requesting special notice, and Office of the United States Trustee on May 1, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

**The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.**

David P. Cusick, the Chapter 13 Trustee ("Trustee") objects to Phillistine Elizabeth Vosley's ("Debtor") claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure §§ 704.730, 704.010, and 704.115 do not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed.

Moreover, Debtor must mention which state's exemptions she is claiming. Debtor has simply written the section number in her Schedule C, not referencing any particular state's exemption code. *See* Schedule C 23, Docket 1. The court assumes that debtor is referencing California exemptions, but that information must be explicitly mentioned in Schedule C.

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

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

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

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

**IT IS ORDERED** that Objection is sustained, and the claimed exemptions listed in Debtor’s Schedule C at 1 are disallowed in their entirety.

21. [24-21255-E-13](#)  
[DPC-1](#)

ANGELA TORRES  
Jasmin Nguyen

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P CUSICK  
5-15-24 [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, Parties requesting special notice, and Office of the United States Trustee on May 15, 2024. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

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

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

1. Debtor Angela Kozette Torres (“Debtor”) has not listed all community debts in her Schedules and Forms. Obj. 1:23-2:3, Docket 17. Trustee provides: “Without the NFS’ income, it is impossible to see the entire picture since we are missing key pieces of the puzzle. California is a

community property state and regardless of whether or not the Debtor keep their finances separate, that information still needs to be disclosed so that the Trustee can properly review the petition and ensure that it was filed in good faith and complies with the Code.” *Id.* at 4:7-11.

2. Debtor has not provided Trustee with the following documents: NF-Spouse’s pay advices, 2023 tax return (since Debtor and NF-Spouse filed separately) and information regarding the NF-Spouse’s debts/loans/credit cards/other creditors. *Id.* at 3:7-13.
3. The Plan violated Local Bankruptcy Rule 2016-1(c) where Debtor’s attorney opted into the no-look fee arrangement but does not propose equal monthly payments for attorney’s fees over the life of the Plan. *Id.* at 3:18-24.

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

### **Debtor’s Opposition**

On May 28, 2024 Debtor submitted an Opposition to Trustee’s Objection. Docket 51. Debtor states:

1. Debtor and her NF-Spouse have maintained and continue to maintain separate finances since their marriage in 2012. Debtor states, “Due to their long-standing agreement [of maintaining separate finances], Debtor is unable to have her NFS to contribute or agree to commit any of his income toward her Chapter 13 plan, and notwithstanding the maturity of any of his own debts. . . In essence, Debtor has constructively maintained separate households with the non-filing spouse throughout their marriage. Debtor has now executed a post-nuptial agreement to memorialize the ongoing verbal agreement between the parties and to essentially formalize the constructive separation as an enforceable, binding agreement with respect to the division of property and debts between the parties.” *Id.* at 2:5-8, 2:23-27.
2. Debtor argues pursuant to the long-standing agreement of constructive separation, and in accordance with their formal Post-Nuptial Agreement, there is no community property. *Id.* at 3:1-5.
3. Debtor has still complied and provided Trustee with NF-Spouse’s pay advices, and will provide a copy for the 2023 tax return when it has been made available to Debtor. *Id.* at 3:8-13.
4. Debtor’s attorney agrees to take her fees in equal monthly installments over the life of the Plan in accordance with Local Bankruptcy Rule 2016-1(c). *Id.* at 3:16-18.

Debtor also files as Exhibit 1 at Docket 23 a copy of the postnuptial agreement. The postnuptial agreement states that it was executed on May 30, 2024, but submitted with the court on May 28, 2024.

## **DISCUSSION**

As an initial matter, Debtor has resolved two of trustee's Objections. Debtor has provided the NF-Spouse's pay advices and has asserted she will provide the 2023 tax return when it is available. Moreover, Debtor's attorney has agreed to adjust the attorney's fees to comply with Local Bankruptcy Rule 2016-1(c).

### **Community Property**

The remaining outstanding issue is the dispute over which debts must be listed in Debtor's Schedules. Trustee, citing to *Rooz v. Kimmel (In re Kimmel)*, 378 B.R. 630 (9th Cir. B.A.P. 2007), argues that the interplay of 11 U.S.C. §§ 541(a)(2) and 101(7) brings a community debt into the bankruptcy estate as community property could be liable for such debt. Therefore, the NF-Spouse's debt must be included in the Schedules and Forms.

Debtor, in response, argues that the postnuptial agreement and the ongoing verbal contract between Debtor and NF-Spouse shows that there is no community property or community debts here. Debtor cites to no law whatsoever in support of her position.

11 U.S.C. § 541(a) states:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

Community property is not defined in the Code. Community claim, however, is defined in 11 U.S.C. § 101(7), which states:

(7) The term "community claim" means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section

541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case.

Importantly, “bankruptcy courts are required to look to state law—in this case, California law—to determine whether property is community property and therefore included in the bankruptcy estate.” *In re Brace*, 908 F.3d 531, 536 (9th Cir. 2018). There is a general presumption under California law “that, absent a statute to the contrary, all property acquired during marriage is community property.” *Id.* at 537. Turning to state law to define community property, the California Family Code provides:

(a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

Ca. Fam. Code § 910. The community estate “includes both community property and quasi-community property.” *Id.* at § 63. Under § 910, it is apparent that community property is exposed to claims against an individual spouse. Finally, community property is defined as:

Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.

*Id.* at § 760.

Community property that is subject to a community claim is part of the bankruptcy estate as claims that may be satisfied against community property are subject to discharge under 11 U.S.C. § 524(a)(3).

Here, Debtor asserts that the verbal contract between her and NF-Spouse sufficiently shows that there is no community property in this case. Debtor has cited to no legal authority that supports her position. Upon the court’s review of the relevant state law provisions, Ca. Fam. Code § 850 provides:

Subject to Sections 851 to 853, inclusive, married persons may by agreement or transfer, with or without consideration, do any of the following:

- (a) Transmute community property to separate property of either spouse.
- (b) Transmute separate property of either spouse to community property.
- (c) Transmute separate property of one spouse to separate property of the other spouse.

Such a transmutation would sufficiently overcome the presumption that community property is in fact separate property. A transmutation carries the following requirements:

(a) A transmutation of real or personal property **is not valid unless made in writing** by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.

(b) A transmutation of real property is not effective as to third parties without notice thereof unless recorded.

(c) This section does not apply to a gift between the spouses of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage.

(d) Nothing in this section affects the law governing characterization of property in which separate property and community property are commingled or otherwise combined.

(e) This section does not apply to or affect a transmutation of property made before January 1, 1985, and the law that would otherwise be applicable to that transmutation shall continue to apply.

Cal. Fam. Code § 852 (emphasis added).

The writing in this case was executed on May 30, 2024, two months after the filing of this case. However, the property subject to the writing was already part of the bankruptcy estate. The verbal agreement was not enough to transmute that community property into separate property, meaning Debtor would need to report all of her NF-Spouse's income and debts.

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.~~



**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 May 16, 2024. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor holds a security interest in a 2019 Honda Ridgeline RT Pickup vehicle, VIN # 5FPYK2F54KB007833 and asserts a claim of \$22,931.69. The estimated replacement value a retail merchant would charge for the vehicle is \$19,035.00. The Creditor objects to the Plan as not paying the full value of the claim pursuant to 11 U.S.C. § 506(b). Obj. 2:2-6, 17-20, Docket 28.
2. The Plan fails to pay the applicable prime plus interest rate. Furthermore, the Debtor must pay the present value of the secured claim by paying the creditor a discount rate of interest as measured by the formula rate. *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The current prime rate of interest

is 8.5% and the creditor objects to the confirmation of the Plan proposing to pay less than the prime interest rate plus 1%. Obj. 2:21-3:2, Docket 28.

3. The Plan does not provide for equal monthly payments to Creditor. The Code requires the Plan be confirmed over an objection of a secured creditor only if the payments made under the Plan are “in equal monthly amounts.” 11 U.S.C. § 1325(a)(5)(B)(iii)(I). As this Plan provides payments to Creditor on a pro rata basis, the Creditor objects. *Id.* at 3:3-6

Creditor submits the Declaration including the copy of the Motor Vehicle Retail Installment Sales Contract to authenticate the facts alleged in the Objection. Decl., Docket 30.

## DISCUSSION

Creditor’s objections are not well-taken.

### Failure to Provide for a Secured Claim

Creditor asserts a claim of \$22,931.69 in this case. Obj. 2:2-6, 28; POC 7-1. Debtor’s Schedule C estimates the current value of the vehicle is \$13,200 with Debtor owning \$6,600.00 of that. Schedule A/B 12, Docket 1. Debtor claimed \$7,500.00 exempt. Schedule C 17, Docket 1.

The Plan does not provide for treatment of this claim, and thus does not provide for the prime plus interest rate or equal monthly payments. Debtor does not provide for this Claim in the Plan. *See* Plan, Docket 3.

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

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

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

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

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

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

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

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

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

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 Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), persons who have filed a Request for Notice, and Office of the United States Trustee on May 3, 2024. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

#### REVIEW OF MOTION AND OPPOSITION

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

1. The debtor, Diana Evans ("Debtor"), is delinquent \$7,384.50 in plan payments. Debtor filed on January 8, 2024 and has a plan calling for payments to the Trustee of \$2,461.50 per month. Mot. 2:3-5, Docket 44.
2. The Court ordered the Debtor to serve the Plan when filed and a motion to confirm, but the Debtor has not filed a proof of service or mailed a motion to confirm to creditors. *Id.* at 2:6-9.
3. Debtor filed Schedule I and J showing income of \$3,600 and did not show deductions or expenses for taxes, food, or utilities other than phones. Based on the mortgage claim filed, Debtor appears to have last paid the mortgage more than seven years ago. *Id.* at 2:10-15.
4. The Debtor represents herself in this case, but the bankruptcy may be too complicated for the Debtor to accomplish *pro se*. The Debtor has not filed the plan form required in the Eastern District of California, EDC 3-080, required by LBR 3015-1. This case has already been dismissed once for failure to file documents by February 20, 2024 as ordered. *Id.* at 2:16-21.

5. This petition, filed on January 8, 2024, is the tenth bankruptcy petition filed by the Debtor. The Debtor's spouse has also filed six prior cases since February 23, 2015. Debtor did not list any prior case numbers in the Petition for the last eight years but simply checked the box stating that there had been previous cases filed in Sacramento. An order dismissing the case with prejudice with a 2-year prefiling bar was entered in the last solo case by Debtor's spouse in Case #19-21592. *Id.* at 1-17.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 46.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition to the Motion to Dismiss on May 21, 2024. Docket 54. Debtor states that she opposes the Motion to Dismiss due to inconsistencies of statements in documents mailed to her. She further asserts that such documents "lacked empathy, including bias and prejudice to the case." Opp., Docket 54. She further states that opinions and recommendations in these documents were incorrect, and that she does not feel that she was treated with respect or fairness as a disabled person. *Id.*

## **DISCUSSION**

The court first hits the grounds stated by the Chapter 13 Trustee and whether such grounds are a basis for dismissal of the Case. The court then addresses the Debtor's Opposition and those grounds.

### **Failed to Commence Plan Payments**

Debtor did not commence making plan payments and is \$7,384.50 delinquent in plan payments, which represents multiple months of the \$2,461.50 plan payment. Mot. 1:3-5, Docket 44. Before the hearing, another plan payment will be due on May 25, 2024. Decl. 2:3-6, Docket 46. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

### **Never Noticed Initial Plan**

Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. *Id.* at 2:6-9. A review of the docket shows that no such motion has been filed. *Id.* at 2:6-9. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Debtor Cannot Comply with the Plan**

Debtor may not be able to make Plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor indicates a monthly income of \$3,600 and does not indicate deductions or expenses for taxes, food, or other utilities except for phones. Rev. Plan 23-26, Docket 23. Based on the mortgage claim filed, Debtor appears to not be making recent mortgage payments, as Debtor appears to have last paid the mortgage over seven years ago. Claim 1-1, ps. 8-9. Debtor is unable to fund any Chapter 13 Plan without a source of income. Chapter 13 bankruptcy requires that the plan shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan. 11 U.S.C. § 1322(a)(1). Here, there are likely

insufficient future earnings or other future income, and thus Debtor is unable to satisfy the requirements of a Chapter 13 Plan.

### **Asserted Inability of Debtor to Prosecute the Bankruptcy Case in *Pro Se***

Looking at the Chapter 13 Plan, Debtor, in *pro se*, did not use the required Eastern District of California Plan form, EDC 5-080 required by LBR 3015-1. *Id.* at 2:16-21. This case was already dismissed once for failure to file documents by the date specified as ordered. Order, Docket 26; *see* Order to Extend Deadline, Docket 20. This form is required by LBR 3015-1. *Id.* at 2:16-21. Without Debtor submitting the required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Looking at the court's files, this Debtor has filed and has had dismissed a number of prior cases in the recent past. In the past four years, these cases are:

- A. Chapter 13 Case 23-20713.....Case Dismissed March 10, 2023
  - 1. Represented by Counsel.
  - 2. Case 23-20713 was dismissed due to Debtor re-filing a case within a 2-year filing bar without preview conducted by the Chief Bankruptcy Judge
- B. Chapter 13 Case 21-23775.....Case Dismissed February 11, 2022
  - 1. In *Pro Se*.
- C. Chapter 13 Case 21-20525.....Case Dismissed March 1, 2021
  - 1. In *Pro Se*.
- D. Chapter 13 Case 20-22996.....Case Dismissed July 13, 2020
  - 1. In *Pro Se*.
  - 2. Case 22-21241 was dismissed due to Debtor failing to make a filing fee installment payment. 22-21241; Civil Minutes, Dckt. 42.

In the prior recent *pro se* cases, it appears that they have been dismissed due to the Debtor in *pro se* failing to file the basic documents to prosecute a Chapter 13 case.

### **Bad Faith**

11 U.S.C. § 1307(c) provides:

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case

under this chapter, whichever is in the best interests of creditors and the estate, for cause, including –

- (1) unreasonable delay by the debtor that is prejudicial to creditors.

The list of enumerated reasons to dismiss a case does not include a case being filed or prosecuted in bad faith, but courts have decided bad faith is a valid reason to warrant dismissal or conversion. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) (“Although not specifically listed, bad faith is a ‘cause’ for dismissal under § 1307(c).”); *See also In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) (“A Chapter 13 petition filed in bad faith may be dismissed ‘for cause’ pursuant to 11 U.S.C. § 1307(c).”). The following factors are considered in a bad faith analysis:

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

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

### **Undisclosed Bankruptcy Filings Within Prior Eight Years**

Trustee reports that Debtor failed to disclose on the petition the following 9 prior bankruptcy cases:

- A. Case No. 23-20713
  1. Date Filed: March 7, 2023
  2. Chapter: 13
  3. Date Dismissed: March 10, 2023
  4. Reason for Dismissal: Order Dismissing Case as Case Filed within 2-year Filing Bar and No Preview Conducted by Chief Bankruptcy Judge
- B. Case No. 22-20524
  1. Date Filed: March 7, 2022
  2. Chapter: 7
  3. Discharge Entered: July 11, 2022
- C. Case No. 21-23775
  1. Date Filed: November 1, 2021
  2. Chapter: 13
  3. Date Dismissed: February 11, 2022
  4. Reason for Dismissal: Order Dismissing Case for Failure to File Certification about Financial Management Course

- D. Case No. 21-20525
1. Date Filed: February 16, 2021
  2. Chapter: 13
  3. Date Dismissed: March 1, 2021
  4. Reason for Dismissal: Order Dismissing Case for Failure to Timely File Documents
- E. Case No. 20-22996
1. Date Filed: June 12, 2020
  2. Chapter: 13
  3. Date Dismissed: July 13, 2020
  4. Reason for Dismissal: Order Dismissing Case for Failure to Timely File Documents
- F. Case No. 19-24939
1. Date Filed: August 8, 2019
  2. Chapter: 13
  3. Date Dismissed: January 16, 2020
  4. Reason for Dismissal: Order Dismissing Case due to Debtor's Failure to Appear at Sec. 341(a) Meeting of Creditors, Delinquency in Plan Payments, Failure to Provide Pay Advices and Tax Returns, Failure to File Amended Plan and Motion to Confirm
- G. Case No. 17-26013
1. Date Filed: February 8, 2018
  2. Chapter: 7
  3. Date Dismissed: June 7, 2018
  4. Reason for Dismissal: Order Dismissing Case due to Conduct Inferring Debtor Acted in Bad Faith and Manipulated Bankruptcy Code
- H. Case No. 15-27853
1. Date Filed: October 7, 2015
  2. Chapter: 13
  3. Date Dismissed: January 22, 2016
  4. Reason for Dismissal: Order Dismissing Case due to Debtor's Failure to Appear at Sec. 341(a) Meeting of Creditors and Failure to Provide Tax Returns
- I. Case No. 15-21350
1. Date Filed: February 3, 2015
  2. Chapter: 13
  3. Date Dismissed: July 8, 2015
  4. Reason for Dismissal: Order Dismissing Case due to Debtor's Failure to Appear at Sec. 341(a) Meeting of Creditors, Delinquency in Plan Payments, Failure to Provide Pay Advices and Tax Returns



Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition, p. 3, Dckt. 1. Debtor reported filing, but did not report any case numbers, dates, and simply listed the location of these filings as having occurred in Sacramento. *Id.* Debtor's "pattern of filing and dismissal . . . combined with the [Debtor's] failure to disclose all required prior filings, strongly indicates Debtor does not intend to use the bankruptcy process the way it was intended. The Debtor's creditors have been wrongly hindered or delayed from enforcing their rights." *Landis v. Barttels (In re Barttels)*, No. 10-01145-13, 2011 Bankr. LEXIS 5588, at \*8 (Bankr. E.D. Cal. Jan. 28, 2011) (dismissing Debtor's bankruptcy case with prejudice because of undisclosed serial filings and barring Debtor from filing another bankruptcy petition within two years).

### **Review of Debtor's Opposition**

The Opposition filed by Debtor, Dckt. 54, states general opposition grounds and raises points with respect to the overall bankruptcy process. The court addresses those Opposition grounds collectively in this separate discussion rather than having them peppered throughout the discussion of the Trustee's grounds.

The Debtor first states that there have been inconsistencies of statements made in documents mailed to her. The Debtor does not identify the inconsistencies or how they have derailed her from the prosecution of this Bankruptcy Case.

Debtor then states that such documents lacked empathy, and show bias and prejudice to Debtor's Bankruptcy Case. With respect to bias and prejudice, no specific or general documents or conduct is identified. Debtor does not identify if these are pleadings from creditors or the Chapter 13 Trustee, or ruling of the court.

Debtor also makes reference to there being opinions and recommendations that were inaccurate. Such opinions (whether those issued by the court or some opinions provided by opposing counsel, the Chapter 13 Trustee, or other persons from whom she has sought help) are not identified.

Debtor, who states she is disabled, concludes that she does not feel that has been treated fairly or with respect in connection with this Bankruptcy Case.

The court first notes that the judicial process, including proceedings in the United States Bankruptcy Court, are driven by the law (as written by Congress and the States) and Rules enacted by the United States Supreme Court. The court strives to make is a transparent process, providing the parties and their attorneys (if so represented) with a fair day in court and the opportunity to know and address the issues presented.

### **Dismissal of Case and Order Vacating Dismissal**

With respect to this Bankruptcy Case, as the Chapter 13 Trustee noted, the Clerk of the Court issued an order dismissing this case on February 21, 2024, due to the Debtor failing to file the required documents by February 20, 2024, which was the extend deadline for filing as ordered by the court. Order Granting Motion of Debtor to Extend Time; Dckt. 20.

On February 22, 2024, Debtor filed the final required documents and a Motion to Vacate the Dismissal of the Bankruptcy Case. Mtn.; Dckt. 27. On February 23, 2024, the court entered its Order vacating the order dismissing this case and allowing it to proceed before this court. Order; Dckt. 30.

### Review of Debtor's Plan and Schedules

The Chapter 13 Plan filed by Debtor on February 20, 2024 (for which confirmation has been denied) would require the Debtor to make Plan payments of \$2,461.50 for sixty months. The Plan (not on the required form for the Eastern District of California) states that there are no creditor holding claims which are to be cured and Debtor has no creditors with secured claims. Plan; Dckt. 25. The Plan also states that there are no disbursements to be made to creditors by the Trustee. *Id.*; p. 8.

On Schedule A/B Debtor states having a joint tenancy interest in real property having a value of \$439,800. Dckt. 23 at 3. On Schedule H Debtor states that there are no codebtors who are liable on Debtor's debts. *Id.* at 22.

On Schedule D Debtor lists Deutsche Bank as having a claim secured by the real property. *Id.* at 16. The Village Terrace HOA is listed as having a secured claim in an unstated amount. *Id.*

On Schedule E/F Debtor lists two creditors having unsecured claims, one of which is stated to be between (\$300,000) to (\$800,000) in amount.

On Schedule I, Debtor lists that she is employed and her Non-Filing Spouse is employed. Debtor shows a gross income of \$3,600 for the two. No deductions are made for taxes, Social Security, or Medicare. *Id.* at 23-24. In reviewing the Statement of Financial Affairs Debtor states receiving Social Security Benefits of \$1,900 a month, but does not list any Social Security Benefits received by the Non-Filing Spouse. With Debtor's Social Security Benefits, the gross income is increased to approximately \$5,500 a month.

On Schedule J, Debtor lists (\$2,821) for mortgage, property insurance, home maintenance, HOA dues. *Id.* at 25. Debtor then lists no expenses for electricity and natural gas, food and housekeeping supplies, clothing and laundry, personal care products and services, medical and dental expenses, transportation, or entertainment. *Id.* at 26. Debtor does list vehicle insurance of \$71 a month (though no transportation expenses, such as gas, maintenance, and repairs, are provided for on Schedule J). *Id.*

### Review of Proofs of Claim

Deutsche Bank National Trust Company, as Trustee, filed Proof of Claim 1-1, stating a secured claim in the amount of (\$535,136.39), for which there is stated to be a (\$247,879.13) pre-petition arrearage. The collateral is Debtor's real property. No other secured claims have been filed.

Four general unsecured claims have been filed, totaling approximately (\$525,000). Proofs of Claim 2-1, 3-1, 4-1, and 5-1. These have been filed by several Naviant entities and these appear to relate to student loan debt. The court notes that there was a 2022 class action settlement in an action against Navient for which the borrowers may obtain debt forgiveness or in some cases received restitution payments.

## **DECISION**

The grounds stated by the Trustee are a basis for the court dismissing this Bankruptcy Case. Debtor has been attempting to prosecute her Chapter 13 cases for the most part in *pro se* and has been unsuccessful. In Chapter 7 Case 22-20524, Debtor and her Co-Debtor were represented by counsel and both received their discharges.

In Chapter 13 Case 23-20713, Debtor and her Co-Debtor were represented by experienced bankruptcy counsel, but that case was dismissed three days after it was filed. 23-20713; Order, Dckt. 11. It was dismissed because it was filed during a two year period in which Debtor and her Co-Debtor had to obtain prior approval from the Chief Bankruptcy Judge for the Co-Debtor to file another bankruptcy case.

While Debtor and her Non-Filing Spouse may be desperate to prevent a foreclosure on their home, their multiple Chapter 13 attempts have been unsuccessful in confirming a plan or completing a plan to cure the arrearage and save the home.

In reviewing the file in this Bankruptcy Case, the court cannot identify instances of bias or prejudice against the Debtor. For Debtor in this case, the first issue is financial - how will Debtor fund a plan to provide for paying the creditor with the lien on the home. A pre-petition arrearage amount of (\$247,879.13) amortized over sixty (60) months would require a monthly cure payment of (\$4,133.32). This is in addition to the regular monthly payment of (\$2,097.48). These alone exceed Debtor's gross projected income (including Social Security Benefit). There is the additional secured claim of Debtor's Homeowners Association.

At the hearing, **XXXXXXX**

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, attorneys of record who have appeared in the bankruptcy case, the adversary proceeding, or contested matter, and Office of the United States Trustee on April 19, 2024. By the court’s calculation, 46 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 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). Therefore, the defaults of the respondent and other parties in interest are entered.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Cynthia Jean Martin (“Debtor”), has provided evidence in support of confirmation. *See* Decl., Docket 24; Ex., Docket 25. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition to Debtor’s Motion to Confirm on May 8, 2024. Trustee’s Non-Opposition, Docket 33.

While affirmatively stating a “Non-Opposition” to the Motion, the Chapter 13 Trustee notes in passing that no Chapter 13 Plan has been filed with the court for which the Motion to Confirm was filed. Non-Opp; Dckt. 33. The Trustee notes that the Plan which the Debtor seeks to have confirmed is filed as an Exhibit.

Local Bankruptcy Rule 3015-1(c) and (d) require that the proposed Chapter 13 Plan itself must be filed with the court. It does not provide that the Plan may be an exhibit, filed on the Docket “hidden” with other exhibits.

Additionally, Paragraph 1.01 of the required Chapter 13 Plan in the Eastern District of California states (emphasis added):

Section 1. Notices

1.01. Use of this form is mandatory. The Bankruptcy Court of the Eastern District of California requires the use of this local form chapter 13 plan in lieu of any national form plan. **This Plan shall be filed as a separate document.**

Exhibit B, Chapter 13 Plan - Amended; Dckt. 25.

The failure to propose a Chapter 13 Plan with the court is a basis for denying a motion to confirm a Chapter 13 Plan. While Exhibit 1 is the Proposed Plan, a “mere” exhibit of a Plan is not a Plan filed with the court.

The court further notes, though not mentioned by the Chapter 13 Trustee, on April 19, 2024, Debtor filed a hybrid amended/supplemental Schedules I and J. Dckt. 20. Debtor has stated under penalty of perjury that the Schedule J filed is both “Amended” Schedule J that dates back to the February 22, 2024 filing of this Bankruptcy Case, and is also a “Supplemental” Schedule J which only provides accurate information from April 19, 2024, and thereafter.

The court on multiple occasions addressed with other counsel that a schedule cannot be both “amended” and a mere “supplemental” schedule. It appears that this practice of “check all the boxes without regard to the legal significance” is growing statewide. Debtor’s counsel in this case has appeared before this court multiple times previously in a number of cases, demonstrating the skills of a very good consumer attorney.

If such a counsel and his office treats filings in Federal Court in this manner, then this is a significant problem that exists well beyond Debtor’s counsel’s office.

While the Plan may be “hunky-dory” based on the funding and finances, that is not a basis for not properly filing documents. While various counsel may argue, “come on, it’s not that big of a deal, judge, just read the exhibit,” it does not comply with the filing requirements. How and what documents must be filed and placed on the docket is not merely an aesthetic matter so that the Docket looks pretty in a bankruptcy case. Rather, it is a critical, stand alone document, such as a complaint or motion, that must clearly stand out and be easily found on the Docket.

Therefore, the court concludes that the Motion cannot be granted, there being no Chapter 13 Plan having been filed.

The Motion is denied without prejudice.

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 Chapter 13 Plan filed by the debtor, Cynthia Jean Martin (“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 denied without prejudice.

25 thru 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 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).**

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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 May 15, 2024. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

1. §521 documents are not provided. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his 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. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). Under 11 U.S.C. §521(e)(2)(A)(1), this is required seven days before the date first set for the meeting of creditors. Obj. 1:25-2:3, Docket 18.
2. Chapter 13 documents are inaccurate or incomplete. The Plan may not be feasible, and the Debtor does not appear to be able to comply with the Plan,

to have the ability to make the Plan payments and/or has failed to carry his burden of showing that the Plan complies with 11 U.S.C. §1325(a)(1) and (a)(6). At the Meeting of Creditors, the Trustee requested that the following documents be amended to correct the missing and inaccurate information. To date, none of the documents have been amended. Obj. 2:4-2:11, Docket 18.

- a. Schedule H: The Debtor admitted at the First Meeting of the Creditors held on May 9, 2024, that he is married, but separated from his Non-Filing Spouse, (hereinafter referred as “NFS”). The Debtor’s response to Question 1 in Schedule H, however, states that he does not have any co-debtors and his response to Question 2 does not provide any information regarding the Debtor’s NFS. Voluntary Pet. for Bankr. 26, Docket 1. This information conflicts, and the Trustee objects pursuant to 11 U.S.C. §1325(a)(1). Obj. 2:11-2:18, Docket 18.
- b. Schedules I and J: Debtor’s Schedule I provides that \$1,000 is deducted from his check each month for domestic support obligations. Voluntary Pet. for Bankr. 28:5f, Docket 1. Debtor’s Schedule J provides that Debtor pays child support each month in the amount of \$1,000.00. *Id.* at 31:19. At the First Meeting of Creditors, Debtor admitted that this obligation is paid by an automatic monthly deduction from his paycheck. The Trustee requested that Schedule J be amended to remove this expense. Obj. 2:19-2:26, Docket 18.
- c. Documents required by the Trustee. Schedule I, Question 5f and Schedule J, Question 19, show the Debtor has expenses of child support payments in the amount of \$1,000.00 per month. *Id.* at 28:5f, 31:19. Pursuant to 11 U.S.C. §§1302(b)(6) and (d)(1), the Trustee is required to provide the holder of a claim for a domestic support obligation with written notice of such claim and of the right of such holder to use the services of the State child support enforcement agency established under the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case. Pursuant to Local Bankruptcy Rule 3015-1(c)(2), the Debtor is required to serve upon the trustee no later than fourteen (14) days after the filing of the petition a Domestic Support Obligation Checklist. LBR 3015-1(c)(2). To date, the Debtor has failed to provide the Trustee with the Domestic Support Obligation Checklist, thereby hindering the Trustee’s ability to perform his duties. The Debtor has failed to comply with 11 U.S.C. §521(a)(3) and LBR 3015-1(c)(2). Obj. 2:26-3:13, Docket 18.

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

## **DISCUSSION**

### **Failure to provide tax returns**

As proposed, 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).

### **Failure to comply with the Bankruptcy Code**

Additionally, 11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that fails to comply with the Bankruptcy Code. At the First Meeting of the Creditors held on May 9, 2024, the Debtor stated that he is married, but is separated from his Non-Filing Spouse, (“NFS”). The Debtor’s responses to Question #1, regarding existence of any co-debtors and Question #2 regarding the Debtor’s NFS are, however, in direct conflict with his admission at the First Meeting of the Creditors. Voluntary Pet. for Bankr. 26, Docket 1.

### **Failure to provide accurate information reflecting Debtor’s financial reality**

Similarly, Debtor’s Schedules I and J contain inaccurate information. Without an accurate picture of debtor’s financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6). Debtor’s Schedule I provides that \$1,000 is deducted from his check each month for domestic support obligations. Voluntary Pet. for Bankr. 28:5f, Docket 1. This statement is corroborated by Debtor’s own admission at the First Meeting of Creditors, where he stated that his child support obligation is paid by automatic deduction from his paycheck each month. Debtor’s Schedule J, however, provides that each month Debtor pays child support in the amount of \$1,000.00. *Id.* at 31:19. Despite the request by the Trustee, Schedule J has not been amended to remove the child support expense in the amount of \$1,000.

### **Failure to provide Domestic Support Obligation Checklist**

Finally, Schedule I, Question 5f and Schedule J, Question 19, suggest that Debtor has expenses of child support payments in the amount of \$1,000.00 per month. *Id.* at 28:5f, 31:19. Under 11 U.S.C. §§1302(b)(6) and (d)(1), the Trustee is required to provide the holder of a claim for a domestic support obligation with written notice of such claim and of the right of such holder to use the services of the State child support enforcement agency established under the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case. Pursuant to Local Bankruptcy Rule 3015-1(c)(2), the Debtor is required to serve upon the trustee no later than fourteen (14) days after the filing of the petition a Domestic Support Obligation Checklist. LBR 3015-1(c)(2). Having failed to provide the Trustee with the Domestic Support Obligation Checklist, the Debtor is not in compliance with 11 U.S.C. §521(a)(3) and LBR 3015-1(c)(2).

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. [24-21380-E-13](#)  
[DPC-1](#)

**DARRAL BARROW**  
Timothy Walsh

**OBJECTION TO DISCHARGE BY DAVID  
P. CUSICK**  
5-6-24 [\[12\]](#)

### **Final Ruling**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 6, 2024. By the court’s calculation, 29 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.

<b>The Objection to Discharge is sustained.</b>
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David P. Cusick, the Chapter 13 Trustee, (“Objector”) objects to Darral Barrow’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 filed a Chapter 7 bankruptcy case on January 12, 2022. Case No. 22-20071. Debtor received a discharge on April 25, 2022. Case No. 22-20071, Docket 14.

The instant case was filed under Chapter 13 on April 4, 2024. Obj. 1:24, Docket 12.

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 April 25, 2022, which is less than four years preceding the date of the filing of the instant case. Case No. 22-20071, Docket 14. 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. 24-21380), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 24-21380, the case shall be closed without the entry of a discharge.

**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 May 8, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

1. The Debtor is \$2,652.52 delinquent in Plan payments to the Trustee. The next scheduled payment of \$2,902.52 is due on May 25, 2024 and electronic payments are pending which may cure the delinquency if they clear.
2. The following Section 521 Documents have not been provided:
  - a. Pay advices. The Debtor failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv), and the Order Re: Chapter 13 Plan Payments, Adequate Protection Payments, and Employer Payment Advices. Obj. 2:9-13, Docket 30.

- b. Tax return. The Debtor has failed to provide the Trustee with her 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. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. §521(e)(2)(A)(1). A 2021 return was provided. Obj. 2:14-19, Docket 30.
  - c. Not all tax returns filed. 11 U.S.C. §1325(a)(9) requires the Debtor to have filed all applicable tax returns for the four years prior to filing and provide the Trustee with a copy of the last filed federal tax return. The Debtor admitted at the First Meeting of Creditors, held on May 2, 2024, that she was required to file a tax return for 2023 and has not done so. The meeting has been continued to June 13, 2024, at 2:00 p.m. in order to give the Debtor sufficient time to file the required tax returns. Obj. 2:20-26, Docket 30.
- 3. Inaccurate Schedules: The Trustee cannot assess the feasibility of the plan. At the Meeting of the Creditors, the Debtors testified that she should be receiving retirement income from her deceased husband's retirement. The Trustee requested that Schedule A/B be amended to list this account. To date, no amendment has been filed. The debtor has failed to carry her burden of showing that the plan complies with 11 U.S.C. §1325(a)(6). Obj. 3:1-5, Docket 30.
  - 4. Zero Monthly Payments for attorney's fees. Debtor may not be able to comply with the Plan without assistance from their attorney, 11 U.S.C. §1325(a)(6). Obj. 3:6-8, Docket 30.

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

## **DISCUSSION**

### **Delinquency**

Debtor is \$2,652.52 delinquent in plan payments, which represents approximately one month of the \$2,902.52 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Failure to Provide Pay Stubs**

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

### **Failure to File Tax Returns**

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

### **Amendments**

Debtor should comply with Trustee's requests in amending Schedules A & B to include retirement account proceeds from Debtor's deceased husband. Debtor is required to cooperate with Trustee. 11 U.S.C. § 521(a)(3).

### **Attorney's Fees**

The Plan cannot be confirmed without the discrepancy in attorney's fees resolved. Local Bankruptcy Rule 2016-1(c)(4)(B) states, "[a]fter confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received." Where the Plan proposes to pay \$0 per month, the Plan violates this rule because it does not provide for payment of fees in equal monthly installments over the term of the most recently confirmed 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.

**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 May 8, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

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

- A. U.S. Bank Trust National Association filed an Objection to Confirmation of Debtor's Plan, claiming an interest at the real property located at 2303 Kennedy Avenue, Chico, CA 95973 . Obj. 2:1-6, Docket 18.
- B. This debt is not provided for in the Plan or listed on Schedule D and there is no expense listed on Schedule J to provide for payment of this claim Obj. 2:5-7, Docket 21. The Trustee argues without the creditor listed in the Schedules and the expense listed on Schedule J or in the plan, the Trustee cannot assess the feasibility of the plan and whether or not this claim would have an effect on it. Obj. 2:8-10, Docket 21.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 23.

Debtor filed a statement indicating nonopposition on May 29, 2024. Docket 27. Debtor states the Objection is meritorious and Debtor should be able to get an Amended Plan on file.

## **DISCUSSION**

### **Failure to Provide for a Secured Claim**

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

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

### **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). The failure to provide for a secured claim in the Plan, Schedule D, or Schedule J raises uncertainties about the Debtor's financial reality. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 granted.

29 thru 30

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on May 22, 2024. By the court’s calculation, 13 days’ notice was provided. The court set the hearing for June 4, 2024. Dckt. 22.

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

<b>The Motion to Impose the Automatic Stay is <span style="color: red;">XXXXXX</span>.</b>
--

Tazmin Sabina Godamunne (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor’s third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor’s prior bankruptcy cases (Nos. 24-21368 and 24-21711) were dismissed on April 22, 2024, and May 13, 2024, respectively. *See* Order, Bankr. E.D. Cal. No. 24-21368, 9, April 22, 2024; Order, Bankr. E.D. Cal. No. 24-21711, 15, May 13, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed not due to willful inadvertence or negligence of her part, but because she was unsure of her rights as a Debtor in *pro se*. Decl., Docket 18 ¶¶ 6-7.

## CREDITOR’S OPPOSITION



Sunit Lohtia And Meenal S. Lohtia (“Creditor”) filed two Oppositions in this matter. Creditor’s initial Opposition filed on May 28, 2024, asserts Debtor has not overcome the presumption of bad faith in this recent filing. Opp’n, Docket 23. Creditor argues that because Debtor’s Declaration does not provide sufficient evidence to overcome the presumption of a bad faith filing. *Id.* at 7:20-8:1. Creditor also argues that, because Debtor has not made a payment as of yet, this also shows the filing was not in good faith. *Id.* at 8:2-8.

Creditor filed a second Opposition on May 30, 2024, in response to Debtor’s proposed Chapter 13 Plan and Schedules. Opp’n, Docket 31. This Opposition lays out arguments for why Debtor’s Chapter 13 Plan is not feasible, and also asserts Debtor has inaccurately reported information in her Schedules. Specifically, Creditor argues it should be paid \$10,969 monthly in its Claim (*Id.* at 5:19), and that Debtor has overstated her income where she cannot even afford the \$5,517 proposed plan payment (*Id.* at 6:21-25).

In summarizing Creditor’s Opposition, Creditor states that Creditor’s Claim is a (\$425,263.73) secured claim, with daily interest accrual of (\$188.74). Additionally, the payment on this loan in full is due August 1, 2025, with a final balloon payment of (\$363,900).

In the Supplemental Opposition, Creditor computes that the amount necessary to pay the Claim in full would be:

Principal Payment Monthly .....	(\$6,065.00)
Interest Payment Monthly .....	(\$3,900.00)
Arrearage Payment Monthly.....	(\$1,004)

for a total monthly payment of (\$10,969.00). Supp. Opp., p. 3:7-11; Dckt. 31.

Creditor also reviews the history of there being no payments made to Creditor on this loan, with Debtor immediately going into default when the first monthly payment came due.

With a monthly interest payment of (\$3,900.00) and the principal balance of (\$360,000), this would appear to be a loan with approximately 13% per annum interest rate.

As filed, Creditor argues that the proposed Chapter 13 Plan does not provide to pay this claim in full during the term of the Plan.

## **REVIEW OF DEBTOR’S CHAPTER 13 PLAN**

Debtor, now represented by counsel, has her Chapter 13 Plan filed. Dckt. 29. The Plan is for a term of sixty (60) months, with Plan payments of \$5,517.00 per month. Over the sixty month term of the Plan that totals \$331,020 in Plan payments.

On Schedule D, Debtor lists Creditor having a claim of (\$423,887) and that the Property securing the Claim has a value of \$622,303.00. Dckt. 26 at 11.

The Plan states that Creditor is to receive the regular post-petition payment of \$3,900.00 and an arrearage cure payment of \$1,004 to cure the (\$60,250.00). But the Plan does not provide for paying the

claim in full during the sixty (60) month term of the Plan – whether that would be from fully amortizing the repayment over the sixty months of the Plan or making adequate protection payments which the Debtor promptly proceeded with a commercially reasonable sale of the Property to preserve any exempt value.

It appears that if Creditor's claim totals (\$425,263.73), then amortizing it over sixty (60) months of a plan at 9.5% would require a monthly payment to Creditor of approximately (\$8,946.79). While not quite as high as Creditor computes it, a very substantial monthly payment. The (\$4,900.04) monthly plan disbursement to Creditor falls significantly short of that amount.

## **APPLICABLE LAW**

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

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

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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

A. Why was the previous plan filed?

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

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

## DISCUSSION

Debtor’s prior cases were dismissed after Debtor failed to timely file her Schedules and related Forms. Here, Debtor has knowledgeable counsel to assist her in prosecuting a viable Chapter 13 case, correcting the missteps in the previous cases. Her Schedules report income sufficient to fund a Chapter 13 Plan. *See* Schedule J 19, Docket 26.

This case has been filed to stop a foreclosure sale and reorganize debts. Successive filings to stop a foreclosure do not constitute a bad faith reason for filing a Chapter 13 Case, so long as a Debtor can show that there has been a positive change in circumstances. *In re Metz*, 820 F.2d 1495, 1498 (9th Cir. 1987). With knowledgeable counsel retained in prosecuting this case, and sufficient income present to fund a Plan, such positive change in circumstances is present.

However, filing the case to stop a foreclosure sale is not the end of the inquiry. The court considers what the Debtor will and can do in the Bankruptcy Case to prosecute and perform a confirmable Chapter 13 Plan. Merely having counsel working to move the case forward is not, in and of itself, sufficient to prevail on a motion to impose the Stay.

Here, Debtor is not showing how she can, and is willing, to confirm and perform a Chapter 13 Plan that provides for Creditor’s Claim. As shown on Schedule D, the amount of Creditor’s Claim (though Creditor has not yet filed a proof of claim) is not in dispute.

At the hearing, counsel for the Debtor addressed what good faith, confirmable Plan the Debtor was intending to pursue, stating **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 Impose the Automatic Stay filed by Tazmin Sabina Godamunne (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

**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).**

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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, Debtor's Attorney, Chapter 13 Trustee, all creditors and parties in interest, attorneys of record who have appeared in the case, and Office of the United States Trustee on May 20, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Confirm Absence of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter xx 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, -----

<p><b>The Motion to Confirm Absence of the Automatic Stay is <span style="color: red;">XXXXXXX</span>.</b></p>
--

Sunit Lohtia And Meenal S. Lohtia ("Movant") moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(j). Movant pleads that the present case is Tazmin Sabina Godamunne's ("Debtor") third bankruptcy case pending in the last year. However, there is a motion seeking to impose the stay pursuant to 11 U.S.C. § 362(c)(4)(B) being heard in conjunction with this matter.

A review of Debtor's prior bankruptcy cases reveals that two cases were pending in the prior year, such that the provisions of 11 U.S.C. § 362(c)(4)(i) applied, and the automatic stay did not go into effect upon the filing of this case. *See* Order, Bankr. E.D. Cal. No. 24-21368, Dckt. 9; Order, Bankr. E.D. Cal. No. 24-21711, Dckt. 15.

At the hearing, XXXXXXX

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

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

The Motion to Confirm Absence of the Automatic Stay filed by Sunit Lohtia And Meenal S. Lohtia (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

# FINAL RULINGS

31. [24-20313-E-13](#)  
[PGM-2](#)

KEANNA ALMEDA  
Peter Macaluso

MOTION TO CONFIRM PLAN  
4-22-24 [\[54\]](#)

**Final Ruling:** No appearance at the June 4, 2024 Hearing is required.

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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 requesting special notice, and Office of the United States Trustee on April 22, 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.

<b>The Motion to Confirm the Amended Plan is granted.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Keanna Gayle Almeda ("Debtor") has provided evidence in support of confirmation. *See Decl.*, Docket 57; Exhibits, Docket 58. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 21, 2024. Docket 69. 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, Keanna Gayle Almeda ("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 22, 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. [24-21118-E-13](#)  
[WW-1](#)

**JOHN CAMPOS**  
**Mark Wolff**

**MOTION TO AVOID LIEN OF MURIETA  
CROSSINGS PROPERTY LLC**  
**5-2-24 [32]**

**Final Ruling:** No appearance at the June 4, 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’s Attorney, Chapter 13 Trustee, Creditor, attorney of record who have appeared in the case, Parties requesting special notice, other parties in interest, and Office of the United States Trustee on May 2, 2024. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Murrieta Crossings LLC (“Creditor”) against property of the debtor, John Campos (“Debtor”) commonly known as 2213 Ione Street, Sacramento Ca 95864 (“Property”).

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a nonopposition on May 15, 2024. Docket 41.

A judgment was entered against Debtor in favor of Creditor in the amount of \$331,743.07. Exhibit B, Docket 35. An abstract of judgment was recorded with Sacramento County on February 15, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$457,500 as of the petition date. Docket 1 p. 12. The unavoidable consensual liens that total \$315,406.30 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* at p. 24. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$500,000 on Schedule C. *Id.* at p. 21.

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

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by John Campos ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Murrieta Crossings LLC, California Superior Court for Sacramento County Case No. UDSW2000022, recorded on February 15, 2024, Document No. 202402151023, with the Sacramento County Recorder, against the real property commonly known as 2213 Ione Street, Sacramento Ca 95864, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.



**Final Ruling:** No appearance at the June 4, 2024 Hearing is required.

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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 requesting special notice, and Office of the United States Trustee on April 22, 2024. By the court's calculation, 43 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.

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Dennis A. Frazier ("Debtor"), has filed evidence in support of confirmation. *See* Exhibits, Docket 188; Declaration, Docket 190. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 21, 2024. Docket 198. 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, Dennis A. Frazier ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on April 22, 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.

34. [24-21068-E-13](#)  
[DPC-1](#)

DESIREE LEWIS  
Sunita Kapoor

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
5-9-24 [\[59\]](#)

34 thru 36

**Final Ruling:** No appearance at the June 4, 2024 hearing is required.  
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Local Rule 9014-1(f)(2) Objection—No Appearance 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 May 9, 2024. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Objection To Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed a Second Amended Plan and corresponding Motion to Confirm on May 10, 2024. Dockets 63, 65. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

35. [24-21068](#)-E-13  
[RAS-1](#)

DESIREE LEWIS  
Sunita Kapoor

**OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
5-8-24 [52]**

**Final Ruling:** No appearance at the June 4, 2024 hearing is required.

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Local Rule 9014-1(f)(2) Objection—No Appearance 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 May 8, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection To Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.</b></p>
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed a Second Amended Plan and corresponding Motion to Confirm on May 10, 2024. Dockets 63, 65. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the June 4, 2024 Hearing is required.  
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Local Rule 9014-1(f)(2) Objection—No 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, Attorneys of record who have appeared in the case, and Office of the United States Trustee on May 14, 2024. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Objection To Confirmation has been set for hearing on the notice required by Local 9014-1(f)(2). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed..</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on May 10, 2024. Dockets 65, 63. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

37. [24-21093](#)-E-13  
[RAS-1](#)

GUADALUPE RAMOS  
Michael Hays

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK TRUST  
NATIONAL ASSOCIATION  
4-12-24 [[18](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the June 4, 2024 Hearing is required.  
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U.S. Bank Trust N.A. (“Creditor”) having filed a Notice of Withdrawal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice.**