UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 10, 2025 at 2:00 p.m.

1.	**24-25101-E-13** **RLG-3**	**MARIE EUSTAQUIO** **Robert Goldstein**	**MOTION TO CONFIRM PLAN** **4-29-25 [35]**

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on April 29, 2025. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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 with~~out~~ prejudice.

The debtor, Marie Magno Eustaquio ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for one payment of $590, four payments of $608 each, and 55 monthly payments of $138.49 with 6% dividend to unsecured creditors. Amended Plan, Docket 25. 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, 2025. Docket 42. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is $470.16 delinquent in Plan payments to the Trustee. *Id.* 2:1-9.

B. Creditor Schools Federal Credit Union is misclassified in Class 4 because the debt will be paid off around July 10, 2028, which is prior to this Plan completing. *Id.* at 2:10-15.

C. The Debtor has still failed to provide for Nationstar Mortgage LLC who filed a secured Proof of Claim, for $402,274.85, (Claim #11-1), in the Plan. The Schedules show Debtor may be making these payments outside the Plan, but Trustee lacks knowledge of Debtor's overall financial situation without this expense included in the Plan. *Id.* at 2:16-25.

D. Debtor has not amended Schedule I, and the 2023 tax returns show the Debtor received $3,019.00 in combined tax refunds. The Trustee still believes the expense for taxes may be overstated in the budget and the Debtor should be paying those additional funds into the Plan. Trustee still wishes to reserve the right to review future tax returns and Debtor should contribute any amount over $2,000 to the Plan. *Id.* at 3:1-7.

DISCUSSION
Delinquency

Debtor is $470.16 delinquent in plan payments, which represents multiple months of the $138.49 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).

Misclassified Claims

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

Failure to Provide for
Secured Creditor

Trustee understands that Debtor need not provide for the secured creditor in the Plan. 11 U.S.C. § 1322(b), 1325(a). However, Trustee must assess the feasibility of the Plan. Debtor is not explaining how Nationstar Mortgage LLC will be provided for outside the Plan and cannot address feasibility.

Tax Returns

Trustee requests future amounts of tax returns be contributed to the Plan in the amount over $2,000. Such a request is reasonable and represents a debtor contributing their best effort under 11 U.S.C. § 1325(b)(1). The Plan still does not provide for this provision.

Denial of Motion to Confirm

It appears that Debtor is repeating some deficiency and choosing to ignore requirements of the Bankruptcy Code and the Chapter 13 Plan that must be used in the Eastern District of California.

Subject to the certifications of Debtor and Debtor's counsel made pursuant to Federal Rule of Bankruptcy Procedure 9011, Debtor has intentionally left off from the Plan the secured claim which encumbers her residence. Debtor states that she has no Class 1 secured claims Plan ¶ 3.07; Dckt. 37. Debtor further certifies that she has no Class 2 secured claims. *Id.*; ¶ 3.08. Debtor also certifies that she has no Class 3 secured claims for which she is abandoning the collateral. *Id.*; ¶ 3.09.

Finally, Debtor does state that she has a Class 4 secured claim, which encumbers her 2019 Mazda, that will be paid directly as part of the Plan. *Id.*; ¶ 3.10. However, no claim for an obligation secured by her 4067 Liverpool Street, West Sacramento, California property. *Id.*

The Motion to Confirm states that the Modified Plan provides for Debtor to make the payments on the claim secured by the Liverpool Street Property directly to creditor Mr. Cooper. Motion, ¶ 4.(3); Dckt. 35. That is an incorrect allegation and does not accurately state what is provided for in the proposed Modified Plan.

Debtor provides testimony that she will make payments directly to Mr. Cooper. Dec., ¶ 5; Dckt. 38. However, the Modified Plan she has proposed does not authorize her to make such payments.

On Amended Schedule I Debtor is fortunate to state that she has substantial monthly income in the amount of $11,751. She states that she has additional income of $150 from business or rental property, but fails to attach the required business or rental statement showing the gross and net income from such business. Debtor also states that she has additional income of $250 a month as a spin instructor. Amd. Sch. I; Dckt. 45.

On Schedule A/B Debtor states under penalty of perjury that she has no interests in any businesses. Sch. A/B, ¶¶ 19, 37, 53; Dckt. 1. On the Statement of Financial Affairs Debtor states under penalty of perjury that in 2024, 2025, and 2022, her only income has been from wages/commissions, and that she has had no business income. Stmt. Fin. Affairs, ¶ 4; Dckt. 1. Additionally, in response to Paragraph 27 of the Statement of Financial Affairs, Debtor states under penalty that she did not own a business at the time of or within 4 years prior to filing bankruptcy. *Id.*

In response to the question of whether the Debtor paid any creditor a total of $600 or more in the 90 days prior to filing bankruptcy, Debtor states under penalty of perjury "No." *Id.*; ¶ 6. This would indicate that Debtor defaulted in the mortgage payments to the creditor having a lien on the Liverpool Street Property, and would have a pre-petition default of at least ($8,322), based on the information provided in Original Schedule J (Dckt. 1 at 31).

Though now having been presented with multiple prior opportunities to confirm a Chapter 13 plan, and being notified of errors in those prior plans, the Debtor has been incapable of proposing a confirmable Chapter 13 Plan. It appears that prosecution of a Chapter 13 case may be beyond the ability of the Debtor.

At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Marie Magno Eustaquio ("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 with~~out~~ prejudice, and the proposed Chapter 13 Plan is not confirmed.

2. **25-21604-E-13 DPC-1** | **PATRICIA ZAVALA** **David Ritzinger** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-14-25 [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, and Office of the United States Trustee on May 14, 2025. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Patricia Zavala's ("Debtor") Plan is overextended and Trustee calculates that the plan will take 71 months to complete. Obj. 2:3-7.

2. Internal Revenue Service and Franchise Tax Board filed secured claims that are not provided for in the plan, (Claim 4 & 5), and Debtor has no obvious expense to pay them in Schedule J. *Id.* at 2:11-13.

3. There is missing information in Debtor's Schedules. At the Meeting of Creditors the Debtor testified that her non-filing spouse owns a 2021 Tesla, but she failed to list the Tesla on her Schedules. *Id.* at 2:15-20.

4. There is a discrepancy in attorney's fees. The Plan shows the Debtor is paying $8,500.00 in attorney's fees, of which $2,000.00 was paid prior to filing and $6,500.00 is to be paid through the Plan. The Disclosure of

> Attorney Compensation, (DN 1) does not match the Plan and shows the Attorney is charging $2,000.00, with $2,000.00 paid prior to filing. *Id.* at 2:23-3:3.

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

DISCUSSION
Overextended Plan

The Plan will take 71 months to complete. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

Failure to Afford Plan Payments

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Internal Revenue Service and Franchise Tax Board filed secured claims that are not provided for in the Plan or explained in Schedule J. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Inaccurate or Missing Information

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

Attorney's Fees

The Plan cannot be confirmed without the discrepancy in attorney's fees resolved. Debtor's Plan states fees in the amount of $8,500 but the Disclosure of attorney compensation shows Debtor's counsel as only charging $4,000.

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.

3.	**25-21809-E-13** **DPC-1**	**JOSE/ROSA MEZA** **Julius Cherry**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-22-25 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 22, 2025. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

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

1. Debtor Jose Cesar Gentil Meza and Rosa Michelle Meza ("Debtor") have not filed this case or filed their Plan in good faith. Trustee states in the Objection:

    a. There is something about this case that just doesn't feel right when compared to many of the other cases that the Trustee is responsible for. The Trustee is raising this issue to bring it to the Court's attention, so that it can be further reviewed especially in light of the fact that confirmation may be *res judicata* as to the Debtor's "good faith" in filing of the case. Mot. 2:20-24.

2. Debtor is proposing to pay approximately $16,560 per year in retirement contributions, which is approximately 16.5% of her gross income. Debtor also will pay an additional $873.62 per month toward repayment of Debtor Rosa's retirement loans. *Saldana v. Bronitsky* (*In re Saldana*), No. 23-15860, 2024 U.S. App. LEXIS 31706 (9th Cir. 2024) does permit voluntary retirement contributions, but *Saldana* also seeks to limit abusing voluntary retirement contributions.

   a. Debtor Rosa is not even over the age of 50 where additional withholding allowances are given. Moreover, Debtor Rosa has listed her 401k with an approximate value of $160,000.00.

   b. Trustee notes *Saldana* is stayed pending certiorari before the Supreme Court. With the *Saldana* case, the 9th Circuit ruled in direct opposition to several previous 9th Circuit BAP decisions as well as four (4) other jurisdictions throughout the country creating a distinct split of authority with the 9th Circuit now allowing voluntary retirements (stating they are not disposable income) and the rest of the country disallowing them (generally stating they are disposable income). Mot. at 4:20-5:3.

3. Trustee has never opposed reasonable contributions to retirement accounts, including voluntary contributions, the high percentage that the Debtor is withholding in this case does not appear to be reasonable or in good faith. *Id.* at 5:21-24.

4. Trustee has requested additional documentation from the Debtor including, but not limited to, the last 6 months of pay advices, last 6 months of bank statements, last 6 months of retirement account statements, last 6 months of financial statements from any stock, cryptocurrency and other peer-to peer accounts including venmo and paypal and documentation in writing evidencing the parameters for the employer maintain retirement account including any limits for contributions and what percentage, if any, the employer will match. To date, the Trustee has not received any of these documents. Mot. at 4:13-19.

5. Debtor's attorney's fees total $12,000. Debtor's attorney is entitled to $6,000 at plan confirmation. Debtor is proposing to pay attorney's fees in the amount of $6,300. This extra $300 should be reduced form the first half and added to the second half of plan payments. *Id.* at 5:27-6:8.

6. Freedom Mortgage Corporation, listed as a mortgage creditor holding a deed of trust on the Debtor's primary residence, is listed in Class 1 of the plan. It does not appear Debtor is delinquent under the terms of the mortgage. *Id.* at 6:13-15.

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

DISCUSSION

The court appreciates that the Trustee has clearly laid out the issues and concerns with these types of cases. The court is also cognizant of the idea that *Saldana* is ripe for abuse. The court in *Saldana* states:

> The *Johnson* approach [that voluntary retirement contributions do not constitute disposable income] assuredly allows debtors to devote income to retirement savings that would otherwise go to creditors, but it is not without limitation. The types of retirement plan contributions protected by the hanging paragraph are generally subject to annual contribution limits. *See In re Cantu*, 553 B.R. 565, 577 (Bankr. E.D. Va. 2016), *aff'd sub nom. Gorman v. Cantu* (*In re Cantu*), 713 Fed. App'x 200 (4th Cir. 2017). And all Chapter 13 plans are subject to a good faith requirement. Bankruptcy courts retain the ability to conduct a "fact-intensive examination of the 'totality of the circumstances' " to determine if a debtor's plan is proposed in good faith. *Sisk*, 962 F.3d at 1150 (quoting *Drummond v. Welsh* (*In re Welsh*), 711 F.3d 1120, 1132 (9th Cir. 2013)); *cf. id.* at 1151 ("Debtors do not lack good faith 'merely for doing what the Code permits them to do.' " (quoting *Welsh*, 711 F.3d at 1132)). A debtor's "motivation and forthrightness with the court in seeking relief" remain relevant in assessing their good faith. *Welsh*, 711 F.3d at 1132.

Saldana, 122 F.4th 344. Therefore, the court in *Saldana* decided there are adequate safeguards in place to prevent abuse of voluntary retirement income contributions, including yearly limits on contributions and the requirement the Plan is proposed in good faith.

Trustee would ask the court to either depart from *Saldana*, the case not being binding precedent currently pending a petition for certiorari, or in the alternative, find that this Plan has not been proposed in good faith. The court declines to either depart from *Saldana* or delve into the good faith analysis at this time because the issue is currently hanging in the balance. Were the court to find more persuasive the holding in *In re Parks*, 475 B.R. 703 (B.A.P. 9th Cir. 2012) and rule accordingly, there is the potential for such an analysis to be moot or quickly overruled depending the Supreme Court's decision in *Saldana*. The same outcome is possible, even likely, if the court delves into a good faith analysis. The rule will be decided in the near future: either the Supreme Court grants certiorari and color's the good faith standard surrounding voluntary retirement contributions, or the Supreme Court denies certiorari and *Saldana* controls.

Therefore, pending the outcome of *Saldana*, there is the solution that certain retirement contributions are paid to the Trustee and held in a blocked account. At the hearing, **xxxxxxx**

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

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

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

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

4.	**24-22625-E-13** **DNL-1**	**JAMES WALTHOFF** **Peter Macaluso**	**CONTINUED OBJECTION TO HOMESTEAD EXEMPTION** **8-26-24 [20]**

Item 4 thru 5

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

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

Sufficient Notice not Provided. There is no complete Proof of Service filed in this case, so the court is unable to determine which parties have been served and when. The Proof of Service filed only contains the front page of the form.

The Debtor has filed an Opposition to the Objection to Claim of Exemption, documenting that Debtor was served.

A review of the Verification of Master Address List filed by Debtor lists Experian, Equifax Information Services, LLC, TransUnion, LLC, Amex, Buchalter Law, and Creditor's State Court Counsel as the only persons for noticing in this Bankruptcy Case. Dckt. 4. On Schedule D Debtor lists having no creditor's with secured claims, and on Schedule E/F having no creditors with priority unsecured claims and having two creditors, Other than Creditor brining this Objection, with general unsecured claims, those being Amex and Buchalter Law (those to claims totaling less than $10,000).

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 Exemption is xxxxxxx.

June 10, 2025 Hearing

The court continued the hearing as the Parties reported at the prior hearing that a settlement has been reached concerning the Objection to Exemptions. The Parties requested that this hearing be continued. The court would note parties have been offering the explanation to the court on numerous occasions that they are extremely close on finalizing terms of a stipulation. However, no stipulation has materialized.

A review of the Docket on June 5, 2025 reveals nothing new has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

Crystal Rista ("Creditor") objects to James D. Walthoff's ("Debtor") claimed homestead exemption under Cal. Code Civ. P. § 704.730 in the property commonly known as 6331 Rushmore Dr., Sacramento, California 95842 ("Property"). Creditor states:

A. Debtor claims to hold title to as a joint tenant and approximate value of $400,000.00. The Debtor further states that the Property is community property. Obj. 2:10-11, Docket 20.

B. Debtor's Schedule C asserts an exemption in the amount of $600,000.00 against the Property pursuant to Cal. Code Civ. Pro. § 704.730.

C. Debtor Schedules Creditor's counsel, Huber Fox, as an unsecured creditor with a claim in the amount of $1,226,052.51. On August 21, 2024, Creditor filed POC 2-1 for $1,446,922.50 ("POC 2-1") based on her judgment against the Debtor for financial abuse of an elder, inclusive of attorney's fees and costs and interest awarded by the Superior Court. *Id.* at 2:16-18.

D. During its efforts to enforce the Judgment prepetition, Creditor's counsel determined from public records that the Debtor and his spouse had transferred their interest in the Property to MRDC, LLC, on or about May 13, 2023, and recorded on May 18, 2023—shortly after the bench trial that would result in entry of the Judgment on July 10, 2023. *Id.* at 2:19-22.

E. Property records reveal that, on June 19, 2024, MRDC, LLC, and an individual named Rachelle Carr, executed a grant deed in favor of the Debtor and spouse, which was recorded on June 25, 2024. *Id.* at 2:23-25.

F. Debtor's schedules do not disclose any interest in MRDC, LLC, and a search of California Secretary of State records show no entity operating under that name in California. *Id.* at 2:26-27.

G. Here, the Debtor does not appear to have had either a legal or equitable interest in the Property on the petition date either directly or through MRDC, LLC. In fact, the Debtor appears to have transferred his interest in the Property with the intent to hinder, delay, or defraud the Judgment Creditor in the aftermath of the bench trial that ultimately resulted in the Judgment, only to promptly reverse the transfer postpetition. *Id.* at 3:13-17.

Jonathan Huber, counsel who represented Debtor in the state court proceeding, submitted his Declaration in support. Docket 22. Mr. Huber authenticates the facts alleged in the Objection.

Exhibit B, which is identified as a Title Transfer Report appears to be a report provided by a third party, Data Tree, with the footer on the bottom of the page stating, "2024 First America Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF." Exhibit B; Dckt. 23.

On the last page of Exhibit B is the following disclaimer:

> Disclaimer: This report: (i) is **not an insured product or service or an abstract, legal opinion or a representation of the condition of title to real property**, and (ii) is issued exclusively for the benefit of First American Data Tree LLC (Data Tree) customers and may not be used or relied upon by any other person. Estimated property values are: (i) based on available data; (ii) are not guaranteed or warranted; (iii) do not constitute an appraisal; and (iv) should not be relied upon in lieu of an appraisal. Data Tree does not represent or warrant that the information is complete or free from error, and expressly disclaims any liability to any person or entity for loss or damage caused by errors or omissions in the report. If the "verified" logo {(3t-") is displayed, or a record is designated "verified; Data Tree's algorithm matched fields from two or more data sources to confirm source data.

Id. While it provides information that one would likely follow up and document with the county recorder or testimony from a third-party (likely a title company), this is hearsay concerning purported transactions involving the Property.

DEBTOR'S OPPOSITION

On September 24, 2024, Debtor filed an Opposition. Docket 27. Debtor states the Objection is untimely as it was filed on August 26, 2024, where the 341 Meeting concluded on July 25, 2024. *Id.* at 1:22-2:6. Debtor asserts Fed. R. Bankr. P. 4003(b) provides that a party in interest may object to a debtor's claimed exemptions within 30 days after the conclusion of the Section 341 meeting of creditors. *Id.* at 2:13-15. Therefore, Debtor argues the exemption stands pursuant to *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992).

Debtor does not dispute any of the factual allegations, including the alleged transfers of the Property. Debtor's sole basis for Opposition is alleging that the Objection to Claim of Exemption was not filed.

DISCUSSION

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*.

Importantly, a debtor may only claim an exemption he was entitled to claim on the Petition Date, pursuant to the so-called "snapshot" rule. *Wilson v. Rigby*, 909 F.3d 306, 308 (9th Cir. 2018).

With respect to the deadline for filing of an Objection to a claimed exemption, Federal Rule of Bankruptcy Procedure 4003(b)(1) states:

(b) Objecting to a Claim of Exemptions.

> (1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Computation of Deadline For Filing Objection to Exemption

In Debtor's Opposition, the simple computation of thirty days from the July 25, 2024 completion of the 341 is made as follows:

> July 26 - July 31.....6 days
> August 1 - August 24.....24 days
>
> Thirty days expires, by the Debtor's calculation on August 24, 2024.

The computation of time is not left to the discretion of a judge, but have been set by the United States Supreme Court in Federal Rule of Bankruptcy Procedure 9006. In pertinent part, Federal Rule of Bankruptcy Procedure 9006 states:

> Rule 9006. Computing and Extending Time; Time for Motion Papers [Effective until December 1, 2024]
>
> (a) Computing Time. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.
>
> (1) Period stated in days or a longer unit. When the period is stated in days or a longer unit of time:
>
> (A) **exclude the day of the event that triggers the period**;
>
> (B) **count every day**, including intermediate Saturdays, Sundays, and legal holidays; and
>
> (C) **include the last day of the period**, **but if the last day is a Saturday, Sunday**, or legal holiday, **the period continues to run until the end of the next day** that is not a Saturday, Sunday, or legal holiday.
>
> . . .
>
> (4) "Last day" defined. Unless a different time is set by a statute, local rule, or order in the case, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) "Next day" defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

. . . .

July 25, 2024 was a Thursday. Thirty days later, August 24, 2024, was a Saturday, and August 25, 2024 was a Sunday, neither of which is the "last day" in the thirty day period for the filing of an Opposition to Claim of Exemption. Monday August 26, 2024, is the last day that an Objection to Claim of Exemption could be filed in this Bankruptcy Case.

The Objection to Claim of Exemption having been filed on August 26, 2024, it was timely filed and the Opposition based on timeliness is overruled.

ISSUES OUTSTANDING

Both the Objection to Claim of Exemption and the Opposition present the court with "challenges." Some relate to evidence and authentication thereof. Some relate to not denying allegations in the Objection and relying on a "statute of limitations" affirmative defense. Additionally, though admissible, non-hearsay evidence of transfers has not been presented to the court, it can be heard and some say that the Debtor transferred the Property to a third-party (the limited liability company) and did not obtain title back until after the case was filed.

Possible Transfers of Property

In the evidence submitted, Creditor presents to the court that it has been heard that some say that on May 18, 2023, a deed dated June 19, 2023, transferring title to the Property from Debtor and his spouse to an entity identified as MRDC, LLC. Then, on June 25, 2024, a deed dated June 19, 2024, transferring title to Debtor and his spouse from MRDC, LLC was recorded.

The transfer to MRDC, LLC was recorded on May 18, 2023. This Bankruptcy Case was filed on June 17, 2024, which is approximately only thirteen months after the deed to MRDC, LLC was recorded.

Exhibit C; Dckt. 23, is a copy of a Grant Deed by which MRDC, LLC transfers title to the Property to Debtor and his Spouse as joint tenants. This Grant Deed is dated June 19, 2024. On page 1 of the Grant Deed, in the section for the Transfer Tax, it states that the tax is $0.00 because the transfer was a "Gift," referencing California Revenue and Taxation Code § 11930. That Code Section provides:

§ 11930. Transfer by inter vivos gift or by death

Any tax imposed pursuant to this part shall not apply to any deed, instrument, or other writing which purports to grant, assign, transfer, convey, divide, allocate, or vest lands, tenements, or realty, or any interest therein, if by reason of such inter vivos gift or by reason of the death of any person, such lands, tenements, realty, or

> interests therein are transferred outright to, or in trust for the benefit of, any person or entity.

Cal Rev & Tax Code § 11930. If such a gift were made, presumably the tax reporting of the gift will be consistent therewith.

In response to paragraph 18 of the Statement of Financial Affairs Debtor states under penalty of perjury that within two years before the filing of this Bankruptcy Case the Debtor did not "sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs." Dckt. 13 at 25. The is not consistent with the allegations of Creditor that in May 2023 title to the Property was transferred to MRDC, LLC.

Creditor also alleges (but does not evidence other than counsel's finding) that MRDC, LLC is not an entity registered to do business in California.

The court notes that for the MRDC, LLC Deed to Debtor and Debtor's Spouse, it is dated June 19, 2024, but was not recorded until June 25, 2024. Exhibit C; Dckt. 23. Debtor commenced this Chapter 13 Bankruptcy Case on June 17, 2024 - two days before the date of the Grant Deed from MRDC, LLC.

In looking further at the Schedules filed by Debtor, there are no creditors listed on Schedule D as having secured claims. Dckt. 13 at 11.

October 8, 2024 Hearing

At the hearing, the court set a new briefing schedule to allow Creditor to file supplemental opposition pleadings and properly filed, admissible, authenticated evidence in support of the Objection, and for Debtor to file supplemental opposition pleadings and evidence.

The hearing on the Objection to Claimed Exemptions is continued to 2:00 p.m on December 10, 2024. Creditor shall filed and serve supplemental pleadings and evidence on or before November 7, 2024. Debtor shall file supplemental opposition pleadings and evidence on or before November 21, 2024. Replies, if any, shall be filed and served on or before November 27, 2024.

December 10, 2024 Hearing

The court continued the hearing as it set a new briefing schedule to allow Creditor to file supplemental opposition pleadings and properly filed, admissible, authenticated evidence in support of the Objection, and for Debtor to file supplemental opposition pleadings and evidence.

Creditor filed its supplemental pleadings on November 7, 2024. Dockets 37, 38. Creditor states:

> 1. As already discussed, in accordance with well-settled law, the Debtor is limited to the exemptions he was entitled to claim on the petition date. Supp. Pleading 2:1-2, Docket 37.
>
> 2. Regarding the transfers to and from MRDC, LLC, the Debtor—having gone through trial with the assistance of counsel and waiting on entry of the

> judgment— voluntarily chose to transfer his interest to the LLC. It appears that the transfer had the clear intent to hinder, delay, or defraud the Judgment Creditor in the aftermath of the bench trial that ultimately resulted in the Judgment. The Debtor then waited a year before promptly transferring the Subject Property back from MRDC, LLC, once he had the "cover" of bankruptcy. *Id.* at 2:7-12.

Creditor also requests the court take judicial notice of the attached exhibits at Docket 38. The Exhibits include evidence of the assignment of the Property and then the transfer of the Property back to Debtor after the bankruptcy was filed.

Debtor's Supplemental Pleadings

Debtor filed his Supplemental Pleading on November 21, 2024. Docket 40. Debtor states:

1. The transfer does not constitute a change in ownership because the transfer did not result in the beneficial use of the Property. *Id.* at 2:22-3:1.

2. The transfer was more akin to a transfer into a revocable trust, which holding arrangement can be declared a homestead. *Id.* at 3:4-9.

3. There was no reassessment charged by the County, so there was no ownership change. *Id.* at 3:15-22.

One day after filing his Supplemental Pleadings, Debtor filed a Motion to dismiss his own case. Docket 41. This Motion was not served on any parties, so the court has held off on issuing the Order in the event there may be some reason the court should not dismiss the case.

DISCUSSION

Creditor cites to the snapshot rule, asserting that Debtor may only claim exemptions he was entitled to as of the filed. Since title was in the LLC as of the filing, Creditor concludes no exemption. Debtor's opposition just argues that the court should treat the transfer to a limited liability company the same as if it was made to a revocable trust. Creditor's response is that it is not a trust and there is no evidence of a "gift transfer."

As the Supreme Court has directed trial court judges in the federal courts, it is for the judge to get the law right. *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). Neither party provides the court with a good analysis of the law relating to this transfer and what rights arise under California Law.

With respect to there having been "gift" transfers to the LLC and then back to the Debtor, Objection has provided copies of the two deeds (which Creditor had to provide as part of its objection). Exhibits F and G; Dckt. 38.

Exhibit F is a certified copy of the Grant Deed by which James Walthoff (the Debtor) and Francieline Walthoff granted title to the Property to MRDC, LLC. The Grant Deed is dated May 13, 2023, and has a recording date of May 18, 2023.

The Grant Deed to MRDC, LLC has a documentary transfer tax of $0.00, stating that "None Due - Gift T&T Code 11930." California Revenue and Taxation Code § 11930 provides (emphasis added):

> § 11930. Transfer by inter vivos gift or by death
>
> Any tax imposed pursuant to this part shall not apply to any deed, instrument, or other writing which purports to grant, assign, transfer, convey, divide, allocate, or vest lands, tenements, or realty, or any interest therein, **if by reason of such inter vivos gift or by reason of the death of any person**, such lands, tenements, realty, or **interests therein are transferred outright to, or in trust for the benefit of, any person or entity.**

Then, Exhibit G is a certified copy of the Grant Deed From MRDC, LLC to James Walthoff (the Debtor) and Francieline Walthoff. Dckt. 38. The Grant Deed From MRDC , LLC to James Walthoff and Francieline Walthoff is dated June 19, 2024, and a recording date of June 25, 2024. The June 19, 2024, date of the Grant Deed is two days after this Bankruptcy Case was filed on June 17, 2024.

The Grant Deed from MRDC, LLC to James Walthoff and Francieline Walthoff states that the documentary transfer tax is $0.00, "None Due - Gift R&T Code 11930." *Id*.

California Law Relating to Transfers of Homestead Property to Third-Parties

Debtor appears to argue that the transfer, because there was no ownership change where the Debtor continually resided in the Property, was like transferring property into a revocable trust. Debtor cites the court to *Fisch, Spiegler, Ginsburg & Ladner v. Appel*, 13 Cal. Rptr. 2d 471 (Cal. Ct. App. 1992) to support its contention.

In *Fisch* the judgment debtors had quitclaimed title to their residence to a revocable family trust.

> The Appel [the judgment debtors] say they are entitled to revoke the trust, an assertion which Fisch does not dispute. Although the trust instrument is not part of the record, in light of the Appel' uncontradicted statement it appears the Appel are trustors. This gave them a contingent reversionary interest in the subject property (*see In re Miffed* (C.D. Cal. 1989) 107 Bankr. 255, 259), an interest in real property within the meaning of section 704.910, subdivision (c). Furthermore, the Appel maintain they have life estates in the trust assets, another claim which Fisch fails to dispute. This too amounts to an interest in real property within the meaning of section 704.910, subdivision (c). While a trust is not a natural person, and the homestead exemption applies only to property of natural persons (§ 703.020, subbed. (a)), there is no requirement title be held by a natural person. "[Homestead statutes are to be construed liberally on behalf of the homesteader." (*Ingebretsen v. McNamer* (1982) 137 Cal. App.3d 957, 960.) We determine placing title to property in a revocable living trust does not preclude homeowners from availing themselves of the benefits of the homestead law.

Fisch, Spiegler, Ginsburg & Ladner v. Appel, 10 Cal. App. 4th at 1813. In *Fisch* the person claiming the homestead exemption resided in the property and had the ability to have or control title to the property in which the exemption was claimed.

California law defines a "homestead" in which an exemption may be claimed to as follows:

> (c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

Cal Code Civ Proc § 704.710(c). This focuses on the residency in the property and that a judgment lien of the person who is residing in the property attaches to that property in which the homestead exemption is claimed.

In Miller and Star California Real Estate, 12 Cal. Real Estate (4th ed.) § 43.16, the following statement is made:

> No requirement that legal title be continuously owned. The statutory definition of "homestead" requires only that the judgment debtor reside in the property claimed to be exempt as his or her principal dwelling at the time the judgment lien attaches to the property, and continuously thereafter.[19] Neither the declared homestead exemption nor the automatic homestead exemption requires that the judgment debtor continuously own legal title to the property, but in any case the judgment debtor must continue to reside at the property as his or her principal dwelling during any period while he or she does not own legal title, at least in the case of the automatic exemption.[20]

20

Tarlesson v. Broadway Foreclosure Investments, LLC, 184 Cal. App. 4th 931, 937, 109 Cal. Rptr. 3d 319 (1st Dist. 2010) (automatic exemption); *In re Miffed*, 107 B.R. 255, 260 (Bankr. C.D. Cal. 1989), aff'd, 119 B.R. 201 (B.A.P. 9th Cir. 1990), aff'd, 959 F.2d 740 (9th Cir. 1992) (automatic exemption). In *Tarlesson*, the court expressly did not address whether an ownership interest is required for the declared homestead.

See § 43:26 (equitable interests).

The discussion in Miller and Starr continues under § 43.26, equitable interests, providing the following analysis:

> § 43:26. Equitable interests
>
> Equitable interests in property may be homesteaded. A party may homestead "any interest in real property."[1] An equitable title that supports a right of occupancy is sufficient to enable the owner to claim a homestead of the premises.[2]
> Vendee under installment contract of sale. A vendee in possession of property pursuant to a contract of sale under which the vendor retains legal title can declare a homestead upon his or her equitable interest in the property.[3] This interest is subordinate to the rights of the vendor, but superior to any third-party claim to the property that accrues after the declarant records the declaration of homestead.[4]
>
> 1
> Civ. Proc. Code, § 704.910. [Declared homestead definitions.]
>
> See Estate or interest in real property to which a homestead claim may attach, 74 A.L.R.2d 1355.
>
> 2
> *Fisch, Spiegler, Ginsburg & Ladner v. Appel*, 10 Cal. App. 4th 1810, 1813, 13 Cal. Rptr. 2d 471 (4th Dist. 1992); *Tarlesson v. Broadway Foreclosure Investments, LLC*, 184 Cal. App. 4th 931, 936–937, 109 Cal. Rptr. 3d 319 (1st Dist. 2010) (automatic exemption; referring to prior declared homestead decisions as reflecting rule that "judgment debtors who continuously reside in their dwelling retain a sufficient equitable interest in the property to claim a homestead exemption").
>
> 3
> Civ. Proc. Code, § 704.910, subbed. (c). *Perry v. Ross*, 104 Cal. 15, 19, 37 P. 757 (1894); *In re Reid's Estate*, 26 Cal. App. 2d 362, 366, 367, 79 P.2d 451 (3d Dist. 1938).
>
> *But see Snyder v. Pine Grove Lumber Co.*, 40 Cal. App. 2d 660, 664, 666, 105 P.2d 369 (3d Dist. 1940).
>
> 4
> *Longmaid v. Coulter*, 123 Cal. 208, 217, 55 P. 791 (1898); *Alexander v. Jackson*, 92 Cal. 514, 519, 28 P. 593 (1891).
>
> *See Snyder v. Pine Grove Lumber Co.*, 40 Cal. App. 2d 660, 664–666, 105 P.2d 369 (3d Dist. 1940).

Case Example:

Just before the court entered judgment in a lawsuit against the owner of the property, the owner conveyed the property to his son. The transfer was without consideration and pursuant to an agreement that the son would hold the title in trust and it would not be effective until the owner's death. The owner recorded a homestead declaration on the property and then the creditor recovered a judgment against the owner. The court held that the transfer to the son was a fraudulent conveyance,[5] but since the grantor retained a beneficial interest in the property that was subject to the homestead declaration, the creditor's claim was subject to the homestead.[6]

5
See § 43:10 (homestead with intent to defeat existing creditors' claims).

6
Breeden v. Smith, 120 Cal. App. 2d 62, 65, 66, 260 P.2d 185 (4th Dist. 1953).

Trust interest in real property. Although a trustee may be an "owner," he or she is precluded from declaring a homestead on the property held in trust unless he or she also resides on the property.[7] The equitable interest in property of a trustee, or the spouse of a trustee, who resides on the property can be subject to a homestead declaration.[8] However, the declarant whose only interest in the property is as a beneficiary of a trust cannot declare a homestead on trust property on which he or she resides.[9]

Revocable living trust. A homestead declaration may be recorded on property held in a revocable living trust. Because the living trust is revocable, the trustee/trustor has a contingent reversionary interest in the property that is a sufficient property interest to support a homestead. His or her life estate in the trust assets also is sufficient to support a homestead.[10]

Comment:

The basis for the court's decision was the revocability of the trust. Even if a third party were trustee, the property qualifies for the exemption. The property also would qualify for the automatic exemption because any property on which the debtor and/or the debtor's spouse resides qualifies for the exemption without qualification regarding their title interest in the property,[11] although dictum in one case suggests otherwise.[12]

11
Civ. Proc. Code, § 704.710.

See § 43:16 (automatic exemption; residency, ownership, and use).

12

See California Coastal Com'n v. Allen, 167 Cal. App. 4th 322, 329, 83 Cal. Rptr. 3d 906 (2d Dist. 2008) (asserting that since the automatic exemption

> applies only to the "dwelling of a natural person" the interest of the grantor of a revocable trust could not qualify for the exemption)

§ 43:26. Equitable interests, 12 Cal. Real Est. § 43:26 (4th ed.) [the court having reorganized the footnotes so that they followed the paragraph in which they are referenced rather than having all of the footnotes at the end of the cited text].

The obvious citation by Miller and Starr above relevant to the bankruptcy case before the court is *Breeden v. Smith*, 120 Cal. App. 2d 62, 65, 66, 260 P.2d 185 (4th Dist. 1953). In *Breeden*, the California Court of Appeal states:

> In its findings, filed on August 12, 1952, the [trial] court found . . .that on April 9, 1951, Robert Smith conveyed all his right, title and interest in this property to Stanley Smith without consideration and with intent to defraud his creditors; that the property was then worth $ 8,000; that Stanley Smith accepted and received this deed with the intent to hold the property "as a secret trust for said Robert Smith"; "that since said conveyance the title to the above described real property has remained in the name of" Stanley Smith; that despite such conveyance Robert Smith and his wife remained in exclusive possession of said property until January 1, 1952, . . . As conclusions of law, it was found that on February 15, 1951, Breeden became a creditor of the senior Smiths; that said conveyance was fraudulent as to creditors, and the senior Smiths became insolvent by reason thereof; and that the plaintiffs were entitled to a judgment decreeing that this conveyance was fraudulent as to Breeden, and should be set aside and annulled "insofar as it affects the rights of" Breeden. Judgment was entered on August 12, 1952, adjudging solely that this conveyance was fraudulent as to Breeden, and "hereby is set aside and annulled insofar as it affects the rights of the plaintiff Joseph W. Breeden." No appeal was taken from that judgment.

Breeden v. Smith, 120 Cal. App. 2d at 63-64. The Court of Appeal then affirmed the trial court's conclusion that the homestead exemption could be claimed in the transferred property, stating:

> While the court found that all right and title had been conveyed to the son by the deed of April 9, 1951, and that "title" had remained "in the name of" the son, it further found that such title had been thus accepted and received by the son in trust for the father, and there is nothing to indicate that such situation was ever changed. It does not appear, therefore, that the father had no interest in this property which could be homesteaded. The only thing the judgment purported to do was to declare this conveyance fraudulent as to this creditor and to set it aside insofar as it affects his rights. There being no "inadvertent omission," it clearly appears it was intended to do no more. It did not make any adjudication as to whether or not there was a valid homestead on the property, no such issue having been presented, and it did not adjudicate that the property would be subject to sale on an execution to be issued pursuant to that judgment. The practical effect of the findings and judgment was to hold that the father had been the real owner of the property since the conveyance to the son. The father had a very substantial interest in the property after the conveyance, in fact the full equitable interest, and the homesteads were filed before any judgment was entered.

Id., at 65-66. Then, in holding the homestead exemption enforceable, the Court of Appeal states:

> Had the appellants filed a homestead before this conveyance was made the respondents would have had no enforceable claim against this property. The judgment in this action did not establish such a claim, and nothing in the findings therein establishes the right to sell the property. The principles involved in the cases setting forth the general rules are not favorable to the only attack here made upon these homesteads. (*Montgomery v. Bullock*, 11 Cal.2d 58 [77 P.2d 846]; *Prudential Ins. Co. v. Beck*, 39 Cal. App.2d 355 [103 P.2d 241].) A homestead was filed shortly after this suit was brought and another one was filed before the judgment became a lien. (*Yager v. Yager*, 7 Cal.2d 213 [60 P.2d 422, 106 A.L.R. 664].) The question of the validity or invalidity of the homestead was not raised or decided at the trial of the action. (*Duhart v. O'Rourke*, 99 Cal.App.2d 277 [221 P.2d 767].)
>
> The court having found that the full interest in this property, other than the bare legal title, was in Robert Smith all the time, nothing appears in the record which would adversely affect the validity of the homesteads filed before judgment was entered. In the absence of any showing that the respondents were entitled to a sale of the property on execution it was error to refuse the restraining order asked for. While the respondents could have proceeded under sections 1245 to 1259 of the Civil Code, if the circumstances warranted, no such procedure is involved in this appeal.

Id., at 66.

Breeden was cited by another California Court of Appeal panel in 2010, *Broadway Foreclosure Investments, LLC v. Tarlesson*, 184 Cal. App. 4th 931 (2010), addressing what interest a judgment debtor must have in the residence. In Broadway the court was addressing a situation where title to the residence was transferred to a third-party for the purported purpose of arranging "mortgage financing." *Broadway Foreclosure Investments, LLC v. Tarlesson*, 184 Cal. App. 4th 93, 935 (2010). In affirming that judgment debtor's right to assert a homestead exemption, the California Court of Appeal states:

> Courts "adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor." *(Amin v. Khazindar*, *supra*, 112 Cal.App.4th at p. 588.) . . .
>
> . . .
>
> Several California cases recognize that judgment debtors who continuously reside in their dwellings retain a sufficient equitable interest in the property to claim a homestead exemption even when they have conveyed title to another. (*Breeden v. Smith* (1953) 120 Cal.App.2d 62, 66; *Putnam Sand & Gravel Co. v. Albers* (1971) 14 Cal.App.3d 722, 726; *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 81.) Such a result is consistent with the purpose of California's homestead exemption to protect one's dwelling against creditors. (*Amin v. Khazindar, supra*, 112 Cal.App.4th at p. 588; *accord, Wells Fargo Financial Leasing, Inc. v. D & M Cabinets*, *supra*, 177 Cal.App.4th at p. 67.)
>
> . . .
>
> (5) Broadway does not dispute that the property was Tarlesson's principal residence when it acquired its judgment lien. Nor does it dispute that she has continuously

> resided in the home since 1984, and there is no evidence that rebuts Tarlesson's claim that, "At all times I retained the beneficial interest in my home, which was acknowledged by Peola [Lane]." In the circumstances, Tarlesson's continuous occupancy of her home qualifies it as her "homestead" under section 704.710, subdivision (c). We will not also read a requirement into section 703.020 or 704.710 that Tarlesson must have held continuous title to her home to claim the homestead exemption. [6]
>
> 6
>
> In its reply brief, Broadway refers to a separate statutory definition of a "declared homestead owner" in section 704.910, subdivision (b)(1). But this case deals solely with an automatic homestead exemption claim rather than a declared homestead. We will not further address an argument raised for the first time in a reply brief. *(Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1372, fn. 11 [131 Cal. Rptr. 2d 524].)

Broadway Foreclosure Investments, LLC v. Tarlesson, 184 Cal. App. 4th 931, 936, 937, 938

Based on the court's basic review of California law, the fact that Debtor and his non-debtor spouse transferred the Property into the LLC as a gift to try and keep it from Creditor is not a bar to the homestead exemption being claimed by Debtor. Debtor has not provided any testimony in opposing the Objection to Claim of Exemption. Rather, Debtor has left it to more general arguments by Debtor's counsel.

The court has the two Grant Deeds which state that there was no documentary transfer taxes paid because the transfers were exempt as gifts.

Based on California Law as identified by the court, the "mere" placing the title to the property in the name of another does not terminate the homestead exemption rights of someone who owned, continues to live in, and has an interest in/control of title to the property. Here, the two Grant Deeds demonstrate such control.

As noted above, Debtor now seeks to dismiss this Chapter 13 Case, seeking is almost absolute right to so do.

At the hearing, the parties requested a continuance . The hearing on the Objection to Claimed Exemptions is continued to 2:00 p.m. on January 28, 2025.

January 28, 2025 Hearing

At the hearing, the Parties that they are crafting a stipulation that resolves the Creditor's Objection to Claim of Exemptions, which would allow the Debtor to proceed to confirm his Plan in this Case. The Parties requested a continuance of the hearing.

The hearing is continued to 2:00 p.m. on February 11, 2025.

February 11, 2025 Hearing

The court continued the hearing on this Motion as the Parties reported they were crafting a stipulation that resolves the Creditor's Objection to Claim of Exemptions, which would allow the Debtor to proceed to confirm his Plan in this Case. A review of the Docket on February 3, 2025 revealed no such Stipulation is on file.

At the hearing, the Parties reported that a tentative agreement worked out.

The hearing on the Objection to Exemptions is continued to 2:00 p.m. on March 11, 2025.

March 11, 2025 Hearing

The Parties filed a Stipulation with the court on March 4, 2025. Docket 65. The Stipulation explains the Parties' negotiations are ongoing in resolving this Objection and the related Motion, and the Parties stipulate to a continuance of the hearing to 2:00 p.m. on April 8, 2025.

April 8, 2025 Hearing

The court continued the hearing as the Parties filed a Stipulation with the court on March 4, 2025, explaining that the Parties were engage din negotiations surrounding this Motion. Docket 65. A review of the Docket on April 2, 2025 reveals nothing new has been filed with the court.

At the hearing, the Parties reported that a proposed settlement agreement has been drafted and is now being reviewed by the Debtor, Debtor's Spouse, and counsel.

The hearing is continued to 2:00 p.m. on May 20, 2025.

May 20, 2025 Hearing

The court continued the hearing as the Parties reported at the prior hearing that a settlement has been reached concerning the Objection to Exemptions. The Parties requested that this hearing be continued.

A review of the Docket on May 15, 2025 reveals nothing new has been filed with the court.

At the hearing, counsel for the Debtor states that they are really close in to having a stipulation, with one sticking point for the Debtor.

The Parties requested a further short continuance.

The hearing on the Objection to Exemption is continued to 2:00 p.m. on June 10, 2025.

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

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

The Objection to Claimed Exemptions filed by Crystal Rista ("Creditor") having been presented to the court, the Parties reporting that a Settlement has been agreed to and the agreement has been drafted, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Exemption is **xxxxxxx**.

5. 24-22625-E-13 JAMES WALTHOFF
Peter Macaluso

CONTINUED MOTION TO DISMISS CASE
11-22-24 [41]

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 22, 2024. By the court's calculation, 67 days' notice was provided. The court set the hearing for January 28, 2025. Dckt. 47.

The Motion to Dismiss 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.

The Motion to Dismiss is xxxxxxx.

June 10, 2025 Hearing

The court continued the hearing as the Parties reported at the prior hearing that a settlement has been reached concerning the Objection to Exemptions. The Parties requested that this hearing be continued. The court would note parties have been offering the explanation to the court on numerous occasions that they are extremely close on finalizing terms of a stipulation. However, no stipulation ever materializes. At the hearing, **xxxxxxx**

A review of the Docket on June 5, 2025 reveals nothing new has been filed with the court.

REVIEW OF THE MOTION

Debtor James D. Walthoff ("Debtor") moves to dismiss his own case pursuant to 11 U.S.C. § 1307(b). That right is nearly absolute. The court issued an order setting the hearing on this Motion to be heard in conjunction with the Creditor's Objection to Homestead Exemption.

At the hearing, the Parties that they are crafting a stipulation that resolves the Creditor's Objection to Claim of Exemptions, which would allow the Debtor to proceed to confirm his Plan in this Case. The Parties requested a continuance of the hearing.

The hearing is continued to 2:00 p.m. on February 11, 2025.

February 11, 2025 Hearing

The court continued the hearing on this Motion as the Parties reported they were crafting a stipulation that resolves the Creditor's Objection to Claim of Exemptions, which would allow the Debtor to proceed to confirm his Plan in this Case. A review of the Docket on February 3, 2025 revealed no such Stipulation is on file.

The court having continued the hearing on the Objection to Exemptions, the parties reporting that they are finalizing the Stipulation, the court continues the hearing on the Motion to Dismiss.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on March 11, 2025.

March 11, 2025 Hearing

The Parties filed a Stipulation with the court on March 4, 2025. Docket 65. The Stipulation explains the Parties' negotiations are ongoing in resolving this Motion and the related Objection, and the Parties stipulate to a continuance of the hearing to 2:00 p.m. on April 8, 2025.

April 8, 2025 Hearing

The court continued the hearing as the Parties filed a Stipulation with the court on March 4, 2025, explaining that the Parties were engaged in negotiations surrounding the Objection to Claim of Exemptions. Docket 65. A review of the Docket on April 2, 2025 reveals nothing new has been filed with the court.

The Parties report that a settlement has been reached concerning the Objection to Exemptions. The Parties requested that this hearing be continued.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on May 20, 2025.

May 20, 2025 Hearing

The court continued the hearing as the Parties reported at the prior hearing that a settlement has been reached concerning the Objection to Exemptions. The Parties requested that this hearing be continued. A review of the Docket on May 15, 2025 reveals nothing new has been filed with the court.

At the hearing, the Parties agreed to a continuance to allow the Debtor and Creditor Crystal Rista finalize the terms of their stipulation

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on June 10, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by James D. Walthoff ("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 Dismiss is **xxxxxxx**.

6.	**25-20130-E-13** **DPC-1**	**MICHELLE BOHANON** **Mary Ellen Terranella**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-26-25 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 26, 2025. 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.

The Objection to Confirmation of Plan is xxxxxxx.

June 10, 2025 Hearing

The court continued the hearing as the Parties agreed to continue the hearing to afford counsel for Debtor time to communicate with the IRS regarding the filing of an amended Proof of Claim. The IRS, POC 14-1, has not filed an amended Proof of Claim.

On June 6, 2025, the Chapter 13 Trustee filed a Status Report. Dckt. 40. The Trustee reports that, notwithstanding the diligent efforts of Debtor's counsel, the IRS Claim has not been modified.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

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

1. Michelle Yvonne Bohanon ("Debtor") admitted at the First Meeting of Creditors, held on February 20, 2025, that she was required to file tax returns for 2020 through 2023 and has not done so. Obj. 2:3-8.

2. Debtor's first Plan payment of $3,950.00 was due as of February 25, 2025, and has not been paid, contrary to 11 U.S.C. §§1322(a)(2) & (6.) The Debtor advised the hearing officer at the First Meeting of Creditors that she will be setting up payments to be paid through TFS payment system. To date the Trustee has not received any payments from TFS. *Id.* at 2:11-15.

3. The Plan may not be proposed in Debtor's best efforts. First, the Plan proposes 0% to unsecured creditors, but Schedule I shows the Debtor and the Non-Filing Spouse, ("NFS"), are making a voluntary contribution in a retirement plan for a total of $1,129.00 per month. *Id.* at 2:16-24.

4. Additionally, Schedule I shows the Debtor, and the NFS, are paying retirement loans for a total of $679.00 per month. The Trustee is concerned that these loans will be paid in full at some point during the Plan and the Debtor should make step-up Plan payment(s), if these loans are paid off prior to the completion of the Plan. *Id.* at 2:27-3:2.

5. Debtor has not provided sufficient information regarding her NFS on her Schedule H. Debtor advised she would amend Schedule H, but no such amendment has yet been made. *Id.* at 3:3-7.

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

DISCUSSION

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2020, 2021, 2022, and 2023 tax years have not been filed. Filing of the returns 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).

Debtor's counsel reports that the returns are being obtained and will be presented to the court.

Delinquency

Debtor is $3,950.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Counsel for the Trustee reports that the February 2025 payment was previously made, and the March payment has been made on March 25, 2025.

Failure to Provide Disposable Income / Not Best Effort

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a 0 percent dividend to unsecured claims, though Debtor schedules voluntary retirement payments of $1,129 per month. Moreover, it appears Debtor will have an increase in disposable income when her retirement loan is paid off. Failing to contribute any to unsecured creditors under these circumstances does not appear to be Debtor's best efforts. Thus, the court may not approve the Plan.

Inaccurate or Missing Information

Debtor's Schedules H must be amended to properly inform parties about her NFS. To date, no amended Schedule H has been filed. 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 counsel confirmed that the amended Schedules have been filed.

The Parties agreed to continue the hearing to allow for a review of the Schedules and confirm the financial terms of the Plan.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on May 6, 2025.

May 6, 2025 Hearing

The court continued the hearing on this Objection to allow for a review of the Schedules and confirm the financial terms of the Plan. On April 22, 2025, Trustee filed a Status Report. Docket 32. Trustee states:

1. Debtor has amended Schedule H, has provided their 2023 tax return, and is current in plan payments. *Id.* at 1:22-23.

2. Trustee does not believe the 2024 tax returns have been filed, but Debtor has advised 2022 and 2023 returns have been filed and has now provided both federal returns. *Id.* at 1:24-25.

3. Subsequent to the objection being filed, excess claims were filed by the Internal Revenue Service and Select Portfolio Servicing. Trustee now calculates that the plan is underfunded and will go 87 months. *Id.* at 2:1-4.

4. Debtor is to see a refund for the tax years 2021 through 2023. It may be the case the IRS seeks an offset or if Debtor will be amended Schedule A/B to list the refunds as assets. *Id.* at 2:5-18.

5. Trustee recommends the objection be continued or sustained.

Debtor also filed her Status Report on April 22, 2025. Docket 33. Debtor agrees with Trustee's numbers regarding tax returns and tax claims from the IRS. Debtor also explains, pursuant to the recent case of *Saldana v. Bronitsky* (*In re Saldana*) 122 F.4th 333 (9th Cir. Nov. 2024), voluntary employer-managed retirement plans are not disposable income. Status Report at 3:1-13.

Debtor also states that she and her non-filing spouse do have retirement loans, which are being repaid through payroll deductions. The Debtor's retirement loan will be paid off on March 22, 2027, freeing up, after tax, $150.00. The Debtor's non-filing spouse's retirement loan will be paid off August 24, 2027, freeing up, after tax, $382.00. The Plan includes a step up provision to include this increase in disposable income when it becomes available. *Id.* at 3:6-12. Debtor requests confirmation of the Plan.

At the hearing, counsel for the Trustee reports that there is still the IRS claim, which has not been amended, though the Debtor states that the returns have been filed. The Parties agreed to continue the hearing to afford counsel for Debtor time to communicate with the IRS regarding the filing of an amended Proof of Claim.

The Hearing is continued to 2:00 p.m. on June 10, 2025.

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

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

The 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 Plan is **xxxxxxx**.

7. 25-21337-E-13 DPC-2 | **KURT JACKSON** / **Brian Coggins** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **5-7-25 [14]**

Item 7 thru 8

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 7, 2025. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Kurt C Jackson ("Debtor") failed to appear at the First Meeting of Creditors, held on May 1, 2025, and the Debtor was not examined. Obj. 2:1-4.

2. Debtor failed to submit proof of his identification or social security number to the Trustee, prior to the hearing of the First Meeting of Creditors, required pursuant to FRBP 4002(b)(1)(B). Obj. 2:5-8.

3. Debtor failed to provide business documents requested by the Trustee as required by the Plan. *Id.* at 2:9-13.

4. Debtor may not have filed all tax returns as required under 11 U.S.C. §1325(a)(9). Claim #1-1 filed by the Franchise Tax Board reflects no state

tax return filed for tax years 2013 through 2018. Additionally Claim #3-1 filed by the Internal Revenue shows no returns were filed for tax years 2021 through 2024. *Id.* at 2:14-19.

5. The Schedules are inaccurate or contain missing information.

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

DISCUSSION

Failure to Appear at 341 Meeting

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

Failure to Authenticate Identification Prior to Meeting of Creditors

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause to sustain the objection.

Failure to File Documents Related to Business

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

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the 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. It appears tax returns have not been filed. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Inaccurate or Missing Information

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

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

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

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

8. 25-21337-E-13 KMM-1 | **KURT JACKSON** / **Brian Coggins** | **OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON** / **5-8-25 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 8, 2025. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

The Bank of New York Mellon FKA The Bank of New York as Trustee for the certificate holders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-13 as serviced by NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor"), opposes confirmation of the Plan on the basis that:

1. Debtor Kurt C Jackson's ("Debtor") Plan fails to provide for the curing of the default on Creditor's claim. According to the plan, Debtor has provided for the arrears in the amount of $49,398.00. However, the arrearages on Creditor's claim is in the amount of $50,404.97. Obj. 2:8-12.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $50,404.97 in pre-petition arrearage. POC 4-1. The Plan does not propose to cure that arrearage. The Plan must provide for payment in full of the arrearage as well as

maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

It appears that Creditor has not read the Chapter 13 Plan for the Eastern District of California. The Plan, as proposed, requires payment in full of Creditor's secured claim as stated in the Proof of Claim.

> 3.02. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.
> . . .
> C. Secured Claims
>
> 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.
>
> > (a) Cure of defaults. All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment
> > specified in the table below as the "arrearage dividend" shall pay the arrears in full.
> >
> > > (1) Unless otherwise specified below, interest will accrue at the rate of 0%.
> > >
> > > (2) The arrearage dividend must be applied by the Class I creditor to the arrears. If this plan provides for
> > > interest on the arrears, the arrearage dividend shall be applied first to such interest, then to the arrears.
> >
> > b) Maintaining payments. Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.
> >
> > . . .
> > > (2) If a Class 1 creditor files a proof of claim or a notice of payment change pursuant to Fed. R. Bankr. P. 3002.1(b) demanding a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly.

Chapter 13 Plan, ¶¶ 3.02, 3.07(a) and (b)(2); Dckt. 3.

The difference of the arrearage in Proof of Claim 4-1 of ($50,404.97) and the ($49,398.00) stated in the Plan is $1,2021.97. ~~Over the 60 month term of the Plan, there will be an additional $17.03 that will have to be paid Creditor. There is nothing indicating that Debtor cannot increase the Plan payment by~~

~~$17.03 a month (plus the Trustee's fee on that amount), now that the court, and not Creditor, has identified that $17.03 a month shortfall.~~

~~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 the Bank of New York Mellon FKA The Bank of New York as Trustee for the certificate holders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-13 as serviced by NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is **xxxxxxx** , and the proposed Chapter 13 Plan is **xxxxxxx** confirmed.

9.	**25-21538-E-13** **DPC-1**	**MATTHEW DEL REAL** **Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-22-25 [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 (*pro se*), and Office of the United States Trustee on May 22, 2025. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Matthew Brian Del Real's ("Debtor") schedules contain missing or inaccurate information.

2. The Plan fails to state any specific amount of plan payments. *Id.* at 2:20-24.

3. Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. §1325(a)(4.) The Debtor's non-exempt equity totals $674,548.00 and the Debtor is proposing a 0% dividend to unsecured creditors. *Id.* at 2:25-28.

4. Debtor has not provided 11 U.S.C. § 521 documents, including tax returns and pay advices. *Id.* at 3:4-14.

5. Debtor failed to submit proof of his social security number, and a copy of a government issued picture identification to the Trustee before the First

Meeting of Creditors held on May 15, 2025, as required pursuant to FRBP 4002(b)(1)(A) and (B). *Id.* at 3:15-21.

6. Debtor failed to provide business documents in response to Schedule I. *Id.* at 3:22-4:2.

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

DISCUSSION

Inaccurate or Missing Information

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

Liquidation Analysis

Trustee argues that Debtor fails a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." Here, General unsecured creditors will receive a 0% distribution, but Trustee estimates Debtor has $674,548.00 in non-exempt equity in assets of the estate.

Failure to Provide Pay Stubs / Pay Advices

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). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Tax Returns

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

Failure to Authenticate Identification Prior to Meeting of Creditors

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

> (1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:
>
> > (A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and
> >
> > (B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause to sustain the objection.

Failure to File Business Documents Required by Schedule I

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

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.

10. 21-23539-E-13 DPC-5 | **DEREK WOLF** **Peter Macaluso** | **CONTINUED MOTION TO DISMISS CASE** **4-16-25 [360]**

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 April 16, 2025. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxxxx.

June 10, 2025 Hearing

The court continued the hearing on the Motion to be heard in conjunction with Creditor's Motion to Dismiss. The court directed counsel for U.S. Bank NA, Trustee, and counsel for Debtor to meet and confer to identify the amount remaining to be paid on the loan, the monthly payment amount, the interest rate, and whether there are any arrearages due - when pre-petition or post-petition. Further, Parties should be prepared to tell the court whether they agree on the forgoing, and if not, the specific items to which they disagree.

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 L Wolf ("Debtor"), is delinquent $42,033.93 in plan payments. Debtor will need to have paid $45,512.77 to become current by the hearing date. Mot. 1:19-22, Docket 360.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 362.

DEBTOR'S RESPONSE

Debtor filed a Response on May 21, 2025. Docket 367. Debtor states the delinquency is only $2,672.66. Debtor's counsel informs the court he is unable to contact Debtor and requests a continuance to allow Debtor to appear.

In the Response, Debtor's counsel states that 42 Class 1 Claim payment of $783.99 have come due, for a total amount of $32,927.58. Response, ¶ 4; Dckt. 367. Debtor then states that the Trustee's fee on the $32,927.58 is $2,634.21. *Id.*; ¶ 5.

It is then stated that the post-petition arrearage is only $2,672.66. *Id.*; ¶ 8. It does not state what payments have been made and how the $2,627.66 arrearage is computed.

DISCUSSION
Delinquent

According to Trustee, Debtor is $42,033.93 delinquent in plan payments, which represents multiple months of the $1,739.42 plan payment. Debtor states the delinquency is only $2,672.66; however, Debtor is delinquent in either situation. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor states his pre-petition arrearage on his mortgage loan has been cured, so it raises the question of what is there left to do in this case.

At the hearing, counsel for Debtor and counsel for U.S. Bank National Association, Trustee, engaged in a protracted disagreement over simply stating the current principal balance, the interest rate, the monthly payment amounts, and whether there was any arrearages. In the U.S. Bank Motion to Dismiss, as well as it pleading in support of the Trustee's Motion to Dismiss, the Bank asserts that the "pre-petition arrearage" has been cured. In the support pleading and the Motion to Dismiss, the Bank makes no mention to whether it is asserting a post-petition arrearage. When asked, counsel for U.S. Bank could not answer the court's question as to whether the Bank was asserting there was a post-petition arrearage. The court noted that it appeared that the Bank's pleadings were carefully drafted to make it appeared that the Bank was stating that there were no arrearages, but carefully held back an ability to immediately upon dismissal of the case to assert a post-petition default and pounce of a nonjudicial foreclosure sale.

The court continues the hearing to 2:00 p.m. on June 10, 2025, to be heard in conjunction with the hearing on the Motion to Dismiss filed by U.S. Bank, National Association, Trustee.

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**.

11. 21-23539-E-13 TPL-1 | **DEREK WOLF** Peter Macaluso | **MOTION TO DISMISS CASE** 5-12-25 [364]

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 May 12, 2025. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxxxx.

U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Creditor"), seeks dismissal of the case on the basis that:

1. The case should be dismissed pursuant to 11 U.S.C. § 305(a). The debtor, Derek L Wolf ("Debtor"), will be better off financially because dismissal of the bankruptcy will result in a lower monthly payment obligation. Mot. 3:7-9. The monthly post-petition payment to U.S. Bank is only $783.99.

2. The confirmed plan payments are for post-petition amounts only, as the pre-petition arrearage has been cured. *Id.* at 3:10-11.

3. The purpose for which Debtor sought bankruptcy, to prevent non-judicial foreclosure, is no longer a concern, given the pre-petition arrearage has been cured. *Id.* at 4:4-5.

4. Finally, this Chapter 13 proceeding is unusual in the sense that only one creditor—U.S. Bank—is being paid through the confirmed plan, and the pre-petition arrearage is cured. Given U.S. Bank is the only creditor, there is no concern of a distribution of assets between creditors. *Id.* at 4:16-18

DEBTOR'S RESPONSE

Debtor filed a Response on May 21, 2025. Docket 366. Debtor states the delinquency is only $2,672.66. Debtor's counsel informs the court he is unable to contact Debtor and requests a continuance to allow Debtor to appear.

In the Response, Debtor's counsel states that 42 Class 1 Claim payment of $783.99 have come due, for a total amount of $32,927.58. Response, ¶ 4; Dckt. 367. Debtor then states that the Trustee's fee on the $32,927.58 is $2,634.21. *Id*.; ¶ 5.

It is then stated that the post-petition arrearage is only $2,672.66. *Id*.; ¶ 8. It does not state what payments have been made and how the $2,627.66 arrearage is computed.

CREDITOR'S REPLY

Creditor filed a Reply on June 3, 2025, arguing none of its arguments have been rebutted. Docket 368. Creditor notes how matters in this case have been continued repeatedly with Debtor only delaying the process. *Id.* at 2:14-24.

DISCUSSION

11 U.S.C. § 305(a) states:

> (a)The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
>
> > (1)the interests of creditors and the debtor would be better served by such dismissal or suspension; or
> >
> > (2)
> >
> > > (A)a petition under section 1515 for recognition of a foreign proceeding has been granted; and
> > >
> > > (B)the purposes of chapter 15 of this title would be best served by such dismissal or suspension.

Collier's Treatise states regarding 11 U.S.C. § 305(a):

> Relief under section 305(a)(1) is proper only if the interests of both the "creditors and the debtor" would be "better served" by dismissal or suspension. If dismissal or suspension is not in the interest of the debtor, relief under section 305(a)(1) is inappropriate. The moving party bears the burden to demonstrate that dismissal or suspension benefits the debtor and its creditors. The Bankruptcy Appellate Panel for the Ninth Circuit has formulated the proper section 305(a)(1) analysis as follows:
>
> > As the statutory language and legislative history demonstrate, the test under section 305(a) is not whether dismissal would give rise to a substantial prejudice to the debtor. Nor is the test whether a balancing process favors dismissal. Rather, the test is whether both the debtor and the creditors would be "better served" by a dismissal.

> Because of this requirement, few fact patterns fall within section 305(a). Accordingly, parties who wish to seek dismissal of a case based primarily on the debtor's misconduct or bad faith should invoke, in most instances, the dismissal provisions contained in the relevant chapter under which the case was filed.

2 COLLIER ON BANKRUPTCY ¶ 305.02[1].

In this case, Creditor makes the interesting argument that both parties are better served by dismissal, Debtor being better served as his monthly payment will be lower, and Creditor not having to appear at hearings and incur expense. However, Creditor does not discuss the potential post-petition delinquency. The Parties were directed to appear at this hearing and squarely discuss that issue. 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 Dismiss the Chapter 13 case filed by U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust ("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** .

12. 23-23959-E-13 CRG-2 | **LASHUNDA PHILLIPS** / **Carl Gustafson** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BANKERS HEALTHCARE GROUP, LLC 5-13-25 [100]**

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, Plaintiffs, and all creditors and parties in interest on May 13, 2025. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is granted.

Plaintiffs Lashunda Kelly Phillips and Robert Phillips, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Bankers Healthcare Group, LLC ("Defendant"). The claims and disputes to be resolved by the proposed settlement involve the adversary proceeding, no. 24-02176, where Movant alleged Defendant violated the automatic stay.

Movant and Defendant have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 103):

1. Defendant agrees to pay Plaintiffs the total sum of $53,500.00 within 5 days of April 24, 2025.

2. The adversary proceeding will be dismissed with prejudice upon payment.

3. The Defendant will dismiss its state-court complaint filed in the Supreme Court of the State of New York, Onondaga County (Index No. 005288/2024) styled Bankers Healthcare Group, LLC v. Robert W Phillips (the "State-Court Complaint") within five (5) business days of April 24, 2025.

4. Each side will bear its own costs unless otherwise ordered by the Court.

5. Plaintiffs waive all further claims related to the allegations set forth in the adversary complaint.

Mot. 2:14-22.

The proposed distribution of the settlement funds is as follows:

1. Total Settlement Amount: $53,500.00;

2. Amount to Plaintiffs for funds garnished from Co-Plaintiff Mr. Phillips post-petition: $6,708.45;

3. Attorney's Fees to Lincoln Law: $40,000;

4. Costs Advanced by Lincoln Law: $1,661.05;

5. Net Proceeds Payable to Plaintiffs: $5,130.50.

Mot. 2:1-6.

The court continued this hearing to June 10, 2025 by Order. Docket 106. In its Order, the court authorized Movant to include the request for allowance of legal fees and expenses to be joined with the request for approval of the Compromise. *Id.* at 2:18-22. In that same Order, the court posed the following two questions to Movant:

A. Whether the payment of the monies for the post-petition garnished funds are property of the Bankruptcy Estate (11 U.S.C. § 1306) and must be addressed through a modification to the Bankruptcy Plan.

B. Whether the Net Proceeds labeled as payable to the Debtor and non-debtor Spouse are property of the Bankruptcy Estate and must be addressed through a modification to the Bankruptcy Plan.

Order 2:13-17, Docket 106. On May 27, 2025, Debtor filed a Supplemental Brief answering these questions. Debtor states:

1. Plaintiffs acknowledge that under 11 U.S.C. § 1306(a), property of the estate includes all property specified in § 541 and also includes earnings and property acquired post-petition but before the case is closed, dismissed, or converted. Accordingly, the $53,500.00 received in settlement constitutes

property of the estate. However, just because the funds are property of the estate does not mean the funds constitute disposable income and should be contributed to the Plan. Suppl. Brief 2:7-10.

2. The portion of the settlement, $6,708.45, that reimburses Plaintiffs for wages garnished post-petition is, by its nature, restorative. The garnishment violated the automatic stay and deprived the Debtors of post-petition wages that would otherwise have been used for their household expenses. Recovery of those funds merely restores the Debtors to the position they would have been in absent the violation. *Id.* at 2:15-18.

3. Similarly, the portion of the settlement, $5,130.50, partially reimburses the Plaintiffs for missed work due to the violations of the stay. This represents time the Plaintiffs would have been paid and it came out of appropriate living expenses. This is also restorative in nature. *Id.* at 2:19-3:1.

4. Actual damages under 11 U.S.C. § 362(k), including return of post-petition garnished wages, are not windfalls to the debtor but necessary remedies to address unlawful conduct. These returned wages are not "new" income. They are wages already anticipated in the Debtor's budget wrongfully seized post-petition and subsequently returned. *Id.* at 3:2-4.

5. Courts have drawn a clear distinction between property of the estate and disposable income. While all post-petition earnings and assets may become estate property under § 1306, only "disposable income"—that is, income not reasonably necessary for the support of the debtor or dependents—must be devoted to plan payments. 11 U.S.C. § 1325(b)(2). Suppl. Brief 3:16-19.

DISCUSSION

The court finds Movant's arguments persuasive. The nature of the settlement funds is restorative, bringing the Movant back to their original position. The court finds settlement funds do not constitute a windfall that would be calculated in monthly disposable income. Indeed, disposable income is defined as:

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

> (ii)for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and
>
> (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

11 U.S.C. § 1325(b)(2). "Current monthly income" is then defined as:

> (A) the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—
>
> (i)the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or
>
> (ii)the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and
>
> (B)
>
> (i)includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent). . .

11 U.S.C. § 101(10A). Of note, damages for violation of the stay and wage garnishments are not included in these definitions. Therefore, the court authorizes Movant to retain the settlement funds in the amount of $53,500.00 without need to modify the Plan and contribute any amounts toward the Plan.

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

While Plaintiffs have strong claims, litigation risk and evidentiary issues could impact recovery. Also, Defendant raised several defenses including whether the debt was a consumer debt, whether the plan controls the collection and repayment of the debt, whether Defendant acted with requisite intent, whether the Defendant suffered actual damages, and whether the control exercised by the Debtor was sufficient to bring the claim in the community. Mot. 3:24-4:7.

Expense, Inconvenience, and Delay of Continued Litigation

The matter involves overlapping stay, co-debtor stay, and contempt issues that would require further hearings and potential appeals. Despite multiple hearings on the production of discovery, these issues still remain unresolved and would necessitate further litigation before a trial on the merits of the adversary proceeding. *Id.* at 4:9-12. Settlement avoids additional legal fees and months of delay.

Paramount Interest of Creditors

The proposed recovery and distribution will not adversely affect creditors and provides finality. The recovery will make the Plaintiffs whole by compensating them for money collected post-petition, payment of attorney's fees and costs, lost work for the one year this adversary was pending, and their pain and suffering. The plan base will not be affected by the settlement of this proceeding and any additional funds to the Plaintiffs will make their future plan payments more feasible and affordable. This benefits the creditors, estate and the Debtor in the underlying bankruptcy. *Id.* at 4:20-5:2.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The Compromise will enable all Parties to walk away from what could be lengthy and expensive litigation and creditors are not adversely affected by this outcome. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Plaintiffs Lashunda Kelly Phillips and Robert Phillips, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Bankers Healthcare Group, LLC ("Defendant") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 103).

IT IS FURTHER ORDERED that:

1. Bankers Healthcare Group, LLC shall to pay Plaintiffs Lashunda Kelly Phillips and Robert Phillips the total sum of $53,500.00 within 5 days of April 24, 2025.

2. The adversary proceeding, no. 24-02176, shall be dismissed with prejudice upon payment.

3. Bankers Healthcare Group, LLC shall dismiss its state-court complaint filed in the Supreme Court of the State of New York, Onondaga County (Index No. 005288/2024) styled Bankers Healthcare Group, LLC v. Robert W Phillips (the "State-Court Complaint") within five (5) business days of April 24, 2025.

4. Each side will bear its own costs.

5. Plaintiffs Lashunda Kelly Phillips and Robert Phillips waive all further claims related to the allegations set forth in the adversary complaint.

13. 25-21560-E-13 JTK-1 | **HARRY CHAFFEE** (Pro Se) | **OBJECTION TO CONFIRMATION OF PLAN BY KAMALJIT S. TAKHAR 5-20-25 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on May 20, 2025. 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 ----------.

The Objection to Confirmation of Plan is sustained.

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 and corresponding Motion to Confirm on June 3 and 4, 2025. Dockets 34-35. 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 Kamaljit S. Takhar ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

14. 25-21565-E-13 KMM-1 | **RAQUEL BURKE** **Gabriel Liberman** | **OBJECTION TO CONFIRMATION OF PLAN BY HARLEY-DAVIDSON 5-14-25 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 14, 2025. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Harley-Davidson ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Raquel Helen Burke's ("Debtor") Plan fails to provide for the curing of the default on Creditor's claim. According to the Debtor's plan, Debtor has not provided for the arrears on Creditor's claim in any amount. Debtor must provide for the arrears on the Debtor's loan with Creditor in the amount of $11,553.64. Obj. 2:7-11.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $11,553.64 in pre-petition arrearage. POC 4-1. The Plan does not propose to cure that arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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

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

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

15. 24-21068-E-13 DESIREE LEWIS

RMP-2

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS, INC
5-14-24 [68]

Item 15 thru 16

Debtor's Atty: Sunita Kapoor

Notes:
Continued from 3/11/25 for a status and scheduling conference.

The Status Conference is xxxxxxx

JUNE 10, 2025 HEARING

On June 4, 2025, Debtor Desiree Lewis sent a letter to the court, which has been filed as a request for continuance, stating that "Due to unusual circumstances, I am representing myself as pro se debtor and request a continuance of the confirmation hearing scheduled for June 10, 2025 at 2pm." Motion; Dckt. 187. Debtor further states that she is working on a detailed reply to Creditor's Opposition and will include why Creditor's lien and asserted debt is void.

Debtor is not in pro se in this Case, but her attorney of record is Sunita Kapoor, Esq. The court has not issued any order authorizing Ms. Kapoor to withdraw as counsel for Debtor and has not signed an order substituting the Debtor in *pro se* in place of Ms. Kapoor. An order of the court is required for either when the Debtor will be left in *pro se*. U.S. District Court for the Eastern District of California Local Rule 182(d), Local Bankruptcy Rule 2017-1(e).

At the Status Conference on the Objection to Confirmation, **xxxxxxx**

March 11, 2025 Hearing

The court issued an Order continuing this Opposition / Objection to a time after the Parties could complete the evidentiary hearing on the related Motion to Value. The court held the evidentiary hearing on November 12, 2024, and issued its ruling on November 20, 2024, denying the Motion to Value. Dockets 137, 138.

A review of the Docket on March 6, 2025 reveals nothing new has been filed under this Docket Control Number.

Counsel for Debtor and counsel for Creditor had a spirited exchange concerning the Opposition to the Plan. Counsel for Debtor reported that an Objection to Creditor's Claim was being filed, Debtor believing that the secured claim is now time barred.

Clearly, that fundamental issue needs to be resolved before the Plan can be confirmed, or such litigation and adequate protection made part of the Plan.

The hearing on the Objection /Opposition to Debtor's Motion to Confirm the First Amended Chapter 13 Plan is continued to 2:00 p.m. on June 10, 2025, for status and scheduling conference.

REVIEW OF THE OBJECTION

Real Time Resolutions, Inc. as agent for RRA CP Opportunity Trust 2 ("Creditor") holding a secured claim opposes confirmation of the second amended Plan on the basis that:

1. Creditor is not adequately protected. Obj. 1:27, Docket 68. Creditor has a security interest in Debtor's real property, commonly known as 4822 Mission Beach Ct., Elk Grove, CA 95758-5122 ("Property"), which Debtor has listed as her primary residence. Mem. 1:26-28, Docket 70; *see* Petition pt. 1, par. 5, Docket 1. Debtor's Schedule A lists the value of the residence as $326,000.00 on the date of filing, with Schedule D stating that the senior lienholder, Select Portfolio Servicing, was equally owned $326,000.00 on the date of filing. *Id.* at 1:28-2:2. *See* Docket 17, 18.

   Creditor obtained a Broker Price Opinion valuing the property at $560,000.00, which can be used to rebut the Debtor's valuation. *Id.* at 2:3-4. *see* Decl., Docket 44.

On the filing date, Creditor was owed a total claim of $203,473.33 on the matured loan. Mem. 1:26-28, Docket 70; *see* Decl. Docket 44. Around May 10, 2024, Debtor filed a Second Amended Chapter 13 Plan, which fails to provide for Creditor, stating Creditor's lien will be reduced to $0.00 based on the value of the collateral under Class 2(C). *Id.* at 2:21-24. *See* Plan, Docket 65. Debtor has not provided a proper valuation to support this reduction, and Creditor believes equity in the property exists above the amount owed to the senior lienholder. *Id.* at 2:24-26.

2. The Plan is not feasible and cannot be made feasible. The Creditor states that the Debtor needs a present and future ability to make payments under the Plan pursuant to 11 U.S.C. § 1325(a)(6), as mere hope of being able to make payments is not sufficient when the Plan is not feasible. *Id.* at 1:28-2:4.
3. Debtor appears to be incapable of reorganization. The Creditor alleges that the Debtor must demonstrate an ability to make all Plan payments in order for the court to confirm the plan. *Id.* at 2:1.

Real Time Resolutions, Inc., as agent for RRA CP Opportunity Trust 2,submits the Memorandum of Points and Authorities to authenticate the facts alleged in the Objection. Mem., Docket 70. Creditor also filed a Declaration in support of its Objection to Confirmation of Debtor's previous plan. Decl., Docket 44.

DISCUSSION

Creditor's objections are well-taken.

Lack of Adequate Protection Under the Plan

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See, e.g.*, *Diaz v. Davis (In re Digimarc Corp. Derivative Litigation)*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("[a]ccordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act."). Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325. Several bankruptcy courts that have considered the issue, however, have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral, here, the Property. *See, e.g.*, *In re Sanchez*, 384 B.R. 574, 576 (Bankr. D. Or. 2008); *Royals v. Massey (In re Denton)*, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

In re Trejos holds that "[w]ith respect to secured creditors, § 1325(a)(5) requires generally that a chapter 13 plan must provide one of three alternative treatments: (1) treatment to which the secured creditor consents; (2) retention of collateral by the debtor with a stream of payments to the secured creditor; or (3) surrender of the collateral to the secured creditor." 374 B.R. 210, 214 (B.A.P. 9th Cir. 2007).

Debtor's Plan proposes none of these options regarding Creditor's claim of $203,473.33 on the matured loan, instead arguing that the Motion to Value will reduce Creditor's secured claim to $0. Mem. 1:26-28, Docket 70; *see* Decl. Docket 44 . In regard to the Motion to Value, Creditor has submitted a Declaration and

appraisal of a licensed real estate appraiser, Scott Burton, asserting the Property is valued at $545,000. Docket 89. This valuation leaves equity in the Property for Creditor's secured claim. In the absence of any countervailing evidence, the court accepts Creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II) and sustains the Objection on that basis.

Lack of Feasibility

Under 11 U.S.C. § 1325(a)(6) the Court shall confirm the Plan only if the Debtor demonstrates an ability to make all payments under the Plan and otherwise perform on the provisions of the Plan. Debtor's monthly disposable income is listed as $898.83. Am. Schedule J, Docket 56. Of this amount, the Debtor only proposes to pay $500.00 per month into the Plan for 36 months. Am. Plan § 2.01, Docket 65. In order to pay Creditor's fully-matured lien, if Debtor does not succeed on the Motion to Value, Debtor must pay an additional $5,652.04 into the Plan monthly (for a total of $203,473.33 in 36 months).

Here, the Creditor alleges that the Debtor uses the Plan solely as a vehicle to avoid payments to Creditor, which Creditor reasonably believes is partially or wholly secured by Debtor's primary residence. Mem. 3:21-23, Docket 70.

Debtor is Incapable of Reorganization

The burden is completely on Debtor to show reorganization is in prospect. 11 U.S.C. § 362(g); *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988). Under the standard set by the Supreme Court in *Timbers*, in order to establish that reorganization is in prospect, the Debtor has to demonstrate a "reasonable possibility of a successful reorganization within a reasonable time." *Id.* at 376. Debtor is required to do more than merely assert she can reorganize if only given the opportunity to meet the *Timbers* standard. *See e.g.*, *Am. State Bank v. Grand Sports, Inc.* (*In re Grand Sports, Inc.*), 86 B.R. 971, 975 (Bankr. N.D. Ill 1988).

Here, the Creditor alleges that the Debtor is unable to show that Creditor's lien can be avoided in the instant bankruptcy and is equally unable to pay Creditor's matured lien. Mem. 4:5-8, Docket 70. Debtor's Second Amended Chapter 13 Plan states Creditor's lien will be reduced to $0.00 based on the value of the collateral under Class 2(C). *Id.* at 2:21-24; *see* Plan, Docket 65. Debtor proposes no treatment for the Senior Lienholder in the event the Motion to Value is unsuccessful, and it is unclear if pre-petition arrears were owed to that creditor on the date of filing. *Id.*

There is a pending Motion to Value Creditor's Secured Claim. The court has continued the Motion to Confirm the First Amended Chapter 13 Plan to allow for the Motion to Value to be prosecuted.

The hearing on the Objection to Confirmation, which is deed to be an Opposition to Motion to Confirm the First Amended Chapter 13 Plan, is continued to 2:00 p.m. on September 10, 2024.

September 24, 2024 Hearing

The court continued the hearing on this Objection pending the resolution of the related Motion to Value. A review of the Docket on September 19, 2024 reveals that nothing new has been filed with the court under this Docket Control Number.

The hearing is continued to 2:00 p.m. on December 10, 2024, in light of the court having scheduled an evidentiary hearing on the Motion to Value Secured Claim.

16. 24-21068-E-13 DESIREE LEWIS

SK-2

CONTINUED STATUS CONFERENCE RE:
MOTION TO CONFIRM PLAN AND/OR MOTION FOR COMPENSATION FOR SUNITA KAPOOR, DEBTORS ATTORNEY(S)
5-10-24 [63]

Debtor's Atty: Sunita Kapoor

Notes:
Continued from 3/11/25 for a status and scheduling conference.

The Status Conference on the Motion to Confirm is xxxxxxx

JUNE 10, 2025 HEARING

On June 4, 2025, Debtor Desiree Lewis sent a letter to the court, which has been filed as a request for continuance, stating that "Due to unusual circumstances, I am representing myself as pro se debtor and request a continuance of the confirmation hearing scheduled for June 10, 2025 at 2pm." Motion; Dckt. 187. Debtor further states that she is working on a detailed reply to Creditor's Opposition and will include why Creditor's lien and asserted debt is void.

Debtor is not in pro se in this Case, but her attorney of record is Sunita Kapoor, Esq. The court has not issued any order authorizing Ms. Kapoor to withdraw as counsel for Debtor and has not signed an order substituting the Debtor in *pro se* in place of Ms. Kapoor. An order of the court is required for either when the Debtor will be left in *pro se*. U.S. District Court for the Eastern District of California Local Rule 182(d), Local Bankruptcy Rule 2017-1(e).

At the Status Conference on the Motion to Confirm, xxxxxxx

March 11, 2025 Hearing

The court issued an Order continuing this Opposition / Objection to a time after the Parties could complete the evidentiary hearing on the related Motion to Value. The court held the evidentiary hearing on November 12, 2024, and issued its ruling on November 20, 2024, denying the Motion to Value. Dockets 137, 138.

Trustee filed a Status Report on February 25, 2025. Docket 150. Trustee states:

1. Debtor is current under the terms of the Plan. *Id.* at 1:21-23.

2. Trustee believes his only outstanding issue in confirming this Plan was the attorney's fees issue, but recommends the fees be granted. *Id.* at 1:24-26.

3. Schedule I and J may require an update where the original Schedule I and J filed on March 31, 2024, indicate Debtor may have been seeking better employment. Similarly, the budget indicates it depends on a contribution from Debtor's son, but Debtor's son has not filed a Declaration in support indicating his ability to make the contribution. *Id.* at 1:27-2:3.

A review of the Docket on March 6, 2025 reveals nothing new has been filed under this Docket Control Number.

Counsel for Debtor and counsel for Creditor had a spirited exchange concerning the Opposition to the Plan. Counsel for Debtor reported that an Objection to Creditor's Claim was being filed, Debtor believing that the secured claim is now time barred.

Clearly, that fundamental issue needs to be resolved before the Plan can be confirmed, or such litigation and adequate protection made part of the Plan.

The hearing on the Objection /Opposition to Debtor's Motion to Confirm the First Amended Chapter 13 Plan is continued to 2:00 p.m. on June 10, 2025, for status and scheduling conference.

At the Status Conference on the Motion to Confirm, **xxxxxxx**

REVIEW OF THE MOTION

Debtor Desiree Rebecca Lewis ("Debtor") seeks confirmation of the Amended Plan. The Amended Plan provides for 36 monthly payments of $500 each. Amended Plan, Docket 65. 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 June 3, 2024. Docket 98. Trustee opposes confirmation of the Plan on the basis that:

A. There is a slight delinquency under the terms of the Amended Plan in the amount of $98, likely due to increasing the plan payment from $402 to $500. *Id.* at 2:5-14.

B. The Plan has not been signed by the Debtor in violation of Local Bankruptcy Rule 9004-1(c)(1)(B). *Id.* at 2:16-23.

C. Plan relies on the accompanying Motion to Value. *Id.* at 2:24-28.

D. Debtor states all assets are exempt, but the Trustee does not agree. *Id.* at 3:1-10.

E. There are issues with the attorney's fees where Debtor's attorney accepted $3,000 as a flat rate prior to filing, which may be in violation of Local Bankruptcy Rule 2016-1(c). *Id.* at 3:11-16.

CREDITOR'S OPPOSITION

Real Time Resolutions ("Creditor") holding a secured claim filed an Opposition on May 17, 2024. Docket 84. Creditor opposes confirmation of the Plan on the basis that:

1. Creditor is not adequately protected. Creditor has a second position deed of trust on Debtor's real property, commonly known as 4822 Mission Beach Ct., Elk Grove, CA 95758-5122 ("Property"), which Debtor has listed as her primary residence. Debtor's Schedule A lists the value of the residence as $326,000.00 on the date of filing, with Schedule D stating that the senior lienholder, Select Portfolio Servicing, was equally owned $326,000.00 on the date of filing.

2. On the filing date, Creditor was owed a total claim of $203,473.33 on the matured loan. Around May 10, 2024, Debtor filed the Second Amended Chapter 13 Plan, which fails to provide for Creditor, stating Creditor's lien will be reduced to $0.00 based on the value of the collateral under Class 2(C). *See* Plan, Docket 65. Debtor's monthly disposable income is $898.83, of which Debtor only proposes to pay $500.00 per month into the Plan for 36 months. In order to pay Creditor's fully-matured lien, Debtor must pay an additional $5,652.04 into the Plan monthly ($203,473.33/36 months). Opp'n 3:25-28, Docket 84.

3. Debtor appears to be incapable of reorganization. Debtor must show it can avoid Creditor's lien to make this Plan feasible, but Debtor is unable to do so. *Id.* at 4:2-13.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $98 delinquent in plan payments, which represents less than a month of the $500 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Signature

Local Bankruptcy Rule 9004-1(c) provides:

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

Trustee alleges that Debtor has not signed the Plan, in violation of this rule. The Plan cannot be confirmed without Debtor's signature.

Debtor's Reliance on Motion to Value Secured Claim

The dark horse in Debtor's Plan is that it relies on the court valuing the secured claim of Creditor. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

PREVIOUS CONTINUANCE

The court by prior order has continued the hearing on this Motion to Confirm the First Amended Chapter 13 Plan to 2:00 p.m. on September 24, 2024. The Motion also requests that the court approve a $3,000 no-look (fixed) fee for Debtor's counsel, all of which has been paid in full prior to confirmation. The orders confirming Chapter 13 Plan include the documentation that no-look fees for a debtor's counsel as provided in Local Bankruptcy Rule 2016-1(c)(1) are authorized.

However, Local Bankruptcy Rule 2016(c)(3), (4) require that no more than 25% of the no-look fee may be paid to counsel up front, and that 75% of the fee is then amortized on the term of the Plan.

The Local Rules relating to Chapter 13 debtor attorney's fees were amended in 2023 and the current 25% and 75% requirements put into place. Additionally, the fixed fee agreed to by the attorney is the fee for performing all of the legal work in the case, and an attorney agreeing to a fixed fee cannot seek additional fees and costs for substantial and unanticipated legal services that were allowed in the prior version of Local Bankruptcy Rule 2016-1.

Debtor and Debtor's counsel may well want to readdress the no-look fee in this case and consider whether such fee is reasonable, or if there is possible substantial work that may be necessary in the case that counsel not have a set no-look fee, but proceed with the "traditional" route in seeking interim and final approval of fees pursuant to 11 U.S.C. §§ 330, 331. L.B.R. 2016-1(b).

September 24, 2024 Hearing

The court continued the hearing on this Motion pending the resolution of the related Motion to Value. A review of the Docket on September 19, 2024 reveals that nothing new has been filed with the court under this Docket Control Number.

The hearing is continued to 2:00 p.m. on December 10, 2024, in light of the court having scheduled an evidentiary hearing on the Motion to Value Secured Claim.

March 11, 2025 Hearing

The court issued an Order continuing this Opposition / Objection to a time after the Parties could complete the evidentiary hearing on the related Motion to Value. The court held the evidentiary hearing on November 12, 2024, and issued its ruling on November 20, 2024, denying the Motion to Value. Dockets 137, 138.

Trustee filed a Status Report on February 25, 2025. Docket 150. Trustee states:

1. Debtor is current under the terms of the Plan. *Id.* at 1:21-23.

2. Trustee believes his only outstanding issue in confirming this Plan was the attorney's fees issue, but recommends the fees be granted. *Id.* at 1:24-26.

3. Schedule I and J may require an update where the original Schedule I and J filed on March 31, 2024, indicate Debtor may have been seeking better employment. Similarly, the budget indicates it depends on a contribution from Debtor's son, but Debtor's son has not filed a Declaration in support indicating his ability to make the contribution. *Id.* at 1:27-2:3.

A review of the Docket on March 6, 2025 reveals nothing new has been filed under this Docket Control Number.

Counsel for Debtor and counsel for Creditor had a spirited exchange concerning the Opposition to the Plan. Counsel for Debtor reported that an Objection to Creditor's Claim was being filed, Debtor believing that the secured claim is now time barred.

Clearly, that fundamental issue needs to be resolved before the Plan can be confirmed, or such litigation and adequate protection made part of the Plan.

The hearing on the Objection /Opposition to Debtor's Motion to Confirm the First Amended Chapter 13 Plan is continued to 2:00 p.m. on June 10, 2025, for status and scheduling conference.

17. 24-25872-E-13 DPC-1 | **MARSHAUN TATE** / **James Keenan** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **2-12-25 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 12, 2025. 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.

The Objection to Confirmation of Plan is xxxxxxx.

June 10, 2025 Hearing

The Objection was continued as Parties agreed to continue the hearing to allow Debtor additional time to document that the tax returns have been filed. As of the court's review of the Docket on June 5, 2025, nothing new has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

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

1. Debtor Marshaun Keith Tate ("Debtor") admitted at the First Meeting of Creditors, held on February 6, 2025, that he has not filed 2022 and 2023 tax

returns, but was doing so in the next few days. The Trustee requested the Debtor upload the returns to the secure website at www.bkdocs.us once they have been filed. To date, the Debtor has failed to provide a copy of either return. Obj. 2:1-7, Docket 23.

2. Debtor's Plan relies on the Motion to Value Collateral of Ally, which is set for hearing on March 11, 2025, the same day as this motion. If the motion to value is not granted, Debtor's Plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation. *Id.* at 2:8-11.

   a. The court would note that the hearing on the Motion to Value is actually set for March 25, 2025. Notice, Docket 19.

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

DISCUSSION

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2022 and 2023 tax years have not been filed. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Bank. The hearing on that Motion is not until March 25, 2025. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

In light of the pending Motion to Value and the ongoing discussions between Debtor and Creditor, the Parties agreed to continue the hearing on the Objection.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on April 8, 2025.

April 8, 2025 Hearing

The Objection was continued in light of the pending Motion to Value. That Motion was heard and granted on March 25, 2025. Docket 67. On April 1, 2025, Trustee filed a Status Report with the court. Docket 38. Trustee states:

1. Tax returns may still not be filed, (IRS Claim 7).

2. The motion to value has been granted, (DN 37).

3. Debtor has paid $1,428.00 and is now delinquent $1,422.00.

At the hearing, counsel for the Debtor reported that the tax returns have been filed, the motion to value has been granted, and the Debtor should be within $428 of being current.

Trustee's counsel reported that the IRS Claim has been amended, but that does not document the filing of the returns.

The Parties agreed to continue the hearing to allow Debtor additional time to document that the tax returns has been filed.

The hearing on the Objection to Confirmation of Plan is continue to 2:00 p.m. on June 10, 2025.

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

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

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

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

18. 25-21376-E-13 DPC-1 | **REUBEN LEWIS** / **Julius Cherry** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **5-7-25 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 7, 2025. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Reuben Darrell Lewis ("Debtor") is $2,000.00 delinquent in Plan payments to the Trustee. Obj. 2:1-3.

2. The Plan filed on March 27, 2025, does not contain the Debtor's, or the Debtor's Attorney, original wet signature nor an electronic /s/ signature. *Id.* at 2:8-14.

3. Plan does not work mathematically where it estimates priority claims in the amount of $0, but the IRS filed a priority claim of $82,545.74. *Id.* at 2:15-3:2.

4. Debtor's tax returns included deductions for a business. When Debtor was questioned about this business, he admitted it was not his business but it belonged to his accountant. *Id.* at 3:3-12.

5. Debtor is improperly claiming an exemption in the amount of $150 for Peer-to-Peer Accounts including CashApp, ApplePay, Venmo, Paypal and like accounts under C.C.P. §704.070. There is no evidence this amount is traceable to earnings paid within the 30-day period prior to filing the case or if that amount is the Debtor's wage earnings. *Id.* at 3:13-24.

6. The Plan is not in Debtor's best efforts. *Id.* at 3:3:25-4:3.

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

DISCUSSION

Delinquency

Debtor is $2,000.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Signature

Local Bankruptcy Rule 9004-1(c) provides:

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

The Plan is not signed in violation of this Rule.

Insufficient Plan Payments / Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Plan estimates priority claims in the amount of $0, but the IRS filed a priority claim of $82,545.74. The proposed payments are not sufficient to cover this priority claim Thus, the Plan may not be confirmed.

Failure to Provide Disposable Income / Not Best Effort

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period

beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Here, Debtor is presenting conflicting testimony when compared to his tax records regarding Debtor's business. Debtor is also attempting to claim an exemption of $150 in funds pursuant to C.C.P. §704.070 without providing evidence that the funds are employment income. The Plan has not been proposed in Debtor's best efforts.

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

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

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

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

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

19. 23-24588-E-13 TBG-2 — WENDI/MELISSA PRYDE — Stephan Brown — MOTION TO MODIFY PLAN — 5-6-25 [54]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 6, 2025. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Wendi Marie Pryde and Melissa Diane Pryde ("Debtor") seeks confirmation of the Modified Plan to reduce plan payments due to an increase in living expenses caused by inflation. Declaration ¶ 3, Docket 57. The Modified Plan provides plan payments of $1,730.21 per month for 6 months (January 2024 through June 2024); and $2,631.33 per month for 11 months (July 2024 through May 2025); and $1,439.00 per month for the remaining 43 months beginning with the June 2025 payment. Modified Plan, Docket 55. 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 27, 2025. Docket 60. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent $885.25 under the terms of the proposed modified plan. Opp'n 1:26-27.

    a. Debtor filed a Reply on June 3, 2025. Docket 65. Debtor responds to this point and states Debtor has cured the delinquency as of May 29, 2025. Reply at 1:25-27.

2. No supplemental Schedules I have been filed to support this motion so the Court may find the debtor has not proven they can afford the payments. Opp'n 2:3-6.

   a. On June 2, 2025, Debtor filed a Supplemental Schedule I and J. Reply at 2:1-3.

3. Debtor's Schedules J filed are marked amended rather than supplemental, indicating any changes go back to the beginning of the case rather than from this point forward. Opp'n 2:10-13.

   a. On June 2, 2025, Debtor filed a Supplemental Schedule I and J. Reply at 2:1-3.

4. Debtor's propose to reduce the percentage to unsecured Creditors from 47% under the confirmed plan to 1.50%. The Trustee calculates that the proposed plan will pay unsecured creditors approximately 16.969%. The Trustee requests that the percentage to unsecured creditors be clarified in the Order Confirming to no less than 15%. *Id.* at 2:21-26.

   a. Debtor will adjust the percentage to unsecured Creditors to clarify in the Order Confirming to no less than 15%.

5. The modified plan section 3.06 changes the monthly administrative expenses from $97.92 to $500.00 each month. This does not comply with the Order Confirming Plan (DN 49, 8-11) where the attorney agrees to have his fees paid by the Trustee from plan payments in equal monthly installments over the term of the most recently confirmed Chapter 13 Plan. Opp'n 3:1-8.

   a. Debtor will clarify in the Order Confirming that the attorney's fees will remain the same and comply with the Order Confirming Plan. Reply 2:8-9.

DISCUSSION

It appears to the court this Plan is now ready for confirmation, Debtor actively working to resolve Trustee's points of opposition.

At the hearing, **xxxxxxx**

The Modified Plan, as amended, 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, Wendi Marie Pryde and Melissa Diane Pryde ("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 May 6, 2025, is confirmed as amended to clarify the amount to unsecured creditors and to clarify the amount Debtor's attorney will be paid. 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.~~

20. 24-24192-E-13 SMJ-2 | **CHRISTOPHER SMITH** | **MOTION TO MODIFY PLAN**
Scott Johnson | **4-22-25 [29]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 22, 2025. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Christopher John Smith ("Debtor") seeks confirmation of the Modified Plan d to remove future payments to Travis Credit Union for the Ford F450. The vehicle is too large to now be registered in the State of California, Debtor needs to surrender/trade in the vehicle as it is no longer in compliance in this state. Declaration ¶ 7, Docket 32. The Modified Plan provides for six monthly payments of $630 and then 54 monthly

payments of $380. Modified Plan, Docket 31. 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 27, 2025. Docket 39. Trustee opposes confirmation of the Plan on the basis that:

1. No supplemental Schedule I & J have been filed to support this motion so the Court may find the debtor has not proven they can afford the payments. Opp'n 1:24-27.

    a. Debtor filed a Reply on June 3, 2025. Docket 42. Debtor responds to this point and notes Debtor filed the Supplemental Schedules I and J on May 21, 2025. Docket 37.

2. Section 3.14 of the modified plan states the percent to unsecured creditor is 0%. The Trustee calculates that the plan will pay 17.652% to unsecured creditors over the life of the plan. The Trustee does not oppose that the percent to unsecured creditors be corrected in the Order Confirming Plan to state the total percentage to be paid over the life of the plan to 17.652%. Opp'n 2:3-8.

    a. Debtor is open to increasing the amount to unsecured creditors. Reply at 2:1-7.

3. Debtor's proposed plan payments need clarification, it appears Debtor is paid ahead. Opp'n 2:10-14.

    a. Debtor does not oppose inclusion in the order confirming a provision which corrects the total paid in amount. Debtor proposes to resolve this issue with an additional provision in the order confirming that states: "Debtor has paid a total of $4,740.00 through May 2025. Commencing June 2025, Debtor shall pay $380.00 for the remainder of the plan." Reply 2:8-15.

DISCUSSION

It appears to the court this Plan is now ready for confirmation, Debtor actively working to resolve Trustee's points of opposition.

At the hearing, **xxxxxxx**

The Modified Plan, as amended, 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, Christopher John Smith ("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, 2025, is confirmed as amended to clarify the amount that will be paid to unsecured creditors and the amount Debtor has paid into the Plan to date. 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.

21. 25-20794-E-13 DPC-1 | **DAVID LANG, Pro Se** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 4-23-25 [44]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on April 23, 2025. 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.

No opposition was stated at the hearing.

The Objection to Confirmation of Plan is xxxxxxx.

June 10, 2025 Hearing

The court continued the hearing on this Objection as counsel for Trustee suggested that the Trustee send out a notice of continued hearing and proposed plan amendments to all parties in interest. I light of the Debtor being in *pro se*, the Trustee believes that such a continuance and notice will work well given the circumstances of this Bankruptcy Case. A review of the Docket on June 5, 2025 reveals nothing new has been filed in the case.

The Trustee's Notice of Objection served on May 23, 2025, states the following amendments to be made to the Plan:

A. SACRAMENTO COUNTY shall be paid as a Class 2A claim to receive 18% interest pursuant to California Revenue & Taxation Code §4103.

B. Unsecured claims shall be paid no less than 100%.

C. The Trustee shows the plan will conclude within its original 36 month term or less where SACRAMENT COUNTY was scheduled for $2,244.24 but has no claim filed and the only unsecured claim filed was CITIBANK for $1,061.53

At the hearing, **xxxxxxx**

REVIEW OF MOTION

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

1. Debtor David Lang ("Debtor") has not provided Trustee with proof of social security number, proof of rental income, or a copy of the last filed federal tax return. Obj. 1:24-2:4.

2. Debtor is $468.31 delinquent in Plan payments to the Trustee. Debtor's monthly disposable income on the Schedule I and J is listed as a net negative ($166), so Debtor cannot afford plan payments. *Id.* at 2:5-17.

3. Debtor's Plan does not specify any specific creditor to be paid. *Id.* at 2:18-19.

4. There is missing and inaccurate information in the Schedules. *Id.* at 2:24-3:23.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 46.

DISCUSSION

Failure to Authenticate Identification
Prior to Meeting of Creditors

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause to sustain the objection.

Failure to Provide Tax Returns

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

Failure to File Business Documents Required by Schedule I

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

Delinquency

Debtor is $468.31 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Inaccurate or Missing Information

Debtor's Schedules I and J, Statement of financial Affairs, and Forms 122C-1 and 122C-2 contain outdated or inaccurate information. Moreover, the Plan is not filled out to direct trustee to make payments to any particular creditors. 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).

Counsel for the Trustee reports that the Social Security and other issues have been resolved. However, the payment of Debtor's secured property tax arrearages need to be provided for in Class 2 of the Plan. The Trustee suggested that the Trustee send out a notice of continued hearing and proposed plan amendments to all parties in interest. I light of the Debtor being in pro se, the Trustee believes that such a continuance and Trustee notice will work well given the circumstances of this Bankruptcy Case.

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 **xxxxxxx**.

22. 24-24598-E-13 PGM-2 | **WLODZIMIERZ LITWIN** | **Peter Macaluso** | **MOTION TO VACATE DISMISSAL OF CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7**
5-12-25 [100]

DEBTOR DISMISSED: 05/02/25

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on May 12, 2025. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Vacate is xxxxxxx.

MULTIPLE MOTIONS COMBINED INTO ONE MOTION

The court notes that this Motion attempts to join multiple claims for relief in one motion. The first being a Motion to Vacate order dismissing the case pursuant to Federal Rules of Civil Procedure 59 and 60. The second motion is requesting the court grant this case a conversion to one under Chapter 7 pursuant to 11 U.S.C. § 1307.

Though parties may join multiple claims in an adversary proceeding, with Federal Rule of Civil Procedure 18 being incorporated into Federal Rule of Bankruptcy Procedure 7018, Rule 18 has not been incorporated into bankruptcy contested matters (bankruptcy case motion, objection, application process). FED. R. BANKR. P. 9014(b). Movant has improperly joined these Motions.

At the hearing, **xxxxxxx**

~~Therefore, the court only considers the Motion to Vacate.~~

THE MOTION

Wlodzimierz Jan Litwin ("Debtor") filed the instant case on October 12, 2024. Docket 1. A plan was never confirmed in the case.

On March 14, 2025, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to Debtor being delinquent in plan payments and failing to have a Plan confirmed. Docket 76. On April 16, 2025, a hearing on the Motion to Dismiss was held, and the Motion was conditionally granted on May 2, 2025, if Debtor had not become current by May 1, 2025. Docket 94. Debtor never became current and the case was dismissed on May 2, 2025. Docket 97.

On May 12, 2025, Debtor filed this instant Motion to Vacate. Debtor states:

1. Counsel maintains a calendaring system with Amicus Attorney and the "to do' deadline for May 1, 2025 was marked as done, but in error and inadvertently the Motion to Convert was not filed. Mot. 2:8-10.

2. Debtor had met with counsel on April 28, 2025 and requested conversion, had signed the proper documents to convert and provided documents. *Id.* at 2:11-13.

3. The file was marked "no new plan" and the "to do" marked as completed, when the conversion should have been filed. This was an error and not an attempt to hinder or delay the Court. *Id.* at 2:14-16.

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

TRUSTEE'S REPLY

Trustee filed a Reply on May 13, 2025. Docket 105. Trustee argues there may be cause to grant the requested relief as attorney mistake is typically sufficient under Fed. R. Civ. P. 60 as incorporated into bankruptcy by Fed. R. Bankr. P. 9024.

APPLICABLE LAW

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

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

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

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

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

DISCUSSION

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

In this instance, Debtor's counsel reports that he mistakenly failed to convert this case before the conditional dismissal became effective. Counsel's mistake justifies relief so Debtor can have a chance in bankruptcy.

Additionally, the court notes that Debtor's Counsel represents a significant number of clients in this court, stays on "top of his game," and does not "let things slide." Clearly, this was a mistake or excusable neglect, as the Rule says. Or as this Judge has said on a number of occasions, "we are all human, yes, even the judge, and mistakes will occur. What shows character is now we address them, and merely offer excuses."

Therefore, in light of the foregoing, the Motion is granted, and the order dismissing the case (Docket 97) 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 Wlodzimierz Jan Litwin ("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 97) is vacated.

23.	**25-21698-E-13 DPC-1**	**MARL STEPHEN/SAMANTHA VELOSO Julius Cherry**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-22-25 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 22, 2025. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Marl Stephen Gordoncillo Veloso and Samantha Nicole Veloso ("Debtor") have not proposed this Plan in their best efforts in violation of 11

U.S.C. § 1325(b). Similarly, the Plan is not presented in good faith. The following issues are unanswered:

a. The Trustee states Debtors are making voluntary contributions to retirement plans of $250 by Marl Veloso and $1,950 by Samantha Veloso. Obj. 2:1-7. Regarding Ms. Veloso's contributions, Trustee has reviewed various documents provided as pay advices for her reflecting prior employment with the State of California but none with her current employment. The pay advices reflect a retirement expense ranging from $626.31 in March 2024 to $661.68 in December 2024, so Debtor states the expense has increased by $1,288.32 per month. Debtor may be able to decrease her voluntary retirement deduction and increase the plan payment so as to meet best efforts requirements. *Id.* at 3:1-4.

b. Debtor claims education expense for children of $568.74 per month where only one child is of school age, and the Trustee does not show documentation and an explanation has been provided where this expense normally is limited to $214.58 per child. *Id.* at 2:13-15.

c. Debtor claims $1800 for childcare which the Trustee has not been able to verify from review of Debtor's bank statements. *Id.* at 2:15-16.

2. Trustee has requested additional documentation from the Debtor including, but not limited to, the last 6 months of pay advices, last 6 months of bank statements, last 6 months of retirement account statements, last 6 months of financial statements from any stock, cryptocurrency and other peer-to peer accounts including venmo and paypal and documentation in writing evidencing the parameters for the employer maintain retirement account including any limits for contributions and what percentage, if any, the employer will match. To date, the Trustee has not received any of these documents. *Id.* at 4:8-14.

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

DISCUSSION

Failure to Provide Disposable Income / Not Best Effort

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

In the Plan's current version there are too many unexplained variables. Debtor's gross income before expenses is $9,133.00 for Mr. Veloso and $10,840.53 for Ms. Veloso. Schedule I at 37, Docket 1. Yet Debtor calculates $2,500 in monthly net income on their Schedule J. Schedule J at 40. A large portion of the reported expenses is going to monthly retirement contributions and childcare. Neither of those expenses have been adequately explained to the Trustee. Trustee is unable to verify the $1,800 expense of childcare in the bank statements, the education expense of $568.74 for only a single child of school age, or the discrepancy between Ms. Veloso's reported retirement contributions compared to what is provided on her pay advices. Unsecured creditors will be receiving a 0% distribution. The court determines this Plan has not been proposed in Debtor's best efforts. 11 U.S.C. § 1325(b)(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.

24. 17-25403-E-13 BYLLIE DEE
Bert Carter

MOTION TO ENFORCE AND TO REIMPOSE AUTOMATIC STAY O.S.T. 6-3-25 [241]

DEBTOR DISMISSED: 03/26/18

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 parties in interest on June 2, 2025. By the court's calculation, 10 days' notice was provided. The court set the hearing for June 10, 2025. Order, Docket 247.

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

The Motion is xxxxxxx.

Debtor Byllie Dee commenced this Chapter 13 Case on August 15, 2017, and the case was dismissed on March 26, 2018. Order; Dckt. 145. The courts Findings and Conclusions, Dckt. 144, are stated in the Civil Minutes for the hearing on the Trustee's Motion to Dismiss, providing an extension discussion of this Bankruptcy Case and the basis for the dismissal.

On June 2, 2025, Debtor Byllie Dee filed a pleading titled Motion for Sanctions for Violations of the Automatic Stay. Dckt. 238. Notice of Hearing for this Motion sets the hearing date for 11:00 a.m. on August 21, 2025. Ntc.; Dckt. 239. No evidence was filed in support of the Motion for Sanctions.

On June 3, 2025, Debtor filed a pleading titled Motion to Enforce and Reimpose the Automatic Stay. Dckt. 241. The Motion has been filed with a request for order shortening time, and has been noticed for hearing on June 10, 2025.

Debtor cites 11 U.S.C. §§ 362(a), 362(c)(3)(B), and 549 as the legal basis for enforcing and reimposing the automatic stay. Debtor states that certain actions were taken in violation of the automatic stay are void. The alleged violations include:

A. BMD Mortgage had locks changed on the Debtor's property on multiple times, it initiated a post-petition unlawful detainer action in State Court, and failed to comply with federal and state protection statues. Mtn: p. 2:3:4; Dckt. 241.

B. Subsequently, Arvus Equity, LLC filed an unlawful detainer action in 2021, which falsely identified the property as commercial, when in fact Debtor maintained a valid residential lease and sublease of portions of the property to residential tenants. *Id.*; 2:5-7.

The court notes that Debtor commenced this Bankruptcy Case on August 15, 2017 (Petition; Dckt. 1), at which time the automatic stay went into effect. 11 U.S.C. § 362(a)(1). On March 26, 2018, the Debtor's Bankruptcy Case was dismissed. The dismissal of the Bankruptcy Case terminated the automatic stay.

> (c)Except as provided in subsections (d), (e), (f), and (h)[1] of this section—
>
> (1)the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;
>
> (2)the stay of any other act under subsection (a) of this section continues until the earliest of—
>
> (A)the time the case is closed;
>
> (B)the time the case is dismissed; or
>
> (C)if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c).

Debtor states that the legal authority for "reimposing" the automatic stay is 11 U.S.C. § 362(c)(3)(B), which states, in pertinent part:

> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)
>
> (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

[1] These provisions of 11 U.S.C. § 362 provide for an earlier termination of the stay than as provided in 11 U.S.C. § 362(c)

> (B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period 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;. . . .

The provisions of 11 U.S.C. § 362(c)(3)(B) does not provide for the court "reimposing" the automatic stay after it has been terminated by operation of law, but "merely" authorizing the court to allow the automatic stay continue into effect as to the debtor and not be terminated as provided in 11 U.S.C. § 362(c)(3)(A).

There are no provisions cited or which the court has identified in its preliminary review of this matter providing for the court to reimpose the "automatic stay" created in 11 U.S.C. § 362(a) after it has been terminated as a matter of law pursuant to 11 U.S.C. § 362(c)(3)(A). Rather, it appears that Debtor may well be seeking a preliminary injunction.

The Debtor clearly states that to the extent that acts were done in violation of the stay before it was terminated, such acts are void, not merely voidable.

On June 4, 2025, Debtor filed a pleading titled Emergency Supplement to Motion To Enforce and Reimpose the Automatic Stay. Dckt. 244. The additional information stated in this Supplemental Pleading includes:

A. On June 3, 2025, Debtor went to the Alameda Superior Court to object to an ex-parte Motion filed by Arvus Equity, LLC to Strike Notice of Stay of proceedings. Supp., ¶ 1; Dckt. 244. A copy of the Ex Parte Motion to Strike is attached as Exhibit A to the Supplemental Pleading. *Id*. at p. 5. No grounds are stated in the *Ex Parte* Motion attached as an exhibit.

B. Debtor file an Opposition to the Motion to Strike. *Id*.; p. 2:1-2. This is attached as Exhibit B to the Supplemental Pleading.

C. Debtor states that Arvus Equity, LLC misstated to the State Court that Debtor's assertion of there being, or having been, an automatic stay is based on Debtor reopening the Chapter 13 Bankruptcy Case. *Id*.; ¶ 5.

D. Arvus Equity, LLC is seeking to obtain a writ of possession, however, the basis for such relief are acts taken in violation of the automatic stay and are void. *Id*.; ¶¶ 6, 7.

The Supplemental Pleading requests emergency relief as follows:

> Debtor urgently requests the following relief:
>
> - That the Court issue a temporary stay f the enforcement of the writ of possession pending hearing on the Motion to Enforce and Reimpose Stay;

- That the Court schedule the motion fo hearing on the earliest available date, or grant relief ex parte if warranted;

- That the Court issue and [sic] order declaring the issuance and enforcement of the writ as void as a violation of the automatic stay;

- That further unlawful detainer proceedings be stayed until further order of this Court.

Debtor states he faces irreparable harm in the form of imminent eviction, loss of residence, and further financial and emotional injury if the writ is executed. Further, that no party has obtained relief from the stay. *Id*.; p. 3:19-20. Debtor also adds:

> The transfer of property of subject property to Arvus Equity, LLC occurred during the pendency of Debtor's chapter 134 case without the authorization o knowledge of the bankruptcy Court.

Id.; p. 3:20-22.

In reviewing the Motion to Shorten Time, the Supplemental Pleading, and the Motion For Sanctions for Violation of the Automatic Stay, it is not clear to the court what acts were done with respect to the unlawful detainer proceeding between the August 15, 2017 filing of Debtor's Chapter 13 Case and the March 26, 2018 dismissal of Debtor's Chapter 13 Case.

It appears that there are some issues to address and points to be clarified with respect to what is asserted to have violated the automatic stay. No evidence has been filed in support of the motions filed by Debtor.

It appears that Debtor has served the state court counsel for Arvus Equity, LLC. Service on the entity itself, and not merely counsel for Arvus Equity, LLC, is required.

The court ordered Debtor to appear in person at the initial hearing being held on June 10, 2025 at 2:00 p.m. Order, Docket 247.

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 filed by Debtor Byllie Dee, 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

25.	**25-20612-E-13** **SMJ-1**	**DAVID/JENNIFER OROZCO** **Scott Johnson**	**MOTION TO VALUE COLLATERAL OF USAA FEDERAL SAVINGS** **4-29-25 [27]**

Final Ruling: No appearance at the June 10, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on April 29, 2025. By the court's calculation, 42 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). 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 USAA Federal Savings Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $11,756.00.

The Motion filed by David Orozco and Jennifer Solange Orozco ("Debtor") to value the secured claim of USAA Federal Savings Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 29. Debtor is the owner of a 2017 Infiniti QX80 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,756.00 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 Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 21, 2025.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on October 25, 2021, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $20,370.51. Proof of Claim, No. 13-1. Therefore, Creditor's claim secured by a lien on

the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $11,756.00, 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 David Orozco and Jennifer Solange Orozco ("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 USAA Federal Savings Bank ("Creditor") secured by an asset described as 2017 Infiniti QX80 ("Vehicle") is determined to be a secured claim in the amount of $11,756.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $11,756.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

26. 25-20717-E-13 CW-2 | **CASEY WOODBURY** | **MOTION TO EMPLOY ONE CHOICE REAL ESTATE AS BROKER(S)**
Pro Se | **5-5-25 [36]**

Final Ruling: No appearance at the June 10, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on May 5, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

Casey Woodbury ("Debtor") seeks to employ Gary Smith of One Choice Real Estate ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to market and sell his real property commonly known as 961 Silverton Circle, Lincoln, CA 95648 ("Property").

Mr. Smith testifies that he is a licensed broker and has agreed to market and Sell the Property. Decl. 1:26-12:8, Docket 39. Mr. Smith testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶¶ 6-7.

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

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such

terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Gary Smith of One Choice Real Estate as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 40. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Casey Woodbury ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, effective June 10, 2025, and Debtor is authorized to employ Gary Smith of One Choice Real Estate ("Broker") for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 40.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

27. 20-20430-E-13 BLG-16 | **RAFAEL DE LA TORRE** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M JOHNSON, DEBTORS ATTORNEY(S)**
Chad Johnson | **4-17-25 [223]**

Final Ruling: No appearance at the June 10, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on April 10, 2025. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted

Chad M Johnson, the Attorney ("Applicant") for Rafael Palos De La Torre, the Chapter 13 Debtor ("Client"), makes a request for final approval of interim fees and expenses already awarded in the case on an interim basis in the amount of $16,620.26. Applicant does not seek an award of any additional fees or costs. The fees are requested for the period January 27, 2021 through April 17, 2025.

The Chapter 13 Trustee filed a Non-Opposition on April 25, 2025. Docket 229.

APPLICABLE LAW
Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include providing general case administration, filing several substantive motions, and drafting Complaint and subsequent settlement related to an adversary proceeding. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant prepared and filed Debtor's petition, schedules, statement of financial affairs and original plan; preparation and submission to the trustee of the required 521 documents, and preparing for and attending the required 341 meeting of creditors. Applicant also reviewed the claims filed to date. Applicant also prepared and filed an Amended Plan and Motion to Confirm the Amended Plan.

Significant Motions and Other Contested Matters: Applicant prepared and filed several motions including: a Motion to Value the claim of Independence Bank, three Motions to Value the claim of Yuba Sutter, two Motions to Avoid Judgement Liens of Quarter Spot, a Motion to Value a claim secured by solar equipment, and a Motion to Value the claim of Funding Metrics.

Adversary Proceeding: Applicant prepared and filed Complaint and communicated with Creditor's Counsel; prepared and filed a Motion to Approve the Settlement; and attended the hearing and related Status Conference.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Chad Johnson, attorney	32.8	$400.00	$13,120.00
Tina Perez, Paralegal	14.6	$185.00	$2,701.00
Jennifer (Last Name Unknown), Staff	.5	$85.00	$42.50
	0	$0.00	$0.00
Total Fees for Period of Application			$15,863.50

Costs & Expenses

Applicant also seeks the final allowance and recovery of costs and expenses in the amount of $756.76 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$222.56
Copies	$0.05 per page	$134.20
UCC Request Charge		$14.00
Credit Report Fee		$45.00
Court Fees		$341.00
Total Costs Requested in Application		$756.76

FEES AND COSTS & EXPENSES ALLOWED
Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Final Approval of Fees in the amount of $15,863.50 are approved on final basis pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First and Final Costs in the amount of $756.76 are approved on a final basis and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$15,863.50
Costs and Expenses	$756.76

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

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

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

The Motion for Allowance of Fees and Expenses filed by Chad M Johnson, the Attorney ("Applicant") for Rafael Palos De La Torre, the Chapter 13 Debtor ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M Johnson, Professional employed by the Chapter 13 Debtor

Fees	$15,863.50
Costs and Expenses	$756.76,

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

28. 24-24334-E-13 RAS-1

KENNETH WILKINSON
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION
5-13-25 [135]

Final Ruling: No appearance at the Jun 10, 2025 hearing is required.

The Plan already having been denied confirmation, the Objection is overruled as moot without prejudice. Order, Docket 143.

The Objection to Confirmation is overruled as moot without prejudice, the Plan already having been denied confirmation on May 27, 2025.

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 having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot without prejudice, the Plan at Docket 117 already having been denied confirmation.

29. 25-20957-E-13 AP-1 | **IRENE AMMON** | **Michael Hays** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF NEW YORK MELLON** | **4-17-25 [18]**

Final Ruling: No appearance at the June 10, 2025 hearing is required**.**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 17, 2025. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled, and the Chapter 13 Plan is confirmed subject to the terms of the Parties' Stipulation that resolves this Objection.

REVIEW OF OBJECTION

Bank of New York Mellon, as Trustee for the Asset Backed Securities Corporation Home Equity Loan Trust 1999-LB1 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Irene Lavada Ammon's ("Debtor") Plan does not provide for proper treatment of Creditor's claim. Creditor's claim is secured by a deed of trust encumbering the real property commonly known as 231 Ammon Rd, Burnt Ranch, CA 95527 fka NSN Grays Falls HWY 299, Burnt Ranch, CA 95527 ("Property").

2. Debtor placed Creditor in Class 2(A) in the amount of $12,930.06 with 5% interest. Creditor argues the interest rate is too low and should ne prime rate plus risk as asserted in *Till*.

3. Creditor requests that the Order Confirming Plan include language which states the Debtor will be responsible for paying the Property Taxes and Hazard Insurance directly, and allowing for the filing of a post-petition fee notice for all escrow disbursements made between the filing of the instant case and the de-escrowing of the Loan. Obj. 5:2-5.

DISCUSSION
Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5%. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 7.5%, plus a 1.25% risk adjustment, for a 8.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Further, in clarifying who will be paying insurance premiums upon plan confirmation, at the hearing, counsel for Debtor and counsel for creditor reported that these terms are being been worked out and documented. The Parties have agreed to a 7% interest rate for Creditor's secured claim.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on June 10, 2026.

June 10, 2025 Hearing

The court continued the hearing on this Motion to afford Parties the time to put a stipulation on file documenting the agreed upon interest rate of 7%. On June 4, 2025, the Parties filed that Stipulation with the court. Docket 26. The Stipulation details how insurance and taxes will be paid, with the Debtor paying them directly and not through escrow, and that Creditor's loan is repaid at 7% interest through the Plan.

The Plan, as amended by the Stipulation filed on June 4, 2025 (Dckt. 26), complies with 11 U.S.C. § 1322 and § 1325, and the Motion is granted and the Plan as amended 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 Bank of New York Mellon, as Trustee for the Asset Backed Securities Corporation Home Equity Loan Trust 1999-LB1 ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Irene Lavada Ammon's ("Debtor") Chapter 13 Plan filed on March 7, 2025, is confirmed as amended to incorporate the terms of the stipulation filed at Docket 26. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. 24-24264-E-13 CK-2 | **RACHEL BAGWELL** **Catherine King** | **MOTION TO CONFIRM PLAN** **4-23-25 [63]**

Final Ruling: No appearance at the June 10, 2025 hearing is required.

The Motion to Confirm Plan is dismissed without prejudice.

Rachel Leilani Bagwell ("Debtor") having filed"Withdrawal of Motion", which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on June 3, 2025, Dckt. 73; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Cusick ("the Chapter 13 Trustee"); the *Ex Parte* Motion is granted, the Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Confirm Plan filed by Rachel Leilani Bagwell ("Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 73, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm Plan is dismissed without prejudice.

31. 25-21169-E-13 DPC-1 | **TERESITA LUNA** | **Mikalah Liviakis** | **OBJECTION TO DISCHARGE BY DAVID CUSICK** | **5-9-25 [17]**

Final Ruling: No appearance at the June 10, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on May 9, 2025. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Teresita Jesus Luna'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 13 bankruptcy case on June 8, 2022, which was then converted to Chapter 7. Case No. 22-21599. Debtor received a discharge on April 18, 2023. Case No. Case Number of Prior Case, Docket 54.

The instant case was filed under Chapter 13 on March 16, 2025.

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 18, 2023, which is less than four years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 25-21169), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 25-21169, the case shall be closed without the entry of a discharge.

32. 25-20872-E-13 EAT-2 | **ALLISON HINGST ELO** | **OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC**
Pro Se | **5-1-25 [32]**

Final Ruling: No appearance at the May 10, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on May 1, 2025. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

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

The Objection to Confirmation of Plan is overruled without prejudice, the court having ordered this Chapter 13 Case to be dismissed at the June 4, 2025 hearing on the Trustee's Motion to Dismiss.

Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Allison Marie Hingst Elo's ("Debtor") Plan does not fully cure the pre-petition arrearage on Creditor's claim. Obj. 2:19-21.

2. Creditor notes this is the Debtor's 3rd Chapter 13 bankruptcy case filed within one year, it appears from the Debtor's schedules that she could fund a feasible Plan if she consulted a bankruptcy attorney.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $52,710.83 in pre-petition arrearage. POC 5-1. The Plan does not propose to

cure that arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

The court has ordered that this Case be dismissed, as stated in the Civil Minutes for the June 4, 2025 hearing on the Trustee's Motion to Dismiss. Dckt. 56. The signed order is in process.

The Bankruptcy Case being dismissed, the Objection is rendered moot.

The Objection is overruled 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 Objection to the Chapter 13 Plan filed by Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the court having granted the Chapter 13 Trustee's Motion to Dismiss (Civ. Minutes; Dckt. 56), and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled without prejudice.