

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

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

**June 18, 2024 at 2:00 p.m.**

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1. <a href="#"><u>23-23572-E-13</u></a> <a href="#"><u>CYB-1</u></a>	<b>DUSTIN/MICHELLE PETRIE</b> <b>Candace Brooks</b>	<b>MOTION TO APPROVE LOAN MODIFICATION</b> <b>5-24-24 [38]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on May 24, 2024. By the court’s calculation, 25 days’ notice was provided. 14 days’ notice is required.

The Motion to Approve Loan Modification 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, -----  
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**The Motion to Approve Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Dustin Wayne Petrie and Michelle Darleen Petrie (“Debtor”) seeks court approval for Debtor to incur post-petition credit. New Residential Mortgage, LLC (“Creditor”), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will

reduce Debtor's mortgage payment from the previous \$2,922.96 per month to \$2,724.34 per month at 5.625%. An arrearage of \$11,644.05 is being capitalized. The loan is a 40 year loan, ending on April 1, 2064.

This court granted Debtor authority to enter into a trial loan modification by Order entered on February 14, 2024. Docket 32. This Motion now seeks to make the loan modification permanent.

David Cusick, the Chapter 13 Trustee ("Trustee"), filed a nonopposition on May 29, 2024.

The Motion is supported by the Declaration of Debtor. Dckt. 40. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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

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

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

The Motion to Approve Loan Modification filed by Dustin Wayne Petrie and Michelle Darleen Petrie ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Dustin Wayne Petrie and Michelle Darleen Petrie ("Debtor") to amend the terms of the loan with New Residential Mortgage, LLC ("Creditor"), which is secured by the real property commonly known as 3626 Indian Creek Road, Placerville, Ca 95667, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 29, 2024. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

1. Plan requires motion. The Debtor cannot afford to make the payments or comply with the Plan. 11 U.S.C. §1325(a)(6). A claim has been filed as a Class (2)(C) claim secured by \$265,700.26 for David and Cheryl Remy. Off. Form 410 2:7, Claim 2; Chapter 13 Plan 4:3.08(d), Docket 3. To date, no motion to value collateral or avoid lien has been filed. If a motion to value or motion to avoid lien is not granted, Debtor's Plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation. Obj. 1:25-2:5, Docket 13.
2. Domestic support obligation checklist. Schedule I, Question 5f, shows that the Debtor has expenses of child support payments in the amount of \$140.00 per month. Voluntary Pet. for Bankr. 30:5f, Docket 1. The Local

Bankruptcy Rules require that Debtor provide the Trustee “not later than the 14 days after the filing of the case with the Domestic Support Obligation Checklist for each domestic support obligation.” Chapter 13 Plan 6:6.02, Docket 3. Pursuant to Local Bankruptcy Rule 3015-1(c)(2), the Debtor is required to serve upon the trustee, no later than fourteen (14) days after the filing of the petition, a Domestic Support Obligation Checklist. To date, the Debtor has failed to provide the Trustee with the Domestic Support Obligation Checklist, thereby hindering the Trustee’s ability to perform his duties. The Debtor has failed to comply with 11 U.S.C. §521(a)(3) and Local Bankruptcy Rule 3015-1(c)(2), and the plan should not be confirmed based on 11 U.S.C. §1325(a)(6). Obj. 2:5-2:23, Docket 13.

3. 2023 Tax return may not be filed. The Debtor has failed to provide the Trustee with a 2023 tax return or a copy of any extension, and since this case was filed on April 26, 2024, the plan may not be confirmable under 11 U.S.C. §1325(a)(9). Obj. 2:24-2:28, Docket 13.
4. Ability to pay. The Plan payment may not be Debtors’ best efforts under 11 U.S.C. §1325(b). Debtors’ Plan proposes payments of \$6,416.00 with 2% dividend to unsecured claims. Chapter 13 Plan 1:2.01, Docket 3. Debtor appears above median income claiming \$3,550.00 tax expense per month, with a negative \$714.00 per month after reducing projected income by \$2,000 a month due to a loss of overtime pay. Voluntary Pet. for Bankr. 48:16; 51:45, Docket 1.

The Trustee believes the tax expense is significantly less based on the 2022 tax refunds which, if amortized over 12 months, would be \$832.08, bringing the net monthly income to positive \$118.08. Debtor’s 2022 tax returns show Debtor was entitled to a \$9,985.00 combined refund from the Internal Revenue Service and Franchise Tax Board. The tax refunds are not listed in Schedule I as additional income. Voluntary Pet. for Bankr. 23-29, Docket 1. The Trustee objects unless any tax refunds, starting with tax year 2023, greater than \$2,000.00, are added to the Plan as an additional payment. (While the Trustee has received and reviewed the tax returns mentioned, the Trustee has not filed them as Exhibits as the Trustee believes that it may not be necessary, but will submit them if requested or required to do so). Obj. 3:2-3:20, Docket 13.

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

## **DISCUSSION**

Trustee’s objections are well-taken.

## **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 David & Cheryl Remy. However, Debtor has failed to file a Motion to Value the Secured Claim of David & Cheryl Remy. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

### **Domestic Support Obligation Checklist**

Pursuant to 11 U.S.C. §§1302(b)(6) and (d)(1), the Trustee is required to provide to the holder of a claim for a domestic support obligation written notice of such claim and of the right of such holder to use the services of the State child support enforcement agency established under the Social Security Act for the State in which such holder resides for assistance in collecting child support. Furthermore, Local Bankruptcy Rule 3015-1(c)(2), requires the Debtor to serve upon the trustee no later than fourteen (14) days after the filing of the petition a Domestic Support Obligation Checklist.

Schedule I, Question 5f, shows that the Debtor has expenses of child support payments in the amount of \$140.00 per month. Voluntary Pet. for Bankr. 30:5f, Docket 1. To date, the Debtor has failed to provide the Trustee with the Domestic Support Obligation Checklist, thereby hindering the Trustee's ability to perform his duties. The Debtor, thus, failed to comply with the requirements of 11 U.S.C. §521(a)(3) and Local Bankruptcy Rule 3015-1(c)(2) and, based on 11 U.S.C. §1325(a)(6), the plan should not be confirmed.

### **Failure to Provide Tax Returns**

Debtor did not provide 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). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **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.

Debtors' Plan proposes payments of \$6,416.00 with 2% dividend to unsecured claims. While Debtor appears above median income claiming \$3,550.00 tax expense per month, with a negative \$714.00 per month, the Trustee believes the tax expense is significantly less based on the 2022 tax refunds which, if amortized over 12 months, would be \$832.08, bringing the net monthly income to positive \$118.08. Debtor's 2022 tax returns show Debtor was entitled to a \$9,985.00 combined refund from the Internal Revenue Service and Franchise Tax Board; however, the tax refunds are not listed in Schedule I as additional income. Unless any tax refunds, starting with tax year 2023, that are greater than \$2,000.00, are added to the Plan as additional payments, the Plan may not be approved.

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.

DEBTOR DISMISSED: 04/04/24

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, attorneys of record who have appeared in the case, creditors, and Office of the United States Trustee on May 20, 2024. By the court’s calculation, 29 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held on June 18, 2024, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon this language, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

The Motion for Allowance of Professional Fees was 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, -----

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<b>The Motion for Allowance of Professional Fees is granted.</b>
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Michael Benavides, the Attorney (“Applicant”) for Derek Murai, the Chapter 13 Debtor (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 18, 2024, through June 18, 2024. Applicant requests fees in the amount of \$2,100, pursuant to a fee agreement Client and Movant entered into. Ex. C 29 Docket

33. The fee agreement, filed under seal, is at Exhibit A, Docket 33. Movant does not request reimbursement for costs.

Though this Bankruptcy Case was voluntarily dismissed by Debtor, the Motion for fees states that Debtor's property was saved from foreclosure and the Debtor being able to address the creditor's claim outside of bankruptcy. Motion, Declaration; Dckts. 32, 38.

## **APPLICABLE LAW**

### **Reasonable Fees**

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

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

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

### **Lodestar Analysis**

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

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney



must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include protecting his Client's home from an imminent foreclosure sale as well as quickly selling the subject property to pay the deed of trust creditor in full. Decl. 2: 8-14, Docket 38. The court finds the services were beneficial to Client and the Estate and were reasonable.

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

### **Fees**

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

General Case Administration: Applicant spent 5.8 hours in this category. Applicant advised the client to stop an imminent foreclosure within 72 hours of our initial consultation; this goal was ultimately achieved. Furthermore, the work performed involved working with his real estate agent to craft a short-term solution that was possible but not probable and also any contingency plans to file a complete petition, schedules and feasible plan for the foreclosing creditor. Decl. 2: 8-14, Docket 38.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Michael Benavides, Attorney	5.8	Approx. \$375.00	\$2,100.00

<b>Total Fees for Period of Application</b>	<b>\$2,100.00</b>
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## **FEES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$2,100 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor, Client.

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

Fees	\$2,100
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Michael Benavides, the Attorney (“Applicant”), for Derek Murai, 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 Michael Benavides is allowed the following fees and expenses as a professional of the Estate:

Michael Benavides, Professional employed by Chapter 13 Debtor

Fees in the amount of \$2,100,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on May 23, 2024. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

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

1. Debtor did not propose Plan in good faith.
  - a. Trustee cites *Fidelity v. Warren* factors #1, #2, #4, #9, and #10 to indicate bad faith. *In re Warren*, 89 B.R. 87 (B.A.P. 9th Cir. 1988).
    - i. #1: The amount of the proposed payments and the amounts of the Debtor’s surplus:
      - (1) The entirety of insurance proceeds (~\$40,000 remaining) should be included to unsecured creditors under the liquidation test.

- (2) The Plan proposes 0.00% to unsecured creditors.

Obj. 2:5-22, Docket 41.

- ii. #2: The Debtor's employment history, ability to earn, and likelihood of future increases in income:

- (1) Debtor is unemployed.
- (2) NF-Spouse is recently unemployed.
- (3) Debtor's LLCs have multiple years of no income.
- (4) Debtor only receives income through Social Security and food stamps.

Obj. 2:25-3:1, Docket 41.

- iii. #4: The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court:

- (1) NF-Spouse's vehicle not listed on Schedule A/B.
- (2) Debtor shows employment income when unemployed.
- (3) Debtor discussed NF-Spouse's credit card debt but did not list creditors on Schedules E/F.
- (4) Schedule G lacks information regarding Creditor Solar Integrated Fund.
- (5) Schedule H does not acknowledge community property of NF-Spouse.
- (6) Debtor's Statement of Financial Affairs does not acknowledge Debtor's stated role in two LLCs.
- (7) Form 122C-1 shows wage income while Debtor remains unemployed.
- (8) Debtor attempts to claims exemptions from both C.C.P. §703.140(b) and §704, which is not permissible per §703.140(a).

Obj. 3:2-4:1, Docket 41.

- iv. #9: The frequency with which the debtor has sought relief under the Bankruptcy Reform Act:

- (1) Debtor has filed six (6) Ch. 13 cases since 2018. All were dismissed and only one payment has been made to the Trustee.

Obj. 4:7-14, Docket 41.

v. #10: The motivation and sincerity of the debtor in seeking Chapter 13 relief:

(1) Insurance proceeds are being spent instead of being included in Plan.

(2) NF-Spouse creditors omitted from Schedules.

Obj. 4:14-23, Docket 41.

2. Debtor does not show Best Efforts/Ability to Make Payments

a. Monthly income not accurate

i. Debtor's only income is Social Security and food stamps.

Obj. 4:28-5:5, Docket 41.

b. Not all community debts and assets are listed on schedules

i. Trustee does not believe all required NF-Spouse assets are Scheduled.

Obj. 5:6-16, Docket 41.

c. Attorneys Fees Overcharged

i. Plan's \$10,000 in attorney fees is excessive considering Debtor's LLCs' complete lack of income.

Obj. 5:17-25, Docket 41.

3. Debtor has Failed to File Required Motions

a. Neither Motion to Value Collateral nor Motion to Avoid Lien have been filed.

Obj. 5:26-6:2, Docket 41.

4. Liquidation Value Exceeds Plan Proceeds

a. Plan does not provide greater proceeds to Creditors than would be produced in Chapter 7 liquidation due to presence of insurance proceeds and NF-Spouse's car.

Obj. 6:3-11, Docket 41.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 43.

## DISCUSSION

Trustee's objections are well-taken. In looking at the proposed Plan, it requires a \$70,000 lump sum insurance payment and monthly payments of \$6,600 a month for 59 months. Plan; § 7 Additional Provisions; Dckt. 18.

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

11 U.S.C. § 1325(a)(3) states:

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

...

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

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

The evidence before the court today shows the Plan has not been proposed in good faith. Debtor has misrepresented income and assets on his Schedules. Debtor has improperly omitted NF-Spouse's information as well, which must be included as community property. Debtor has filed a slew of bankruptcy cases in recent years, all being dismissed with Trustee reporting only one single payment ever having been made. The court finds Debtor's behavior constitutes an attempt to unfairly manipulate the Bankruptcy Code.

At the hearing, **XXXXXXX**

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

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Insufficient Income to Support Proposed Plan Payments: Monthly income and expenses were not reported correctly on Schedules I & J. Debtor's only sources of income are Social Security and Food Stamps. Obj. 4:28-5:5, Docket 41. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **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 Carvana LLC/Bridgecrest. Debtor has failed to file a Motion to Value the Secured Claim of Carvana LLC/Bridgecrest, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Obj. 5:26-6:2, Docket 41.

### **Debtor's Reliance on Motion to Avoid Lien**

A review of Debtor's Plan shows that it relies on avoidance of the lien of Law Office of Todd A. Murray, Inc. Debtor has failed to file a Motion to Avoid Lien of Law Office of Todd A. Murray, Inc., however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Obj. 5:26-6:2, Docket 41.

### **Debtor Fails Liquidation Analysis**

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor has received approximately \$79,000.00 in insurance proceeds and has \$5,004.00 in non-exempt assets. Debtor has stated that the NF-Spouse possesses a 2013 Volkswagen Jetta. The Trustee intends to object to the exemptions and move to convert to Chapter 7. Obj. 6:3-11, Docket 41.

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, (Plan, Docket 18 § 3.14), but Trustee estimates Debtor has \$5,004.00 in non-exempt equity in assets of the estate. Obj. 6:3-11, Docket 41.

At the hearing, **XXXXXXX**

### **Previous Chapter 13**

Debtor filed a previous Chapter 13 petition on October 30, 2023, which was dismissed on March 22, 2024. Obj. 4:7-14, Docket 41. Debtor's recent bankruptcy case has implications for the duration of the automatic stay, *see* 11 U.S.C. § 362(c)(3), but is not by itself reason to deny confirmation.

### **Amendments**

Debtor should comply with Trustee's requests in amending the Schedules to include business information and NF-Spouse assets. Debtor is required to cooperate with Trustee. 11 U.S.C. § 521(a)(3).

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

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

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

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

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

# FINAL RULINGS

5. [24-21659](#)-E-13  
[DPC-1](#)

ROBERT BILLS  
Len ReidReynoso

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
5-29-24 [\[16\]](#)

**Final Ruling: No appearance at the June 18, 2024 Hearing is required.**  
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Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 29, 2024. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

**The Objection to Confirmation of Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.**

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

1. The following documents in Robert Ronald Bills' petition remain inaccurate:
  - a. Debtor overstated his income in Schedule I, according to correspondence from Debtor's attorney. Obj. 2:1-4, Docket 16.
  - b. The expense of property insurance has been incorrectly included and listed twice in Debtor's Schedule J. *Id.* at 2:6-11.
  - c. Debtor's attorney indicated to Trustee that Debtor misreported gambling income on Debtor's Statement of Financial Affairs. *Id.* at 2:12-17.



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

## **DEBTOR'S RESPONSE**

Debtor submitted a Response to the Objection on June 6, 2024. Docket 22. Debtor informs the court he has incorporated Trustee's feedback in a recently filed Amended Plan.

## **DISCUSSION**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on June 6, 2024. Dockets 23, 26. Debtor also filed amended Schedules, appearing to address Trustee's concerns. Docket 27. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

## **MOTION TO CONFIRM AMENDED PLAN AND DECLARATION FILED**

As stated by Debtor, on June 6, 2024, the Debtor filed a Motion to Confirm First Amended Plan. Dckt. 23. A quick review of the Motion indicates that it does not "state grounds with particularity" upon which the requested relief - confirmation of a Chapter 13 Plan - is based. See, Fed. R. Bankr. P. 9013. Debtor and counsel may wish to promptly file and serve a supplement to the Motion which states the grounds with particularity and not merely state that the Plan complies with the law.

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.

6 thru 7

**Final Ruling: No appearance at the June 18, 2024 Hearing is required.**

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Local Rule 9014-1(f)(2) Objection—Hearing not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, attorneys of record who have appeared in the Bankruptcy case, the Adversary Proceeding, or contested matter, and Office of the United States Trustee on May 14, 2024. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is deemed to be an Opposition to Debtor's Motion to Confirm the First Amended Chapter 13 Plan, and will be heard in conjunction with the Motion to Confirm at 2:00 p.m. on September 10, 2024.**

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 deemed 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.

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 Real Time Resolutions, Inc. as agent for RRA CP Opportunity Trust 2 (“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 hearing on the Objection to Confirmation, which is deemed 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**, to be heard with the Motion to Confirm.

7. [24-21068-E-13](#)  
[SK-2](#)

**DESIREE LEWIS**  
**Sunita Kapoor**

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

**Final Ruling: No appearance at the June 18, 2024 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—Hearing not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on June 10, 2024. However, the court assumed this to be a clerical error, where Movant meant to type in May 10, 2024, the date the pleadings were filed. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

<p><b>The Hearing on the Motion for Confirmation and Allowance of Professional Fees has been continued to 2:00 p.m. on September 24, 2024 (Order; Dckt. 93).</b></p>
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#### **CONTINUANCE OF HEARING TO SEPTEMBER 24, 2024**

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).

**Final Ruling:** No appearance at the June 18, 2024 Hearing is Required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, attorneys of record who have appeared in the bankruptcy case, the adversary proceeding, or contested matter, and Office of the United States Trustee on April 19, 2024. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Therefore, the defaults of the respondent and other parties in interest are entered.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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### **Review of the Motion**

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

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

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

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

Section 1. Notices

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

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

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

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

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

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

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

Therefore, the court concluded that the Motion cannot be granted, there having been no Chapter 13 Plan filed before the June 4, 2024 hearing.

### **June 18, 2024 Hearing**

The court continued this hearing from the court’s June 4, 2024 calendar as Debtor had not filed the Amended Plan as a separate document in violation of Local Bankruptcy Rule 3015-1(c) and (d). Debtor had also filed Schedules as both amended and supplemental. A review of the Docket on June 10, 2024 reveals that Debtor corrected that mistake, filing the Amended Plan as a separate document at Docket 44. Debtor also filed Schedules properly marked as Amended at Exhibit 1, Docket 43.

The Chapter 13 Trustee, David Cusick, filed a Nonopposition on June 11, 2024. Docket 48. As mentioned above, the errors having been corrected, the court can confirm the Amended Plan.



The Proposed Amended Chapter 13 Plan complies with the requirements of 11 U.S.C. §§ 1322, 1325, and 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 Confirm the Chapter 13 Plan filed by the debtor, Cynthia Jean Martin (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on June 7, 2024, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.