UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 24, 2025 at 2:00 p.m.

1.	**24-21910-E-13** **DWL-5**	**TAMMY ANDREWS** **Patricia Wilson**	**CONTINUED MOTION TO CONFIRM PLAN** **3-17-25 [79]**

Item 1 thru 3

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, and Office of the United States Trustee on March 18, 2025. By the court's calculation, 35 days' notice was provided. 28 days' notice is required (Fed. R. Bankr. P. 2002(b)(3).

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

The Motion to Confirm the Amended Plan is xxxxxxx.

June 24, 2025 Hearing

The court continued the hearing on this Motion to provide Debtor with time to correct procedural shortcomings and to supplement the record. This Motion is contingent on Debtor's Motion to Value the claim secured by her 2017 Dodge Ram 1500. The court has granted the Motion to Value Secured Claim (DCN: DWL-6).

At the hearing, **XXXXXXX**

REVIEW OF MOTION

The debtor, Tammy Marie Andrews ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid $16,362 as of March of 2025 with monthly payments of $2,805 to commence for the remainder of the Plan. Amended Plan, Docket 83. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on April 8, 2025. Docket 88. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor failed to include in the Notice required language of Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). Opp'n at 1:25-2:6.

B. Debtors' Plan relies on a Motion to Value Collateral being filed for Siskiyou Central Credit Union ("Creditor"), listed in Class 2(B), to lower the claim from $35,996.65 to $15,000.00.

C. Debtor failed to attach a business income and expense statement to the supplement and the Trustee is concerned that the monthly net income of $2,805.06 does not accurately reflect the Debtor's monthly net monthly income. *Id.* at 2:22-25.

D. There are issues with the attorney fees provisions. The Plan only reflects attorney's fees of $500, but the Disclosure of Attorney Compensation form reflects fees of $8,500. *Id.* at 3:3-11.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Creditor. Debtor has filed the Motion to Value being heard in conjunction with this Motion, and the court tentatively denied that Motion to Value. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Failure to File Business Documents Required by Schedule I

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

Local Rules Discussion

> Local Bankruptcy Rule 9014-1(d)(3)(B)(iii) states:
>
> (iii)The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Debtor's Notice of Hearing at Docket 80 does not include this required language. In light of the proceedings in this case, the court finds that such shortcoming is not detrimental and the Notice is sufficient.

The Parties requested that the court continue the hearing to allow Debtor to address these matters.

The hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on June 24, 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 Confirm the Amended Chapter 13 Plan filed by the debtor, Tammy Marie Andrews ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is **XXXXXXX**

2. **24-21910-E-13 KMM-1** **TAMMY ANDREWS Patricia Wilson** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 1-10-25 [56]**

CITIBANK, N.A.

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, and Office of the United States Trustee on January 10, 2025. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxxxx.

June 24, 2025 Hearing

The court continued the hearing on the Motion in light of Debtor curing the arrearage on Movant's claim through her Plan, which appears confirmable.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

Citibank, N.A., not in its individual capacity but solely as Owner Trustee of New Residential Mortgage Loan Trust 2020-RPL1 as serviced by NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Movant") seeks relief from the automatic stay with respect to Tammy Marie Andrews' ("Debtor") real property commonly known as t 230 N 14th Street, Montague, California 96064 ("Property"). Movant has provided the Declaration of Justin Alexander to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 58.

Movant argues Debtor has not made at least approximately three post-petition payments, with a total of $1,463.77 in post-petition payments past due. Declaration ¶ 7, Docket 58.

The Chapter 13 Trustee filed a Nonopposition on February 5, 2025. Docket 66.

DEBTOR'S OPPOSITION

Debtor filed a Declaration in opposition on January 28, 2025. Docket 64. Debtor explains the reason for the post-petition delinquency. Specifically, Debtor states that she spoke with Movant in November to make her post-petition payments to Movant. Resulting from that conversation, there was some miscommunication, and Debtor ended up not making payments for October or November. *Id.* at ¶ 6.

Debtor will be proposing a Modified Plan to address Movant's arrearage and to provide adequate protection. *Id.* at ¶ 9.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $115,747.13 (Declaration ¶ 4, Docket 58), while the value of the Property is determined to be $81,804.00, as stated in Schedules A/B filed by Debtor. Schedule A/B at 11, Docket 1.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

In this case, Debtor has explained the reason for her delinquency and noted that the post-petition arrearage will be cured going forward.

At the hearing, the Parties agreed to continue the hearing.

The hearing Motion for Relief from the Automatic Stay is continued to 1:30 p.m. March 25, 2025.

March 25, 2025 Hearing

The court continued the hearing on this Motion to allow Debtor to cure the post-petition delinquency. Nothing new has been filed under this Docket Control Number as of the court's March 19, 2025 review of the Docket. Debtor has filed a Modified Plan, Motion to Confirm, and a Motion to Value on March 17, 2025.

At the hearing, counsel for creditor reported that she has spoken with Debtor's counsel and requests that the hearing be continued to be conducted in conjunction with the hearing on the Motion to Confirm Plan.

The hearing on the Motion for Relief from the Automatic Stay is continued 2:00 p.m. April 22, 2025, to be conducted in conjunction with the hearing on the Motion to Confirm Chapter 13 Plan.

April 22, 2025 Hearing

The court continued the hearing on this Motion as the Parties at the prior hearing requested this Motion be heard in conjunction with the Motion to Confirm the Amended Plan. A review of the Docket on April 17, 2025 reveals nothing new has been filed with the court under this Docket Control Number.

At the hearing, counsel for Movant reports that the arrears are to be included in the Plan. The parties requested the hearing be continued to be conducted in conjunction with the Motion to Confirm Plan.

The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on June 24, 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 for Relief from the Automatic Stay filed by Citibank, N.A., not in its individual capacity but solely as Owner Trustee of New Residential Mortgage Loan Trust 2020-RPL1 as serviced by NewRez LLC d/b/a Shellpoint Mortgage Servicing ("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 Relief from the Automatic Stay is **XXXXXXX**.

3. 24-21910-E-13 DWL-6 | **TAMMY ANDREWS** **Patricia Wilson** | **MOTION TO VALUE COLLATERAL OF SISKIYOU CREDIT UNION 5-13-25 [105]**

Final Ruling: No appearance at the June 24, 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 creditors that have filed claims on May 13, 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 Siskiyou Central Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $15,423.

The Motion filed by Tammy Marie Andrews ("Debtor") to value the secured claim of Siskiyou Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 107. Debtor is the owner of a 2017 Dodge Ram 1500 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $15,423 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).

DISCUSSION

The lien on the Vehicle's title secures a loan incurred on July 26, 2024, which is less than 910 day prior to filing the petition. Mot. 2:9-10. However, Debtor makes the argument that the loan is not a purchase-money loan as it was a refinance of the original loan, destroying purchase-money status.

Cal. Com. Code § 9103(f) states:

> (f) In a transaction other than a consumer-goods transaction, a purchase money security interest does not lose its status as such, even if any of the following conditions are satisfied:

> (1) The purchase money collateral also secures an obligation that is not a purchase money obligation.
>
> (2) Collateral that is not purchase money collateral also secures the purchase money obligation.
>
> (3) The purchase money obligation has been renewed, refinanced, consolidated, or restructured.

This section only applies to transactions other than consumer-goods transactions and when the loan is refinanced. The Vehicle is used for personal every day use, so this is a consumer-good transaction. The refinance, therefore, has destroyed the purchase-money status. Creditor has not filed an Opposition either, this Motion being noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1).

The loan secures a debt owed to Creditor with a balance of approximately $35,996.65. POC 4-1. 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 $15,423, 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 Tammy Marie Andrews ("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 Siskiyou Central Credit Union ("Creditor") secured by an asset described as 2017 Dodge Ram 1500 ("Vehicle") is determined to be a secured claim in the amount of $15,423, 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 $15,423 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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 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 24, 2025 Hearing

The court continued the hearing to June 24, 2025 as a "drop-dead" date for the Parties to get a Stipulation together. A review of the Docket on June 18, 2025, reveals nothing new has been filed in the case.

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.

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, counsel for the Debtor reported that they are about to a stipulation, but have not gotten there quite yet.

The hearing on the Objection to Exemption is continued to 2:00 p.m. on June 24, 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 24, 2025 Hearing

The court continued the hearing to June 24, 2025 as a "drop-dead" date for the Parties to get a Stipulation together. A review of the Docket on June 18, 2025, reveals nothing new has been filed in the case. At the hearing, **xxxxxxx**

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.

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 been presented to the court.

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

At the hearing, counsel for the Debtor reported that they are about to a stipulation, but have not gotten there quite yet.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on June 24, 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.	**24-24029-E-13 MOH-2**	**SANDRA BROWN / MICHAEL TIBBETTS** **Michael Hays**	**OBJECTION TO CLAIM OF VIRGIL AND CAROL TREADWAY, CLAIM NUMBER 11** **5-16-25 [79]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor on May 16, 2025. By the court's calculation, 39 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 11-2 of Virgil and Carol Treadway is xxxxxxx.

Sandra Ann Brown Tibbetts and Michael Dean Tibbetts, the Chapter 13 Debtor, ("Debtor") requests that the court disallow the claim of Virgil and Carol Treadway ("Creditor"), Proof of Claim No. 11-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $1,002,490.92. Debtor objects on the following grounds:

1. The creditors themselves never actually signed their proof of claim. Obj. 1:23-32.

2. The amount of debt calculated in the proof of claim is incorrect. The Claim is not supported by proper documentation that would support the amount claimed. There are no documents attached, such as a recorded deed of trust, though the Claim is apparently secured by a deed of trust. *Id.* at 2:1-24.

3. Debtor computes the amount owed, including arrearage, to be in the amount of $749,498.99, which is more than a $250,000 difference. *Id.* at 3:26-4:1.

4. Debtor also informs the court that they have retained counsel outside bankruptcy and demanded Creditor send a proper accounting for the payoff demand.

The Declaration of Sandra Brown Tibbetts is filed in support to authenticate the facts alleged. Decl., Docket 81.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 10, 2025. Docket 94. Trustee notes he is paying the claim at this time in the amount of $3,200 per month and notes if the Claim objection is sustained, the Plan appears to call for the continuation of these payments.

Creditor filed an Opposition on June 11, 2025. Creditor states that they will appear at the hearing and object to this Objection, but Creditor also states they hope to resolve the matter with Debtor without further judicial intervention. Docket 95.

DISCUSSION

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

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

The Creditor has stated they plan to object, so the court now only tentatively lays out issues for the Parties to consider pending the objection. Fed. R. Bankr. P. 3001(b) and (c) state:

> (b) Who May Sign a Proof of Claim . Only a creditor or the creditor's agent may sign a proof of claim—except as provided in Rules 3004 and 3005.
>
> (c) Required Supporting Information.
>
> > (1) Claim Based on a Writing. Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

(i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

A review of Creditors Claim shows that there are no attachments filed whatsoever despite the Claim being based on a writing. The Claim cannot stand as filed as it is in clear violation of Fed. R. Bankr. P. 3001(c). Moreover, the Treadways themselves have not signed the Claim, only their counsel. The Claim lacking the individual Treadway's signature is in violation of Fed. R. Bankr. P. 3001(b).

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 Claim of Virgil and Carol Treadway ("Creditor"), filed in this case by Sandra Ann Brown Tibbetts and Michael Dean Tibbetts, the Chapter 13

Debtor, ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 11-2 of Creditor is **xxxxxxx**.

7.	**21-23539-E-13** **DPC-5**	**DEREK WOLF** **Peter Macaluso**	**CONTINUED MOTION TO DISMISS CASE** **4-16-25 [360]**

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.

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 24, 2025 Hearing

The court continued the hearing on the Motion so counsel for Debtor and counsel for Creditor can continue to communicate to identify what arrearage may exist, how such would be addressed, and finally inform the court whether this Case may be dismissed or a modified plan is necessary. A review of the Docket on June 18, 2025, reveals nothing new has been filed with the court.

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.

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, counsel for the Debtor reports that he thinks this is about 95% resolved. Counsel for Creditor advised the court that there is a post-petition delinquency

Counsel for Debtor and counsel for Creditor will continue to communicate to identify what arrearage may exist, how such would be addressed, and whether this Case may be dismissed or a modified plan is necessary.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on June 24, 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 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.**

8. **21-23539-E-13 TPL-1** **DEREK WOLF** **Peter Macaluso** **CONTINUED 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.

June 24, 2025 Hearing

The court continued the hearing on the Motion so counsel for Debtor and counsel for Creditor can continue to communicate to identify what arrearage may exist, how such would be addressed, and finally inform the court whether this Case may be dismissed or a modified plan is necessary. A review of the Docket on June 18, 2025, reveals nothing new has been filed with the court.

At the hearing, xxxxxxx

REVIEW OF MOTION

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.

At the hearing, counsel for the Debtor reports that he thinks this is about 95% resolved. Counsel for Creditor advised the court that there is a post-petition delinquency

Counsel for Debtor and counsel for Creditor will continue to communicate to identify what arrearage may exist, how such would be addressed, and whether this Case may be dismissed or a modified plan is necessary.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on June 24, 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 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**.

9. 25-20052-E-13 PGM-1 | **TAMMI KELLER** Peter Macaluso | **CONTINUED MOTION TO VALUE COLLATERAL OF BMW FINANCIAL SERVICES NA, LLC**

Item 9 thru 11 | **2-17-25 [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 Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 17, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of BMW Financial Services NA, LLC ("Creditor") is xxxxxxx.

June 24, 2025 Hearing

The court continued the hearing on this Motion as Creditor objected to the valuation and a briefing schedule was set. Supplemental opposition pleadings were to be filed and served on or before June 10, 2025, and reply pleadings, if any, were to be filed and served on or before June 17, 2025. Order, Docket 62.

No supplemental pleadings were filed in the case. At the hearing, xxxxxxx

REVIEW OF MOTION

The Motion filed by Tammi Bravo Keller ("Debtor") to value the secured claim of BMW Financial Services NA, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 27. Debtor is the owner of a 2022 BMW 320i x4 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $18,500.00 as of the petition filing date based in part on various physical issues with the Vehicle. 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).

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee"), filed an Opposition on March 11, 2025. Docket 41. Trustee opposes the Motion on the basis that the Motion seeks to value the Vehicle at $18,500, but the Plan has listed the Vehicle in Class 2(B) with a value of $18,000.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on March 11, 2025. Docket 46. Creditor opposes the Motion on the basis that Creditor argues the value of the Vehicle is actually $31,950.00. *Id.* at 2:13. Creditor requests time to conduct its own inspection and appraisal of the Vehicle to better assess its value. Thus, BMW requests the Court grant additional time to allow for sufficient time to obtain an independent valuation as well as provide the Debtor and BMW sufficient opportunity to discuss resolving these matters consensually.

DEBTOR'S REPLY

Debtor filed a Reply on March 18, 2025. Docket 54. Debtor states that the value of the vehicle was $18,500.00 not the $18,000.00 listed on the Plan and requests that the value be clarified in the Order Confirming. *Id.* at ¶ 1.

In responding to Creditor, Debtor argues Creditor has not provided any evidence of a higher valuation, so Debtor's valuation should be accepted.

DISCUSSION

Creditor has the right to conduct discovery and come forward with its own valuation. The court recalls discussing the right to discovery in contested matters, at a hearing, fifteen years ago, and over the more recent years. Seeing such an opposition based on denying Creditor's right to discovery, the court begins to wonder if the Debtor is prosecuting this Bankruptcy Case in good faith, and whether it would possible for her to confirm a Plan in this Case.

The court does also note that Debtor in her Declaration, ¶ 6, (Dckt. 27) notes that there are some significant damages to this Vehicle, stating:

> 6. The following items are broken, damaged, and/or in need of repair:
>
> A. Damage to front grill
>
> B. Damage to rear bumper
>
> C. Brakes and pads need replacement as they squeak.
>
> D. Transmission slips when in drive to neutral
>
> E. Alignment issues

This gives Creditor a running start in assessing the value of the Vehicle.

At the court the court continues the hearing to allow Creditor to proceed with discovery, the Debtor to provide information concerning the condition of the vehicle (which should expedite Creditor's determination of value), and the Parties discuss these issues before having to file supplemental pleadings.

The hearing on the Motion to Value Collateral and Secured Claim of BMW Financial Services NA, LLC ("Creditor") is continued to 2:00 p.m. on June 24, 2025, with supplemental opposition pleadings filed and served on or before June 10, 2025, and reply pleadings, if any, filed and served on or before June 17, 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 Value Collateral and Secured Claim filed by Tammi Bravo Keller ("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 Value Collateral and Secured Claim of BMW Financial Services NA, LLC ("Creditor") is **XXXXXXX**.

10. 25-20052-E-13 AP-1 | **TAMMI KELLER** / **Peter Macaluso** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BMW BANK OF NORTH AMERICA 2-13-25 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 13, 2025. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

June 24, 2025 Hearing

The court continued the hearing on this Objection at the Parties' request because the related Motion to Value the collateral of Creditor had been continued to this date and time. A briefing schedule was set in that Motion to Value. No supplemental pleadings were filed in the case.

At the hearing, xxxxxxx

REVIEW OF OBJECTION

BMW Bank of North America ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Tammi Bravo Keller's ("Debtor) Plan fails to pay the prime rate of interest on Creditor's claim. Obj. 4:13-22.

2. Debtor is attempting to value Creditor's collateral without there being a Motion to Value on file. *Id.* at 5:7-11.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 4, 2025. Docket 40. Debtor asks the Motion be continued until a date after March 25, 2025, when Debtor has scheduled to hear her Motion to Value.

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 4%. Creditor's claim is secured by a 2022 BMW X4 xDrive30i. 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% risk adjustment, for an 8.5% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Creditor. Debtor has filed a Motion to Value the Secured Claim to be heard on March 25, 2025.

At the hearing, the Parties agreed to continue the hearing on this Objection to 2:00 p.m. on April 8, 2024.

The hearing is continued to 2:00 p.m. on April 8, 2025.

April 8, 2025 Hearing

The court continued the hearing on this Objection as Debtor's Plan relied on a Motion to Value Creditor's collateral. The Motion to Value was heard on March 25, 2025 at which the court continued the Motion to June 24, 2025, for the Parties to conduct discovery and file supplementary evidence.

At the hearing, counsel for Creditor reported that the continued hearing on the Motion to Value is set 2:00 p.m. on June 24, 2025m and the Parties requested that the hearing on this Objection be continued to that time as well.

The Debtor confirmed on the record that with respect to Creditor's secured claim, the Debtor agrees that the Plan will provide for an 8.5% interest rate.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on June 24, 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 BMW Bank of North America ("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 Objection to Confirmation of Plan is **xxxxxxx**.

11. 25-20052-E-13 DPC-1 | **TAMMI KELLER** **Peter Macaluso** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **2-12-25 [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 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 24, 2025 Hearing

The court continued the hearing on this Objection at the Parties' request because the related Motion to Value the collateral of Creditor had been continued to this date and time. A briefing schedule was set in that Motion to Value. No supplemental pleadings were filed in the case.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

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

1. Tammi Bravo Keller's ("Debtor) Plan relies on the Motion to Value the collateral of BMW Bank of North America ("Creditor"). Obj. 2:1-11.

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

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Creditor. Debtor has filed a Motion to Value the Secured Claim to be heard on March 25, 2025.

At the hearing, the Parties agreed to continue the hearing on this Objection to 2:00 p.m. on April 8, 2024.

The hearing is continued to 2:00 p.m. on April 8, 2025.

April 8, 2025 Hearing

The court continued the hearing on this Objection as Debtor's Plan relied on a Motion to Value Creditor's collateral. The Motion to Value was heard on March 25, 2025 at which the court continued the Motion to June 24, 2025, for the Parties to conduct discovery and file supplementary evidence.

At the hearing, counsel for Creditor reported that the continued hearing on the Motion to Value is set 2:00 p.m. on June 24, 2025, and the Parties requested that the hearing on this Objection be continued to that time as well.

The Debtor confirmed on the record that with respect to Creditor's secured claim, the Debtor agrees that the Plan will provide for an 8.5% interest rate.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on June 24, 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**.

12. 23-24655-E-13 SLH-1 | **JOANNE EVANS** | **MOTION TO INCUR DEBT**
Seth Hanson | **5-27-25 [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 20, 2025. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is xxxxxxx .

Joanne Marie Evans ("Debtor") seeks permission to purchase real property commonly known 5708 San Marcos Way, North Highlands, CA 95660 ("Property") for $350,000.00 at 7% interest and monthly payments of $2,995.00 over 30 years.

However, Debtor also states:

> Debtor has proposed financing this loan of $12,464.00 with a 9.00% interest rate through Premier Mortgage Resources, LLC and monthly payments of $157.89 over 10 years.

Mot. 1:26-27

This statement directly contradicts the statement that Debtor has proposed financing this loan of $343,660.00 with a 7.00% interest rate through Premier Mortgage Resources, LLC and monthly payments of $2,995.00 over 30 years.

At the hearing, **xxxxxxx**

Debtor will also be paying $6,340.00 out of pocket as a down payment for the residence.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 27, 2025. Trustee opposes on the following grounds:

1. No Motion to Employ Realtor has been filed, and the realtor/broker has not been approved by the Court. According to the California Residential Purchase Agreement show the Debtor's broker is Ridhi Sahni of Keller Williams. Opp'n 1:24-26, Docket 32.

2. Debtor failed to disclose the source of the $6,340.00 down payment *Id.* at 1:27-2:2.

3. It appears Debtor cannot afford plan payments where the Amended Schedules I and J reflect future expected expenses of $610. *Id.* at 2:3-5.

4. Debtor's Declaration does not clearly state where the expense of the monthly payment, $157.89, for the second loan has been scheduled. *Id.* at 2:6-11.

5. It appears escrow is to close on June 20, 2025, which is prior to this hearing date. *Id.* at 2:12-16.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Response Filed by Debtor

On June 16, 2025, Debtor filed her Declaration in Reply to the Opposition. Dec.; Dckt. 39. The Debtor first addresses the failure to obtain authorization to employ a Realtor to represent Debtor in the purchase of the Property. The Realtor that is to represent Debtor is Ridhi Sahni who is with Keller Williams. For this transaction, the Seller is represented by Michael Giancanelli, who is also with Keller Williams Realty. Dec.; ¶ 2; Dckt. 39.

Debtor then testifies that her "broker" will be paid a 4% commissions computed on the purchase price. *Id*. Since buyer and seller residential property commissions are equally divided between the buyer's broker and seller's broker, it appears that there is an 8% real estate commission being charged. That it well in excess of the common 5% to 6% presented to this court in other unrelated cases.

The Debtor indicates that the court should not worry about a professional hired to represent the Debtor being paid because it is the Seller who is paying the professional representing the Debtor. 11 U.S.C. § 330 does not include an exception to a professional needing to authorized by the court to be hired by the Chapter 13 debtor or for the court to approve the fees and expenses of that professional merely because a third-party is going to pay the professional.

At the hearing, **xxxxxxx**

Source of $6,340.00 Downpayment

Debtor states that the source of the $6,340.00 down payment will be a FHA down payment assistance program. It is not clear if this is another loan, a grant, or the FHA acquiring an interest in the Property being purchased. *Id.*; ¶ 3.

At the hearing, **xxxxxxx**

Ability to Pay the Loan

Debtor states that in the Third Supplemental Schedules I and J anticipated new car purchase expenses and insurance for her husband's anticipated vehicle. *Id.*; ¶ 4. Debtor states that they have readjusted their expenses, including entertainment so that she (not we) can make the $2,650.00 mortgage payment.

Debtor's latest Supplemental Schedules I and J are were filed on June 12, 2025. Dckt. 37. On Supplemental Schedule I, Debtor states that she and her husband have $16,724 in monthly gross income. After taxes, insurance and mandatory retirement plan contributions, the monthly net income is $10,706.

On Schedule J, Debtor lists reasonable and necessary food and expenses, which include, ($2,955) for home ownership expenses (including taxes and insurance), ($100) for maintenance, ($1,000) for food and housekeeping supplies, ($750) for transportation (fuel, maintenance, registration), and ($400) for non-filing spouse's unsecured debts. Debtor's reasonable and necessary expenses stated on Supplemental Schedule J total ($8,056.59) a month.

After deducting the ($8,056.59) in expenses from the $10.706.59 in take home income, the Debtor states having $2,650 a month to fund a Plan. Sch. J, ¶ 23c.; Dckt. 37.

Debtor's confirmed Chapter 13 Plan that was filed December 29, 2023, (Dckt. 3) and confirmed on February 14, 2024 (Order; Dckt. 13). Thus, when Debtor was single, and did not have community property income of a spouse, Debtor had reasonable and necessary expenses that allowed her to have "only" $2,650.00 in projected disposable income to fund the Chapter 13 Plan. Schedules I and J; Dckt. 1 at 35-38.

Under the Confirmed Plan (Dckt. 3), with only the Debtor's income, Debtor's Plan does provide for no less than an 80% dividend to be paid to creditors with general unsecured claims. This is a substantially higher dividend in most Chapter 13 cases.

However, it appears in these expenses that the Debtor and her spouse are choosing to divert community property income to pay the non-debtor's spouse's unsecured debts at $450 a month for remaining three and one-half years of the Plan, with totals approximately $18,900.

At the hearing, **xxxxxxx**

The Debtor also addresses in the Declaration that $157.89 for the second loan is addressed in the Third Supplemental Schedule J. Dec., ¶ 5; Dckt. 39.

DECISION

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 Incur Debt filed by Joanne Marie Evans ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxx** .

13. 24-23957-E-13 PRITAM SINGH — MOTION TO CONFIRM PLAN
PGM-2 Peter Macaluso — 5-20-25 [94]

Items 13 thru 14

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

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 20, 2025. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx

The debtor, Pritam Singh ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid of total of $2,250.00 through April 2025 with plan payments of $375.00 per month to commence on May 25, 2025 for 48 months. Amended Plan, Docket 98. 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 23, 2025. Docket 106. Trustee opposes confirmation of the Plan on the basis that:

A. The case has been going for nine months with Debtor still refusing to provide business documents to Trustee regarding Debtor's LLC known as Pacific Builders Construction. *Id.* at 1:27-2:16.

B. Amended Schedule A/B still does not identify any financial accounts that are an asset for the corporation. The Trustee is still not clear whether the Debtor has failed to list all financial accounts, or other assets, for the corporation. *Id.* at 2:17-20.

C. Debtor must amend the Schedule C to exempt the proper amount of wage income, which would be $2,242.62 in this case. *Id.* at 2:21-28.

D. Amended Official Form 122C-1 does not identify the non-filing spouse's, ("NF-Spouse"), worker's compensation income. It does not appear that the Debtor has listed all income, received six months prior to the filing of this case, and, as a result, the Trustee cannot ascertain whether the Debtor is above or below median income. *Id.* at 3:1-7.

DEBTOR'S RESPONSE

On June 17, 2025 Debtor filed a Reply to the Trustee's Opposition. Dckt. 117. In the Response, which is not supported by a Declaration or other evidence, Debtor's counsel states:

A. Debtor has provided the information about Pacific Builders Construction.

B. Debtor has provided tax returns for both the Debtor and Pacific Builders Construction. Debtor has also provided the bank statements for the business.

C. Debtor has amended Schedule C.

D. Debtor has amended the "CMI."

E. Debtor has amended Schedules A and B.

F. Debtor has provided the required 11 U.S.C. § 521 documents.

G. Debtor is current on Plan payments.

H. Debtor's spouse has obtained limited worker's compensation.

I. Debtor has made the final corrections to Schedule B (listing the business account), and Schedule I and J.

Dckt. 117.

DISCUSSION

As an initial matter, Debtor has filed an Amended Schedule C on June 6, 2025, correcting the amount of wage income claimed as exempt. Am. Schedule C at 3, Docket 110. Debtor discloses that asset to be valued at $15,920 and claims as exempt $4,550. *Id.*

However, questions remain that prevent confirmation.

Failure to File Documents Related to Business

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

A. Two years of tax returns,

B. Six months of bank account statements, and
C. Six months of profit and loss statements.

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.

Inaccurate or Missing Information

Debtor's Schedule A/B and Form 122C-1 contain outdated or inaccurate information. Some accounts for Debtor's LLC are not identified on the Schedule A/B, and Debtor's NF-Spouse's worker's compensation income is also not identified. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

14. 24-23957-E-13 DPC-4 | **PRITAM SINGH** / **Peter Macaluso** | **CONTINUED MOTION TO DISMISS CASE** / **5-7-25 [88]**

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 7. 2025. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxxxx.

June 24, 2025 Hearing

The court continued this hearing to the specially set day and time to be heard in conjunction with Debtor's Motion to Confirm Plan. It appears that the Plan is not confirmable.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

Debtor filed an Amended Plan and Motion to Confirm on May 20, 2025. Dockets 94, 98. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Docket 96. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

However, the Trustee has filed an Opposition to the Motion to Confirm, which includes the failure to provide business documents, the ability to make plan payments, failure to provide copies of tax returns, over-claiming of exemptions, and failing to disclose income of the non-debtor spouse. Opposition; Dckt. 106.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

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

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

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

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

15. 24-25862-E-13 CLH-1 | **SUSAN SCOTT** **Cindy Lee Hill** | **CONTINUED MOTION TO CONFIRM PLAN** **3-27-25 [42]**

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 , creditors that have filed claims or creditors holding allowed priority unsecured claims, and other parties in interest on March 27, 2025. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx.

June 24, 2025 Hearing

The court continued the hearing to allow Debtor to attend and be examined at the continued the 341 Meeting. A review of the Docket on June 16, 2025 reveals Debtor attended and the Meeting was concluded.

Debtor also filed a Declaration in support of the Motion on May 23, 2025. Docket 59. Debtor testifies she has finally mailed the Trustee her missing tax returns for the years 2020 through 2023. *Id.* at ¶ 5.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

The debtor, Susan C Scott ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor paying $60 per month for three months beginning in January of 2025 with payments to increase to $152 per month for the remaining 33 months of the Plan. Amended Plan, Docket 47. The Amended Plan calls for a sale of Debtor's real property identified as 53750-53725 NV Hwy 376 Mountain House NV ("Property") within 18 months from filing the original Plan in January of 2025. Proceeds from the sale will result in a 100% repayment to creditors. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 6, 2025. Docket 54. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is yet to file her tax returns for the years 2019 through 2023. Opp'n 1:27-2:1.

    a. Debtor filed a Reply on May 13, 2025. Docket 57. Debtor responds and suggests the hearing be continued to 2:00 p.m. on June 24, 2025 to be heard after the continued 341 Meeting scheduled for June 5, 2025.

2. The claim of NYE Tax Collector ("NYE") were originally listed in Class 2(A) of the Plan, but it appears that the claims may need to be given priority unsecured status. Opp'n 2:18-27.

    a. Debtor responds and states NYE originally filed its claim as secured but then later amended the claims to priority. If priority, Debtor will pay the claims without interest. Reply at 1:22-26.

3. The time line for selling the Property appears too long, especially given Debtor's health issues, currently at 18 months. There is no evidence on file of plans or progression being made regarding the sale. Opp'n 2:28-3:18.

    a. Debtor responds and reiterates her position that the sale should be 18 months. Reply at 2:1-3.

4. Debtor may have additional funds to contribute toward the Plan deriving from Debtor applying for IHHS for her eldest son. Opp'n 3:19-25.

a. Debtor responds and states there are no additional funds available to contribute toward the Plan. Reply at 2:4-7.

DISCUSSION

There are some outstanding issues with confirmation at this stage. Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2019 through 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).

Moreover, the court agrees that 18 months for a proposed sale is a long time line that would be prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The time line appears too long given Debtor's medical issues coupled with a general lack of clarity on how the Property will be sold. There is no contingency provision in the Plan in the event the Property is not sold.

The hearing on the Motion to Confirm is continued to 2:00 p.m. on June 24, 2025, to allow sufficient time for the continued 341 Meeting of Creditors to be concluded and for the Debtor to address any other matters that may arise at the continued Meeting.

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, Susan C Scott ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is **XXXXXXX**

16. 25-21564-E-13 CCJ-1 | **MICHAEL WARD** **Scott Shumaker** | **OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION** **5-22-25 [21]**

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

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

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

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

At the hearing, **xxxxxxx**

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

The Objection to Confirmation of Plan is overruled without prejudice.

Secured creditor U.S. Bank National Association, as Trustee for Velocity Commercial Capital Loan Trust 2021-4 ("Creditor"), opposes confirmation of the Plan on the basis that:

1. Debtor Michael Derek Christoph Ward's ("Debtor") Plan cannot pay a 0% interest on the arrearage. Moreover, the Plan only lists the arrearage as $40,000, but Creditor asserts the arrearage is at least $44,527.02. Obj. :11-4:17.

2. The Plan also contradicts itself on the basic amount of the monthly payments to be made, reporting in section 2.01 that the monthly plan payment to be made to the Trustee shall be $6,140, while noting in section 3.07(c) that the combined arrearage dividend and monthly contractual installments total $5,243.32. No

other debts or expenses are purported to be paid under the Plan other than a $75 monthly payment to the Trustee, leaving the $821.68 discrepancy unexplained. *Id.* at 6:1-5.

3. Debtor's disposable income is $6,140 and he is committing it all to the Plan, not leaving anything behind for emergencies, so the Plan is not feasible. *Id.* at 6:11-27.

4. Debtor has admitted in his 341 Meeting of Creditors that he has not yet made any payments on the Plan, nor has he made any post-petition mortgage payments, nor has he submitted his tax returns for the last three tax years. *Id.* at 7:4-6.

5. Confirmation should be denied and Debtor's case should be dismissed.

Creditor submits the Declaration of Carl C. Jones to authenticate the facts alleged in the Objection. Decl., Docket 22.

With respect to the Declaration, the court notes that Carl C. Jones is an attorney with the Attlelsey Ward Law firm, the attorneys for Creditor for this Objection. Mr. Jones testimony is limited to what he personally observed at, and the statements made by the Debtor at the 341 Meeting of Creditors.

DISCUSSION

Initial Issue, Debtor's Failure to File Motion to Confirm

The Trustee filed on June 5, 2025, a Motion to Dismiss this Bankruptcy Case. Docket 24. Trustee notes that as Debtor filed the documents late in the case, Debtor was required to file a Motion to Confirm the Plan. Debtor has not done so. Moreover, Debtor has not provided Trustee with documents such as pay advices and tax returns, so Trustee is unable to assess Plan feasibility.

As the Trustee notes in the Motion to Dismiss, the Debtor is required to file a Motion to Confirm the proposed Plan that was filed on April 30, 2025. L.B.R. 3015-1(c)(1) requires a debtor to file a Chapter 13 plan within fourteen (14) days of the filing of the bankruptcy petition. Here, the Chapter 13 Plan was filed on April 30, 2025, which is twenty-eight (28) days after the petition was filed on April 2, 2025. If a Chapter 13 plan is timely filed, then parties in interest are required to file an Objection to Confirmation. L.B.R. 3015-1(d)(4).

When a plan is not filed within fourteen days of the petition being filed, then the debtor must file a motion to confirm, supporting evidence, and notice a hearing using the procedures provided in Local Bankruptcy Rule 3015-1(d)(1). L.B.R. 3015-1(c)(3).

Thus, the Plan that is the subject of Creditor's Objection cannot be confirmed without a Motion being filed. It appears that Creditor's Objection is a precautionary filing

Interest Rate on Arrearage Cure

Creditor states a ground for Objection to Confirmation being that the Plan provides for a 0% interest on the arrearage cure. Creditor does not cite a legal basis for this ground. 11 U.S.C. § 1322(e) was enacted as

part of the Bankruptcy Reform Act of 1994, expressly to "overrule" the U.S. Supreme Court Decision in *Rake v. Wade*, 508 U.S. 464 (1993), which required interest to be paid on the arrearage cure amounts. 11 U.S.C. § 1322(e) provides:

> (e) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

This is discussed in 8 Collier on Bankruptcy, 16th Edition, ¶ 1322.09[a]:

> The legislative history is clear that Congress intended to overrule the decision in Rake, but only prospectively.45 Some courts have held that the statute's deference to the mortgage contract's provisions, along with the general prohibition of modification, may compel the debtor to pay a higher default interest rate if the contract so requires and state law permits.45a
>
> 45
> See H.R. Rep. No. 835, 103d Cong., 2d Sess. 55 (1994); 140 Cong. Rec. H10,770 (daily ed. Oct. 4, 1994) (remarks of Rep. Jack Brooks), reprinted in App. Pt. 9(b) infra.
>
> 45a
> *See Anderson v. Hancock*, 820 F.3d 670, 674 (4th Cir. 2016); *see Pacifica L 51 LLC v. New Invs. Inc. (In re New Invs., Inc.)*, 840 F.3d 1137 (9th Cir. 2016) (construing similar chapter 11 provision). *But see In re Cooper*, 2021 Bankr. LEXIS 2258 (Bankr. D.S.C. Aug. 18, 2021) (creditor could not seek default rate of interest when it had obtained a state court judgment that had not been based on such interest).

The Ninth Circuit Court of Appeals discusses this in *Pacifica L 51 LLC v. New Invs. Inc. (In re New Invs., Inc.)*, 840 F.3d 1137, 1144-1145 (9th Cir. 2016), which includes:

> In *Rake*, the Supreme Court held that an over secured creditor was entitled to pre- and post-confirmation interest on mortgage arrearages paid to cure a default under a Chapter 13 plan. 508 U.S. at 471-75. This reading of the relevant provisions of the Bankruptcy Code, §§ 506(b), 1322(b), and 1325(a)(5), permitted secured creditors to collect interest on top of the interest payments paid by debtors under their mortgages. Id. at 470-75.
>
> Congress overtly rejected this result in enacting § 1123(d). H.R. Rep. No. 103-835, at 55. The amendments to § 1123 were contained in § 305 of the Bankruptcy Reform Act of 1994, which is entitled "Interest on Interest." Pub. L. No. 103-394, § 305, 108 Stat. 4106, 4134 (1994). The relevant House Report states that the amendments "will have the effect of overruling the decision of the Supreme Court in *Rake v. Wade*," because Rake "had the effect of providing a windfall to secured creditors" by giving them "interest on interest payments, and interest on the late charges and other fees, even where

applicable laws prohibit[] such interest and even when it was something that was not contemplated by either party in the original transaction." H.R. Rep. No. 103-835, at 55.

Debtor Committing 100% of Projected Disposable Income

Another ground for Creditor's Objection is that the Debtor is proposing 100% of his disposable income to fund the Plan. Obj., p. 6:21-27; Dckt. 21. Creditor asserts that Debtor has "only" $821.68 per month to cover emergency expenses and fluctuating costs. At $821.68 a month, that equals $9,860 a year in surplus monies for Debtor.

The court is unaware of any legal authority for allowing debtors to reserve large sums of disposable income for future speculative expenses, which results in creditors not being paid all of the debtor's projected disposable income.

Creditor appears to not appreciate that a debtor may, or have to, modify a plan in the event of negative or positive future economic changes. Creditor does not point to any facially underfunded necessary expenses.

Creditor objects on these grounds that the Plan only commits $5,243.32 to the Plan with no other debts or expenses purported to be paid under the Plan, leaving a discrepancy of $821.68 not accounted for in monthly plan payments. However, the Plan explicitly provides for paying priority claims in the amount of $7,000 through the Plan and a 25% dividend on general unsecured claims through the Plan. Plan § 3.12, 3.14, Docket 18. Trustee will also receive a fee of the monthly payments. There are additional payments being made through the Plan, contrary to Creditor's assertion.

Creditor Also Requests Dismissal of Case

Though no grounds for or requests that the court dismiss this Bankruptcy Case, in the prayer, Creditor requests that the "bankruptcy petition" be dismissed. Presumably, Creditor is requesting that the Bankruptcy Case be dismissed, because the Bankruptcy Code does not provide for dismissing a petition.

In making this prayer for relief, Creditor would have the court completely bypass the requirements of 11 U.S.C. § 1307(c) and the limited joinder of claims permitted under the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules that require notice, separate motion, and hearing for a request to dismiss this Bankruptcy Case. Rather, Creditor would have the court dismiss this case as part of the order sustaining the objection to confirmation. Such a request demonstrates a fundamental misunderstanding of the Bankruptcy Code and how this process works.

The Objection to Confirmation 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 Secured creditor U.S. Bank National Association, as Trustee for Velocity Commercial Capital Loan Trust 2021-4

("Creditor")having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled without prejudice, the Debtor being required to file a Motion to Confirm and set it for hearing as provided in Local Bankruptcy Rule 3015-1(d)(1), as provided in Local Bankruptcy Rule 3015-1(c)(3).

17. 24-23271-E-13 CCR-1 | **BARBARA DODGE** **Eric Schwab** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY KRISTOFER ORRE AND SARAH ORRE 9-12-24 [23]**

Item 17 thru 19

Debtor's Atty: Eric John Schwab

Notes:
Continued from 2/25/25. Counsel for the Debtor reported that the appraisal has been obtained and exchanged. They are reviewing the appraisals and continuing in their discussions to resolve this matter.

The Objection to Confirmation is xxxxxxx.

June 24, 2025 Hearing

The court continued the hearing on the Objection as the Parties were in the process of resolving this matter. A review of the Docket on June 16, 2025 reveals nothing new has been filed in the case.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

Kristofer Orre and Sarah Orre ("Creditor") holding a secured claim oppose confirmation of the Plan on the basis that:

1. Debtor Barbara Ann Dodge ("Debtor") did not file this Plan and case in good faith, in violation of 11 U.S.C. § 1325(a)(3) and (7). Debtor has engaged in hiding assets prepetition by transferring money to avoid paying Creditor's claim, as well as misrepresenting costs on Debtor's Schedule J in the present case. Docket 23.

Creditor submits the Declaration of Sarah Orre to authenticate the facts alleged in the Objection. Decl., Docket 25.

DEBTOR'S REPLY

Debtor filed a Reply on October 2, 2024, asking the court continue the hearing on this Objection to November 5, 2024 at 2:00 p.m. to be heard in conjunction with the related Motion to Avoid Judicial Lien. Docket 32.

DISCUSSION

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

11 U.S.C. § 1325(a)(3) states:

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

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

The evidence before the court in this case shows that Debtor owed Creditor $252,581.56 resulting from an arbitration award entered by the Superior Court of California, County of Santa Cruz, case no. 23CV01407. Decl. ¶ 6, Docket 25. Creditor argues that Debtor closed certain accounts prepetition and moved funds from the closed accounts in order to frustrate collection attempts. If true, the court could infer the plan has been filed in bad faith.

At the hearing, the parties requested that the hearing be continued to 2:00 p.m. on November 5, 2024. The hearing on the Debtor's Motion to avoid the judicial lien of Creditor has been continued to that time and date.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 5, 2024.

November 5, 0224 Hearing

By prior Order of the Court, Dckt. 44, the hearing has been continued to 2:00 p.m. on December 10, 2024.

January 14, 2025 Hearing

The court continued the hearing on this Objection by order granting the *Ex Parte* Motion for a continuance. Docket 54. A review of the Docket on January 9, 2025 reveals nothing new has been filed with the court.

On January 10, 2025, Creditor and Debtor filed an *Ex Parte* Joint Motion to continue the hearing to 2:00 p.m. on February 25, 2025.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on February 25, 2025, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

February 25, 2025 Hearing

The court continued the hearing on this Objection by order granting the *Ex Parte* Motion for a continuance. Docket 67. A review of the Docket on February 21, 2025 reveals nothing new has been filed with the court.

As part of the court continuing this matter, opposition was to be filed by February 11, 2025, and replies were to be filed and served on or before February 18, 2025.

At the hearing, counsel for the Debtor reported that the appraisal has bee obt6ined and exchanged. They7 are reviewing the appraisals and continuing in their discussions to resolve this matter.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on April 8, 2025, for a Status and Scheduling Conference.

APRIL 8, 2025 STATUS CONFERENCE

At the Status Conference, counsel for the Debtor reported that there are two concerns to address. First, Debtor's Motion to Avoid Judicial Lien, and second, the Motion to Value Secured Claim.

The Debtor's appraiser needs to provide an update to the Appraisal Report confirming that his opinion of value is for the 2024 value (the Report containing what appears to be a typo making reference to 2023).

The Motion to Value, if granted, then resolves the two Objections to Confirmation.

Creditor reports that it is reviewing the financial information provided by the Debtor and needs additional time to complete the review.

The Parties agreed that the Motion to Value and the two Objections to Confirmation shall all be continued to 2:00 p.m. on May 6, 2025.

May 6, 2025 Hearing

At the hearing the Parties requested a further continuance to allow the Creditor additional time to review the documents, and likely resolving this matter.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on June 24, 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 Confirmation filed by Kristofer Orre and Sarah Orre, Creditors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

18. 24-23271-E-13 DPC-1 | **BARBARA DODGE** **Eric Schwab** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-11-24 [19]**

Debtor's Atty: Eric John Schwab

Notes:
Continued from 2/25/25. Counsel for the Debtor reported that the appraisal has been obtained and exchanged. They are reviewing the appraisals and continuing in their discussions to resolve this matter.

The Objection to Confirmation is xxxxxxx.

June 24, 2025 Hearing

The court continued the hearing on the Objection as the Parties were in the process of resolving this matter. A review of the Docket on June 16, 2025 reveals nothing new has been filed in the case.

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 Barbara Ann Dodge's ("Debtor") Plan relies on a Motion to Avoid Judicial Lien, and if the Motion is not granted, the Plan is not confirmable because it will fail the liquidation test. Obj. 2:3-14, Docket 19.

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

DISCUSSION

Debtor's Reliance on Motion to Avoid Judicial Lien

Debtor's Plan relies on avoiding the judicial lien of Kristofer Orre and Sarah Orre ("Creditor"). If Debtor succeeds on that Motion and the claim is placed in the general unsecured class of creditors, then Debtor's Plan passes the liquidation test. However, if the Motion does not succeed and Creditor's claim stays secured, Debtor's Plan will not provide unsecured creditors with more than what they would receive under a Chapter 7. 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."

At the hearing, the parties requested that the hearing be continued to 2:00 p.m. on November 5, 2024. The hearing on the Debtor's Motion to avoid the judicial lien of Creditor has been continued to that time and date.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 5, 2024.

November 5, 2024 Hearing

The court continued the two related matters to December 10, 2024. Dockets 43, 44. Therefore, the court continues the hearing on Trustee's Objection to the same time and date to be heard in conjunction with the related matters at 2:00 p.m. on December 10, 2024.

January 14, 2025 Hearing

The court continued the hearing on this Objection to be heard with the related Objection and Motion to Avoid Lien. A review of the Docket on January 9, 2025 reveals nothing new has been filed with the court.

February 25, 2025 Hearing

The court continued the hearing on this Objection to be heard with the related Creditor's Objection to Confirmation and Motion to Avoid Lien. As part of the court continuing this matter, opposition was to be filed by February 11, 2025, and replies were to be filed and served on or before February 18, 2025. A review of the Docket on February 21, 2025 reveals nothing new has been filed with the court.

At the hearing, counsel for the Debtor reported that the appraisal has bee obtained and exchanged. They7 are reviewing the appraisals and continuing in their discussions to resolve this matter.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on April 8, 2025, for a Status and Scheduling Conference.

APRIL 8, 2025 STATUS CONFERENCE

At the Status Conference, counsel for the Debtor reported that there are two concerns to address. First, Debtor's Motion to Avoid Judicial Lien, and second, the Motion to Value Secured Claim.

The Debtor's appraiser needs to provide an update to the Appraisal Report confirming that his opinion of value is for the 2024 value (the Report containing what appears to be a typo making reference to 2023).

The Motion to Value, if granted, then resolves the two Objections to Confirmation.

Creditor reports that it is reviewing the financial information provided by the Debtor and needs additional time to complete the review.

The Parties agreed that the Motion to Value and the two Objections to Confirmation shall all be continued to 2:00 p.m. on May 6, 2025.

The Objection to Confirmation is under review, with the Creditor reviewing financial records of the Debtor. Creditor is about halfway through the review of the documents.

The hearing is continued to 2:00 pm. On May 6, 2025.

May 6, 2025 Hearing

At the hearing the Parties requested a further continuance to allow the Creditor additional time to review the documents, and likely resolving this matter.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on June 24, 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 Confirmation filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation is **xxxxxxx.**

19. 24-23271-E-13 EJS-1 | **BARBARA DODGE** Eric Schwab | **CONTINUED MOTION TO AVOID LIEN OF KRISTOFER ORRE & SARAH ORRE 8-13-24 [10]**

Debtor's Atty: Eric John Schwab

Notes:
Continued from 2/25/25. Counsel for the Debtor reported that an appraisal was obtained and has been transmitted to counsel for Creditor. Creditor's counsel reported that she has receive it and the Parties are continuing in their negotiations to resolve this matter.

The Motion to Avoid Lien is xxxxxxx.

June 24, 2025 Hearing

The court continued the hearing on the Objection as the Parties were in the process of resolving this matter. A review of the Docket on June 16, 2025 reveals nothing new has been filed in the case.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The Motion was continued multiple times. In the most recent continuance, the court granted a Stipulation filed by the parties requesting the continuance. Order, Docket 53. In the Order, creditors Kristofer Orre and Sarah Orre were to obtain a valuation and file opposition to the Motion on or before December 31, 2024. No oppositions were ever filed.

This Motion requests an order avoiding the judicial lien of Creditor against property of the debtor, Barbara Ann Dodge ("Debtor") commonly known as 9021 Braden Way, Sacramento, Ca 95826 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $255,416.56. Exhibit D, Dckt. 13. Debtor has not properly filed the Abstract of Judgment with the court as it lacks recorder information. The court is unable to determine where and when the judgment was recorded.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $528,100 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total $0 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 20, Docket 1. However, Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $532,000 on Schedule C. Schedule C at 17, Docket 1.

JANUARY 14, 2025 HEARING

On January 10, 2025, the Debtor and Creditors Kristofer and Sarah Orre filed an *Ex Parte* Joint Motion requesting that the hearing be continued to 2:00 p.m. on February 25, 2025, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

February 25, 2025 Hearing

The court continued the hearing on this Motion to be heard with the related Objections to Confirmation. As part of the court continuing this matter, opposition was to be filed by February 11, 2025, and replies were to be filed and served on or before February 18, 2025. A review of the Docket on February 21, 2025 reveals nothing new has been filed with the court.

At the hearing, counsel for the Debtor reported that an appraisal was obtained and has been transmitted to counsel for Creditor. Creditor's counsel reported that she has received it and the parties are continuing in their negotiations to resolve this matter.

The hearing on the Motion to Avoid Judicial Lien is continued to 2:00 p.m. on April 8, 2025, for a Status and Scheduling Conference.

APRIL 8, 2025 STATUS CONFERENCE

At the Status Conference, counsel for the Debtor reported that there are two concerns to address. First, Debtor's Motion to Avoid Judicial Lien, and second, the Motion to Value Secured Claim.

The Debtor's appraiser needs to provide an update to the Appraisal Report confirming that his opinion of value is for the 2024 value (the Report containing what appears to be a typo making reference to 2023).

The Motion to Value, if granted, then resolves the two Objections to Confirmation.

Creditor reports that it is reviewing the financial information provided by the Debtor and needs additional time to complete the review.

The Parties agreed that the Motion to Value and the two Objections to Confirmation shall all be continued to 2:00 p.m. on May 6, 2025.

MAY 6, 2025 CONTINUED CONFERENCE

At the hearing, counsel for the Debtor reported that Creditor has requested supplemental information from the appraiser, which the appraiser is generating the information.

The Parties requested that the hearing be continued to 2:00 p.m. on June 24, 2025

The hearing on the Motion to Avoid Lien is continued to 2:00 p.m. on June 24, 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 Avoid Lien of Kristofer Orre and Sarah Orre, Creditors, filed by Barbara Dodge, 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 Avoid Lien is **xxxxxxx**.

20. 24-23472-E-13 PLG-3 | **DARREN SOOHOO** / **Rabin Pournazarian** | **MOTION TO MODIFY PLAN** / **5-16-25 [74]**

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 and all creditors and parties in interest on May 16, 2025. By the court's calculation, 39 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, Darren James SooHoo ("Debtor") seeks confirmation of the Modified Plan because Debtor was unemployed in January of 2025 and then had found new employment on May 2, 2025. Declaration, Docket 77. The Modified Plan provides for payments of $2,390.00 per month from May 2025 (month 9) to end of plan term (month 60). Modified Plan, Docket 76. 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 June 10, 2025. Docket 85. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has not clarified the amount paid through the Plan to date in the Modified Plan. The amount paid through April of 2025 is $4,535.76. *Id.* at 1:23-2:2.

B. Debtor is delinquent $2,390.00 under the terms of the proposed modified plan, but Trustee states an electronic payment for $2,390 is pending. *Id.* at 2:3-6.

C. The motion does not cite applicable code sections to support it such as 11 U.S.C. § 1329, which is required under LAR 9014-1(d), and FRB 9013. Obj. 2:6-10.

DISCUSSION

Debtor's counsel is reminded that the Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b). Failing to cite to legal authority is a failure to stay with particularity.

Delinquency

Debtor is $2,390.00 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

In confirming if the electronic payment cleared, at the hearing, **xxxxxxx**

The amount paid through the Plan to date is $4,535.76 and can be specified in the order confirming.

~~The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Darren James SooHoo ("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 16, 2025, is confirmed as amended to clarify that the amount paid through the Plan to date is $4,535.76. 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. 24-24973-E-13 FF-1 | **SARAH/AUSTIN FOWLER** **Gary Fraley** | **MOTION TO CONFIRM PLAN** **5-20-25 [33]**

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 creditors that have filed claims on May 20, 2025. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Sarah Elizabeth Fowler and Austin Thomas Fowler ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $4,069 per month beginning on May 25, 2025, with a 100% dividend to general unsecured creditors. Amended Plan, Docket 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 28, 2025. Docket 39. Trustee opposes confirmation of the Plan on the basis that:

1. The Motion to Confirm, Notice, Debtor's declaration, and Exhibits all lack Debtor's signatures in violation of Fed. R. Bankr. P. 9011(a) and Local Bankruptcy Rule 9004-1(c). Opp'n 1:22-2:10.

2. Debtor filed their Amended Schedules I and J as Exhibits in support of the Motion and not as their own Docket entry, so it may be difficult for parties in interest to locate the documents. Debtor also failed to file an amendment cover sheet, and Debtor has not provided any information in the Schedules about Debtor Sarah's new employment and income. *Id.* at 2:11-25.

3. Debtor is $949.00 delinquent in Plan payments to the Trustee. *Id.* at 3:3-10.

4. There are defects in the Plan. Debtor listed the claim of Merrick Bank, for a 2022 Keystone Montana High Country 377FI for arrears only, in the amount of $18,499.83, as a Class 1 Claim. Merrick Bank is also listed as a Class 2(B) claim with a secured claim amount of $40,000.00. Additionally, Section 7 Nonstandard Provisions, §7.03, states the arrearage claim of $18,499.83 is part of the unsecured claim of $19,309.76. Trustee is not clear why Merick Bank is listed for arrears in Class 1, and then again as a Class 2(B) claim, when the unsecured portion of the claim automatically falls into the Class 7 unsecured claims. It appears to the Trustee that the claim identified in Class 1 may have been misclassified. *Id.* at 3:13-23.

5. It is not clear how the Plan will be paying creditor Employment Development Department who filed a proof of claim asserting a secured claim in the amount of $1,898.27. *Id.* at 3:28-4:5.

6. Debtor's Schedule D shows secured claims for Ally Bank for 2021 Chevrolet Tahoe, Harley Davidson Financial for 2018 FXBB Streetbob Harley Davidson, and Merrick Bank for "Recreational", which do not appear to be listed in the Plan or expensed on Amended, Supplemental Schedule J. *Id.* at 4:6-9.

7. There is a typo in Section 7.04 of the Plan where it states unsecured creditors will be paid a 10% dividend, but the Motion and Section 3.14 of the Plan state a 100% dividend. *Id.* at 4:13-18.

8. Section 7 Nonstandard Provisions, §7.02 states the current Trustee's fees are 10.00%. This is an inaccurate statement. The Trustee is currently collecting 7.80%. Trustee would request any language in regards to an exact percentage of the Trustee's fee be stricken as it is unnecessary and could impede the Trustee's administration of the case in the future. *Id.* at 4:19-24.

DISCUSSION

Trustee's objections are well taken. As an initial matter, Debtor must cure the delinquency prior to this Plan being confirmed. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). Moreover, Debtor must file the correct Schedules as separate Docket entry items to be easily located by parties in interest. Debtor must also clearly indicate whether the Schedules are actually amended or supplemental and file the appropriate cover sheet.

Regarding Debtor's signatures, Local Bankruptcy Rule 9004-1(c) provides:

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

It does not appear Debtor has conformed with this rule, the two separate Debtors' signatures being made in the same style and font. Decl. 4, Docket 37. At the hearing, **XXXXXXX**

Trustee objects based on two separate dividend amounts that will be paid to general unsecured creditors. Debtor states in Section 3.14 of the Plan that there will be a 100% dividend. In section 7.04, Debtor states that general unsecured creditors will receive 10% interest on their claimed amount. It is not clear by this language if this is interest paid on top of the 100% dividend, or if Section 7.04 means to lower the amount paid in general to 10%.

Moreover, the Plan does not account for all creditors. Schedule D shows secured claims for Ally Bank for 2021 Chevrolet Tahoe, Harley Davidson Financial for 2018 FXBB Streetbob Harley Davidson, and Merrick Bank for "Recreational", which do not appear to be listed in the Plan or expensed on Amended, Supplemental Schedule J. It is not clear how these claims are being paid.

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, Sarah Elizabeth Fowler and Austin Thomas Fowler ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

22. 25-21073-E-13 DPC-1 | **HEATHER REIMUND** / **Mark Shmorgon** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **4-16-25 [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, Debtor's Attorney, and Office of the United States Trustee on April 16, 2025. 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.

The Objection to Confirmation of Plan is xxxxxxx.

June 24, 2025 Hearing

The court continued the hearing on this Objection to allow Debtor to file her tax returns. A review of the Docket on June 18, 2025 reveals nothing new has been filed in this contested matter.

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 Heather Reimund ("Debtor") has not filed her tax returns for the years 2021 through 2024. Obj. 1:27-2:2.

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

DISCUSSION

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2021 through 2024 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).

At the hearing, the Parties requested a continuance to allow the Debtor, Creditor and Chapter 13 Trustee to address these matters.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on June 24, 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**.

23. 25-21073-E-13 JTK-1 | **HEATHER REIMUND** / **Mark Shmorgon** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE MONEY BROKERS, INC.** **4-16-25 [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, Chapter 13 Trustee, and Office of the United States Trustee on April 16, 2025. 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.

The Objection to Confirmation of Plan is xxxxxxx.

June 24, 2025 Hearing

The court continued the hearing on this Objection to allow Debtor to address the issue of selling her home and paying creditor in full. On June 6, 2025 Creditor filed a Supplement to their Objection. Docket 38. Creditor states:

1. Debtor cannot sell or refinance the Property because she cannot convey clear title. Specifically, Debtor has pending on her Property an agreement to divide the Property into four parcels. The agreement cannot be performed until and unless the subdivision is approved and finalized. One of these parcels is to be sold to the Perevertan Family. Suppl. Obj. 1:20-2:6.

2. The Court's order authorized Debtor to list her property for sale without regard to the pending subdivision application or the agreement, under which the Perevertan Family has the contractual right to purchase part of the property. If a buyer submitted an offer to purchase the property, the Perevertan Family

could bring an action to compel specific performance of the agreement, record a notice of pendency of action, and cloud title to the property. *Id.* at 2:11-15.

3. Counsel for Secured Creditor and Debtor have discussed this matter by email letters, and it is evident to both that the County must approve the lot line adjustment before any sale of the property can proceed. This means that the employed broker cannot legitimately market the property for sale, because the parcel or parcels to be sold, i.e., the balance of about 8.75 acres, three of the four new parcels, have not yet been legally created; the same is true for the 2.27 acre parcel to be conveyed to the Perevertan Family. *Id.* at 2:19-24.

The agreement and tentative parcel map are submitted in support of the Objection as authenticated Exhibits A and B at Docket 39.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

The Money Brokers, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. It is not clear how Debtor Heather Reimund ("Debtor") will fund the Plan, if social security payments will go toward funding it. Obj. 1:20-24.

2. The valuation of debtor's home is incorrect. Debtor claims her real property located at 6647 20TH Street, Rio Linda, California, has a value of $1,000,000.00 ("Property"). However, Creditor estimated the Property has a fair market value no greater than $549,524.00. This Plan relies on selling or refinancing the home, and Debtor will not be able to do so if she has no equity. *Id.* at 2:1-11.

3. No Motion to Employ Broker on file.

    a. This has been resolved, the court hearing the Motion to Employ in conjunction with this Motion.

Creditor submits the Declaration of William H. Watson to authenticate the facts alleged in the Objection. Decl., Docket 14. Mr. Watson submits a Broker Price Opinion valuing the Property at $549,524.00. *Id.* at 2.

DISCUSSION

The Plan relies on selling or refinancing the Property to repay all creditors in full. Plan § 7.01, Docket 3. However, Creditor has submitted some evidence showing the Property does not contain enough equity to pay all creditors in full.

At the hearing, the Parties requested the hearing be continued as the Debtor, Creditor, and Chapter 13 address these matters.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on June 24, 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 Money Brokers, Inc. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

24. 24-23282-E-13 CYB-1 | **TRINIDAD/RINA BANUELOS** **Candace Brooks** | **MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AND TO WAIVE REQUIREMENT FOR SECTION 522 CERTIFICATE REGARDING EXEMPTIONS AS TO DEBTOR** **6-7-25 [34]**

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 parties in interest on June 7, 2025. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

The Motion to Substitute is granted.

Joint Debtor, Rina Banuelos, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Trinidad Jesus Banuelos. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor Trinidad Jesus Banuelos and Rina Banuelos filed for relief under Chapter 13 on July 26, 2024. On October 24, 2024, Debtor's Chapter 13 Plan was confirmed. Dckt. 23. On January 30, 2025, Debtor Trinidad Jesus Banuelos passed away. Joint Debtor asserts that she is the lawful successor and representative of Debtor. Decl. ¶ 7, Docket 36.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on March 4, 2025. Dckt. 26. Joint Debtor is the wife of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner. Decl. ¶ 6.

DISCUSSION

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

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

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

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

> **court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Rina Banuelos has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Rina Banuelos, as the wife of the deceased party and as the successor's heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Trinidad Jesus Banuelos.

The court grants the Motion to Substitute Party, and substitutes Rina Banuelos as the successor-in-interest to Trinidad Jesus Banuelos and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

The court further grants the Motion and waives the requirements for the deceased debtor, Trinidad Jesus Banuelos, to complete the 11 U.S.C. § 1328 Certificate and Certificate regarding 11 U.S.C. § 522(q).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Rina Banuelos is substituted as the successor-in-interest to Trinidad Jesus Banuelos and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the Motion is granted and the required 11 U.S.C. § 1328 Certificate and 11 U.S.C. § 522(q) Certificate are waived for the deceased Debtor Trinidad Jesus Banuelos.

25. 24-22192-E-13 24-2153 CAE-1 TULLY V. TULLY | **CHRISTOPHER TULLY** | **STATUS CONFERENCE RE: COMPLAINT 5-28-24 [1]**

Item 25 thru 26

Plaintiff's Atty: Pro Se
Defendant's Atty: Eric John Schwab

Adv. Filed: 5/28/24
Answer: 8/7/24

Nature of Action:
Recovery of money/property - preference
Objection/revocation of discharge
Dischargeability - domestic support
Dischargeability - divorce or separation obligation (other than domestic support)
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Pretrial Conference continued from 4/22/25 for a status conference. Order filed 4/24/25 [Dckt 32]

The Status Conference is xxxxxxx

JUNE 24, 2025 PRETRIAL CONFERENCE STATUS

At the June 24, 2025 Conference, xxxxxxx

SUMMARY OF COMPLAINT

The Complaint filed by Heather Tully, the Plaintiff, in pro se, seeks to have debts arising out of a divorce determined nondischargeable. Dckt. 1

SUMMARY OF ANSWER

Christopher Tully, the Defendant-Debtor, has filed an Answer, Dckt. 14. In it he denies that the Plaintiff is bringing a preference action under 11 U.S.C. § 547. He further denies that the complaint is properly brought to deny discharge pursuant to 11 U.S.C. § 727.

Defendant-Debtors then asserts that the allegations does not support relief pursuant to 11 U.S.C. § 523(a)(5) and 11 U.S.C. § 523(a)(15).

STATUS REPORT

A Joint Status Report was filed on August 8, 2024. Dckt. 16. In it the Parties state that they have agreed to a close of discovery that is four months after the Status Conference.

FINAL BANKRUPTCY COURT JUDGMENT

To the extent that Plaintiff alleges in the Complaint relief pursuant to 11 U.S.C. §§ 523 or 727, jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J).

PRETRIAL CONFERENCE ORDER

On August 16, 2024, the court entered its Pretrial Conference Scheduling Order. In addition to discovery deadlines, Pretrial Conference statements are required to be file no later than seven court days prior to this Pretrial Conference. Order, p. 4:4-7; Dckt. 21.

As of the court's April 14, 2025 review of the Docket, neither the Plaintiff nor the Defendant-Debtors had filed Pretrial Conference Statements.

Late Filed Pre-Trial Statement

Though late, Defendant-Debtor filed a Pre-Trial Statement on April 15, 2025. Dckt. 25. The key point in dispute is that Defendant-Debtor states that he owes no obligation to Plaintiff for any support arrearage. Defendant-Debtor identifies the following Exhibits:

a. The Judgement of Dissolution issued in Yolo County Superior Court on July 30, 2022.

b. A Court Order issued by Yolo County Superior Court on December 11, 2024 which confirms that Defendant does not owe support or support arrears to Plaintiff.

c. Defendants' bankruptcy schedules, statements, Chapter 13 Plan and Motions filed by Defendant objecting to the bankruptcy claim of Plaintiff and Defendants' Motion to Confirm his Chapter 13 Plan.

Defendant-Debtor also directs the court to his underlying Bankruptcy Case, 24-22102, in which he has filed an Objection to Plaintiff's Claim and set it for hearing on April 22, 2025. In the Objection to Claim, the assertions include:

4. The Marital Settlement Agreement in Exhibit A, at Page 5 clearly states that Heather Tully has no interest in the Debtor's residential vessel effective on the date of the Family Law Judgement on March 18, 2022, secured or otherwise. Debtor owns the residential vessel free and clear of any other interest.

5. The Marital Settlement Agreement in Exhibit A, at page 9 shows that temporary spousal support would be owed by Debtor to Heather Tully until further court order. A

subsequent Court Order issued December 11, 2024, denied spousal support and/or arrearages and spousal support to be paid by Christopher Tully was terminated. That Order is provided as Exhibit C.

6. The Marital Settlement Agreement in Exhibit A, at page 5 shows that Debtor owes an amount to Heather Tully based on valuation of the vessel during the divorce proceedings and the rental value of the vessel, the combined total being $52,000.00 including interest on the date of the bankruptcy petition. Debtor has scheduled and provided for this claim as general unsecured in class 7 pursuant to 11U.S.C. 523 (a) (15) and 1328 (a) (2). This claim should also be offset by the $5,000.00 recently awarded to the Debtor by the Superior Court in the order issued in December, Exhibit C, for a total allowed claim of $47,000.00.

24-22192; Objection to Claim, ¶¶ 4-6, Dckt. 69.

APRIL 16, 2025 PRETRIAL CONFERENCE

Defendant-Debtor filed his Pretrial Conference Statement on April 15, 2025. Dckt. 25. In it Defendant-Debtor directs the court to the related Chapter 7 Case, 24-22192, in which Defendant-Debtor has filed an Objection to Plaintiff's Claim (which obligation is the subject of this Adversary Proceeding for nondischargeability of debt). The hearing on the Objection to Claim is set for 2:00 p.m. on April 22, 2025.

The Pre-Trial Conference is continued to 2:00 p.m. on April 22, 2025.

APRIL 22, 2025 CONTINUED PRETRIAL CONFERENCE

At the Pretrial Conference, and in light of the Objection to the Claim of Creditor Heather Tully which is based on a State Court Judgment and Orders, and Heather Tully having filed an appeal of such Judgment and Orders, the Parties agreed to continue the Pretrial Conference to 2:00 p.m. on June 24, 2025 for a Status Conference

The Pretrial Conference is continued to 2:00 p.m. on June 24, 2025, for a Status Conference.

26. 24-22192-E-13 EJS-3 **CHRISTOPHER TULLY** **STATUS CONFERENCE RE: OBJECTION TO CLAIM OF HEATHER TULLY, CLAIM NUMBER 2**
3-4-25 [69]

Debtor's Atty: Eric John Schwab

Notes:
Continued from 4/22/25. Creditor Heather Tully to file a Status Conference Statement on or before 6/17/25.

The Objection to Claim xxxxxxx

JUNE 24, 2025 HEARING

On June 17, 2025, Heather Tully, Creditor, filed her Status Report which the court ordered for Ms. Tully to provide the court and Parties with the status of the State Court Appeal of the judgment and orders that are the basis for the Debtor's Objection to her Claim. Dckt. 102. Unfortunately, the Status Report does not provide any information of the status of any such appeals. Rather, it contains allegations that laws and been broken and that the Debtor did not follow order of the State Court.

Going to the office website for the California Court of Appeal, the appeal *Tully v. Tully*, Case No. C102232 is reported. [Fn.1.] The Appeal was filed on October 8, 2024. No briefs are stated to having been filed on the Appellate Court's website for that appeal. Heather Tully, as the Appellate, was granted an extension to April 25, 2025, to file her opening brief.

FN. 1.
https://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=3&doc_id=3114001&doc_no=C102232&request_token=NiIwLSEnTkw5WyApSCI9WEJIUFQ6UTxfIyI%2BTzlTUCAgCg%3D%3D.

There is a docket entry for May 15, 2025 stating that, "The corrected appellant's opening brief and appendix are to be served and filed 40 days after the filing of the record on appeal. *Id.*; Docket page. There is a May 27, 2025 docket entry stating, " Appellant returning notice designating the record on appeal received on 05/21/25. See letter for details."

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

Christopher Tully, Chapter 13 Debtor, ("Debtor," "Objector") requests that the court disallow the claim of Heather Tully ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case.

The Claim is asserted to be partially secured, partially unsecured entitled to priority treatment, and a general unsecured claim for equalization of the division of community property in the amount of $95,000. Objector asserts that there are no documents attached to the Proof of Claim supporting any aspect of the claim.

Creditor's claims derive from a divorce and accompanying Marital Settlement Agreement ("Agreement") between Debtor and Ms. Tully. Debtor has attached a copy of the Agreement with this Objection, filed as Exhibit A, Docket 72.

According to the Agreement, Debtor was awarded the Stolkraft boat named the "Charisma," valued at $90,000. Ex. A at 5. The superior court then applied a *Watts* charge to Debtor's use and enjoyment of the Charisma, and ordered Debtor pay Ms. Tully $20,635.00. *Id.* It was also ordered that Debtor pay Ms. Tully spousal support in the amount of $156 per month pending further order of the court, the marriage being of a long duration. *Id.* at 9. An order was issued by the superior court on December 11, 2024, denying Creditor's request for spousal support and spousal support arrearages. Ex. C at 20. The order also ceased any ongoing spousal support payments. *Id.*

DISCUSSION

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

Review of Proof of Claim 2-1
(Exhibit B in Support of Objection; Dckt. 72

Proof of Claim 2-1 appears to have been prepared and completed by Creditor in *pro se*. In response to Question 4 on Proof of Claim 2-1 as to whether it amends a prior Proof of Claim, Creditor states yes, and then cites to "Claim Number" "FL-2020-15." POC 2-1, § 4. This appears to be the Family Law Case number for the Yolo County Dissolution Proceedings. See Dissolution Judgment, Exhibit A; Dckt. 72.

Creditor states that there is a claim for $95,000.00, the basis of which is "Active Divorce Case # FL-2020-15 Mr. Tully Disregarded All Orders Filed on, 7-30-2022." POC 2-1, § 8.

Under § 9 of Proof of Claim 2-1 for a secured claim, when stating the claim is secured, Creditor has struck out the term "~~a lien on~~" property, then states that the vessel Charisma has a value of $90,000, that Creditor has a claim in the amount of $90,000 that is secured, and that the amount necessary to secure a default is $45,000.

Under § 9 of Proof of Claim 2-1 Creditor states that $8,236.80 of the Claim 2-1 is a priority domestic support obligation.

The only attachments to Proof of Claim 2-1 is a Mortgage Proof of Claim Attachment, in which the dollar amounts are show as "⌀" and the balance is left blank. No court orders or other documents showing such obligations are attached.

Exhibit A filed in support of the Objection is a copy of the State Court Dissolution Judgement, to which property division and attorney's fees judgments/orders are attached. For the Judgment After Court Trial addressing the property division, it provides:

A. For Community Property

1. The boat "Charisma" was awarded to Debtor, with the State court finding that it had a value of $90,000 as part of Debtor's community property division. Exhibit A, Judgement, p. 2:11-15; Dckt. 72 at 5

2. Because Debtor has exclusive possession of the "Charisma" from January 1, 2020, through the date of the Judgment, Debtor owes Creditor $20,625.00 for such exclusive use during that period. *Id*.; p. 2:16-12. The Judgment concludes this paragraph with all capital bold letters that Debtor owes nothing else to Creditor relating to the "Charisma" after the last day of the dissolution trial.

3. The court approved the Stipulation for Partial Settlement of Community Property which identifies specific property. See Attachment 5 to Judgment; *Id*. at 12-13.

4. The Judgment then provides for the equal sharing of the community property value of Debtor's specified retirement benefits. Judgment, ¶ 6; *Id*. at 6.

5. The Judgment then divides specified community property assets to Debtor and to Creditor. Judgment, ¶¶ 7, 8, 9; *Id*. at 7-8..

B. Separate Property.

1. The Debtor's and the Creditor's separate property is specifically identified in the Judgment. Judgment, p. 8:23-9:7; *Id*. at 8-9.

C. Support Obligation.

1. The Judgment provides for $156.00 a month in Spousal Support to continue pending further order of the State court. Judgment, ¶ 12; *Id*. at 9.

D. Attorney Fees

1. Creditor was ordered to pay Debtor $6,000.00. Judgment, p. 6:18-23; *Id*. at 9.

Exhibit C is a copy of the State court "Minute Order," dated December 11, 2024, in the Dissolution Action which states that:

A. The "Motion Denied for SPOUSAL SUPPORT and/or ARREARAGES [RESP] Argued and submitted." Exhibit C; Dckt. 72 at 20 (emphasis in original).

1. The Respondent, the "RESP," is identified as Creditor.

B. "Spousal Support to be paid by [Debtor] is "TERMINATED." *Id*. (emphasis in original).

C. Motion for Sanctions and Attorney's Fees is granted and Creditor is ordered to pay Creditor $5,000. *Id*.

Debtor provides his testimony in a Declaration filed in support of the Objection to Claim. Dec.; Dckt. 71. In the Declaration, Debtor cites the court to the State Court Judgment and Settlement Agreement, referencing parts thereof. However, Debtor provides the court with little personal knowledge testimony. The Declaration does not state that he has paid all of the $156.00 monthly support obligation payments to Creditor. However, the Minute Order states that Creditor's Motion for Arrearages was denied, indicating that there were none owing as of the termination of the Debtor's support obligation.

Here, Creditor has not supported her claim with any of the required documentation. Claims based on writing must be submitted with the proof of claim. *See* Fed. R. Bankr. P. 3001(c). If the claim is secured, it would survive bankruptcy. But there is no evidence the claim is secured.

Here, Debtor has provided the court with testimony and evidence from the State Court Dissolution Action. The record reflects Creditor has no interest in the boat, Charisma, and so her claim is not secured by that asset. Rather, it reflects that there is a property division equalization obligation owed by Debtor to Creditor. The record further reflects that Creditor is not owed an spousal support arrearages or ongoing spousal support payments. Finally, as to the equalization payment of $20,635.00, Debtor has provided for this portion of the claim in the general unsecured claims in the proposed Plan. *See* Am. Schedule E/F at 14, Docket 39.

Based on the evidence before the court and the State Court Judgment and Orders, proper grounds exist for Creditor's claim to disallowed as to any claimed amounts for spousal support in the amount of $8,236.80 and for any secured claim.

However, at the April 22, 2025 Hearing, Creditor advised the court that she has filed an Appeal with the California Third District Court of Appeal of the State Court 2022 Judgment and the State Court December 2024 Order which form the basis for Debtor's Objection to Claim.

APRIL 22, 2025
CONTINUANCE OF HEARING

Agreement for Confirmation of Plan

At the hearing, the Creditor and Debtor agreed to allow for the confirmation of Debtor's proposed Plan, with an amendment to provide for Creditor's Claim in the additional provisions of the Plan in light of the Appeal. The proposed Chapter 13 Plan is amended, with the amendment to be stated in the order confirming the Plan as follows (the court providing the substance of the language, with the Chapter 13 Trustee and Debtor's counsel may refine as appropriate and consistent with this court's ruling stated herein and on the Record at the April 22, 2025 hearing):

Section 7 - Additional Provisions

The Claim of Heather Tully, Proof of Claim 2-1, shall be provided for as a Class 7 General Unsecured Claim in the amount of $20,625.00 under this Chapter 13 Plan.

The inclusion of the Claim of Heather Tully, Proof of Claim 2-1, is without prejudice to the rights of Heather Tully to pursue her appeal of the State Court Judgment and Orders from California Superior Court, for the County of Yolo, Tully v. Tully, Case No. FL2020-0015. In the event that Heather Tully prevails on her appeal and the State Court Judgment and Orders, upon which the Debtor has based his Objection to Heather Tully's Claim, then the amount and nature (general, priority, secured) will be determined, any objections thereto litigated, and the Plan modified by the Debtor as necessary.

The Additional Provisions treatment for Heather Tully's Claim, Proof of Claim 2-1, was agreed to on the Record at the April 22, 2025 hearing for the Debtor's Objection to Heather Tully's Claim and the hearing on the Motion to Confirm Chapter 13 Plan as a method to allow Debtor to confirm and begin performing the Chapter 13 Plan based on the Judgment and Orders of the State Court, and preserve Heather Tully's right to appeal and have such Judgment and Orders changed.

With the forgoing amendment, the appellate litigation is provided for in the Chapter 13 Plan, Heather Tully's Claim based on the existing Judgment and Orders are provided for, the rights of Heather Tully to pursue the appeal and any changes in the Judgment and Orders preserved, and the Debtor's ability to proceed with the performance of the Plan pending the appellate decision(s) allowed.

The hearing on the Objection to Proof of Claim Number 2-1 of Heather Tully is continued to 2:00 p.m. on June 24, 2025, for a status Conference.

On or before June 17, 2025, Creditor Heather Tully shall file a Status Conference Statement which shall provide information concerning the status of the State Court Appeal of the judgment and orders that are the basis for Debtor's Objection to Claim.

27. 24-25394-E-13 **CLAYTON DELAUGHDER**
Joshua Sternberg

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA INC.
6-3-25 [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)(1) Motion—Hearing Required.

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties in interest on June 3, 2025. By the court's calculation, 21 days' notice was provided. 28 days' notice is required. Movant is seven days late of the required notice period. Moreover, Movant has not complied with Local Bankruptcy Rule 9014-1(f)(1) and explained in the Notice where opposition should be submitted. The Notice is procedurally and substantively failing to conform to the Rule.

At the hearing, **xxxxxxx**

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

The Motion to Value Collateral and Secured Claim of Santander Consumer USA Inc. ("Creditor") is xxxxxxx.

NO DOCKET CONTROL NUMBER

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

THE MOTION

The Motion filed by Clayton Daniel Delaughder ("Debtor") to value the secured claim of Santander Consumer USA Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 43. Debtor is the owner of a 2015 Chevrolet Spark ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $3,683 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).

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 $5,066.28. Proof of Claim, No. 1-1. 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 $3,683, 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 Clayton Daniel Delaughder ("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 Santander Consumer USA Inc. ("Creditor") secured by an asset described as 2015 Chevrolet Spark ("Vehicle") is determined to be a secured claim in the amount of $3,683, 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 $3,683 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

28. 25-21803-E-13 **ERIC LEE**
Pro Se

MOTION TO EXTEND TIME AND VACATE DISMISSAL
6-16-25 [14]

DEBTOR DISMISSED: 05/05/25

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 18, 2025. By the court's calculation, 6 days' notice was provided. The court set the hearing for June 24, 2025. Dckt. 15.

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

The Motion to Extend Time to File and Vacate Dismissal is xxxxxxx.

On April 16, 2025, Eric Lee, the Debtor, commenced this Chapter 13 Case. The Clerk of the Court issued a Notice of Incomplete Filing and Intention to Dismiss on April 16, 2025, stating that if the required documents (including Schedules, Statement of Financial Affairs, and Chapter 13 Plan) were not filed by April 30, 2025, the Bankruptcy Case would be dismissed. Notice; Dckt. 3. The documents were not filed and on May 5, 2025, the Clerk of the Court entered an order dismissing this Bankruptcy Case. Dckt. 9.

On June 16, 2025, a letter from the Debtor was received and filed by the court. The Letter is dated June 10, 2025. Dckt. 14. In it Debtor requests a 90-day extension to "reopen and file my case and proceed with retaining legal counsel for a Chapter 13 bankruptcy filing." *Id.* In the letter the Debtor describes several health conditions and references a contested sale of the Debtor's home, trespassing by the person asserting to be the buyer, and it being reported to the police. *Id.*

Debtor has only one prior bankruptcy case filed in this District, that being a 2011 Chapter 7 Case that was fully prosecuted and Debtor's discharge entered. Case 11-47364.

The court can appreciate the stress parties face and the need to obtain bankruptcy relief. Here, the Debtor filed the bankruptcy case in *pro se* on April 16, 2025, and as of the June 10, 2025 letter from Debtor requesting an extension, Debtor had not obtained counsel during that fifty-seven (57) day period. In the letter,

Debtor requests a 90-day "extension" in which to file the required documents, prosecute the Bankruptcy Case, and possibly obtain counsel.

In the letter Debtor states that he has to "rely on the help of my son to manage these matters." Debtor's son is not identified in the letter. No evidence that complies with the requirements of the Federal Rules of Evidence has been filed in support of this request for an extension.

In substance, Debtor must be requesting that the court vacate the order dismissing this Bankruptcy Case, extend the time to file the required documents, and afford Debtor a 90-day breathing period to get things straightened out. With respect to the latter, it sounds in the nature of obtaining a "preliminary injunction" to prevent others from taking actions by virtue of the automatic stay. Debtor does not identify any event, circumstance, or action for which the automatic stay would be of any benefit.

Subsequent Chapter 13 Case Filed

On June 18, 2025, the Debtor commenced a new Chapter 13 Case, No. 25-23031, which is assigned to the Hon. Christopher M. Klein. With the June 18, 2025 filing of Chapter 13 Case No. 25-23031, the Debtor has the prior bankruptcy cases that were pending and dismissed within one year of the June 19, 2025 filing of the Debtor's latest case. The prior Case are:

Case	Dismissal
25-21803 Chapter 13 Case	May 5, 2025

This one prior case that was pending and dismissed within one year of Case No. 25-23031 brings the provisions of 11 U.S.C. § 362(c)(3)(A) into play, with the automatic stay terminating as to the Debtor 30 days after that case was filed unless the Debtor obtains an extension of that stay:

> (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**;
> >
> > (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; . . . .

11 U.S.C. § 362(c)(3).

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 Extend Time to File and Vacate Dismissal filed by Eric Lee, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

29. 24-25653-E-13 DPC-3 | **MICHAEL PARRA** | **Peter Macaluso** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** | **5-22-25 [61]**

Final Ruling: No appearance at the June 24, 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 22, 2025. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemption is sustained, and the exemption is disallowed in its entirety.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Michael Anthony Parra's ("Debtor") claimed exemptions under California law. Trustee objects to Debtor claiming an exemption in the amount of $2,000 in a 2002 Tamte Carrier Double Axles Trailer ("Trailer") under Cal. Code Civ. P. §703.140(b)(2). Cal. Code Civ. P. §703.140(b)(2) states:

> (b) The following exemptions may be elected as provided in subdivision (a):
>
> . . .
>
> (2) The debtor's interest, not to exceed seven thousand five hundred dollars ($7,500) in value, in one or more motor vehicles.

A motor vehicle is defined as "a vehicle that is self-propelled." Cal. Vehicle Code § 415(a). The Trailer does not fit this definition. Debtor filed a Non-Opposition to the Motion on June 10, 2025. Docket 66.

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*.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemption in the amount of $2,000 in a 2002 Tamte Carrier Double Axles Trailer under California Code of Civil Procedure §703.140(b)(2) is disallowed in its entirety.

30. 24-21962-E-13 MRL-1 JEFFREY/STACY ALDEA Mikalah Liviakis MOTION TO MODIFY PLAN 5-15-25 [23]

Final Ruling: No appearance at the June 24, 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 parties in interest on May 16, 2025. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Jeffrey David Aldea and Stacy Elaine Aldea ("Debtor"), have filed evidence in support of confirmation. *See* Decl., Docket 25; Ex., Docket 26. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 10, 2025. Docket 30. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jeffrey David Aldea and Stacy Elaine Aldea ("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 15, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

31. 24-25272-E-13 DPC-1 | **ELIZABETH CASTANEDA**
Mohammad Mokarram | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
5-20-25 [19]

Final Ruling: No appearance at the June 24, 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 20, 2025. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemption is sustained, and the exemption is disallowed in its entirety.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Elizabeth Pearl Castaneda's ("Debtor") claimed exemptions under California law. Trustee states:

> A. Schedule C shows the Debtor exempting Federal and State 2024 tax refunds, for $1,900.00 under Cal. Code Civ. P. §704.080. This exemption identified as "Deposit Account" and means a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent. Tax refunds are not public benefits or social security benefits. Obj. 1:23-2:13, Docket 19.

DISCUSSION

Cal. Code Civ. P. §704.080 states:

(a) For the purposes of this section:

> (1) "Deposit account" means a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent.
>
> (2) "Social security benefits" means payments authorized by the Social Security Administration for regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits. "Public benefits" means aid payments authorized pursuant to subdivision (a) of Section 11450 of the Welfare and Institutions Code, payments for supportive services as described in Section 11323.2 of the Welfare and Institutions Code, and general assistance payments made pursuant to Section 17000.5 of the Welfare and Institutions Code.

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*.

Debtor has not stated a basis to claim the amount of $1,900.00 from tax refunds as exempt under this section. There is no evidence showing tax refunds would fit the definition of public benefits or social security benefits that would enable the exemption to be properly claimed under this section. Debtor did not file any Response to this Objection, despite it being noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1). For these reasons, the Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemption for Federal and State 2024 tax refunds, in the amount of $1,900.00 under Cal. Code Civ. P. §704.080, is disallowed in its entirety.

32.	**24-21068-E-13** **SK-4**	**DESIREE LEWIS** **Sunita Kapoor**	**MOTION BY SUNITA KAPOOR TO WITHDRAW AS ATTORNEY** **6-6-25 [188]**

The Motion to Withdraw was granted by Order issued on June 12, 2025. Order, Docket 193. The matter is concluded and removed from the calendar.