UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 2, 2024 at 2:00 p.m.

1.	**24-22599-E-13** **CYB-1**	**JAMES JOHNSON** **Candace Brooks**	**MOTION TO EXTEND AUTOMATIC STAY O.S.T.** **6-26-24 [16]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 26, 2024. By the court's calculation, 6 days' notice was provided. The court set the hearing for July 2, 2024. Dckt. 23.

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

The Motion to Extend the Automatic Stay is granted.

James Roy Johnson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition

pending in the past year. Debtor's prior bankruptcy case (No. 22-20815) was dismissed on May 5, 2024, after Debtor became delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 22-20815, Dckt. 73, May 2, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor's income was his social security under the previous Plan. Debtor was also supplementing his income with funds from his retirement and investments accounts. Debtor was unable to obtain a reverse mortgage under the previous Plan, and so his previous case was dismissed. Decl. 2:1-5, Docket 18. However, since the filing of No. 22-20815, Debtor was hospitalized and has made the decision to sell his primary residence and pay off debts all debts at 100%. Mot. 2:15-18, Docket 16.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has made the decision to sell his home and pay off all creditors due to his new medical condition since being hospitalized. Decl. 2:13-15, Docket 18. Debtor made substantial payments under the previous Plan, having paid $61,608. Debtor plans to make adequate protection payments until the home is sold, meaning the mortgagee will not be stuck waiting around for a sale to occur and will be receiving some money each month. *Id.* at 2:20-23.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by James Roy Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted on an interim basis, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court, through and including xx:xx x.m. on xxxx, 2024.
>
> **IT IS FURTHER ORDERED** that the final hearing on this Motion shall be conducted at xx:xx x.m. on xxxx, 2024. Debtor shall provide notice of the continued hearing on or before xxxx, 2024, with written oppositions, if any, filed and served on or before xxxx, 2024; and replies, if any, filed and served on or before xxxx, 2024.

**2. 20-21299-E-13 ADR-3 | DERWIN/GLORIA DARBY
Justin Kuney | MOTION TO MODIFY PLAN
5-1-24 [65]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors and parties in interest, and Office of the United States Trustee on May 16, 2024. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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, Derwin Darby and Gloria Ann Darby ("Debtor") seeks confirmation of the Modified Plan because Debtor has incurred temporary losses in income causing them to fall behind in plan payments. Declaration ¶ 5, Docket 68. The Modified Plan provides for $164,554.00 having been paid into the Plan for months 1 through 50, with monthly payments of $3,375 to be paid for months 51-60 to complete the Modified Plan. Modified Plan § 7.01, Docket 67. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a brief Response on June 14, 2024, simply asking for clarification as to the dividend to unsecured creditors. Debtor has projected a 0% dividend, but Trustee calculates a dividend of 3.062%. Docket 73.

DISCUSSION

Clarifying the amount of unsecured creditors, at the hearing, **XXXXXXX**

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, Derwin Darby and Gloria Ann Darby ("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 1, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

3. 24-20297-E-13 LORELL LEAL
Pro Se

CONTINUED MOTION TO CONFIRM PLAN
4-16-24 [36]

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Aldridge Pite, LLP, and Office of the United States Trustee on April 16, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

Movant did 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, the court addressed with the *pro se* Debtor several rules and requirements in Federal Court that may not be obvious to a *pro se* party.

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 without prejudice, Debtor having filed an Amended Plan for which the hearing on the Motion to Confirm is set for August 6, 2024.

July 2, 2024 Hearing

The court continued the hearing on this Motion in light of potential equity in Debtor's home to preserve through a successful bankruptcy and after holding conversations with Debtor about employing knowledgeable counsel to assist in prosecuting this case. Debtor has not enlisted counsel. On June 24,

Debtor filed an Amended Plan and Motion to Confirm. Dockets 86, 87. As to that Motion, the court notes Debtor has again failed to use this district's Certificate of Service Form, EDC 007-005. Similarly, multiple pleadings have again been improperly filed as one document, violating Local Bankr. R. 9004-2(c)(1).

On June 24, 2024, Debtor filed an Amended Plan and Motion to Confirm, setting the hearing on the Motion for August 6, 2024. Dckts. 87, 86. No evidence is filed in support of the Motion.

The court notes that on March 29, 2024, NewRez, LLC filed Proof of Claim 3-1, in which Citibank, N.A., as Trustee, is identified as the creditor holding a claim secured by Debtor's residence.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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

PLEADINGS FILED AS ONE DOCUMENT

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

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

THE MOTION TO CONFIRM

The debtor, Lorell Jo Leal ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for three monthly payments of $4,404.63, 54 monthly payments of $5,513.07, and three monthly payments of $6,621.51 with an estimated 0% dividend to general unsecured creditors. Amended Plan, Docket 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a lengthy Opposition on May 1, 2024. Docket 49. Trustee opposes confirmation of the Plan on the basis that:

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

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

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

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

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

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

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

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

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

   B. Schedule J appears to be inaccurate as it includes $3,371.03 for a mortgage payment, and $980.05 real estate taxes. It appears that

mortgage payment is listed as a Class 1 claim in the Plan and will be paid through the Plan. Additionally, Form 122C-2 shows the property taxes are paid through an escrow account included in the mortgage payment. *Id.* at p. 4:16-20.

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

D. FORM 122C-1, (Docket 1 ps. 58-60), claims 3 dependents for computations of the means test, where on Schedule J, the Debtor has stated there are no dependents. Schedule J expenses seems consistent with a household of 1 person, where the Debtor has previously advised the Court of the many health issue challenges she faces, (*See* Ex Parte Motion for Special Power of Attorney, Docket 26). The Trustee is not clear whether the Debtor is solely supporting herself, or if she has 2 dependents she is supporting, and if all the expenses adequately reflect 3 people, given the Debtor's current health conditions. *Id.* at ps. 4:26-5:4.

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

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

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

Id. at p. 5:5-9.

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

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

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

I. STATEMENT OF FINANCIAL AFFAIRS, (Docket 1 p. 45): The Debtor has failed to disclose all income for the past two years. Question #5 shows the Debtor has not had income in 2024, 2023 or 2022. Schedule I shows that the Debtor is retired and is collecting monthly Social Security income of $1,569.06, pension or retirement income of $4,107.99, and, household contributions by household members of $4,000.00. The Debtor has failed to identify any of this income. The Trustee is not clear if the rest of the Statement of Financial Affairs has been completed accurately and would request that it be amended to include the include the income, and any other information that has been omitted.

DISCUSSION

This case involves a myriad of problems that the Trustee has raised. There is a payment delinquency, procedural errors, service errors (the record showing most creditors likely have not even been served this Motion and related pleadings), inaccurate information subject to the penalty of perjury on the Schedules and required Forms, all while Debtor has avoided appearing before this court despite the court ordering Debtor to do so. There is no evidence in support of confirmation. Debtor's Schedules I and J, Statement of financial Affairs, and Forms 122C-1 and 122C-2 contain inconsistent and inaccurate information. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6). The Plan is also overextended. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection. Debtor is required to cooperate with Trustee in correcting these matters. 11 U.S.C. § 521(a)(3).

At the hearing, the court had a long discussion with the Debtor and the Chapter 13 Trustee's counsel of resources available for pro se consumer debtor, as well as the value of legal services provided by a consumer attorney when a consumer debtor is trying to save a residential property. The court also expressly addressed how a consumer attorney's filing fee are amortized over the life of the Chapter 13 Plan, thereby not requiring the consumer debtor to put up all of the fee amount upfront.

For case manage purposes, the court continues the hearing on the Motion to Confirm. This will afford Debtor some breathing space to consider what resources are available, including meeting with some potential consumer attorneys.

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

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

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

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

4.	**24-20549-E-13 DPC-1**	**RYAN/SHARLENE BECK Mikalah Liviakis**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
	4 thru 5		**4-2-24 [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, and parties requesting special notice on April 2, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

July 2, 2024 Hearing

At the hearing held on April 23, 2024, counsel for the Debtor and counsel for Creditor United Shore Financial Services, LLC d/b/a United Wholesale Mortgage ("Creditor") stated that they believe that they can address the issue of whether there is a pre-petition arrearage for Creditor's claim or whether there

is just an increase in the post-petition payments to account for the projected costs and expenses (such as insurance and property taxes) that are included in Debtor's monthly payment.

The Trustee concurred with the request for a continuance, believing that resolution of that claim and plan payment (which may be a Class 4 Claim) can be addressed by Debtor's and Creditor's counsel in light of each of their's demonstrated ability to get matters resolved.

On June 11, 2024, Debtor filed a Response. Docket 39. Debtor states that on the date the petition was filed, Debtor was current with their mortgage payments. *Id.* at 1:25-26. Debtor agrees to resolve Trustee's and Creditor's Objections by filing a Stipulation with the court where Creditor's Claim will remain in Class 4 and the escrow shortage that was calculated on the date of the petition will be paid through Debtor's postpetition mortgage payments. *Id.* at 1:28-2:4.

Trustee filed a Response as well, still recommending the Plan not be confirmed. Docket 43. Trustee states the Stipulation does not make clear what the new payment will be and how long the repayment will last. Also, Trustee states the Debtor has not filed a supplemental Schedule I and J with this information to show that the increased payment is feasible in their budget. The Trustee cannot assess whether or not this will affect the feasibility of the plan without this information.

On June 18, 2024, Creditor and Debtor filed a Stipulation to Resolve Objection to Confirmation of Chapter 13 Plan. Dckt. 45. The Stipulated Terms are:

A. Creditor's claim will be provided for in Class 4 of the Chapter 13 Plan.

B. For the $3,255.40 projected escrow shortage, Debtor shall make payments of **xxxxxxx** into the escrow account, in addition to Debtor's regular post-petition monthly payment.

At the hearing, **xxxxxxx**

REVIEW OF THE OBJECTION

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

1. The Debtor cannot make the plan payments and does not appear to have the ability to make the plan payments. Objection, Docket 21, p. 1:25-27.

2. The Debtor's Plan does not comply with 11 U.S.C. § 1325(a)(1) and (6). *Id.* at p. 2:1-2.

3. The Debtor has failed to accurately disclose information in the Plan and Schedules, as well as provide documents to the Trustee. *Id.* at p. 2:3-4.

4. The Debtor listed United Shore Financial Services, LLC d/b/a United Wholesale Mortgage as a class 4 claim, but the Trustee believes this creditor should be listed as a class 1 claim and paid through the Plan. *Id.* at p. 2:5-13.

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

DISCUSSION

Trustee's objections are well-taken.

Improper Classification of a Claim

Trustee objects to confirmation of the Plan on the basis that the Debtor lists United Shore Financial Services, LLC d/b/a United Wholesale Mortgage ("Creditor") as a class 4 creditor in the Plan. Plan, Docket 3, § 3.10. However, the Trustee believes that this Creditor should be listed in class 1 of the Plan. Objection, Docket 21, p. 2:5-13. The Creditor's Proof of Claim states that they are owed $7,747.11 at the time the Debtor filed their Petition. Claim No. 13. For this reason, the Trustee believes that this claim should be listed in class 1 of the Plan. Objection, Docket 21, p. 2:5-13.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan needs to account for the $7,747.11 arrearage owed to Creditor. In order to account for this arrearage, Debtors monthly plan payment will need to increase by a minimum of $129.12. However, based on Debtor's Schedule J, it does not appear that they can afford an increase in plan payments. The Debtor's proposed Plan calls for a $990.00 monthly plan payment for 60 months. Plan, Docket 3, § 2. According to Debtor's Schedule J, their net monthly income is $990.50. Petition, Docket 1, p. 34. Thus, the Debtor is already putting all of their net monthly income into the proposed plan payment and would not be able to afford an increase. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Inaccurate or Missing Information

Trustee claims that the Debtor has failed to accurately disclose information in the Plan and Schedules, as well as provide documents to the Trustee. Objection, Docket 21, p. 2:3-4. However, the Trustee has not indicated specifically what information or documents has not been provided. Based on the court's review of all the documents, it appears that Debtor has not accurately disclosed the Creditor's claim in the proposed Plan, but the court is unsure as to what additional information and documents the Trustee is referring.

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**.

5. **24-20549-E-13 JCW-1** | **RYAN/SHARLENE BECK** | **Mikalah Liviakis** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY UNITED SHORE FINANCIAL SERVICES, LLC 3-26-24 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 26, 2024. By the court's calculation, 28 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. Opposition was presented at the hearing.

The Objection to Confirmation of Plan is xxxxxxx.

July 2, 2024 Hearing

At the hearing held on April 23, 2024, counsel for the Debtor and counsel for Creditor United Shore Financial Services, LLC d/b/a United Wholesale Mortgage ("Creditor") stated that they believe that they can address the issue of whether there is a pre-petition arrearage for Creditor's claim or whether there is just an increase in the post-petition payments to account for the projected costs and expenses (such as insurance and property taxes) that are included in Debtor's monthly payment.

The Trustee concurred with the request for a continuance, believing that resolution of that claim and plan payment (which may be a Class 4 Claim) can be addressed by Debtor's and Creditor's counsel in light of each of their's demonstrated ability to get matters resolved.

On June 11, 2024, Debtor filed a Response. Docket 39. Debtor states that on the date the petition was filed, Debtor was current with their mortgage payments. *Id.* at 1:25-26. Debtor agrees to resolve Trustee's and Creditor's Objections by filing a Stipulation with the court where Creditor's Claim will remain in Class 4 and the escrow shortage that was calculated on the date of the petition will be paid through Debtor's postpetition mortgage payments. *Id.* at 1:28-2:4.

On June 18, 2024, Creditor and Debtor filed a Stipulation to Resolve Objection to Confirmation of Chapter 13 Plan. Dckt. 45. The Stipulated Terms are:

A. Creditor's claim will be provided for in Class 4 of the Chapter 13 Plan.

B. For the $3,255.40 projected escrow shortage, Debtor shall make payments of **xxxxxxx** into the escrow account, in addition to Debtor's regular post-petition monthly payment.

At the hearing, **xxxxxxx**

REVIEW OF THE OBJECTION

United Shore Financial Services, LLC d/b/a United Wholesale Mortgage ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor is in default in the amount of $7,747.11 as of the date of the Petition. Objection, Docket 17, ¶ 1.

2. Debtor's Plan does not include arrearage owed to the Creditor. *Id.* at ¶ 2. In order for the Debtor to cure the arrearage within 60 months, Creditor would need to receive $129.12 increase in plan payments. *Id.*

3. Debtor's plan payment is in the amount of $990.00, and Debtor's net monthly income is $990.50, therefore, the Debtor will not be able to afford the increased plan payment when it accurately accounts for the arrearage owed to the Creditor. *Id.*

United Shore Financial Services, LLC d/b/a United Wholesale Mortgage ("Creditor") did not submit a Declaration to authenticate the facts alleged in the Objection.

DISCUSSION

Creditor's objections are well-taken.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). It appears that the Creditor is owed $7,747.11 in arrearage. Claim No. 13. However, the Debtor's Plan lists the Creditor as a class 4 creditor and the Plan does not propose to pay any amount of arrearage to the Creditor. Plan, Docket 3, § 3.10. The Plan proposes to make a monthly plan payment in the amount of $990.00 for 60 months. *Id.* at § 2. In order for the Debtor to cure the arrearage owed to the

Creditor, the plan payment would need to increase in the amount of $129.12. Based on Debtor's Petition, it does not appear that the Debtor has sufficient funds to account for this increase in plan payment. Debtors Schedule J shows that they have a net income of $990.50. Petition, Docket 1, p. 34. Therefore, it is not clear how the Debtor will be able to afford an increase in plan payment to account for the arrearage owed to the Creditor. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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 United Shore Financial Services, LLC d/b/a United Wholesale Mortgage ("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**.

6. 21-23927-E-13 JACK/MARYANNE JODOIN MOTION TO MODIFY PLAN
LBG-401 Lucas Garcia 4-30-24 [93]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 30, 2024. By the court's calculation, 63 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 denied.

The debtor, Jack Michael Jodoin and Maryanne Susan Jodoin ("Debtor") seek confirmation of the Modified Plan to account for loss of employment and misunderstood tax refund amounts. Decl. 1:21-24, Docket 96. The Modified Plan provides $7,500.00 to be paid through payments of $250.00 for 30 months, and a 0% percent dividend to unsecured claims. This follows $5,750.00 that has been payed into the existing plan. Modified Plan, Docket 95. 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 14, 2024. Obj., Docket 105. Trustee opposes confirmation of the Plan on the basis that:

A. The modified plan will extend past 60 months. Obj. 1:24-2:12, Docket 105.

B. Plan incorrectly states that all attorney's fees have been disbursed. Obj. 2:13-2:20, Docket 105.

C. Legal basis is not cited for modification. Obj. 2:21-2:25, Docket 105.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in roughly 80 months due to the modified Plan's reduced monthly payment. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). Obj. 1:24-2:12, Docket 105.

Inconsistently Represented Attorney's Fees

Discrepancies exist between the modified plan's attorney's fees accounting and that of the Trustee. The Plan incorrectly claims that "all" attorney's fees have been paid. Obj. 2:13-2:20, Docket 105.

Legal Basis

Per LBR 9014-1(d) and FRBP 9013, legal basis must be provided for modifications to a plan, even when legal basis is not complex. Obj. 2:21-2:25, Docket 105.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jack Michael Jodoin and Maryanne Susan Jodoin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

7. 20-20334-E-13 MS-1 ALEKSANDR/LYUDMILA ANDROSHCHUK Mark Shmorgon

MOTION TO MODIFY PLAN 5-16-24 [44]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 30, 2024. By the court's calculation, 63 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 denied.

The debtor, Aleksandr Androshchuk and Lyudmila Androshchuk ("Debtor") seek confirmation of the Modified Plan to account for increased mortgage, insurance, and property tax expenses. Declaration 3:24-28, Docket 46. The Modified Plan provides for $99,380.13 having been paid as of month 51 with $16,144.00 to be paid through 8 payments of $2,018.00, and a $15.00 arrearage dividend for Fay Servicing, LLC. Modified Plan § 7, Docket 48. 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 18, 2024. Obj.,Docket 50. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor's delinquency under the previously confirmed plan leaves insufficient funds to pay post-petition contract installments. Obj. 1:25-2:7, Docket 50.

B. Plan will take longer than 60 months to complete. Obj. 2:8-17, Docket 50.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor's proposed $15.00 arrearage dividend is inadequate to cover Fay Servicing arrearage of $1,344.39, which resulted from failure of debtor to make payments under the previously approved plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). Obj. 1:25-2:7, Docket 50.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 64 months due to insufficient plan payments. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). Obj. 2:8-17, Docket 50.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Aleksandr Androshchuk and Lyudmila Androshchuk ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

8. **23-23335-E-13 MDM-2** | **MARDI CLOWDUS** **Michael Mahon** | **OBJECTION TO CLAIM OF LES SCHWAB TIRE CENTERS OF CALIFORNIA, INC., CLAIM NUMBER 10** **5-7-24 [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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Not Provided. There has been no Certificate of Service filed in this matter. The court is unable to determine who has been served and when.

At the hearing, **xxxxxxx**

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

The Objection to Proof of Claim No. 10 is ~~sustained as it is a duplicate of Proof of Claim No. 9, as confirmed by the Creditor in the withdrawn Proof of Claim No. 10 filed on May 16, 2024 (which was after the May 7, 2024 commencement of this Contested Matter) .~~

The Objection to Proof of Claim No. 9 is ~~overruled without prejudice in light of the court sustaining the Objection to duplicate Proof of Claim No. 10.~~

Mardi D. Clowdus, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Les Schwab Tire Centers of California, Inc. ("Creditor"), Proofs of Claim No. 9 and 10 ("Claims"), Official Registry of Claims in this case. The Claims are asserted to be secured in the amount of $1,140.53. Objector asserts that Claim 10 appears to be an exact duplicate of Claim 9.

Debtor's Declaration indicates that she only bought one set of tires on the day indicated on the materials attached to Claims 9 and 10. Decl. ¶ 2, Docket 44.

Objector states online records of the California Secretary of State indicate that the corporation listed has been changed into another business organization, therefore, the Proof of Claim is technically false as well. Obj. to Claim 1:19-27, Docket 41.

CHAPTER 13 TRUSTEE'S RESPONSE

In his Response, David P. Cusick, The Chapter 13 Trustee ("Trustee"), responds to the Debtor's Objection, stating that:

1. Claim 10 appears to have been withdrawn by the Creditor on May 16, 2024.

2. Where Claim 9 consists of a secured claim for $1,140.53 and unsecured claim for $115.27, the Trustee notes that the pending plan, outlined in Docket 27, has not been set for hearing and no plan has been confirmed. That Plan does not provide for the claim as secured so the secured party will not be paid. A motion to dismiss is set for Jule 10, 2024 at 9 a.m., as no motion to confirm is pending.

3. The Trustee does not see a Proof of Service filed for this Objection to Claim in the court docket.

4. The Trustee notes that while the California Secretary of State Record provided by the Debtor shows the creditor named in the claim as "Converted Out," that website appears to clarify that this means that a corporation can convert to another legal entity and Les Schwab Tire Centers of California, LLC (202030410008) appears active on that website.

The Trustee requests that the objection be overruled based on the lack of a Proof of Service. Trustee's Response 1:23-2:14, Docket 51.

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. Here, it appears as though the Claim was indeed an inadvertent duplicate as Creditor has withdrawn the duplicate claim, Claim 10.

At the hearing, **xxxxxxx**

Based on the evidence before the court, the Objection to Proof of Claim No. 10 is sustained as it is a duplicate of Proof of Claim No. 9, as confirmed by the Creditor in the withdrawn Proof of Claim No. 10 filed on May 16, 2024 (which was after the May 7, 2024 commencement of this Contested Matter) . The Objection to Proof of Claim No. 9 is overruled without prejudice in light of the court sustaining the Objection to duplicate Proof of Claim No. 10.

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 Les Schwab Tire Centers of California, Inc. ("Creditor"), filed in this case by Mardi D. Clowdus, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proofs of Claim Number 10 filed by Creditor is sustained and Proof of Claim No. 10 disallowed it being a duplicate of Proof of Claim No. 9. Creditor has filed a withdrawal of Proof of Claim No. 10 on May 16, 2024, after the commencement of this Objection to Claim, notifying the court and Parties in Interest that it is a duplicate of Proof of Claim No. 9.
>
> **IT IS FURTHER ORDERED** that the Objection to Proof of Claim No. 9 is overruled without prejudice, the court having sustained the Objection to Proof of Claim No. 10, it being a duplicate of Proof of Claim No. 9.

9. 24-21235-E-13 RPM-1 — ASHLEY/JEFF VANHEE, Joe Laub — OBJECTION TO CONFIRMATION OF PLAN BY MERCEDES BENZ FINANCIAL SERVICES USA LLC, 5-28-24 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 28, 2024. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtors' Plan provides that the pre-petition arrears on MBFS's Class 1 claim shall be cured by the Trustee and that the Trustee shall maintain post-petition payments on the motor vehicle purchase contract between MBFS and Debtor Jeff VanHee. The Plan incorrectly states that no contract arrears are owed to MBFS. The contract between MBFS and Debtor Jeff VanHee is presently in pre-petition default for the payment coming due March 26, 2024 in the regular contractual amount of $595.78 and for accrued late charges in the amount of $29.79.

2. The Plan does not provide for a dollar amount for the post-petition payment to MBFS. The contract is also in post-petition default for the $595.78

> contract payments coming due on April 26 and May 26, 2024. The monthly payment under the Contract is $595.78.

Obj. to Confirmation of Plan 2:4-12, Docket 41.

Creditor submits the Declaration of Star Faz to authenticate the facts alleged in the Objection. Decl., Docket 44.

DISCUSSION

Creditor's objections are well-taken.

Inaccurate or Missing Information

Debtor's "Secured Claims" section in the Plan suggests that no contract arrears are owed to MBFS. Chapter 13 Plan 3, Docket 29. However, MBFS asserts there is a prepetition arrearage owed. 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).

Moreover, the Plan does not specify the postpetition monthly contractual payment to be maintained by the Trustee.

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

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

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

10. 24-20837-E-13 JLL-1 | **TERRI/JOSE PALACIOS** | **Leo Spanos** | **OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 5** | **5-7-24 [22]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 Trustee, parties requesting special notice, and Office of the United States Trustee on May 7, 2024. By the court's calculation, 56 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 5-1 of Internal Revenue Service is xxxxxxx.

Terri Lashai Cook Palacios and Jose Camacho, the Chapter 13 Debtor, ("Objector," "Debtor") requests that the court disallow the claim of Internal Revenue Service ("IRS"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be an unsecured priority claim in the amount of $69,485.22. Objector asserts that, per Debtor's 2023 amended federal tax returns, the IRS's claim should be in total priority amount of $59,543.82 and a general unsecured amount of $78,796.73. Obj. to Claim 1:24-2:2, Docket 22; Ex. A 27, Docket 25.

CHAPTER 13 TRUSTEE'S RESPONSE

In his Response, David P. Cusick, The Chapter 13 Trustee ("Trustee"), responds to the Debtor's Objection, stating that:

1. The IRS amended its Claim on June 12, 2024, reducing the priority claim to $60,781.82, showing $16,028 owing for 2023, a difference of $1,238.00 from Debtor's amended return. Obj. 1:25-2:2.

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 Debtor objects to the allowance of the estimated 2023 priority claim amount of $24,731.40 ($1,461.60 plus $23,269.80) of the IRS Claim 5-1 in the total unsecured priority amount of $69,485.22, filed on March 26, 2024. Debtor does not object to the allowance of a 2023 priority amount of $14,790.00 (as per Debtor's amended tax return) resulting in total priority amount of $59,543.82 and a general unsecured amount of $78,796.73. Obj. to Claim 1:24-2:2, Docket 22.

However, the IRS amended its Claim since this Objection was filed, showing $16,028 owing for 2023, a difference of $1,238.00 from Debtor's amended return. This amount on the return for 2023 reduces the priority claim to $60,781.82, slightly more than Debtor's requested amount of $59,543.82.

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 Internal Revenue Service ("IRS"), filed in this case by Terri Lashai Cook Palacios and Jose Camacho, the Chapter 13 Debtors, ("Objectors") 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 5-1 of the IRS is **xxxxxxx**.

11. 21-23539-E-13 PGM-5 | **DEREK WOLF** **Peter Macaluso** | **CONTINUED MOTION TO MODIFY PLAN** **4-10-24 [287]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditors that have filed claims, Parties requesting special notice, and Office of the United States Trustee on April 10, 2024. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Confirm the Modified Plan is xxxxxxx.

July 2, 2024 Hearing

At the hearing held on June 4, 2024, Debtor's counsel requested a continuance to finalize with counsel for Creditor U.S. Bank, N.A., as Trustee, with dispute, if any, actually exists concerning the principal balance of the secured claim. Debtor was to engage an accountant/financial person to make such computations. There has been nothing submitted that suggest Debtor has retained a financial expert.

At the June 4 hearing, Creditor was unsure if Debtor has actually cured all postpetition arrears, while Debtor asserted he had cured all postpetition arrears.

Creditor submitted a Status Report with the court on June 26, 2024, stating that all postpetition arrears indeed have not been cured. Docket 320. Creditor asserts that Debtor is due for four missed postpetition payments. Thus, Creditor asserts that Debtor is in default under the terms of the Plan.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The debtor, Derek L. Wolf ("Debtor") seeks confirmation of the Modified Plan. The Modified Plan provides for $20,888.96 having been paid through April of 2024 with six monthly payments of $900 each to commence in May of 2024 and to finish the Plan. Modified Plan, § 7; Docket 291. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Modified Plan also provides the following nonstandard provisions:

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

Modified Plan, Docket 291 § 7.

CHAPTER 13 TRUSTEE'S OPPOSITION

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

1. It is not clear how Debtor is proposing to make payments to creditor Rushmore Servicing. This creditor was in Class 1 under the previously confirmed Plan, but a postpetition delinquency in the amount of $10,456.63 arose due to Debtor failing to make payments. It is unclear how these arrears will be cured. *Id.* at ps. 1:25-2:17.

2. The Plan is severely overextended, relying on a R.E.S.P.A. accounting that may or may not go in Debtor's favor. *Id.* at ps. 2:21-3:10.

3. Debtor disputes how much is remaining on the new principal balance of his home mortgage loan, the same dispute that has been going on for the life of this case, and the Plan is dependent on a favorable R.E.S.P.A. accounting that may or may not occur. *Id.* at p. 3:11-21.

4. Debtor is paid ahead under the proposed modified Plan by $900.00. *Id.* at p. 3:22.

5. Debtor has marked Schedules I and J as amended, not supplemental. *Id.* at p. 4:1-4.

6. Supplemental Schedules I and J have not been served in violation of Local Bankruptcy Rule 3015-1(d)(2). *Id.* at p. 4:5-12.

DEBTOR'S REPLY

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

1. There is no postpetition mortgage arrearage through a combination of Trustee disbursements and the application of postpetition grant funds. *Id.* at ps. 1:23-2:22.

2. Debtor is not proposing to pay the full principal balance in this Modified Plan, just cure the arrearage on his loan. Therefore, even though the principal balance is disputed, its resolution is not necessary to effectuate the Modified Plan. *Id.* at ps. 2:23-3:4.

CREDITOR'S OPPOSITION

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

1. At the May 1, 2024 hearing, the Court ordered Debtor to submit a supplement to the Second Proposed Modified Plan by May 7, 2024. Creditor would then have an opportunity to respond to the supplement. Debtor did not file any supplement to the Second Proposed Modified Plan and has not clarified how Creditor's claim would be treated under the Second Proposed Modified Plan. *Id.* at p. 1:24-27.

2. As noted in the Trustee's Opposition to the Motion to Confirm Modified Plan, filed May 6, 2024, Debtor is not current post-petition. *Id.* at p. 2:3-5.

3. Debtor is currently due for the March 2024 payment, i.e., is three months behind, contrary to Debtor's contention that he is current. Debtor's Second Proposed Modified Plan has no provision to cure the three-month post-petition arrearage. *Id.* at p. 2:7-9.

4. Debtor's pre-petition arrearage has been cured. The pre-petition arrearage was the apparent reason for Debtor's bankruptcy filing. Given the pre-petition arrearage is cured, continuation of this bankruptcy proceeding is unnecessary. While Debtor disputes the post-petition payments and the current interest-bearing principal amount, Debtor can bring such claims in a non-bankruptcy court. *Id.* at p. 2:10-13.

DISCUSSION

Amended or Supplemental Schedules

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

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

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

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

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

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

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

Postpetition Arrearage

Trustee and Creditor assert that Debtor has not cured the postpetition arrearage. Creditor asserts there are three months of postpetition payments in arrears. Debtor argues that he is completely current as of the filing of this Motion. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B).

R.E.S.P.A. Accounting

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

At the hearing, Debtor's counsel requested a continuance to finalize with counsel for Creditor U.S. Bank, N.A., as Trustee, with dispute, if any, actually exists concerning the principal balance of the secured claim. Debtor is engaging an accountant/financial person to make such computations. The Modified Plan will provide for there to be five months of payments before completion, and if a dispute exists as to the amount of the principal balance, the Debtor will file an Objection to Claim in an effort to provide a simplified resolution of any such dispute.

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

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

12. 24-22050-E-13 JOSE GARCIA
PGM-1 Peter Macaluso

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
5-29-24 [17]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 Debtor, Chapter 13 Trustee, attorneys of record who have appeared in the case, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on May 29, 2024. By the court's calculation, 6 days' notice was provided. The court set the hearing for June 4, 2024. Dckt. 26.

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

No opposition was stated at the hearing.

The Motion to Extend the Automatic Stay is xxxxxxx.

July 2, 2024 Hearing

The court continued this Motion from the June 4, 2024 hearing to conduct the final hearing on this Motion. The court's prior order provides that the automatic stay is extended for all purposes and parties, on an interim basis through and including July 19, 2024. Dckt. 30. On June 21, 2024 the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Status Report updating the court on some of the events that have transpired. Docket 36. Trustee states:

1. Neither Debtor nor his attorney appeared at the Meeting of Creditors that was held on June 20, 2024, although Trustee notes that Debtor's attorney had a medical emergency. *Id.* at 1:25-28.

2. Trustee needs to examine Debtor regarding the following items of concern:

A) "Cause of Action; Foreclosure Violations" appears on Scheduled A/B, (DN 23, Page 7, #33),

B) Debtor's Schedule I, (DN 23, Pages 20-21), does not clearly reflect the rental income referred to in this motion, (DN 17, Page 3, Lines 23-24), and

C) No motion to confirm is pending where one is needed as the plan was filed 5/13/24 with a payment of $2700 and mortgage arrears of $19,000, (DN 3, Pages 1 & 3, §§2.01 & 3.07(c)), and then amended 5/29/24 with a payment of $4,050 and mortgage arrears of $68,000, (DN 24, Pages 1 & 3, §§2.01 & 3.07(c).))

Status Report 2:4-13, Docket 36.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Jose Antonia Garcia ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 23-23473) was dismissed on May 2, 2024, after Debtor as Debtor was delinquent in plan payments and failed to file tax returns. *See* Minutes, Bankr. E.D. Cal. No. 23-23473, Dckt. 67, May 1, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed due to financial hardship and general life struggles. Specifically, Debtor provides testimony that he was recently left unemployed after the company he worked at for 34 years terminated his position. Decl., Docket 21 1:24. His son was also living him during the last case. Debtor's son is an adult with five dogs who was not contributing to help in the bankruptcy and who was getting in legal trouble. *Id.* at 2:5-7. Debtor made the tough choice to have his son move out. *Id.* Debtor explains his circumstances have changed since his last filing, stating he has good employment and plans to rent out rooms of his home soon. *Id.* at 2:14-22.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has submitted compelling testimony clearly explaining why his previous case was dismissed and how the current case can succeed. Debtor has expressed his earnest efforts in successfully reorganizing under Chapter 13.

The Motion is granted, and the automatic stay is extended for all purposes and parties, on an interim basis through and including July 19, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Jose Antonia Garcia ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS FURTHER ORDERED** that the automatic stay is **XXXXXXX**.

13. 24-22452-E-13 MET-1 | **EARL MOORE** **Mary Ellen Terranella** | **MOTION TO EXTEND AUTOMATIC STAY AND/OR MOTION TO REINSTATE AUTOMATIC STAY** **6-10-24 [9]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on June 10, 2024. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay 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 Extend the Automatic Stay is granted.

Earl Moore ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 23-23714) was dismissed on February 23, 2024, after Debtor was delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 23-23714, Dckt. 35, February 23, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor's former landlord refused to allow Debtor to operate his food truck business. Decl. 2:8-9, Docket 11. Debtor's smoker equipment and other equipment was in the food trailer. *Id.* at 2:10-11. Debtor testifies he discovered the landlord registered the food truck business in his own name, which Debtor asserts is theft. *Id.* at 11-14. Debtor has filed a state court action to resolve this issue.

However, here, Debtor has rebuilt his smokers and reestablished his business in two locations. *Id.* at 16-17. Debtor also testifies he has full catering events through summer. These measures will allow Debtor to fund a Chapter 13 Plan moving forward.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has testified as to how he can afford a Plan moving forward, overcoming the adversity that caused him to become delinquent under the terms of the previous Plan.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by Earl Moore ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

14. 23-24568-E-13 CRG-3 | **SUNDREA GORDON-HACKLEY** **Carl Gustafson** | **CONTINUED MOTION TO CONFIRM PLAN** **4-9-24 [56]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 10, 2024. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied as moot, the Court having dismissed this Bankruptcy Case by prior order.

July 2, 2024 Hearing

The hearing on this Motion was continued to allow escrow to close on the sale of Debtor's residence. Trustee filed a Status Report on June 18, 2024. Docket 106. Trustee states:

1. The Trustee has been notified the buyer does not appear willing to accept the Trustee's check to pay the mortgage arrears as required under the plan, which would normally be paid by the Trustee into escrow in exchange the Trustee's demand would also be paid from escrow. *Id.* at 1:24-27.

2. Trustee believes the sale has not yet occurred. *Id.* at 1:28.

However, on the same day as Trustee's Status Report, Debtor filed a Motion to Dismiss her own case pursuant to 11 U.S.C. § 1307(b). This right is nearly absolute when the case has not been already converted, as is the case here.

The Motion is denied as moot, the court having dismissed this Bankruptcy Case by prior order of the court.

REVIEW OF THE MOTION

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

CREDITOR'S OPPOSITION

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

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

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

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

CHAPTER 13 TRUSTEE'S OPPOSITION

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

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

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

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

DISCUSSION

As an initial matter, Creditor's assertion that the Amended Plan is too speculative is overruled as moot, the sale having been granted with escrow having been set to close over a week ago on May 7, 2024. At the hearing, the Chapter 13 Trustee requested that the court continue the hearing on this Motion sufficiently in the future to allow for the sale to close and final paperwork buttoned up. Counsel for Debtor did not oppose such continuance.

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

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

By this same reasoning, with the sale and escrow having closed, Trustee should have been given the funds to pay himself and all creditors at 100%, rendering Trustee's Objection moot as all payments can now properly be made pursuant to 11 U.S.C. § 1322(b)(5). Trustee cites to *In re Gavia*, 24 B.R. 573 (B.A.P. 9th Cir. 1982) for his position that maintenance payments must be made pending a proposed sale. The facts of *Gavia* are different from this matter as the debtors in *Gavia* did not have concrete offers for the sales of their homes. *Id.* at 574 (holding that one debtor had not made any marketing efforts, and the only marketing efforts the two remaining debtors' attorneys had made were telling the court a potential sale "might look better in a month," and that there had been some "interest in the home."). Here, Debtor has already found a purchaser, been granted authority to sell the home, and a closing date has already passed.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Sundrea Danyelle Gordon-Hackley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Amended Plan is denied as moot, the court having entered an order dismissing this Bankruptcy Case.

15. 23-23572-E-13 CJK-1 | **DUSTIN/MICHELLE PETRIE** **Candace Brooks** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY NEW RESIDENTIAL MORTGAGE, LLC 11-27-23 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 7, 2023. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is ~~overruled.~~

July 2, 2024 Hearing

This matter was continued to allow the Debtor to complete the trial period on the loan modification. The trial period concluded, and on June 23, 2024, the court issued an Order authorizing to Debtor to enter into the loan modification. Docket 48.

At the hearing, **xxxxxxx**

REVIEW OF THE OBJECTION

New Residential Mortgage, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

> 1. Creditor has a secured interest in Debtor's real property commonly known as 3626 Indian Creek Rd, Placerville, California 95667-8923 ("Property"). Debtor is currently in an active forbearance under the terms of the mortgage beginning September 2023, which is expected to end on November, 2023, totaling approximately $8,768.88 in deferred payments. Debtor proposes to make payments under the forbearance agreement at the end of Debtor's mortgage loan. Plan, Dckt. 3 ¶ 7.01. Creditor objects to this provision of the Plan, arguing this modification is improper.

Dckt. 17.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of $440,586.77 in this case. POC 4-1. Debtor's Schedule D estimates the amount of Creditor's claim as $437,625.00 (Schedule D, Dckt. 1 p. 22) and indicates that it is secured by a deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 4 claim, but proposes to pay the Claim at the end of the mortgage loan, not during the life of the Plan.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it does not properly address repayment of the loan forbearance period of its Claim, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

Review of Specific Plan Terms for Creditor's Claim

The Chapter 13 Plan is funded by Debtor with monthly payments of $200. Plan, ¶ 2.0-1; Dckt. 3. The Additional Provisions, Section 7 of the Plan, provide:

> 7.01 Valon Mortgage Inc, successor to Caliber Home Loans Secured Claim.

Class 4

Valon Mortgage Inc., successor to Caliber Home Loans secured claim shall be treated as a Class 4 Claim as Debtors are current with their mortgage payments pursuant to the terms of a forbearance agreement with Valon Mortgage Inc., successor to Caliber Home Loans.

Valon Mortgage Inc., successor to Caliber Home Loans claim is secured by a first deed of trust recorded against the real property commonly known as 3626 Indian Creek Road, Placerville, CA 95667 ("Collateral").

For the first month of Debtors Chapter 13 plan (November 2023), Debtors shall pay $00.00 per month to Class 4 Creditor, Valon Mortgage Inc., successor to Caliber Home Loans, followed by Debtors' contractual mortgage payments of $2,922.96 per month, commencing in December 2023,and continuing for the remaining duration of the Debtors' Chapter 13 plan.

Debtors mortgage payments for September, October and November 2023 in the amount of $2,922.96 are suspended pursuant to the terms of the forbearance agreement. The payments under the forbearance agreement shall be applied to the end of Debtors' mortgage loan.

Dckt. 3 at 7.

Creditor states that under the terms of the Forbearance Agreement, "[a]t the end of the forbearance, the arrears are due payable. Debtors have not been approved by New Residential to add the forbearance arrears to the end of the loan as such, the proposed cure is purely speculative." Objection; p. 2:20-22; Dckt. 17. The Declaration of Monica Hargrove is provided, in which she testifies that the forbearance amounts are due at the end of the forbearance, not the end of the loan.

The court could not identify a copy of the Forbearance Agreement in the record. Under the terms of the Note upon which the claim is based, it states that the last payment is due on this claim in May of 2052. Exhibit 2; Dckt. 19.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

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

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

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

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

December 12, 2023 Hearing

At the hearing, the Parties agreed to continue the hearing in light of their efforts to get the amount of the claim clearly identified and provided for in the Plan.

January 23, 2024 Hearing

A review of the Docket on January 18, 2024 reveals that no new documents have been uploaded with the court. At the hearing, counsel for the Creditor says that a trial loan modification is in process and that the last payment to be made on the trial loan modification is in March 2024. Counsel for the Trustee does not oppose a continuance.

The hearing is continued to 2:00 p.m. on April 9, 2024.

April 9, 2024 Hearing

Debtors filed an *Ex Parte* Motion to Approve a Trial Loan Modification with accompanying Declaration and Exhibits on February 14, 2024. On February 14, 2024, the Court issued an Order authorizing Debtors, retroactively, to enter into the Loan Modification Agreement. Exhibit A, Docket 31.

At the hearing, counsel for the Debtor reported that Creditor has reported that the current modification is in process and will be sent to the Debtor. The Parties agreed to a continuance.

The hearing on the Objection is continued to 2:00 p.m. on June 25, 2024.

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

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

The Objection to the Chapter 13 Plan filed by New Residential Mortgage, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Confirmation of Plan is overruled.

16. 24-21075-E-13 DPC-1	**RUDY/ROBERTA GONZALEZ Thomas Amberg**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
16 thru 18		**4-24-24 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on April 24, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

July 2, 2024 Hearing

The court continued the hearing to allow Debtor's counsel to have necessary discussions about the financial reality of this case, and to allow Debtor an opportunity to supplement the record with evidence showing that lenders for a refinance wanted to see at least 12 months of payments in bankruptcy before a loan modification would be considered.

On June 25, 2024, Debtor filed a Status Report and supporting evidence with the court. Debtor has provided evidence that at least one lender, Convoy Home Loans, would provide for a refinance, only after seeing 12 months of payments in bankruptcy. Status Report ¶ 4, Docket 47; Decl. ¶ 6, Docket 48. An authenticated email from Convoy Home Loans filed as Exhibit F in support shows that the lender requires 12 months of payments in bankruptcy before considering a loan modification. Docket 49.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

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

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

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

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

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

DEBTOR'S RESPONSE

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

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

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

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

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

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

Id. at ¶ 4.

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

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

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

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

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

Id. at ¶ 9.

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

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

7. The question that is common throughout this proceeding (from the Trustee and objecting creditors) is: why will a refinance work now when it did not in the past? The reason for optimism here is because the Debtors are proposing a lower monthly payment ($6,000 per month), which covers the

ongoing mortgage to US Bank, as well as adequate protection payments to US Bank and Chong. The adequate protection payments as proposed are $300.00 per month to US Bank and $1,000 per month to Chong (which is more than the normal monthly payment called for in the hard money loan agreement). *Id.* at ¶ 14.

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

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

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

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

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

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

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

Debtor submits their own Declaration in support, authenticating the facts alleged in the Motion. Docket 30. Debtor states that they earnestly wish to pay all creditors in full via a good faith bankruptcy plan. *Id.* at ¶ 4. Debtor tried to negotiate with Creditor Chong outside of bankruptcy when a notice of foreclosure was issued, but the parties could never reach a deal. *Id.* at ¶ 10. A list of some of the lenders Debtor has spoken to (which is not an exhaustive list, but what we can find) includes: Rocket Mortgage, California Mortgage Relief Program, Loan Tap, New American Funding, and Kappel Mortgage Group. *Id.* at ¶ 11.

Debtor is routinely being told that they need to show 12 on-time payments in the case before they will be considered for a refinance. *Id.* Debtor believe they can afford the plan payments. Mr. Gonzalez has had the same employment for over 37 years, and Mrs. Gonzalez now has a stable job with a higher salary. *Id.* at ¶ 14.

DISCUSSION

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

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

At the hearing, counsel for Creditor Chong noted that this loan is due in full. Additionally, the Debtor has not provided emails about the need for the twelve month payments.

Debtor's counsel reported that the Debtor will file a supplemental declaration and copies of loan rejections based on the need to have twelve months of plan payments under their belts.

Feasibility of Plan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

==========

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

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

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

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

As addressed at the hearing, Debtor have tried, made substantial six figure plan payment in two prior Chapter 13 cases, with both of those cases being dismissed and those plans not completed. Those two cases were dismissed, notwithstanding Debtor being represented by experienced bankruptcy counsel.

At the hearing, counsel for Debtor reported that they are having some "hard" discussions concerning the financial consequences of trying to save the residence property and what alternatives may exist if an unexpected event disrupts Debtor's income or the refinance option fails.

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**.

17. 24-21075-E-13 DVW-1 RUDY/ROBERTA GONZALEZ Thomas Amberg CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION 4-24-24 [23]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 24, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

July 2, 2024 Hearing

The court continued the hearing to allow Debtor's counsel to have necessary discussions about the financial reality of this case, and to allow Debtor an opportunity to supplement the record with evidence showing that lenders for a refinance wanted to see at least 12 months of payments in bankruptcy before a loan modification would be considered.

On June 25, 2024, Debtor filed a Status Report and supporting evidence with the court. Debtor has provided evidence that at least one lender, Convoy Home Loans, would provide for a refinance, only after seeing 12 months of payments in bankruptcy. Status Report ¶ 4, Docket 47; Decl. ¶ 6, Docket 48. An authenticated email from Convoy Home Loans filed as Exhibit F in support shows that the lender requires 12 months of payments in bankruptcy before considering a loan modification. Docket 49.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

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

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

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

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

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

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

Creditor did not submit a Declaration in support.

DEBTOR'S RESPONSE

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

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

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

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

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

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

Id. at ¶ 4.

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

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

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

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

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

Id. at ¶ 9.

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

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

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

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

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

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

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

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

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

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

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

DISCUSSION

Payments in Equal Monthly Installments

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

> (5) with respect to each allowed secured claim provided for by the plan—
> . . .
> (B)
>
> (i) the plan provides that—

(I) the holder of such claim retain the lien securing such claim until the earlier of—

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

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

(iii)if—

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

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

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

Bad Faith

11 U.S.C. § 1325(a)(3) provides:

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

The following factors are considered in a bad faith analysis:

(1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner,

(2) the debtor's history of filings and dismissals,

(3) whether the debtor only intended to defeat state court litigation,

(4) whether egregious behavior is present.

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

Here, Creditor states the Plan was not filed in good faith because Debtor does not have ability to fund and complete the Plan. This is not a reason to find a bad faith filing or Plan, especially as Debtor is presenting evidence that they may be able to fund the Plan. Debtor has provided testimony and evidence to show that their Plan has been proposed in good faith in an earnest attempt to repay their debts. This court finds that the case and Plan have not been filed in bad faith.

Possible Refinance

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

At the hearing, counsel for Debtor reported that they are having some "hard" discussions concerning the financial consequences of trying to save the residence property and what alternatives may exist if an unexpected event disrupts Debtor's income or the refinance option fails.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on July 2, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of Plan is **xxxxxxx**.

18. 24-21075-E-13 MMG-1 | **RUDY/ROBERTA GONZALEZ** | **Thomas Amberg** | **CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DOLORES CHONG** | **4-24-24 [16]**

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

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

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

Sufficient Notice not Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 24, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

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

INSUFFICIENT NOTICE

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

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

The Objection to Confirmation of Plan was adequately set for hearing under the circumstances (two other Objection filed relating to similar grounds) 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 is xxxxxxx.

July 2, 2024 Hearing

The court continued the hearing to allow Debtor's counsel to have necessary discussions about the financial reality of this case, and to allow Debtor an opportunity to supplement the record with evidence showing that lenders for a refinance wanted to see at least 12 months of payments in bankruptcy before a loan modification would be considered.

On June 25, 2024, Debtor filed a Status Report and supporting evidence with the court. Debtor has provided evidence that at least one lender, Convoy Home Loans, would provide for a refinance, only after seeing 12 months of payments in bankruptcy. Status Report ¶ 4, Docket 47; Decl. ¶ 6, Docket 48. An authenticated email from Convoy Home Loans filed as Exhibit F in support shows that the lender requires 12 months of payments in bankruptcy before considering a loan modification. Docket 49.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

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

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

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

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

Creditor did not submit a Declaration in support.

DEBTOR'S RESPONSE

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

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

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

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

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

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

Id. at ¶ 4.

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

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

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

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

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

Id. at ¶ 9.

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

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

7. The question that is common throughout this proceeding (from the Trustee and objecting creditors) is: why will a refinance work now when it did not in the past? The reason for optimism here is because the Debtors are proposing a lower monthly payment ($6,000 per month), which covers the

ongoing mortgage to US Bank, as well as adequate protection payments to US Bank and Chong. The adequate protection payments as proposed are $300.00 per month to US Bank and $1,000 per month to Chong (which is more than the normal monthly payment called for in the hard money loan agreement). *Id.* at ¶ 14.

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

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

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

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

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

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

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

Debtor submits their own Declaration in support, authenticating the facts alleged in the Motion. Docket 30. Debtor states that they earnestly wish to pay all creditors in full via a good faith bankruptcy plan. *Id.* at ¶ 4. Debtor tried to negotiate with Creditor Chong outside of bankruptcy when a notice of foreclosure was issued, but the parties could never reach a deal. *Id.* at ¶ 10. A list of some of the lenders Debtor has spoken to (which is not an exhaustive list, but what we can find) includes: Rocket Mortgage, California Mortgage Relief Program, Loan Tap, New American Funding, and Kappel Mortgage Group. *Id.* at ¶ 11.

Debtor is routinely being told that they need to show 12 on-time payments in the case before they will be considered for a refinance. *Id.* Debtor believe they can afford the plan payments. Mr. Gonzalez has had the same employment for over 37 years, and Mrs. Gonzalez now has a stable job with a higher salary. *Id.* at ¶ 14.

DISCUSSION

Bad Faith

> 11 U.S.C. § 1325(a)(3) provides:
>
> (a) Except as provided in subsection (b), the court shall confirm a plan if—
> . . .
> (3) the plan has been proposed in good faith and not by any means forbidden by law;.
> . .

The following factors are considered in a bad faith analysis:

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

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

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

Bankruptcy History

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

At the hearing, counsel for Debtor reported that they are having some "hard" discussions concerning the financial consequences of trying to save the residence property and what alternatives may exist if an unexpected event disrupts Debtor's income or the refinance option fails.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on July 2, 2024.

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

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

The Objection to the Chapter 13 Plan filed by Dolores Chong ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

19. 24-21578-E-13 DPC-2 | **ALLEN GAMBLE** **Peter Macaluso** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **5-29-24 [54]**

19 thru 20

THIS FINAL RULING WILL BE ADDRESSED ON THE COURT'S 1:30 P.M. CALENDAR IN CONJUNCTION WITH A RELATED MATTER IN THIS CASE

Final Ruling

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 29, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Allen Dontony Gamble's ("Debtor") claimed exemptions under California law. Trustee asserts Cal. Code Civ. P. §§ 703 and 704 permit Debtor to claim as exempt certain property under either of these sections, but not both simultaneously.

Indeed, Cal. Code Civ. P. § 703.140(a) states:

(a) In a case under Title 11 of the United States Code, all of the exemptions provided

> by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the **exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter**, as follows:

(Emphasis added).

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Here, Debtor has filed an Amended Schedule C on June 18, 2024, choosing to elect exemptions under Cal. Code Civ. P. § 704 and not § 703. The Trustee's Objection is sustained as to the Schedule C filed on April 22, 2024 at Docket 20.

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 exemptions as to the Schedule C filed on April 22, 2024 at Docket 20 are disallowed in their entirety without prejudice, Debtor filing an Amended Schedule C on June 18, 2024, at Docket 67.

20. 24-21578-E-13 NLG-1 | **ALLEN GAMBLE**
Peter Macaluso | **OBJECTION TO CONFIRMATION OF PLAN BY FLAGSTAR BANK, N.A.**
5-3-24 [31]

THIS FINAL RULING WILL BE ADDRESSED ON THE COURT'S 1:30 P.M. CALENDAR IN CONJUNCTION WITH A RELATED MATTER IN THIS CASE

Final Ruling

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 3, 2024. By the court's calculation, 60 days' notice was provided. 14 days' notice is required.

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

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on June 26, 2024. Dockets 76, 72. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

21. 24-20888-E-13 DPC-1	**JASMINE GAINES Pro Se**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
21 thru 22		**4-22-24 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (pro se), parties requesting special notice, and Office of the United States Trustee on April 22, 2024. By the court's calculation, 71 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

July 2, 2024 Hearing

The court continued the hearing after having a conversation with Debtor about obtaining counsel and navigating through a Chapter 13 case. On June 21, 2024, Trustee filed a Status Report with the court. Docket 55. Trustee informs the court that the Debtor has since attended the 341 Meeting by phone, but the audio dropped and the meeting was continued to July 25, 2024. *Id.* at 1:23-24. However, Trustee also notes Debtor never commenced making plan payments. *Id.* at 1:26-28. Trustee has a Motion to Dismiss set in this case for July 10, 2024.

At the hearing, **xxxxxxx**

REVIEW OF THE OBJECTION

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

1. The debtor Jasmine Nicole Gains did not show up at the 341 Meeting. Obj., Docket 33.

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Objection. Decl., Docket 35.

DISCUSSION

Failure to Appear at 341 Meeting

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

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

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

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

22. 24-20888-E-13 SKI-1 | **JASMINE GAINES** Pro Se | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY AVID ACCEPTANCE LLC** **4-12-24 [28]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (pro se), Chapter 13 Trustee, and Office of the United States Trustee on April 12, 2024. By the court's calculation, 81 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

July 2, 2024 Hearing

The court continued the hearing after having a conversation with Debtor about obtaining counsel and navigating through a Chapter 13 case. On June 21, 2024, Trustee filed a Status Report with the court. Docket 55. Trustee informs the court that the Debtor has since attended the 341 Meeting by phone, but the audio dropped and the meeting was continued to July 25, 2024. *Id.* at 1:23-24. However, Trustee also notes Debtor never commenced making plan payments. *Id.* at 1:26-28. Trustee has a Motion to Dismiss set in this case for July 10, 2024.

At the hearing, **XXXXXXX**

REVIEW OF THE OBJECTION

Avid Acceptance LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The debtor Jasmine Nicole Gains' ("Debtor") proposed Plan exceeds 60 months, coming in at 96 months. Obj. 2:22-23, Docket 28.

2. Creditor argues it has also been incorrectly classified in Class 1 because its loan is scheduled to mature before completion of the Plan on July 10, 2026. *Id.* at 3:3-4.

3. Debtor also incorrectly lists the amount of prepetition arrears and the ongoing monthly payment. *Id.* at 3:6-8.

4. Debtor has proposed a 0% interest rate. Due to the risk factors, Creditor suggests an interest rate of 11.5%. *Id.* at 5:9.

5. Debtor's vehicle (which secures Creditor's claim) is not insured. *Id.* at 5:12-15.

6. The Plan was not filed in good faith, Debtor not filing fully completed Schedules and this being her third bankruptcy case in 85 days. *Id.* at 5:19-6:6.

Creditor submits the Declaration of John Eng to authenticate the facts alleged in the Objection. Decl., Docket 30.

DISCUSSION

Creditor's objections are well-taken.

Overextended Plan

The Plan will take 96 months to complete. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

Improper Classification

Class 1 creditors are for delinquent secured claims that mature after the completion of the plan. However, Creditor's secured claim will complete during the life of the Plan. Creditor is misclassified, which is cause to deny confirmation.

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 0%. Creditor's claim is secured by a 2019 Hyundai Elantra. 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 would fix the interest rate as the prime rate in effect at the commencement of the case, 8.5%, plus a 1.25% risk adjustment, for a 9.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

11 U.S.C. § 1325(a)(3) states:

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

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

Here, the court is inclined to agree the Plan has not been field in good faith. Debtor's Schedules are incomplete and the Plan contains inaccurate or missing information. However, Debtor appearing in pro se, these mistakes are more common than when a person is represented by counsel, tending to show the Plan has not been proposed in bad faith.

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

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

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

23. 24-20988-E-13 KXL-1 | **ANDREA MOORE** **Peter Cianchetta** | **MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY** **5-23-24 [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.

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 May 23, 2024. By the court's calculation, 27 days' notice was provided as of the date of the Amended Notice of Hearing. Docket 45. 28 days' notice is required, so the court has permitted oral argument.

The Motion to Confirm Absence of 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 to Confirm Absence of the Automatic Stay is xxxxxxx.

LoanDepot.com, LLC ("Movant") moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(j). Movant pleads that the present case of Andrea Nicole Moore ("Debtor") implicates the new California legislative foreclosure scheme regarding Debtor's residence. Movant states that Debtor no longer owns or has any right to the property, pursuant to Cal. Civ. Pro. § 2924m(a)(1)(C)(i). Creditor states that a foreclosure sale of the property commonly known as 3836 Moonbeam Drive, Sacramento, Ca 95827 ("Property") occurred on February 29, 2024. Mot. 3:22, Docket 34. Debtor then filed bankruptcy on March 13, 2024, during the 15-day bidding procedure set up under the new California scheme. Creditor states that Cal. Civ. Pro. § 2924M(a)(1)(C)(i) does not allow mortgagor, Debtor here, to overbid on the Property during that 15-day window, meaning Debtor no longer has any right in the Property.

Movant informs the court that during that 15-day window, no overbids came in, and so Movant asserts the sale was finalized ending with Movant owning the Property. Decl. ¶ 4, Docket 37. The case was dismissed on April 1, 2024, for failing to timely file documents. Docket 12. However, the court reinstated the case on April 4, 2024, by Order se3tting aside/vacating the earlier dismissal Order. Docket 22. Movant recorded Trustee's Deed Upon Sale ("TDUS") on April 4, 2024, while the present case was ongoing, but on the very day the court set aside the dismissal Order. Decl ¶ 7, Docket 37. Movant asserts it was not aware this case was reinstated and ongoing when it recorded the TDUS on April 4. *Id.* at ¶ 8.

Movant therefore explains that, under this new California foreclosure scheme, it owned the Property and Debtor had no right in the Property. Movant seeks this Order to confirm there was no stay in effect as to the Property when it foreclosed and subsequently recorded the TDUS.

APPLICABLE LAW
California Law and the
Plain Language

The underlying facts of the present dispute are simple; however, the law may not be. In this situation, the facts boil down to the following:

a. A nonjudicial foreclosure sale was conducted on February 29, 2024, at which Movant was the successful bidder, it also being the foreclosing creditor. Because Movant is not the prospective owner-occupant, a 15-day window opened up for bidding on the Property. No bids were submitted.

b. On Mach 13, 2024, Debtor commenced this Bankruptcy Case. The case was dismissed on April 1, 2024, for failing to timely file documents. The court set aside / vacated that dismissal by Order entered on April 4, 2024.

c. Movant recorded its TDUS on April 4, 2024, perfecting its interest on the same day this court set aside the dismissal and reinstating the case.

California has radically amended its nonjudicial foreclosure law as it relates to 1-4 unit dwellings, creating the opportunity for owner/occupier/tenant/community organizations to submit post-foreclosure bids to purchase. These provisions have been through a series of amendments the past several years.

California Civil Code § 2924h(c) states, in pertinent part, the general rule as to when a nonjudicial foreclosure is deemed final and the period in which the recording of the trustee's deed perfects title back to the final sale date as follows:

> (c) In the event the trustee accepts a check drawn by a credit union or a savings and loan association pursuant to this subdivision or a cash equivalent designated in the notice of sale, the trustee may withhold the issuance of the trustee's deed to the successful bidder submitting the check drawn by a state or federal credit union or savings and loan association or the cash equivalent until funds become available to the payee or endorsee as a matter of right.
>
> **For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance** of the last and highest bid, and shall **be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 21 calendar days after the sale**, or the next business day following the 21st day if the county recorder in which the property is located is closed on the 21st day. If an eligible bidder submits a written notice of intent to bid pursuant to paragraph (3) of subdivision (c) of Section 2924m, the trustee's sale shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 60 calendar days after the sale or the next business day following the 60th day if the county recorder in which the property is located is closed on the 60th day. However,

> the sale is subject to an automatic rescission for a failure of consideration in the event the funds are not "available for withdrawal" as defined in Section 12413.1 of the Insurance Code. The trustee shall send a notice of rescission for a failure of consideration to the last and highest bidder submitting the check or alternative instrument, if the address of the last and highest bidder is known to the trustee.
>
> If a sale results in an automatic right of rescission for failure of consideration pursuant to this subdivision, the interest of any lienholder shall be reinstated in the same priority as if the previous sale had not occurred.

Cal Civ Code § 2924h(c) (emphasis added). This provision begins with the statement that the sale is deemed final upon the acceptance of the final bid, and that title can then be perfected within a 21 day period. A longer period is provided if written notices of intend to bid are submitted as provided in California Civil Code § 2924(m)(c)(3).

California Civil Code § 2924h(c) further provides that with respect to the provisions of § 2924h, they control "except as specifically provided in [11 U.S.C. § 2924m].

Finality of Nonjudicial Foreclosure Sale of 1-4 Unit Residential Property

Moving to California Civil Code § 2924m(c)(2), it provides that for a trustee's sale of a 1-4 unit residential property through a nonjudicial foreclosure sale when the buyer is not an eligible tenant buyer or bidder, the sale is not "deemed final" until as follows:

> (c) A trustee's sale of property under a power of sale contained in a deed of trust or mortgage on real property containing one to four residential units pursuant to Section 2924g **shall not be deemed final until the earliest of the following**:
> . . .
> (2) **Fifteen days after the trustee's sale unless** at least one eligible tenant buyer or eligible bidder submits to the trustee either a bid pursuant to paragraph (3) or (4) or a nonbinding written notice of intent to place such a bid.

Cal. Civ. § 2924m(c)(2). This period is then extended if a post-foreclosure sale eligible tenant buyer or eligible bidder submits a timely bid or notice of intent to bid. Cal. Civ. § 2924m(b)(3), (4).

California Code of Civil Procedure 2924m(f) and (h) then include specific provisions which address the status of the title to the property pending the running of the applicable period for which it is statutorily deemed to be final, stating:

> (f) Title to the property shall remain with the mortgagor or trustor until the property sale is deemed final as provided in this section.
> . . .
> (h) This section shall prevail over any conflicting provision of Section 2924h.

What these provisions tell all is that while the sale has occurred on February 29, 2024, it would not be "deemed final" until March 15, 2024 California Civil Code § 2924m(f) expressly states that title remains in the trustor (here the Debtor) until final; however, that title is subject to the provisions of

California Civil Code § 2924m, which includes the statutory finality of the sale fifteen days after the nonjudicial foreclosure sale having been conducted upon the failure of other events.

The open question is what is the effect of California Civil Code § 2924m(c)(2) providing that the sale is not "deemed final" until the expiration of the fifteen (15) day period, or such longer period as provided in the statute if a bid or notice of bid is made by a prospective owner-occupant or eligible tenant buyer as provided in California Civil Code § 2924m(a)(1) and (2). Excluded from "prospective owner-occupant" and "eligible tenant buyer" are "the mortgagor or trustor, or the child, spouse, or parent of the mortgagor or trustor." Cal. Civ. 2924m(a)(1)(C)(i), (ii); (a)(2)(C).

While California Civil Code § 2924m(f) provides that title remains in the mortgagor or trustor until the "sale is deemed final as provided in this section," is that title subject to the provisions of California Code of Civil Procedure § 2924m(c)(2) that make the sale final upon the expiration of fifteen (15) days?

Are these statutory rights for the nonjudicial foreclosure sale of property fixed rights, subject only to the conditions subsequent that may occur – none of which conditions are under the control or rights of the mortgagor or trustor (which is the Debtor in this case)?

From the court's initial review of the Legislative History, while the term "final" is used in the AB 1837 (the Bill which made the Civ. Code § 2924m and other amendments), it is little discussed in the Legislative Committees.

Timing of Foreclosure Sale and
Recording of Deed of Trust

Here, the nonjudicial foreclosure sale was conducted on February 29, 2024. The fifteenth day after the nonjudicial foreclosure sale is March 15, 2024.

Debtor commenced this Bankruptcy Case on March 13, 2024, prior to the expiration of the fifteen day period specified in California Civil Code § 2924m(c)(2).

Debtor's Bankruptcy Case was dismissed on April 2, 2024, for failure to file documents.

On April 4, 2024, the court issued an order vacating the dismissal of the case and Creditor had the TDUS Recorded.

Creditor provides a copy of the TDUS as Exhibit 8, Dckt. 36, which has a recording time and date of 12:29:47 p.m. on April 4, 2024. The court's order Vacating the Dismissal is stamped with a "filed" date and time of 12:42:28 p.m. on April 4, 2024. Dckt. 22.

The TDUS was recorded on April 4, 2024, which is thirty-four (34) days after the February 29, 2024 nonjudicial foreclosure sale. California Civil Code § 2924h(c) provides that if the Trustee's Deed is recorded within 21 calendar days after the nonjudicial foreclosure sale, then the sale shall be deemed "perfected" as of 8:00 a.m. on the day of the nonjudicial foreclosure sale.

Post-Petition Interests
In the Property

At the heart of the dispute is what is the effect of a foreclosure sale conducted before the bankruptcy case is filed and what occurs when, statutorily, that sale is not "deemed final" until after the expiration of a time period. As has been well known, prior California law provided that so long as the trustee's deed was timely filed (former Cal. Civ. § 2924h), the perfection of such title by recording the trustee's deed was permitted pursuant to 11 U.S.C. § 362(b)(3).

§ 362(b)(3) provides that the stay does not apply to any act to perfect, maintain, or continue the perfection of an interest in property which are subject to the provisions of 11 U.S.C. § 546(b), which states:

> § 546. Limitations on avoiding powers
>
> (b)
>
> (1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that—
>
> > (A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or
> >
> > (B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

Congress provides that a bankruptcy estate acquires the property of the Debtor as of the commencement of the bankruptcy case. See, 11 U.S.C. § 541(a) providing in pertinent part:

> § 541. Property of the estate
> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
>
> (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
>
> > (A) under the sole, equal, or joint management and control of the debtor; or
> >
> > (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

With respect to the interests acquired by the bankruptcy estate, the trustee (here the Debtor exercising the powers and rights of a bankruptcy trustee) has the rights of a *bona fide* purchaser of real property from the Debtor. 11 U.S.C. § 544(a)(3).

11 U.S.C. § 541 does not provide that the acquisition of interest date for the bankruptcy estate changes if the case is dismissed and then the court vacates the order dismissing the case.

Here, the Bankruptcy Estate in this Case acquired its interests in the Property as of the March 13, 2024 commencement of this Case. Creditor, having missed the twenty-one day window for recording the TDUS to relate back to the February 29, 2024 nonjudicial foreclosure date, has the TDUS recording and it's interests in the Property perfected as of April 4, 2024.

JULY 2, 2024 HEARING

At the July 2, 2024 hearing, **XXXXXXX**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm Absence of the Automatic Stay filed by LoanDepot.com, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **XXXXXXX**.

24. 23-24590-E-13 DRE-3 | **JON FENTON** / **Randall Ensminger** | **AMENDED MOTION TO CONFIRM PLAN** / **5-16-24 [78]**

Items 24 and 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2023. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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, Jon Wesley Fenton ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for four payments of $1,000 per month, and then a small step up to 56 payments of $1,140 per month for 56 months with no less than 16% going to unsecured creditors. Amended Plan, Docket 74. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 12, 2024. Docket 86. Trustee opposes confirmation of the Plan on the basis that:

A. Mercedes-Benz Financial Services is misclassified, still, in Class 4. Trustee appears to assert that the claim does not appear to be Class 4 because the claim will mature before the end of the Plan. Trustee seeks further clarification regarding whether the claim is secured and entitled to Class 4 treatment, or whether the loan matures after the completion of the Plan *Id.* at 1:27-2:11.

B. Debtor has failed to provide for Kapitus Servicing Inc. which filed a secured Proof of Claim, for $62,659.18, (Claim 12-1), whose debt appears to be secured by UCC-1 Financing Statement. Debtor has failed to list this creditor on Schedule D, provide treatment for this creditor's claim in the Plan, and it appears that the creditor is not listed, as an expense, on Schedule J. *Id.* at 2:12-16.

C. Debtor continues to fail to cooperate with the Trustee in the investigation of the assets, debts, income and expenses. Debtor has failed to amended Schedules D and E/F to show the Non-Filing Spouse's, ("NFS"), debt especially the $19,000.00 that the Debtor admitted the NFS owed as of the day he filed this case. Where Schedule J now discloses $500 per month to credit cards and $200 to an auto, (Docket 76, Page 4, Lines 17c & 17d), the amount of these claims needs to be clarified and the creditor's identified. Opp'n 2:17-23, Docket 86.

D. Trustee seeks clarification as to what type of business Debtor operates to generate his income. Amended Schedule I, Question #8b, shows the Debtor receives $8,766.67 in interest and dividends, where the Statement of Financial Affairs, #4, shows income from the Debtor operating a business, and Question #27 shows the Debtor as a sole proprietor and a member of a limited liability company, (LLC), or limited liability partnership, (LLP). Opp'n 2:17-23, Docket 86.

E. The following bank statements have not been provided:

a) Wells Fargo Bank, (accounts ending 1879 & 4259) for July 2023, August 2023 and September 2023;

b) OE Federal Credit Union for all accounts of both the Debtor and/or the NFS, but more specifically 6 months of statements for account ending 8516;

c) Wells Fargo Bank, (account ending 8269), all 6 months of statements

Opp'n 3:8-13, Docket 86.

F. Debtor may fail the liquidation test. Opp'n 3:14-4:5, Docket 86.

DISCUSSION

Misclassified Claims

Class 2(A) claims cannot be reduced if "the claim holder has a purchase money security interest and the claim either was incurred within 910 days of the filing of the case and is secured by a motor vehicle acquired for the personal use of Debtor, or was incurred within 1-year of the filing of the case and is secured by any other thing of value." Plan Form EDC 003-080 § 3.08(c)(1). Importantly, the Plan's standard language says "[t]hese claims must be included in Class 2(A)." *Id.* It appears that creditor Mercedes-Benz

Financial Services' claim secured by the 2018 Mercedes-Benz C300 fits the description of being a Class 2(A) claim.

At the previous hearing, counsel for the Debtor reported that the 2018 Mercedes is owned by Debtor's non-filing spouse. Additionally, the debt has been paid by Debtor's brother in law, who now will accept a direct payment of $200 a month. If this is the case, then the claim may not be subject to Class 4 treatment which is only for secured claims that mature after the life of the Plan.

At the hearing, **xxxxxxx**

Failure to Provide for a Secured Claim

Trustee alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for the secured claim of Kapitus Servicing Inc., which is secured by a UCC-1 Financing Statement. POC 12-1; *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

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

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

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

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not

necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

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

Insufficient Information Scheduled

Debtor has still not scheduled community debts, omitting a $19,000 debt of the NFS. Where Schedule J now discloses $500 per month to credit cards and $200 to an auto, Trustee requires the amount of these claims needs to be clarified and the creditor's identified.

Moreover, Debtor schedules earning $8,766.67 in dividend payments from his corporation, Ultimate Video and Security Systems. Question #8b, shows the Debtor receives $8,766.67 in interest and dividends, where the Statement of Financial Affairs, #4, shows income from the Debtor operating a business, and Question #27 shows the Debtor as a sole proprietor and a member of a limited liability company, (LLC), or limited liability partnership, (LLP). Debtor should clarify where this income comes from and the nature of the business entity.

Finally Trustee is still missing bank statements for the Debtor material to this case. At the hearing, **xxxxxxx**

Liquidation Analysis

Trustee argues that Debtor fails a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." Here, General unsecured creditors will receive an 18% distribution in the amount of $21,121.97, Plan, Docket 11 § 3.12, but Trustee estimates Debtor has $45,945.29 in non-exempt equity in assets of the estate.

At the hearing, **xxxxxxx**

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

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

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

25. 23-24590-E-13 DPC-1	**JON FENTON Randall Ensminger**	**CONTINUED MOTION TO DISMISS CASE 2-21-24 [30]**

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

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, persons having filed a Request for Notice, and Office of the United States Trustee on February 21, 2024. 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.

July 2, 2024 Hearing

The court continued this Motion to Dismiss to be heard in conjunction with Debtor's Motion to Confirm Plan. Trustee has filed Opposition in the Motion to Confirm.

At the hearing, xxxxxxx

REVIEW OF THE MOTION

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

1. The debtor, Jon Wesley Fenton ("Debtor"), is delinquent $1,000.00 in plan payments. This case was filed on December 22, 2023, and Debtor has paid $0.00 into this plan. Prior to the hearing in this matter, Debtor's next scheduled payment of $1,000.00 will come due. Motion, Docket 30, p. 1:21-28.

2. Debtor filed a Chapter 13 Plan on January 19, 2024. Plan, Docket 23. Debtor has failed to file a Motion to Confirm the Plan and set it for confirmation. Motion, Docket 30, p. 2:6-8.

3. Debtor has failed to provide documents requested by Trustee as required by the plan. The trustee seeks:

   A. 2021 personal tax returns.

   B. 2021 and 2022 business tax returns.

   C. Four months of bank statements for Wells Fargo bank accounts #1879 and #4259.

   D. 6 months financial statements for the Ultimate Voltage & Jon. W. Fenton Biz account.

   E. Business income & expense statement.

   Id. at 2:9-22.

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

DEBTOR'S REPLY

Debtor filed a Reply on March 6, 2024. Docket 38. Debtor states that they have cured the delinquency. Declaration, Docket 40, p.2: 5-6.

Debtor declares that they brought the plan current on February 23, 2024. *Id.* at 2:4-5. Debtor has submitted a cashier's check in the amount of $1,000.00 addressed to Trustee, and dated February 23, 2024. Exhibit, Docket 39, Exhibit A. Due to the nature of Debtor's business and a slow holiday period, Debtor originally did not have the funds to bring the plan current. Declaration, Docket 40, p.2 at 2:3-5.

A Motion to Confirm Plan is in the final preparation stages and will be filed and served on all creditors before the Motion to Dismiss Hearing. *Id.* at 2:8-9.

The additional business documents such as 2021 personal tax returns, 2021 & 2022 business tax returns, 6 months of business bank statements, business income and expense statement, and 4 months of Wells Fargo Bank statements have been provided to Trustee. *Id.* at 2:10-15.

DISCUSSION

Delinquent

Debtor has submitted sufficient evidence that they have cured their delinquency.

Business Records

Debtor testifies that the additional business documents such as 2021 personal tax returns, 2021 & 2022 business tax returns, 6 months of business bank statements, business income and expense statement, and 4 months of Wells Fargo Bank statements have now been provided to Trustee.

At the hearing, counsel for the Trustee reported that these tax returns have been received.

No Pending Motion to Confirm Plan

Debtor filed a Chapter 13 Plan on January 19, 2024. Debtor has promised to file a Motion to Confirm Plan. Declaration, Docket 40, p. 2:8-9. A review of the docket on March 17 shows that Debtor has not yet filed a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, Debtor's counsel reported that the Amended Plan and Motion to Confirm, with supporting pleadings have been filed. See, Dckts. 49-52.

The Trustee agreed to a continuance of the hearing on this Motion to Dismiss to be conducted in conjunction with the hearing on Debtor's Motion to Confirm. The hearing on the Motion to Dismiss is continued to 2:00 p.m. on May 7, 2024, to be conducted in conjunction with Debtor's Motion to Confirm (if this Motion has not been dismissed by the Trustee prior to that time).

May 7, 2024 Hearing

The court continued this Motion in light of Debtor having cured the delinquency and to be heard in conjunction with Debtor's Motion to Confirm.

At the hearing counsel for the Trustee concurred with Debtor's request that the hearing be continued to 2:00 p.m. on June 25, 2024, to be conducted in conjunction with the final hearing on the Debtor's Motion to Confirm the Amended Chapter 13 Plan.

The hearing is continued to 2:00 p.m. on June 25, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by 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**.

26. 24-22090-E-13 EJS-1 | **TAZMIN GODAMUNNE** Eric Schwab | **CONTINUED MOTION TO IMPOSE AUTOMATIC STAY** 5-22-24 [16]

26 thru 27

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

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

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

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

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

The Motion to Impose the Automatic Stay is xxxxxxx.

July 2, 2024 Hearing

The court continued the hearing to conduct the final hearing this Motion, having previously imposed the stay on an interim basis through and including July 28, 2024. Docket 38. A review of the Docket on June 27, 2024 reveals that nothing new has been filed with the court.

At the hearing, xxxxxxx

REVIEW OF THE MOTION

Tazmin Sabina Godamunne ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor's third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor's prior bankruptcy cases (Nos. 24-

21368 and 24-21711) were dismissed on April 22, 2024, and May 13, 2024, respectively. *See* Order, Bankr. E.D. Cal. No. 24-21368, 9, April 22, 2024; Order, Bankr. E.D. Cal. No. 24-21711, 15, May 13, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

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

CREDITOR'S OPPOSITION

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

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

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

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

Principal Payment Monthly .....($6,065.00)

Interest Payment Monthly .....($3,900.00)

Arrearage Payment Monthly.....($1,004)

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

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

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

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

REVIEW OF DEBTOR'S CHAPTER 13 PLAN

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

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

The Plan states that Creditor is to receive the regular post-petition payment of $3,900.00 and an arrearage cure payment of $1,004 to cure the ($60,250.00). But the Plan does not provide for paying the claim in full during the sixty (60) month term of the Plan – whether that would be from fully amortizing the repayment over the sixty months of the Plan or making adequate protection payments which the Debtor promptly proceeded with a commercially reasonable sale of the Property to preserve any exempt value.

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

APPLICABLE LAW

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

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

> (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
>
> (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
>
> (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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

A. Why was the previous plan filed?

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

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

DISCUSSION

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

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

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

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

At the hearing, counsel for the Debtor addressed what good faith, confirmable Plan the Debtor was intending to pursue, stating the Debtor has come to accept that this property must be sold for Debtor to preserve her equity in it. Hopefully, there will be a buyer that will lease the property back to the Debtor so that she can continue to operate her daycare business there.

Creditor counsel expressed the continuing frustration with the Debtor, reminding the court and Debtor's counsel that Debtor immediately defaulted on this loan and has never made a payment. Debtor's counsel noted the high interest rate on this loan.

Debtor's counsel stated that a Plan will be filed in the next week, which will provide for the marketing and sale of the property securing creditor's claim in a commercially reasonable matter.

Additionally, Debtor will make adequate protection payments beginning in June 2024 through the Plan in the amount of $5,300.00, consisting of a $3,900.00 interest payment and $1,400.00 arrearage cure payment.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay on an interim basis while Debtor gets her plan on file and commences making the adequate protection payments through the Plan. The court continues the hearing to allow Debtor to accomplish the initial promises of action and payment.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by Tazmin Sabina Godamunne ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxx**.

27. 24-22090-E-13 MF-1 | **TAZMIN GODAMUNNE** Eric Schwab | **CONTINUED MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY** 5-20-24 [10]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors and parties in interest, attorneys of record who have appeared in the case, and Office of the United States Trustee on May 20, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Confirm Absence of the Automatic Stay is xxxxxxx.

July 2, 2024 Hearing

The court continued the hearing to conduct the final hearing the Motion to Impose the Stay, having previously imposed the stay on an interim basis. Docket 38. A review of the Docket on June 27, 2024 reveals that nothing new has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Sunit Lohtia And Meenal S. Lohtia ("Movant") moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(j). Movant pleads that the present case is Tazmin Sabina Godamunne's ("Debtor") third bankruptcy case pending in the last year. However,

there is a motion seeking to impose the stay pursuant to 11 U.S.C. § 362(c)(4)(B) being heard in conjunction with this matter.

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

At the related hearing on Debtor's Motion to Impose the Automatic Stay Debtor's counsel and Movant's counsel addressed various issues, including how Debtor (now represented by counsel) would move forward with a plan that provides for adequate protection payments to Movant and the commercially reasonable sale of the property that secures Movant's claim.

Movant does not identify any actions taken by Movant or others during the period that no stay was in effect, but states that Movant is seeking this order to insure that all parties in interest are aware, by order of the court, that there is no automatic stay impacting the nonjudicial foreclosure sale Movant desires to have conducted.

The hearing on this Motion is continued to 2:00 p.m. on July 2, 2024, to be heard in conjunction with the final hearing on Debtor's Motion to Impose the Automatic Stay.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm Absence of the Automatic Stay filed by Sunit Lohtia And Meenal S. Lohtia ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxx**.

28. 18-25114-E-7 DAVID HOWERTON ORDER TO SHOW CAUSE
RHS-1 Peter Macaluso 6-26-24 [177]

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

All responses may be presented orally at the hearing, and the hearing may be continued as appropriate.

The court sets this hearing on such short notice to afford notice to counsel for the Debtor, the U.S. Trustee, and the Chapter 7 Trustee the opportunity to provide immediate insight to this recently discovered failure to provide notice.

The Order to Show Cause is xxxxxxx.

On August 15, 2018, Debtor David De Vaughn Howerton commenced this Bankruptcy Case under Chapter 13. Debtor confirmed a Chapter 13 Plan. On June 11, 2020, a Notice of Death was filed, the Debtor having passed away on May 4, 2020. Dckts. 40, 52. The court appointed a Successor Representative, who, with the assistance of Debtor's family members, attempted to prosecute a Chapter 13 Plan to cure the arrearage on Debtor's home mortgage.

Unfortunately, the Successor Representative and Debtor's family members could not successfully prosecute a Plan and the Chapter 13 Trustee filed a Motion to Dismiss on May 8, 2023. Dckt. 115. After multiple continuances and efforts by the Successor Representative to confirm a modified plan, the court ordered the Case converted to one under Chapter 7. Order; Dckt. 148. At the March 20, 2024 final hearing on the Motion to Dismiss, the Successor Representative made an oral motion to convert this case to one under Chapter 7. Civ. Min.; Dckt. 147.

Though the Clerk's Office and the Chapter 7 Trustee scheduled the Chapter 7 341 Meeting and the Clerk's Office set deadlines for the filing of objections to discharge and for determination of the dischargeability of debts (11 U.S.C. § 727, § 523), no Notice of Conversion to Chapter 7 was given by the Clerk of the Court and no creditors were provided with notice of the 341 Meeting or the objections to discharge and actions for nondischargeability deadlines.

The Chapter 7 Trustee has conducted the 341 Meetings (having continued the Meeting) and has now determined that this is a no asset case. See, April 27, 2024, and May 14, 2024 Docket Entry Reports. The Trustee filed a No Distribution Report on June 21, 2024. Dckt. 174.

The failure to provide Notice of the Objection to Discharge and Actions for Nondischargeability of Debt deadlines could raise issues for the late Debtor and his estate. In reviewing the file, only four creditors have filed proofs of claim. Two are secured claims (house and vehicle) and there are two general

unsecured claims, one for ($1,765.10) and the other for ($7,870.74). Debtor lists several other creditors on Schedule E/F, which creditors did not file a proof of claim in this Bankruptcy case. Thus, it does not appear that out of the universe of creditors, there are substantial debts at issue for the late Debtor.

This failure of providing notice having recently been brought to the court's attention, and in light of the somewhat unique circumstances, the court is considering ordering the Clerk of the Court to provide a new Notice of Deadlines for Filing Objections to Discharge and Actions for Determination of the Nondischargeability of Debt. Before doing so, the insight from counsel for the Successor Representative, the U.S. Trustee, and the Chapter 7 Trustee is needed.

With the Notice of Conversion to Chapter 7 not having been provided by the Clerk of the Court, the court conducts the hearing on this Order to Show Cause why the court should not: (1) set extended deadlines for filing Objections to Discharge and Actions for Nondischargeability of Debt and (2) order the Clerk of the Court to serve a Notice of Reset Deadlines on the parties in interest in this case, for Objections to Discharge and Actions for Nondischargeability of Debt.

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 Order to Show Cause 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 Order to Show Cause is **xxxxxxx.**

FINAL RULINGS

29. 23-23608-E-13 DPC-1 | **TEMA ROBINSON** | **Peter Macaluso** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** | **5-28-24 [99]**

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 28, 2024. 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 Exemptions is sustained, and the exemptions are disallowed in their entirety.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Tema Kay Robinson's ("Debtor") claimed exemptions under California law because she improperly attempted to claim as exempt her refund check from Trustee in the amount of $1,478.00 under Cal. Code Civ. P. § 704.220.

Debtor filed a nonopposition on June 18, 2024. Docket 109.

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 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 exemptions for her refund check from Trustee in the amount of $1,478.00 under Cal. Code Civ. P. § 704.220 are disallowed in their entirety.

30. 24-21908-E-13 RLG-1 | **SELENA CONTRERAS** | **MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION**
Steven Alpert | **5-17-24 [9]**

Final Ruling: No appearance at the July 2, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors holding allowed secured claims, and Office of the United States Trustee on May 17, 2024. By the court's calculation, 46 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 Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $10,492.00.

The Motion filed by Selena Lynn Contreras ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Decl., Docket 11. Debtor is the owner of a 2017 Chevy Malibu vin ending in 1825 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,492.00 as of the petition filing date. Ex. 2, Docket 12. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor also provides a Kelly Blue Book valuation of the automobile. Ex. 2, Docket 12.

David Cusick, the Chapter 13 Trustee, filed a nonopposition on June 18, 2024. Docket 20. Trustee does not oppose the Motion, but notes the proposed Plan shows the value of the Vehicle at $10,376 whereas the value of the collateral in this Motion is $10,492. *Id.* at 2:1-2.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July 27, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $12,128.17. Decl., Docket 11. POC 6-1. 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 $10,492.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Selena Lynn Contreras ("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 Travis Credit Union ("Creditor") secured by an asset described as 2017 Chevy Malibu vin ending in 1825 ("Vehicle") is determined to be a secured claim in the amount of $10,492.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,492.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

31. 24-21423-E-13 DPC-1 | **ALLISON MURPHY** / **Candace Brooks** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-14-24 [16]**

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

The Objection to Confirmation is dismissed without prejudice, and the Chapter 13 Plan filed on April 5, 2024 at Docket 3 is confirmed.

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed an Ex Parte Motion to Dismiss the pending Objection on June 25, 2024, Docket 29; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Allison Danielle Murphy ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Objection is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Docket 29, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Allison Danielle Murphy's ("Debtor") Chapter 13 Plan filed on April 5, 2024, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. 21-23024-E-13 BLG-4 | **WILLIAM PITTS, Chad Johnson** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S) 5-8-24 [60]**

DEBTOR DISMISSED: 05/03/24

Final Ruling: No appearance at the July 2, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, persons who have filed a Request for Notice, creditors that have filed claims, and Office of the United States Trustee on May 8, 2024. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Chad M. Johnson, the Attorney ("Applicant") for William Louis Pitts, Chapter 13 Debtor ("Client"), makes a Final Request for the Allowance of Fees and Expenses in this case. Applicant now seeks a final request for approval of fees that were authorized as interim fees initially filed on November 11, 2021. *see* Appl., Docket 17; Order, Docket 31. Applicant is not seeking any additional fees beyond what was approved in the original Application.

Applicant submits the declaration of Chad M. Johnson to authenticate the facts in the motion. Decl., Docket 62. Fees are requested for the period November 4, 2019, through November 11, 2021, regarding work related to case preparation and administration. Appl. 2:17, Docket 60.

Applicant requests final authorization of approved fees in the amount of $2,903.00 and costs in the amount of $10.79. Appl. 3:12-13, Docket 60.

David Cusick, the Chapter 13 Trustee, filed a nonopposition on June 3, 2024. Docket 70.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include case preparation, case administration, and work for the BLG-1 matter. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Preparation: Attorney spent 2.80 hours and paralegal spent 3.20 hours in this category. Attorney bills $400 per hour and paralegal bills $185 per hour. This work was done to properly advise Debtor and prepare and file a complete Petition, Schedules, and required documents. Mot. 3:9, 3:19-20, Docket 60.

Case Administration: Attorney spent 2.10 hours and paralegal spent 0.20 hours in this category.

BLG-1: Attorney spent 0.60 hours and paralegal spent 0.40 hours in this category.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Attorney: Case Preparation	2.80	$400.00	$1,120.00
Attorney: Case Administration	2.10	$400.00	$840.00

Attorney: BLG-1	0.60	$400.00	$240.00
Paralegal: Case Preparation	3.20	$185.00	$592.00
Paralegal: Case Administration	0.20	$185.00	$37.00
Paralegal: BLG-1	0.40	$185.00	$74.00
Total Fees for Period of Application			$2,903.00

Appl. 3:7-13, Docket 60.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $10.79 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of $10.79. Appl. 3:15, Docket 17.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Fee Motion (BLG-1)	----------	$10.79
Total Costs Requested in Application		$10.79

Appl. 3:13, Docket 60.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of $2,903.00 are approved pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Costs & Expenses

Final Costs in the amount of $10.79 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees	$2,903.00
Costs and Expenses	$10.79

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Chad M. Johnson ("Applicant"), Attorney for William Louis Pitts, Debtor in Possession, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:
>
> Chad M. Johnson, Professional employed by the Chapter 13 Debtor:
>
> Fees in the amount of $2,903.00
> Expenses in the amount of $10.79,
>
> as the fees and costs approved pursuant to prior Interim Application, Docket 31, are approved as final fees and costs pursuant to 11 U.S.C. § 330 as the final allowance of fees and expenses as counsel for the Chapter 13 Debtor.

33. 23-22026-E-13 BLG-2 | **ROMUALDO/MYRA GUILLERMO** | **OBJECTION TO CLAIM OF GOLDEN 1 CREDIT UNION, CLAIM NUMBER 15**
Chad Johnson | **4-9-24 [36]**

Final Ruling: No appearance at the July 2, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, other parties in interest, and Office of the United States Trustee on April 9, 2024. By the court's calculation, over 70 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 15-1 of Golden 1 Credit Union is sustained, and the claim is disallowed in its entirety.

Romualdo Somera Guillermo, Jr and Myra Cristina Guillermo, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Golden 1 Credit Union ("Creditor"), Proof of Claim No. 15-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $12,604.17. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is August 30, 2023. Notice of Bankruptcy Filing and Deadlines, Dckt. 8.

Objector also requests prevailing attorney's fees in the amount of $400 for one hour of work related to prosecuting this Objection. Objector states although the credit card user agreement was not filed in the proof of claim, Objector found the agreement online and included it in these pleadings as Exhibit B. Ex. B, Docket 39.

The Chapter 13 Trustee, David Cusick, filed a nonopposition on June 10, 2024. Docket 44.

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 factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter was August 30, 2023. Creditor's Proof of Claim was filed on September 7, 2023. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

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

Pursuant to Cal. Code Civ. P. § 1717, Objector is also awarded attorney's fees in the amount of $400 pursuant to the reciprocal contractual arrangement. Creditor's Member Cash Rewards Credit Card Agreement contains a "Promise to Pay" clause that clearly implicates Cal. Code Civ. P. § 1717 here. Ex. B 11, Docket 39. Objector's attorney testifies that this agreement is likely the standard provision in all of Creditor's card agreements and applies to the card at issue here. Decl 2:5-8, Docket 38. Therefore, Objector is awarded attorney's fees in the amount of $400.

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 Golden 1 Credit Union ("Creditor") filed in this case by Romualdo Somera Guillermo, Jr and Myra Cristina Guillermo, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 15-1 Golden 1 Credit Union is sustained, and the claim is disallowed in its entirety.
>
> **IT IS FURTHER ORDERED** Objector is awarded attorney's fees in the amount of $400 pursuant to Creditor's Member Cash Rewards Credit Card Agreement and Cal. Code Civ. P. § 1717. This order is a judgment for this monetary award and may be enforced as such. Fed. R. Bankr. P. 9001(7), 9002(5).
>
> The court has determined that in light of the very modest amount of attorney's fees requested, $400, that joining it with the Objection to Claim is proper. To require a separate motion and post-judgment proceeding would significantly increase the amount of fees, likely to be around $2,000.00.

34. 23-23827-E-13 MET-1 | **ERNEST JACKSON** Mary Ellen Terranella | **MOTION TO CONFIRM PLAN** 4-24-24 [26]

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 24, 2024. By the court's calculation, 69 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Ernest Jackson ("Debtor"), has provided evidence in support of confirmation. *See* Decl., Docket 29. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 18, 2024. Non-Opposition, Docket 35. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Ernest Jackson ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on April 24, 2024, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. 22-22838-E-13 TLA-1 | **DIANNIA LINDSEY** **Thomas Amberg** | **MOTION TO MODIFY PLAN** **5-24-24 [27]**

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 24, 2024. 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, Diannia Lindsey ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 30; Exhibits, Docket 29. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 18, 2024. Docket 36. 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, Diannia Lindsey ("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 24, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

36. 24-20140-E-13 MS-2 | **MELANIE PRUITT** | **Mark Shmorgon** | **MOTION TO MODIFY PLAN** | **5-24-24 [25]**

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, and Office of the United States Trustee on May 24, 2024. 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, Melanie Pruitt ("Debtor"), *See* Decl., Docket 29; Exhibits, Docket 28. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 18, 2024. Docket 36. 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, Melanie Pruitt ("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 24, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

37. 23-22089-E-13 PGM-2 | **PHILIP LA TONA** | **Peter Macaluso** | **MOTION TO CONFIRM PLAN** | **5-16-24 [74]**

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on May 16, 2024. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Philip John La Tona ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 76; Exhibits, Docket77. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 14, 2024. Docket82. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Philip John La Tona ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on May 16, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. 24-20790-E-13 EAT-1 | **APRIL MARSHALL** | **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC** | **4-18-24 [32]**

DEBTOR DISMISSED: 05/02/24

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on April 22, 2024. By the court's calculation, 71 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation is overruled without prejudice as moot.

Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim objects to confirmation of the debtor, April Marie Marshall's ("Debtor") Chapter 13 plan. However, the court granted the Chapter 13 Trustee's Motion to Dismiss by Order issued on May 2, 2024. Docket 40. Debtor's case was accordingly dismissed, this Plan is not operative, rendering Creditor's Objection moot.

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 Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, this Bankruptcy Case having Been dismissed (Order; Dckt. 40) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled without prejudice as moot.

39. 24-21190-E-13 BLG-1 JOSE CORTES Chad Johnson MOTION TO CONFIRM PLAN 5-9-24 [14]

Final Ruling: No appearance at the July 2, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 9, 2024. 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Jose Arimas Cortes ("Debtor") has provided evidence in support of confirmation. *See* Decl., Dockets 16, 17. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 18, 2024. Docket 26. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Jose Arimas Cortes ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on May 9, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

40. 24-20395-E-13 CRG-1 | **CHRYSTAL REYES** | **Carl Gustafson** | **MOTION TO CONFIRM PLAN** | **4-29-24 [24]**

Final Ruling: No appearance at the July 2, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and parties in interest, and Office of the United States Trustee on April 30, 2024. By the court's calculation, 63 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Chrystal Jamille Reyes ("Debtor"), has provided evidence in support of confirmation. *See* Decl., Docket 27; Ex., Docket 28. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 18, 2024. Docket. 48. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Chrystal Jamille Reyes ("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 Chapter 13 Plan filed on April 29, 2024 is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

41. 24-21897-E-13 DPC-1 | **TRACY/CORINA SAKATA** **Mikalah Liviakis** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-11-24 [17]**

Final Ruling: No appearance at the September 21, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 11, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled without prejudice, this Bankruptcy Case having been dismissed by order of the court (Dckt. 23).

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

1. Tracy Yasuo Sakata and Corina Sakata ("Debtor") were unable to verify Debtor Tracy Sakata's social security number before the first 341 Meeting, and so Trustee continued the meeting to July 18, 2024 to give Debtor time to provide verification. Docket 17.

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

DISCUSSION

Debtor is required to submit verification of their social security numbers as required by Fed. R. Bankr. P. 4002(b)(1)(B).

This Bankruptcy Case having been dismissed pursuant to the request of Debtor (Order; Dckt. 23), the Objection is overruled without prejudice.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, the Bankruptcy Case having been dismissed (Order; Dckt. 23) 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.