UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 26, 2022 at 2:00 p.m.

1.	**22-20382-E-13** **AVN-2**	**RICHARD/LORI ROBERTS** **Anh Nguyen**	**MOTION TO CONFIRM PLAN** **6-8-22 [32]**

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 June 8, 2022. By the court's calculation, 48 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 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 granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Richard David Roberts and Lori Ann Roberts ("Debtor") have provided evidence in support of confirmation.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on June 21, 2022, raising concerns regarding the adequacy of the proof of service. Dckt. 39.

DEBTOR'S REPLY

Debtor filed a Reply on June 23, 2022, explaining the format of their certificate of service. Dckt. 41. Debtor's Reply appears to resolve Trustee's concerns.

At the hearing, Trustee confirmed XXXXXXXXXX

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, Richard David Roberts and Lori Ann Roberts ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 8, 2022, 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.

2.	**22-21246-E-13** **DPC-1**	**AERON WALLACE** **Mary Ellen Terranella**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **6-29-22 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 29, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Infeasible Plan

B. Failure to File Documents Related to Business

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 12, 2022 (Dckt. 24) stating:

1. Debtor submitted six months of profit and loss statements and their Debtor's 2019 tax return.

2. Debtor clarifies that the nonstandard provision regarding the claim of Solano County Department of Child Support Services is for child support arrears to be paid outside the Plan. Debtor asserts that it would be impossible to repay the claim over sixty months within the Plan.

DISCUSSION

Trustee's objections are well-taken.

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Plan calls for the priority claim of Solano County Department of Child Support Services to be paid by Debtor. Dckt. 3 at 7. Schedules I and J do not indicate any expense for child support, and the Debtor has not provided any verifying documents indicating the creditor agrees to this treatment. Dckt. 1, pages 37-38. It is not clear that Debtor will be able to comply with the Plan or make all the Plan payments. Thus, the Plan may not be confirmed.

Failure to File Documents Related to Business

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

A. Two years of tax returns,
B. Six months of profit and loss statements,

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. It appears Debtor has resolved this particular objection. At the hearing, XXXXXXXXXX

JULY 26, 2022 HEARING:

At the hearing, XXXXXXXXX

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

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

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

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

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

3.	**21-23303-E-13** **EJS-1**	**BRIAN/STEPHANIE PACE** **Eric Schwab**	**MOTION TO MODIFY PLAN** **5-31-22 [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—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 31, 2022. By the court's calculation, 56 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 debtors, Brian Joseph Pace and Stephanie Kathleen Pace ("Debtor") seeks confirmation of the Modified Plan because debtor Stephanie Pace was out of work for several months due to surgery, causing the debtors to fall behind in Plan payments. Declaration, Dckt. 32. The Modified Plan provides for $11,738.13 total Plan payments from October 2021 to May 2022, followed by $2,553.00 per month for fifty-one (51) months, and with a zero percent (0%) guaranteed dividend to general unsecured claims. Modified Plan, Dckt. 33. 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 July 11, 2022. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in Plan payments.

B. Plan fails to cure post-petition arrearage.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $2,553.00 delinquent in plan payments, which represents one month of the $2,553.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Cure Post-Petition Arrearage

The Chapter 13 Trustee asserts that Debtor failed to make timely Plan payments under the previous plan, leading to a post-petition arrearage to Class 1 creditor LoanCare LLC of $5,106.00. The modified plan proposes no cure for this post-petition arrearage. Trustee is therefore unable to fully comply with § 2.08(b) of the plan. The court notes, however, there is no § 2.08(b) of the Plan. The court presumes this was a typographical error and Trustee intended to write § 3.07(b), which is the proper section regarding Trustee maintaining payments of Class 1 claims.

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 debtors, Brian Joseph Pace and Stephanie Kathleen Pace ("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.

4. **21-24203-E-13 RK-3** **MICHAEL/SHANON BENNETT** **Richard Kwun** **MOTION TO CONFIRM PLAN** **5-10-22 [61]**

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 10, 2022. By the court's calculation, 77 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 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 Plan is denied.

The debtors, Michael Hugh Bennett and Shanon Bennett ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for $2,690.00 per month starting May 25, 2022, with $7,800.00 already paid at that time, for a duration of 60 months. Plan, Dckt. 63. General unsecured claims will receive no less than a zero percent (0%) dividend. *Id.* 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 22, 2022. Dckt. 69. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in Plan payments.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $2,690.00 delinquent in plan payments, which represents one month of the $2,690.00 plan payment. Before the hearing, another two plan payments will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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 Chapter 13 Plan filed by the debtors, Michael Hugh Bennett and Shanon Bennett ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

5. **21-23704-E-13 DRE-2** **KEITH/KELLY SPENCER** **D. Randall Ensminger** **MOTION TO CONFIRM PLAN** **5-25-22 [52]**

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

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 25, 2022. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the ~~Amended Plan is denied.~~

The debtors, Keith Allan Spencer and Kelly Shawn Spencer ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for a lump sum payment of $1,600.00 in month five, followed by $828.00 monthly payments for fifty-four (54) months starting May 25, 2022, with general unsecured creditors receiving no less than a one hundred percent (100%) dividend. Amended Plan, Dckt. 54. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating opposition on July 5, 2022. Dckt. 58. Trustee opposes confirmation of the Plan on the basis that:

A. Plan is unclear as to whether Capital One Auto Finance and Schools First Federal Credit Union shall be paid as Class 2 and Class 4.

B. Plan is unclear as to whether Debtor will pay a total of $1,600.00 through April 2022 and then $828.00 monthly thereafter, or whether the $1,600.00 will be paid in June 2022 as indicated by the statement that it

will be made in "month 5."

CREDITOR'S OPPOSITION

Secured Creditor SchoolsFirst Federal Credit Union ("Creditor"), successor to SchoolsFinancial Credit Union ("SchoolsFinancial") filed an opposition (Dckt. 60) on the grounds that:

1. The proposed interest rate is insufficient for adequate protection. Because the Plan extends the loan term 30 months (two and one-half years) past the current end of the term of the pre-petition loan terms.

DISCUSSION

Plan Feasibility

Plans should only be confirmed if they are feasible, in that debtors must "be able to make all payments under the plan and to comply with the plan." 11 U.S.C. § 1325(a)(6). Ambiguous provisions make it impossible to determine if the Plan is feasible, viable, or complies with 11 U.S.C. 1325.

Lack of Adequate Protection Under the Plan / Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the 6.25% interest rate on its loan with Debtor to 3.69%.

Creditor's claim is secured by a 2009 Subaru Impreza, VIN ending in 0623. 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. Creditor has only identified a "risk factor" that the loan term has been extended, but no negative consequences flowing therefrom.

In light of Creditor only asserting that it needs to have it's interest "protected" for the additional 30 months of the Plan, the first, and possibly final, interest rate computation is the 3.25% prime rate for this repayment which is under the statutory scheme and protection provided by Congress in the Bankruptcy Code.

When Creditor made the loan, the Vehicle securing its claim was already well seasoned, being a 2009 model year vehicle when Creditor provided the financing in 2018. The depreciation curve on such a well seasoned vehicle had flattened.

Creditor, in making the loan three years ago computed the correct interest rate to be 3.69%. Proof of Claim 6-1. Debtor uses Creditor's contractual interest rate of 3.69% in the Plan, not reducing it even one tenth of a percentage. That provides Creditor almost a full .34% upside over the current prime rate of 3.25%. Creditor has not provided the court why the contract interest rate, which is above the prime rate, of 3.69% for a claim of only $4,298.00

As stated by the Supreme Court in *Till*:

> Third, from the point of view of a creditor, the cram down provision mandates an objective rather than a subjective inquiry. 13 That is, although § 1325(a)(5)(B) entitles the creditor to property whose present value objectively equals or exceeds the value of the collateral, **it does not require that the terms of the cram down loan match the terms to which the debtor and creditor agreed prebankruptcy**, nor does it require that the cram down terms make the creditor subjectively indifferent between present foreclosure and future payment. Indeed, the very idea of a "cram down" loan precludes the latter result: By definition, a creditor forced to accept such a loan would prefer instead to foreclose. Thus, a court choosing a cram down interest rate need not consider the creditor's individual circumstances, such as its prebankruptcy dealings with the debtor or the alternative loans it could make if permitted to foreclose. Rather, the court should aim to treat similarly situated creditors similarly, and to **ensure that an objective economic analysis would suggest the debtor's interest payments will adequately compensate all such creditors for the time value of their money and the risk of default.**

Till v. SCS Credit Corp., 541 U.S. at 476-477.

Creditor's Proof of Claim states that there was not a pre-petition default as of the commencement of this case. Proof of Claim 6-1. Creditor provides no objection economic analysis or evidence why the contractual rate set by Creditor doe not adequately compensate Creditor for the time value of the $4,298.00 during the payment through the Chapter 13 Plan.

Also, the Supreme Court was clear as to who has the burden of proof when contesting a plan interest rate, holding:

> Moreover, starting from a concededly low estimate and adjusting upward places the evidentiary burden squarely on the creditors, who are likely to have readier access to any information absent from the debtor's filing (such as evidence about the "liquidity of the collateral market," post, at ____, 158 L. Ed. 2d, at 813 (Scalia, J., dissenting)). Finally, many of the factors relevant to the adjustment fall squarely within the bankruptcy court's area of expertise.

Id. at 479.

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, Keith Allan Spencer and Kelly Shawn Spencer ("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.~~

6.	**22-20711-E-13 DPC-1**	**TIMOTHY/SHERYL COSETTI Mo Mokarram**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
	6 thru 7		**5-12-22 [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 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 and Debtor's Attorney on May 12, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of the Plan is xxxxxxxxxx

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

A. Debtors' Plan was not proposed in good faith. (The allege grounds for the lack of good faith is addressed below.)

DEBTORS' RESPONSE

Debtors Timothy Alan Cosetti and Sheryl Ann Cosetti (collectively, "Debtors") filed a response on May 31, 2022. Dckt. 32. Debtors state they were married but separated two years ago. Debtor Timothy Alan Cosetti has been living in Folsom since the case was filed and remains there. Debtor Sheryl Ann Cosetti moved to Iowa two years ago when they separated and works there. Debtors' Change of Address (Dckt. 12) filed April 11, 2022 (indicating residency in Iowa), was for the purpose of all the mail going to one place. Debtors state they do not own any real property and have minimum assets. They are trying to pay their creditors 100%, including years of joint tax returns.

Debtors are okay with transferring the case to another district if necessary, but requests the court overrule the objection.

DISCUSSION

Trustee's objections are well-taken.

Asserted Lack of Good Faith

In the Objection to Confirmation Trustee states the following reasons as grounds Debtors have not filed in good faith:

Improper Jurisdiction

Trustee has provided evidence that Debtors are and have been domiciled in Iowa since July 2020. Pursuant to 28 U.S.C. § 1408, venue is proper in the district in which the domicile or residence of the individual has been located for one hundred eighty (180) days immediately proceeding the commencement of the case. Venue, therefore, is proper in Iowa, not the Eastern District of California.

Inaccurate or Omitted Information in Petition and Schedules

In their petition, Debtors states their residence is in Folsom, California, and have been domiciled there for the last one hundred eighty (180) days. However, at the First Meeting of Creditors, Debtors confirmed they live in Iowa and Debtor Timothy Alan Cosetti only travels to Folsom occasionally for work.

Debtors' Statement of Financial Affairs does not disclose any previous addresses.

Improper Use of California Exemptions

Debtors are claiming California exemptions. Pursuant to 11 U.S.C. § 522(b)(3), the state exemption laws applicable are those in which the Debtors have been domiciled for the seven hundred thirty (730) days (or two years) prior to the filing of the bankruptcy case. If Debtors have not been domiciled in the same state for the prior two (2) years, the state exemption laws applicable are those in the six (6) months immediately preceding the two (2) year period.

From the evidence provided, it appears Debtors have not lived in California for the two years prior to the filing of the Bankruptcy Case, as they moved to Iowa in July of 2020. It is unclear to the court where Debtors were residing prior to July 2020.

The evidence in support the Objection is the Declaration of Kristen A. Koo, Esq., counsel for the Chapter 13 Trustee, which testimony includes the following:

6. The First Meeting of Creditors was held on May 5, 2022, where the Debtors

admitted that they both have lived in Iowa since 2020 and he travels back and forth to Folsom, California occasionally for work.

7. It appears the Debtors have been domiciled more than 91 days, six months, prior to filing this case, in Iowa. The Debtors may have filed this case in the wrong jurisdiction.

8. My review of the Debtors' pay advices, provided to the Trustee, both show their address at 711 North 1st Street, Apt H-102, Elridge, IA 52748.

9. My review of a copy of the Debtor[s'] Internal Revenue Service tax return, provided to the Trustee, shows them, as married filing jointly, with a home address of 711 North 1st Street, Apt H-102, Elridge, IA 52748.

10. My review of the Voluntary Petition states the Debtor [Timothy Alan Cosetti] lives at 1003 Rivage Circle, Folsom, CA 95630, (DN 1, Page 2, #5), and he claims he has been domiciled in this jurisdiction for the greater part of the last 180 days, (#6).

11. My review of the Court's docket shows the Debtors filed a Change of Address on April 11, 2022, eighteen (18) days after filing this case, which identifies their address as 711 North 1st Street, Apt H-102, Elridge, IA 52748, (DN 12).

12. I conducted the Debtors' First Meeting of Creditors where the Joint Debtor [Sheryl Ann Cosetti] admitted that she has exclusively lived in Iowa for the last two years and Debtor [Timothy Alan Cosetti] admitted that he lives in Iowa and only travels back and forth to Folsom, California as needed for work.

. . .

16. It is my understanding, from the Debtor [Timothy Alan Cosetti's] testimony at the First Meeting of Creditors, that the Debtor [Timothy Alan Cosetti] has not resided in California for at least 2 years prior to filing the petition or the plurality of the 6 months prior to that date.

Declaration; Dckt. 29.

On Debtors Petition, the two debtors state under penalty of perjury that they currently live at 1003 Rivage Circle, Folsom, California. Petition, § 5; Dckt. 1. Further, the two debtors state under penalty of perjury that they have lived in the Eastern District of California in the 180 days prior to filing longer than in any other district. *Id*., § 6.

On Schedule I, Debtor Timothy Cosetti, Jr. states that his employer is in Plano, Texas, and Debtor Sheryl Cosetti states that her employer is located in Janesville, Wisconsin. *Id*. at 29.

On Schedule J, Debtors state having a monthly rental expense of ($3,000), however, no lease is listed on Schedule I. *Id*. at 28, 32. There is only one rental expense and nothing to indicate a separate Iowa residence.

The two debtors have provided their Declaration in Opposition. Their joint testimony under

penalty of perjury includes (identified by paragraph number in the Declaration):

> ¶ 2. The two debtors have been separated two years, and Debtor Sheryl Cosetti moved to Iowa two years ago. This conflicts with Debtor Sheryl Cosetti's statement under penalty of perjury on the Petition that she lives at the Folsom address.
>
> ¶ 2. Debtor Timothy Cosetti, Jr. lives at the Folsom address, and has lived their since the separation two years ago. However, he recently obtained a new job which requires him to travel extensively state to state.
>
> ¶ 3. Debtor Timothy Cosetti, Jr. and Debtor Sheryl Cosetti filed a change of address after filing this case to give the Iowa address of Debtor Sheryl Cosetti so that all of the documents would be sent to one address. They testify that Debtor Sheryl Cosetti "now" lives in Iowa and Debtor Timothy Cosetti, Jr. is on the road most of the time, and only returns to Folsom when he is not working.
>
> ¶ 4. The two debtors state that they "thought" that since Debtor Timothy Cosetti, Jr. is asserted to live at the Folsom address, then they could state that they both lived there, and did not need to accurately state that Debtor Sheryl Cosetti has lived in Iowa for two years.

Dckt. 33.

It appears, that while not presented with this Objection, the Trustee has clear, objective evidence documenting that both of these two debtors have represented to the world that they live in Iowa. This evidence includes, as stated by counsel for the Trustee:

> 6. The First Meeting of Creditors was held on May 5, 2022, where the Debtors admitted that they both have lived in Iowa since 2020 and Debtor Timothy Alan Cosetti admits he travels back and forth to Folsom, California occasionally for work.
>
> 8. My review of the Debtors' pay advices, provided to the Trustee, both show their address at 711 North 1st Street, Apt H-102, Elridge, IA 52748.
>
> 9. My review of a copy of Debtors' Internal Revenue Service tax return, provided to the Trustee, shows them, as married filing jointly, with a home address of 711 North 1st Street, Apt H-102, Elridge, IA 52748.
>
> 11. My review of the Court's docket shows Debtors filed a Change of Address on April 11, 2022, eighteen (18) days after filing this case, which identifies their address as 711 North 1st Street, Apt H-102, Elridge, IA 52748, (DN 12).
>
> 12. I conducted the Debtors' First Meeting of Creditors where the Joint Debtor [Sheryl Cosetti] admitted that she has exclusively lived in Iowa for the last two years and Debtor [Timothy Cosetti, Jr.] admitted that he lives in Iowa and only travels back and forth to Folsom, California as needed for work.

The pay advices, the tax return, and a transcript of the First Meeting of Creditors can provide the court with evidence for the court to determine whether the information provided in the Petition under penalty of perjury was true or false.

Giving the asserted disturbing disclosure of possible false information under penalty of perjury, the court is not inclined to just transfer this case to Iowa. The court is not inclined to just dismiss the case to let Debtors just file another case.

Rather, with such information, the court presumes that the Chapter 13 Trustee and the U.S. Trustee would move promptly to get such evidence in front of the court and an motion seeking appropriate relief.

Until the court has such evidence, it cannot determine whether the plan should be confirmed.

Therefore, the court continued the hearing to 2:00 p.m. on July 26, 2022. That should allow the parties to file supplemental pleadings in connection with this Objection. That should also allow the Chapter 13 Trustee and the U.S. Trustee to take appropriate action if they believe they have evidence documenting false information being provided under penalty of perjury to this Federal Court.

Trustee's Response

The Chapter 13 Trustee, David Cusick ("Trustee") filed a supplemental response on June 22, 2022. Dckt. 41. There, Trustee provides further evidence that Debtors are residents of Iowa through records of pay stubs indicating an Iowa address and place of employment, as well as Debtors' 2021 tax returns. Exhibits, Dckt. 42. Trustee further states that although they are not opposed to allowing this case to continue in the Eastern District of California if that is deemed to be most efficient, the Debtors are clearly Iowa residents and have failed to amend their Voluntary Petition and Statement of Financial Affairs.

Debtor Tim Cosetti, Jr.'s Supplemental Declaration

On July 15, 2022, Debtor Tim Cosetti, Jr. filed a supplemental declaration (Dckt. 45) stating he has been living in Folsom for the past two years. Debtor Tim Cosetti, Jr. indicates when they are not traveling for work, they are in Folsom, California. Debtor Tim Cosetti, Jr. states since he filed the case with Debtor Sheryl Ann Cosetti, he thought it would be best to combine their expenses and use Debtor Sheryl Ann Cosetti's address on his 2021 tax returns.

July 26, 2022 Hearing

At the hearing, xxxxxxxxxx

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 xxxxxxxxxx**.**

7.	**22-20711-E-13 DPC-2**	**TIMOTHY/SHERYL COSETTI Mo Mokarram**	**CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 6-1-22 [35]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 1, 2022. By the court's calculation, 45 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 Timothy Alan Cosetti and Sheryl Ann Cosetti's (collectively, "Debtors") claimed exemptions under California law because Debtors do not reside in California. Debtors claimed exemptions in their Amended Schedule C under C.C.P. §703. Dckt. 25. Trustee alleges that Debtors admitted at the First Meeting of Creditors on May 5, 2022, that Debtors have lived in Iowa since July 2020. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

Improper Use of California Exemptions

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*.

Debtors are claiming California exemptions. Pursuant to 11 U.S.C.§ 522(b)(3), the state exemption laws applicable are those in which the two debtors have been domiciled for the seven hundred thirty (730) days (or two years) prior to the filing of the bankruptcy case. If Debtors have not been domiciled in the same state for the prior two (2) years, the state exemption laws applicable are those in the six (6) months immediately preceding the two (2) year period. From the evidence provided, it appears the two Debtors have not lived in California for the two years prior to the filing of the Bankruptcy Case, as they moved to Iowa in July of 2020. It is unclear to the court where Debtors were residing prior to July 2020. Debtors, however, have not produced unequivocal evidence demonstrating residence in California two years prior to the filing of the bankruptcy case. The court finds, therefore, the exemptions are improper.

Debtors have not provided the court with the legal analysis of which exemption law applies to joint debtors when they live in different states (to the extent that the court concludes that Debtor Timothy Cosetti lives in California).

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that Objection is sustained, and the claimed exemptions for vehicles, household goods and furnishings, cell phone and computer, clothing, jewelry, checkings/savings, venmo account, pay pal account, and cash app account under California Code of Civil Procedure § 703.140(b)(2)-(5) are disallowed in their entirety.~~

8. **21-24215-E-13 TJW-1** **ARSENIO/LEONORA BUCAD** **Timothy Walsh** **MOTION TO VACATE DISMISSAL OF CASE**
7-5-22 [36]

DEBTOR DISMISSED:
06/02/2022
JOINT DEBTOR DISMISSED:
06/02/2022

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).

NOTICE AS A MOTION UNDER LBR 9014–1(f)(1) OR (f)(2) IS UNCLEAR

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held to move the court to vacate the dismissal. Based upon language that there may submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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, creditors, parties requesting special notice, and Office of the United States Trustee on July 5, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Vacate is denied.

Arsenio Nuque Bucad and Leonora Acenas Bucad ("Debtor") filed the instant case on December 21, 2021 Dckt. 1. A plan has not yet been confirmed.

On May 16, 2022, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to the lack of a confirmed or pending Plan. Dckt. 28. On June 1, 2022, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 32. The ruling was final because Debtor did not file any opposition or offer any opposition at the hearing.

On July 5, 2022, Debtor filed this instant Motion to Vacate, claiming Debtors were unable to commit to the payments required in the Plan they first filed and, because Mr. Bucad has been off and on work, have been unable to file a new plan.

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

TRUSTEE'S OPPOSITION

On July 13, 2022, Chapter 13 Trustee, David P. Cusick ("Trustee"), filed an opposition (Dckt. 41), stating:

1. Delay is prejudicial to the creditors as this hearing is nearly 2 months after dismissal was entered.

2. There was no opposition filed to the Motion to Dismiss and neither Debtor nor Debtor's attorney have provided an explanation for why they failed to oppose the Motion.

3. Debtor has not provided factual evidence to show that the Order Dismissing was entered in error nor does Debtor dispute that reason for dismissal.

APPLICABLE LAW

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

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

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

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

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an

earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

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

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

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

DISCUSSION

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

The sole ground for the Motion to Dismiss was no pending plan payment. As a motion under Local Bankruptcy Rule 9014-1(f)(2), if Debtor or Debtor's counsel sought to oppose the Motion, they had the opportunity to appear at the hearing and oppose there. Instead, Debtor did not present any Opposition at the hearing and let the court issue a ruling without any argument.

Debtor does not state any sufficient grounds for this court to vacate the order under Federal Rule of Civil Procedure 60(b) which is incorporated into Federal Rule of Bankruptcy Procedure 9024. All Debtor offers is that they were not able to prosecute this bankruptcy case. Not being able to financially prosecute a Chapter 13 Plan is not grounds under Rule 60(b).

Possibly, the loss of employment and explaining that Debtor was working to a new plan once their income information stabilized and that such would be in the near future (insurance or disability claims pending) might have been a basis for the court continuing the hearing on the Motion to Dismiss.

But no opposition was filed.

In the Motion to Vacate, Debtor does not state what basis under Rule 60(b), if any, provide a basis to vacate the order dismissing this case. No points and authorities have been filed by Debtor providing the court with any legal basis or analysis as to why such relief may be properly requested (subject to the certifications under Federal Rule of Bankruptcy Procedure 9011 by Debtor and counsel). Rather, the Motion appears to "admit" that no legal basis exists, but that the court should just "slide an order across the table to Debtor because that's what the Debtor wants."

This case was filed in December 2021 and by January 2022 Debtor was in default under the Plan. Objection to Confirmation; Dckt. 23. Now, in July 2022, seven months after the case was filed and six months after Debtor's default in the first monthly plan payment, and no other payments having been made Debtor wants to pull this dismissed case back to life.

There is no identifiable reason why the Debtor, if intending to prosecute a bankruptcy case and bankruptcy plan in good faith, has not just filed a new bankruptcy case, obtaining the immediate protection of the automatic say.

Therefore, Debtor not providing the court with any legal basis for granting relief pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024, the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Arsenio Nuque Bucad and Leonora Acenas Bucad ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

9. **19-25517-E-13 MWB-3** **FRANK/KATHLEEN RANDELL** **Mark Briden** **MOTION FOR RELEASING FUNDS TO DEBTORS** **6-27-22 [71]**

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 June 27, 202. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Release Funds 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 Release Funds is granted.

The Motion, filed by Frank Wesley Randell and Kathleen Lee Randell ("Debtor"), requests that the court authorize Pacific Gas and Electric Company ("PG&E") to release a damage award directly to Debtor, and to execute all documents required to release the claim to Debtor.

DISCUSSION

Debtor's Chapter 13 bankruptcy case was filed August 31, 2019 and Debtor received their discharge on May 16, 2022. PG&E contacted Debtor in March 2022 regarding a settlement award of $105,000.00, but requested that Debtor attain an Order from this court authorizing the release of that award directly to Debtor. Declaration, Dckt. 73. These are damages for the loss of Debtor's home from the Paradise (Camp) Fire.

The Chapter 13 Plan having been completed on November 30, 2021, there are no more funds to disperse thereunder. Dckt. 55. Debtor has completed the Chapter 13 Plan in this case and Debtor's discharge has been entered. Discharge, Dckt. 63.

The Plan having been completed, no opposition to the Motion having been filed, and this bankruptcy case having been closed, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Release Funds filed by the debtors, Frank Wesley Randell and Kathleen Lee Randell ("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 Release Funds is granted, and the funds from the settlement award provided by Pacific Gas and Electric Company shall be released to the debtors.

10. **22-21222-E-13 AP-1** **PEGGY SOMKOPULOS** **Pro Se** **OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY**

10 thru 11 **6-30-22 [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 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 June 30, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Deutsche Bank National Trust Company ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. the Plan does not provide for the full value of Creditor's claim, and

B. the Plan is not feasible.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of $952,843.76 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $741,658.60 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 1 claim, but only proposes to pay arrears and not the post-petition monthly payment.

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).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor states Debtor has understated pre-petition arrears. The Plan proposes to cure $196,488.00 in arrears, but the actual amount, as stated by Creditor, is $304,394.95. Additionally, the Plan fails to provide for post-petition monthly mortgage payments of $6,529.06. Debtor fails to state expenses for residence, utilities, food, and insurance on Schedule J. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 Deutsche Bank National Trust Company ("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.

11. 22-21222-E-13 DPC-1 — PEGGY SOMKOPULOS, Pro Se — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 6-29-22 [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 (*pro se*) on June 29, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to appear at the First Meeting of Creditors held June 23, 2022;

B. Debtor has failed to provide a tax transcript;

C. Trustee states, Debtor is a serial filer;

D. Debtor cannot comply with the Plan;

E. Debtor overuses exemptions under C.C.P. §703.140(b)(5), and

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The meeting has been continued to July 28, 2022 at 1:00 p.m..

Failure to Provide Tax Returns

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

Serial Filing

Trustee raises the issue of Debtor's serial filing; however, the Trustee does not assert that such demonstrate bad faith or filing of bankruptcy cases for an improper purpose. The court declines the assignment to develop any such arguments, to the extent they may exist, for the Trustee.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6) for the following reasons.

A. Debtor does not show any post-petition payments to Class 1 creditor, Select Portfolio SVC.

B. Trustee is not sure how Debtor came to the valuation of a the property located at 3810 Spalding Court, West Sacramento, CA 95691.

C. Trustee is not sure why there is a difference in valuation of furniture between Schedule A/B and Schedule C.

D. Schedule E/F does not list any creditors when First National Bank Omaha has filed an unsecured claim of $3,994.53, and Portfolio Recovery Associates, LLC has filed an unsecured claim for $1,534.07.

E. Debtor only shows $200.00 in monthly expenses to which the Trustee deems not realistic.

F. Debtor shows $1,500.00 in monthly income but also states they are "Retired/Disabled", Trustee is unclear if Debtor is employed.

G. Debtor shows $400.00 paid to Tony Cara - Attorney, located at 2973 Harbor Blvd., Costa Mesa, CA 92626. Trustee states, this is the same address as Peter Nisson, who signed the voluntary petition. Dckt. 1. Trustee is unsure what these fees were for or what services were provided to Debtor.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Improper Use of C.C.P. § 703.140(b)(5)

Debtor has claimed exemptions for the amount of $250,000.00 for an asset identified as SPS Insurance Claim under C.C.P. § 703.140(b)(5). The maximum funds of this exemption is $33,650.00. The Trustee's objection to these exemptions are forthcoming and the Trustee's concerns are well-taken.

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.

12. 21-22223-E-13 MS-1 | **STEVEN WOLF** **Mark Shmorgon** | **CONTINUED MOTION TO MODIFY PLAN** **5-20-22 [31]**

The court having entered an order (Dckt. 46) granting the Motion and confirming the Modified Plan, **the hearing on the Motion to Confirm the Plan is removed from Calendar, pursuant to the Court Order on July 19, 2022. Dckt. 47.**

13. 21-23930-E-13 SLE-2 JEANIE REAM Steele Lanphier

CONTINUED MOTION TO CONFIRM PLAN
2-10-22 [47]

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)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2022. By the court's calculation, 61 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 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 Plan is xxxxxxxxxxx.

The debtor, Jeanie Ream ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides to be 60 months with the Plan being considered as of February 2022, payments shall thereafter be 4525.00 per month until Plan completion, and unsecured claims getting a 0% dividend with claims totaling approximately $83,350.29. Plan, Dckt. 51. 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 March 24, 2022. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor and Debtor's Attorney have failed to appear at the two Meeting of Creditors held on February 10, 2022, and March 10, 2022. Debtor's Attorney contacted Trustee's office on February 9, 2022, informing them he had a conflict and need to appear in Woodland at 9:00 a.m. Trustee continued the hearing to 1:00 p.m. on March 10, 2022, Debtor's Attorney was notified of the continuance on February 10, 2022. On March 10, 2022, at 11:10 a.m., Debtor's Attorney informed the Trustee's office he was in Woodland for a trial and would not be appearing.

B. The Debtor is delinquent the first two Plan payments to the Trustee, in the amount of $1,050.00. The next scheduled payment of $525.00 is due on April 25, 2022.

C. The Plan provision states, "2.01 Plan shall be considered as of February 2022." The Trustee is uncertain what is to be "considered." If the proposal is that no plan payments will be due until February 25, 2022, the Trustee is not certain if this also modifies the plan length of 60 months to start from the same date, a one month difference.

D. The Debtor has failed to file "The Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" identifying what fees have been charged and what fees were paid prior to filing this case.

E. Debtor filed FRBP 2016(b), which identifies Debtor's Attorney agreed to accept $4,000.00 for Chapter 13, and $1,495.00 was paid prior to filing the case, leaving a balance of $2,505.00. The Plan states Debtor's Attorney agreed to $4,000.00 and $0.00 was paid prior to filing. Section 3.06 also shows Debtor's Attorney will receive $4,000.00 each month as an administrative expense. The Trustee is uncertain what amount the attorney has received prior to filing the case and if there will be sufficient funds to pay the Debtor's Attorney $4,000.00 if the Plan is confirmed with the next nine months.

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 the Chapter 13 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 Continued Meeting of Creditors was held on February 10, 2022, and March 10, 2022, and the Chapter 13 Trustee's Report indicates Debtor did not appear. The Meeting of Creditors has been continued for a third time to April 14, 2022, at 1:00 p.m.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,050.00 delinquent in plan payments, which represents multiple months of the $525.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan provision states, "2.01 Plan shall be considered as of February 2022." The Trustee is uncertain what is to be "considered." If the proposal is that no plan payments will be due until February 25, 2022, the Trustee is not certain if this also modifies the plan length of 60 months to start from the same date, a one month difference.

Debtor filed FRBP 2016(b), which identifies Debtor's Attorney agreed to accept $4,000.00 for Chapter 13, and $1,495.00 was paid prior to filing the case, leaving a balance of $2,505.00. The Plan states Debtor's Attorney agreed to $4,000.00 and $0.00 was paid prior to filing. Section 3.06 also shows Debtor's Attorney will receive $4,000.00 each month as an administrative expense. The Debtor has failed to file "The Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" identifying what fees have been charged and what fees were paid prior to filing this case.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Trustee's Status Report

The Trustee filed a status report on May 23, 2022. Dckt. 79. Trustee states Debtor is now current in Plan payments. Additionally, the First Meeting of Creditors is continued again to 1:00 pm on June 9, 2022. Trustee believes the Plan can be confirmable once the following outstanding issues are resolved:

1. Debtor appears at the First Meeting of Creditors.

2. The Order Confirming Plan clarifies Debtor's nonstandard provisions to state the following:

    a. "The Plan effective date is December 1, 2021, the date of conversion. The Plan payments are as follows: The Debtor has paid $1,575.00 through April 2022 (month 4). Plan payments will be $525.00 for 56 months for a total Plan length of 60 months."

3. The Order Confirming Plan clarifies procedure for payment of attorney's fees to state the following:

    a. "[A]ll attorney fees will be subject to Court approval by filing, and serving, a motion in accordance with 11 U.S.C. §§329 and 330, Fed R. Bankr. P. 2002, 2016, and 2017."

Trustee requests the court continue the hearing until after the First Meeting of Creditors, which is to be held on June 9, 2022.

The court continues the hearing on the Motion to Confirm to 2:00 p.m. on July 26, 2022, which is the first available hearing date sufficiently after the continued First Meeting of Creditors to allow the parties to address any shortcomings and file supplemental pleadings, if any.

Trustee's Status Report

On July 19, 2022, Trustee filed a status report stating Debtor is current in Plan payments, however, Debtor has been unable or unwilling to review the Petition, Schedules, Plan, and appear at the Meeting of Creditors. Dckt. 85. Trustee is willing to meet Debtor in person or on Zoom to review the documents. Additionally, the First Meeting of Creditors has now been continued six times.

July 26, 2022 Hearing

At the hearing, xxxxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the debtor, Jeanie Ream ("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 Plan is xxxxxxxxxxx

14. **21-23539-E-13 PGM-2** **DEREK WOLF** **Peter Macaluso** **CONTINUED OBJECTION TO CLAIM OF U.S. BANK, N.A., CLAIM NUMBER 2 5-2-22 [95]**

14 thru 15

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 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, and Office of the United States Trustee on May 2, 2022. By the court's calculation, 57 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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 2 of U.S. Bank, N.A. is xxxxxxxxxxxxx.

Derek L Wolf, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $164,860.13, with arrears of $40,899.99. Objector asserts that the Claim fails to account for the $91,700.00 provided by Keep Your Home California as well as an additional $10,752.50 paid to Creditor by the Chapter 13 Trustee in Objector's previous Chapter 13 case. Objector asserts that if such payments are properly applied, all arrears will be cured and the total balance due will be substantially reduced.

Additionally, Objector asserts that the "Family Rider" signed by the parties contains an attorney's fees provision (Claim No. 2-1 at 48, § E) which entitles Objector to recover reasonable attorney's fees. Although Objector cites California Code of Civil Procedure § 1717 as authorization to recover such attorney's fees, the court presumes the intended citation was to California Civil Code § 1717.

Trustee's Non-Opposition

On June 14, 2022, Chapter 13 Trustee David P. Cusick ("Trustee") filed a non-opposition to Objector's instant Objection. Dckt. 111. Trustee explains that they have placed a hold on Creditor's claim until this Objection has been resolved or until the court clarifies how the claim should be paid. Trustee further notes that they have paid a total of $4,968.60 to Creditor in on-going, post-petition payments, and $29.92 in pre-petition arrears. The Trustee requests the Objection be continued.

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.

Upon review of Creditor's Proof of Claim (Proof of Claim 2-1 at 5-9), the court extracts the following information from their "Mortgage Proof of Claim Attachment":

1. Loan Modification Effective Date.....May 1, 2018.

2. Loan Modification Beginning Principal Balance.....$137,143.66.

3. Contractual Monthly Payment Amount:

    a. May 1, 2018 - August 1, 2019.....$614.41

    b. September 1, 2019 - March 1, 2020.....$896.33

    c. April 1, 2020 - August 1, 2020.....$986.00

    d. September 1, 2020 - July 1, 2021.....$1,075.25

    e. August 1, 2021.....$1,004.98

    f. September 1, 2021.....$1,016.32

    g. October 1, 2021.....$1,016.32

4. Total Funds Contractually Due from May 2018 to Filing of Bankruptcy.....**$35,900.24**

5. Total Funds Received from May 2018 to Filing of Bankruptcy.....**$10,902.50**

6. Total Debt as of Petition Date:

   a. Principal Balance - $97,832.07

   b. Deferred Balance - $36,400.00

   c. Interest Due - $7,397.92

   d. Fees, costs due: $14,994.93

   e. Escrow Deficiency for Funds: $8,410.82

   f. Less funds on hand: <$175.61>

   g. **Total Debt: $164,860.13**

   h. **Total Prepetition Arrearage: $40,899.99**

March 2018
$91,700.00 Payment

Creditor's Exhibits in support of their Proof of Claim do not provide an accounting breakdown prior to the May 1, 2018 loan modification date. Debtor's Objection states on or about March 20, 2018, Debtor advanced a grant from Keep Your Home Ca. to Creditor in the amount of $91,700.00. Debtor states the funds were to be applied to arrears from June 2015 through May 2018. Debtor states the amount of claim does not properly account for this payment. The court has no evidence of payments prior to May 2018.

Prior Chapter 13
Plan Payments to Creditor

Debtor states Creditor received $10,752.50 from the Trustee during Debtor's prior Chapter 13 Case, Case No. 20-22852. Upon the court's review of the accounting in Creditor's Proof of Claim, during the life of the prior Chapter 13 Case, from June 1, 2020 (filing date), to August 27, 2021 (date of dismissal), Creditor received $10,902.50. Therefore, the issuance of payments during Case No. 20-22852 appear properly credited.

The court notes there are a few discrepancies between Creditor's Exhibits and Debtor's Motion regarding amount of payments received since May 1, 2018:

Date Received	Creditor's Assertion of Payment Amount	Date Paid	Debtor's Assertion of Payment Amount
		May 1, 2018	$256.35

		June 1, 2018	$1,019.00
		July 1, 2018	$61,131.14
October 12, 2020	$1,075.25		
October 20, 2020	$150.00		
November 12, 2020	$2,150.50		
December 10, 2020	$1,075.25		
April 13, 2021	$3,225.75		
May 12, 2021	$2,150.50		
July 15, 2021	$1,075.25		
		September 1, 2021	$10,752.50
Total Paid	**$10,902.50**		**$73,158.99**

As seen above, payments documented by Creditor and Debtor since May 2018 have a $60,000 difference. Therefore, there appears to be an accounting error on either Debtor or Creditor's end. The court notes Debtor has not listed the date of distribution of the $91,700.00 grant amount in their Motion.

Based on the evidence before the court, the court finds a detailed account of all payments received by Creditor from Debtor is needed to determine whether the grant was properly applied to Debtor's account. Additionally, Creditor and Debtor should address the above discrepancies.

Per prior order of the court, the hearing on the Objection to Proof of Claim of Creditor has been continued to July 26, 2022 at 2:00 pm in Courtroom 33. Dckt. 115.

Creditor's Reply

On July 12, 2022, Creditor filed a Reply to Debtor's Objection to Claim. Creditor requests that Debtor's objection be overruled with prejudice, and requests attorneys' costs and fees, because Debtor has failed to meet their burden of proof. Creditor asserts:

A. Debtor has not provided sufficient evidence to support their objection. Creditor has filed its Proof of Claim evidencing (i) the debt; (ii) the security interest securing the repayment of debt; (iii) Creditor is the rightful holder of debt; and (iv) additional evidence in the form of Declarations and Exhibits. Debtor has not met their burden to defeat Creditor's claim.

B. Debtor's objection is precluded by the doctrines of collateral and judicial estoppel. Creditor claims that Debtor has filed numerous Bankruptcy cases and received the CalHfa loan proceeds in 2015. Debtor has not disputed debt in any of the previous Bankruptcy cases. Creditor states Debtor had a full and fair opportunity to litigate Creditor's claim in Debtor's prior proceeding. This, however, is only opportunities

to litigate Creditor's claim but has not done so. Creditor has not provided, however, any previous order or judgment regarding the validity of Creditor's claim. The court is unconvinced Debtor's objection is precluded under the doctrines of res judicata and collateral estoppel as the issue was not litigated in Debtor's prior cases.

C. Creditor is entitled to an award of attorneys' fees pursuant to ¶ 14 of the Deed of Trust and 11 U.S.C. § 506(b). Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

Debtor's Reply

On July 19, 2022, Debtor filed a "Sur-Reply" to Creditor's Reply to Debtor's Objection. Dckt. 122. Debtor states:

1. The Objection was never litigated in the previous case and therefore is not precluded from litigating now.

2. Debtor does not dispute $11,276.74 in delinquent mortgage payments from May 1, 2018 - June 1, 2020. Debtor does dispute the $17,977.81 in "costs." Debtor asks the Proof of Claim be credited $17,977.81 in costs which were added by the Creditor without the court's approval.

July 25, 2022 Sur-Response of Creditor to the Sur-Reply of Debtor

On the day before the July 26, 2022 hearing, Creditor has filed a Sur-Response, fourteen pages of exhibits, and a declaration in support of Sur-Response to Sur-Reply of Debtor. Dckts. 124, 125, 126.

From the court's quick eve of hearing reading, Creditor appears to be arguing that since Debtor has not objected to proofs of claim filed by Creditor in prior cases, then the doctrine of *Res Judicata* (which requires that there be a prior judgment or final order in an earlier proceeding) bars any objection to Creditor's claim.

In substance, Creditor appears to argue that because prior bankruptcy cases were filed, those cases were dismissed without prejudice, and nobody litigated any disputes relating to Creditor's claim, that failure of the court to have adjudicated any rights has the same effect as a judgment and the Doctrine of *Res Judicata* applies to create a judgment in favor of Creditor out of whole cloth. [Fn.1.]

FN. 1. The phrase "out of whole cloth" is defined by Merriam-Wester

whole cloth noun

Definition of whole cloth

: pure fabrication —usually used in the phrase out of whole cloth

// the theory was created out of whole cloth

This whole cloth argument raises concerns with respect to the other statements, assertions, and basis for the monies claimed by Creditor.

July 26, 2022 Hearing

At the hearing, xxxxxxxxxxx

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 Proof of Claim filed by Derek L Wolf ("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 is **xxxxxxx** .

15. **21-23539-E-13** **DEREK WOLF** **CONTINUED MOTION FOR RELIEF**
DVW-1 **Peter Macaluso** **FROM AUTOMATIC STAY**
10-19-21 [11]

U.S. BANK, NATIONAL ASSOCIATION VS.

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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 19, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from 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. The court continued the hearing, opposition and rely briefs were filed, and the final hearing set for December 14, 2021.

The Motion for Relief is xxxxxxxxxxxx.

U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Movant" or "Creditor") seeks relief from the automatic stay with respect to Derek Wolf's ("Debtor") real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California ("Property"). Movant has provided the Declaration of Brian Gaske to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues on October 12, 2021, without any notice of filing of Debtor's fourth consecutive bankruptcy case, Movant conducted it's foreclosure sale on the property. Motion, Dckt. 11. At the time of the foreclosure sale, Debtor was due 25 months worth of mortgage payments, with a total of ($25,150.25) in payments past due. Declaration, Dckt. 19. Movant specifies that due to the three prior consecutive bankruptcies prior to this one—all of which were dismissed—the nature of these payments as post or pre petition is not clear.

Movant requests several types of relief in this case. First, the annulment of the stay to make the foreclosure sale valid. Second, to terminate the stay going forward. Third, that the court order

pursuant to 11 U.S.C. § 362(d)(4) that the automatic stay in a future filed case in the next two years will not automatically go into effect.

As the Civil Minutes for this Motion document, this matter has been a long and winding trail of issues, points, and ongoing disagreement. During this process Debtor has obtained counsel, a Plan confirmed, a Plan defaulted, and a related dispute now to be adjudicated in an Objection to Claim over the amount of the debt and application of payments.

Credit for the length of these proceedings does not go solely to the Parties, but the court has contributed significantly. Part of this has focused on insuring that Debtor, first attempting to prosecute this case in pro se and now with counsel, was afforded not only the opportunity to present and have his rights with respect to this Motion properly adjudicated, but that he also understood the process and that he has been afforded such opportunity, what the outcome from this litigation.

As this Contested Matter developed, it appeared to the court that a core dispute Debtor has asserted over the amount of the claim and proper application of payments should be "easily determined" through a "simple spreadsheet" computing the claim and payments made since the 2015 loan modification.

Trustee's Non-Opposition

Trustee initially filed a non-opposition to this motion on October 26, 2021 (Dckt. 21). Trustee non-opposition was based on Debtor, in *pro se*, not getting documents filed.

Summary Relief From Stay Proceeding

As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014). This was restated recently by the Bankruptcy Appellate Panel in *Harms v. Bank of N.Y. Mellon (In re Harms)*, 603 B.R. 19, 27 (B.A.P. 9th Cir. 2019), including:

> Relief from stay proceedings are primarily procedural. *Veal v. Am. Home Mortgage Serv., Inc. (In re Veal)*, 450 B.R. 897, 914 (9th Cir. BAP 2011). They typically determine whether the equities justify releasing the moving creditor from the legal effect of the automatic stay. *Id.* Because of the limited scope of inquiry, neither the movant's claim nor its security should be litigated in the relief from stay proceeding. *Id.* (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740-41 (9th Cir. 1985)); *see also Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir. 1994) ("We find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect. . . ."). "Given the limited nature of the relief, . . . the expedited hearing schedule § 362(e) provides, and because final adjudication of the parties' rights and liabilities is yet to occur, . . . a party seeking stay relief need only establish that it has a colorable claim . . . ." *In re Veal*, 450 B.R. at 914-15 (emphasis added) (citing *United States v. Gould (In re Gould)*, 401

B.R. 415, 425 n.14 (9th Cir. BAP 2009)).

Though the court has discussed, and prodded the parties to address, some substantive matters such as proper computation of the secured claim and document the computation of the claim through a "simple spreadsheet," those issues are not adjudicated in this Motion for Relief From the Stay.

REVIEW OF FILE

Debtor commenced this case on October 12, 2021. On October 27, 2021, a chapter 13 Plan was filed by Debtor in *pro se*. Dckt. 24. The Plan provides for monthly payments by Debtor of $1,500 for sixty (60) months. Plan, Nonstandard Provisions; Dckt. 24 at 7. Additionally, Debtor will pay the Plan off early "if awarded settlement from Social Security." *Id*.

The only claim provided for in the Debtor's *pro se* Plan was Movant's, for which Debtor is to pay $500 a month toward the $29,254.55 arrearage and $1,016.32 for the post-petition monthly payment. These two payment total $1,516.32, which is slightly more than the $1,500 a month play payment.

As addressed in the prior Civil Minutes, there appeared to be some significant financial feasibility issues with such Plan. The court noted that on Schedule J filed by Debtor in pro se, it included the statement, "If Rushmore will finally be fair and recognize my Mod Package that they have on file." In retrospect, this appears to be a reference to the 2015 Loan Modification.

REQUESTED ANNULMENT OF STAY

At the first hearing on this Motion Movant notified the court that the buyer at the foreclosure sale has terminated the contract in light of the circumstances, and Movant was no longer seeking to annul the stay.

JANUARY 25, 2022 HEARING

Debtor's newly obtained counsel appeared at the January 25, 2022 hearing on this Motion. He reported the efforts being made in the prosecution of this case and now a Chapter 13 Plan set for hearing in March 2022. Counsel also discussed his work with the Debtor to insure that Debtor understood that this case, in light of the many prior cases filed by Debtor in *pro se* that have been dismissed, is his final "fish or cut bait moment."

Debtor's counsel also noted that if the Debtor were to sell the residence now, he would have to repay the grant received, it not being forgiven for nine more years. The court projects that the recoverable equity for Debtor would be lower than previously appearing, but could still be $25,000+ cash.

From a review of the Supplemental Schedules I and J (Schedule I being incomplete and not including the gross income from Debtor's business and rental property), it appears that performing a plan for five years may be problematic.

However, the court notes that Debtor's counsel (Debtor previously having commenced this case in *pro se*) substituted in only two weeks prior to the hearing, this may well be part of the "more work to be done" by Counsel working with Debtor.

The Trustee confirmed that he now has the correct address for Movant and the payment of the amounts in the proposed plan, including past payments, will be made from the funds available to the Trustee.

The court continues this hearing to afford Debtor and his new counsel to "fish" (whether through curing the arrearage through the Plan or selling the Residence and obtaining $25,000+ of exempt proceeds), rather than merely "cutting bait" and losing the house (and any exempt value) through a foreclosure.

MARCH 25, 2022 Hearing

At the hearing on the Motion to Confirm, the Trustee reported that Debtor had not provided all of the information. After an extensive discussion in connection with the Motion to Confirm, the court concluded that for this case Debtor was at the "put up or shut up phase." He has promised to make certain payments, he is curing the default (a cashier's check in Debtor's counsel's hand) and has provided to make the payments electronically. Debtor should be allowed to show he can perform the plan in this case and not have it dismissed out from under him. The court granted the Motion to Confirm the Chapter 13 Plan, as it was amended at that hearing.

However, it also appears, as requested by counsel and the creditor seeking relief from the stay, that Debtor's performance bears close watching. Additionally, Debtor may benefit from knowing that there is a motion to dismiss and a motion for relief from stay pending, which he is fending off by performing the Plan.

SUPPLEMENTAL PLEADINGS FILED AND EVOLUTION OF ISSUES

The Parties have filed various pleadings and supplemental pleadings as the court brought them through the trail of this Contested Matter. The court summaries them as follows.

Debtor's Opposition

On November 19, 2021, Debtor, in *pro se*, filed an opposition to the Motion for Relief. Debtor states they need more time to reconcile their mortgage with U.S. Bank. Additionally, Debtor states they are missing accounting for $91,600.00 that Keep Your Homes California granted him in 2018. Debtor also disputes penalties and fees of Rushmore and provides exhibits.

Movant's Response

Movant filed a reply in response to Debtor's opposition to the Motion for Relief from Automatic Stay on December 2, 2021. Dckt. 33. Movant states the Debtor has had the opportunity in his three prior bankruptcy filings to object to Movant's Proof of Claim or reconcile his mortgage, but has not done so.

Also, Debtor asserts that payments were made to Movant in his prior case. In Debtor's Case No. 20-22852, no pre-petition arrears were paid to Movant. Movant also believes the Mortgage Assistance loan received which was sufficient to bring the Debtor's loan current as of February/March 2018, "was in the sum of only $61,131.14, and NOT the entire $91,700 as alleged by the Debtor, and

that the Debtor's account was credited for that amount on or around March 20, 2018 by U.S. Bank, the then servicer of Debtor's loan. Movant has to date been unable to locate any evidence that the sum of $91,700 was received from the Mortgage Assistance loan/program."

Movant concludes that Debtor has set forth no substantive Opposition to Movant's request to terminate and/or annul the stay and as such the Motion should be granted as requested. Movant requests (I) *in rem* relief from the automatic stay, as set forth in its Motion, to proceed to conduct another sale of the Property and (ii) a finding that Movant's previously conducted sale of the Property did not violate the automatic stay.

The Court has now continued this hearing several times. As event have transpired, Debtor has confirmed a plan, and then defaulted on the plan.

Trustee's Status Report

On December 29, 2021, Trustee David P. Cusick filed a status report stating Debtor is delinquent $1,500.00 in Plan payments and Debtor has failed to provide verification of income, 2 years of tax returns, 6 months of profit and loss statements and 6 months of bank statements.

Movant's Supplemental Pleadings
for January 11, 2022 Hearing

For the January 11, 2022 hearing, Movant filed Supplemental Pleadings. Dckts. 43, 44. In the Supplemental Declaration, the testimony includes (identified by paragraph number in the Declaration):

> 5. Debtor states that he received a $91,600.00 loan in approximately February 2018 from the California Help to Homeowner's Program.
>
> 6. A prior loan servicer was responsible for the loan that is the subject of this Motion at that time.
>
> 8., 9. Rushmore, the current loan servicer, has provided Debtor and the proposed counsel for Debtor with documents and records (including those from the period when the prior loan servicer was responsible for this loan), which include:
>
> > a. The sum of $61,131.14 was received and applied to Debtor's loan in 2018.
> >
> > b. Upon further review of the prior loan servicer's files, additional information has been provided Debtor and Debtor's proposed counsel showing that the $91,700 was received in 2018 and applied to Debtor's loan. Exhibit A, Dckt. 44, is a printout of the loan history from the prior loan servicer's records (which unfortunately is not clearly set out in a set of tables, but consists of a lot of words and number squeezed on each page - with the court clearing noting that this is not the records of the current loan servicer, but what they received from the prior loan servicer.
>
> 9a. In the Declaration the obligation under the loan and application of the $91,700 is stated as follows:

Principal Balance 1st Lien	($170,465.08)		($36,400.00)	Deferred Principal 2nd Lien
Application of March 20, 2018 $97,700				
Due Date June 2015		$7,292.61		
Due Date March 2016		$1,620.58		
Due Date May 2016		$1,639.91		
Due Date July 2016		$4,904.70		
Due Date January 2017		$4,904.70		
Due Date July 2017		$4,465.50		
Due Date December 2017		$4,465.50		
Due Date May 2018		$256.35		
Due Date May 2018		$1,019.00		
Due Date May 2018		$61,131.14		
Total Monies Applied		$91,699.99		

11. The $91,700 was applied to the delinquent mortgage payments due for the months of June 1, 2015 through and including May 1, 2018.

In the Motion for Relief, Movant asserts that the arrearage at the time of the foreclosure sale was not less than $25,150.24, which Movant states is for the period October 1, 2019 through October 1, 2021. Motion, ¶ 7; Dckt. 11.

Supplemental Pleadings for
May 10, 2022 Hearing

On May 6, 2022, counsel for the Chapter 13 Trustee provided a Supplemental Declaration providing testimony concerning Debtor's performance under the confirmed Chapter 13 Plan. Dckt. 13. That testimony, identified by paragraph number in the Supplemental Declaration includes:

> 3. and 4. The Trustee received initial payments totaling $1,500 and then payments in March and April 2022 totaling $2,810.00, with a payment scheduled through TFS in the amount of $1,100.00 which is anticipated to be received by May 11, 2022.
>
> 5. The Trustee computes Debtor to be delinquent $3,069.00 in plan payments, with an additional payment of $1,960.00 coming due on May 25, 2022.

The Trustee's counsel also notes that there is an Objection to Creditor's Claim pending, with

a hearing set for June 28, 2022.

Supplemental Pleadings for
June 1, 2022 Hearing

On May 25, 2022, Movant filed the Declaration of Brian Gaske, an Assistant Vice President for Rushmore Loan Management Services, LLC, the loan servicer. Dckt. 107. With respect to the receipt and applicant of the Save Your Home California monies, he states (identified by paragraph number of the Declaration, with the court paraphrasing unless test is shown with "quotation marks"):

> 8. $91,700.00 was received and applied to Debtor's loan in 2018, as identified on Exhibit 1 filed with the Declaration. Also, that Exhibit 1 states the application of payments received by Debtor after May 2018 until the filing of the current Bankruptcy Case.
>
> 9. The $91,700.00 was received on March 20, 2018 and first applied to the payments due June 1, 2015 through April 1, 2018, a period of 35 months in an amount totaling $29,283.04.
>
> 10. After the $29,283.04 was applied as above, Debtor and the prior loan servicer subsequently (to April 1, 2018) agreed that the principal balance of the loan would be "recast."
>
> 10 (cont.). The "recasting" of the loan was to apply the remaining $61,481.20 of the Save Your Home California monies to first reduce the principal, which when combined with the payments for June 1, 2015 through April 1, 2018, by $90,764.24, and then "935.76 for "corporate advances."
>
> 11. After application of the Save Your Home California monies in March of 2018, the principal balance of the loan was reduced from ($170,465.08(to ($161,874.80). The court is directed to review Exhibit 1 to see how the application of the $91,700.00 in March 2018 resulted in a principal reduction of $8,590.28.

The Declaration directs the court to Exhibit 3 (Dckt. 106) for the Principal Reduction and Recast Agreement (HFA Modification Assistance). With respect a principal reduction and recasting, it's provisions include (identified by paragraph number of this Agreement:

> (2.) Debtor deposits $61,141.14 with Creditor, which is to be applied to the "president balance due on principal."
>
> (2. cont.) This payment of $61,141.14 is to be made as of the effective date of this Agreement.
>
> (3.) Debtor agrees that the terms of the mortgage are modified as follows:
>
> - ($100,743.66) is to be paid, with interest, (the Interest Bearing Principal Balance) in monthly installments of $325.29.

- ♦ The first $325.29 payment is due May 1, 2018.

- ♦ The final payment will be due August 1, 2054.

Exhibit 1 (Dckt. 106) is a spreadsheet beginning with a March 2018 payment of $91,700, and showing the application of the payment first to the monthly amounts June 1, 2015, with a starting principal balance of $170,226.53 through April 1, 2018 with a principal balance of ($161,874.80) (the monthly principal, interest, and escrow portion of each monthly payment shown).

Modification of Loan

Before looking the numbers on Exhibit 1, the court goes back to the 2014 Loan Modification to which the subsequent 2018 recast and Save Your Home California monies relate.

In POC 2-1 filed by Creditor Debtor's 2015 Chapter 13 Case, 15-20683, there is attached a Document titled Home Affordable Modification Agreement ("Modification Agreement"). The provisions of the Loan Modification Agreement are summarized as follows:

A. Dated August 4, 2014.

B. The Modification Terms are stated in ¶ 3 of the Modification Agreement, and include (identified by the paragraph number in the Modification Agreement):

1. The Loan is modified effective September 1, 2014. ¶ 3.

2. The first payment due under the loan modification is due September 1, 2014. *Id*.

a. The maturity date is August 1, 2054. ¶ 3.A.

3. Modified Principal Balance is ($208,994.25) ("New Principal Balance"). ¶ 3.B.

4. ($36,400.00) of the New Principal Balance is deferred [Non-Interest Bearing Principal Balance"], with no interest or monthly payments. ¶ 3.C.

5. ($172,594.25) is the "Interest Bearing Principal Balance" on which interest will accrue and payments will be made by Debtor. *Id*.

6. The monthly payments and interest rates on the Interest Bearing Principal Balance are, ¶ 3.C.,:

a. For Years 1-5 of the Modified Loan

(1) Interest is 2%
(2) Principal and Interest Payment is $522.66/month

(3) Escrow Payment is $275.14 (subject to adjustment)

b. For Year 6 of the Modified Loan

(1) Interest is 3%
(2) Principal and Interest Payment is $607.21/month
(3) Escrow Payment is as adjusted

c. For Year 7 of the Modified Loan

(1) Interest is 4%
(2) Principal and Interest Payment is $607.21/month
(3) Escrow Payment is as adjusted

d. For Years 8-40 of the Modified Loan

(1) Interest is 4.125%
(2) Principal and Interest Payment is $677.80/month
(3) Escrow Payment is as adjusted

7. The Modified terms "superseded any provisions to the contrary in the Loan Documents, including but not limited to, provisions for an adjustable, step or simple interest rate." *Id*.

8. If a default rate of interest is permitted in the Loan Documents, then in the event of a default, the interest due will be that provided in ¶ 3.C. of the Loan Modification. ¶ 3.F.

POC 2-1 filed by Creditor in the 2015 Chapter 13 Case is signed by John R. Callison, as the Authorized Agent for U.S. Bank National Association. POC 2-1, § 4, states that:

A. Pre-Petition Arrearage as of the January 30, 2015 filing of Chapter 13 Case 15-20683 was ($3,177.95).

B. The Amount of the secured claim was ($209,166.89).

C. The Interest Rate was currently 2.00%

Additionally, on the Mortgage Proof of Claim Attachment to POC 2-1 filed in the 2015 Chapter 13 Case it states that:

A. The principal due on the claim was.....($171,888.07)

B. The interest due as of the filing of the 2015 Case was.....($ 859.44)

C. The Total Principal and Interest Due was.....($172,747.51)

D. Pre-Petition Fees, Expenses, and Charges.....($ 1,582.35)

Exhibit 1 Application of Payments

The Spreadsheet begins March 20, 2018, with a principal balance of $170,467. This appears consistent with the $172,747.51 non-deferred, Interest Bearing Principal Balance stated in the Loan Modification Agreement effective September 1, 2015.

Receipt of $91,700.00 is listed as received March 20, 2018. This is then applied first to the June 1, 2015 to April 1, 2018 monthly loan payments asserted to then have been in default. With the curing of the asserted defaults, the Interest Bearing Principal Balance is stated to be $161,874.80.

After payment of the April 1, 2018 monthly payment, there is computed to be $61,131.14 of the $91,700.00 received on March 20, 2018 remaining. These monies are then applied to the April 1, 2018 Interest Bearing Principal Balance, reducing it to $100,743.66. (There is also a referenced to the "2nd UPB 36,400.00," which the court interprets to be the non-interest bearing, deferred portion of the principal balance under the 2014 Loan Modification.)

This Spreadsheet then shows only the following amounts received and credited to the Interest Bearing Principal Balance:

10/12/2020	$1,075.25
10/20/2020	$ 150.00
11/12/2020	$2,150.50
12/10/2020	$1,075.25
4/13/2020	$3,225.75
5/12/2021	$2,150.50
7/15/2021	$1,075.25

After application of this $10,902.50 to principal, interest, and escrow payments during the period October 10, 2020 to August 2019, the principal balance is computed by Movant to be $97,832.07

DEBTOR'S OBJECTION TO MOVANT'S PROOF OF CLAIM

On May 2, 2022, Debtor filed an Objection to Claim filed by Movant. Dckt. 95. In the Objection it is alleged that the Proof of Claim must be reduced by a $91,700.00 grant Debtor received and then adjusted for payments of $10,752.50, which thereby reduces the current arrearage to $0.00.

The Debtor's Analysis, Section IV of the Objection to Claim, begins with a "Balance" of ($209,166.89) for the total claim, with a pre-petition arrearage of ($3,177.95), when the 2015 bankruptcy case was filed. When one allows for the (36,400.00) non-interesting bearing Deferred Principal Balance, this would result in the Interest Bearing Principal Balance being ($172,766.89) when the 2015 bankruptcy case was filed.

Debtor then tracks the proofs of claims filed by Creditor which states the total claim amount when the various cases were filed by Debtor, which are stated in Debtor's Analysis to be:

Case 15-20683.....January 30, 2015.....($209,166.89)

[Between these two dates Debtor lists $91,699.99 as being paid on Creditor's claim.]
Case 20-21485.....March 1, 2020.....($153,169.92) [this shows a reduction of $55,996.97 in the claim]

[Between these two date Debtor lists $0.00 as being paid on Creditor's claim.]

Case 20-22852.....June 1, 2020.....($159,190.35)

[Between these two Dates Debtor lists $10,752.50 being paid on Creditor's claim, citing to the Trustee's Final report in Case 20-22852. See 20-22853; Trustee's Final Report, p. 1, Dckt. 231.]

Case 21-23539.....October 1, 2021.....($164,860.13)

These payments identified by Debtor total $102,452.49. Debtor asserts that this documents that the $91,700.00 Keep You Home California monies were not properly applied.

Debtor further asserts that all of the $91,700.00 Keep Your Home California monies should have been applied to arrearages, and therefore there should be no arrearage due Creditor.

Debtor further asserts that Creditor has applied the payments to an unauthorized $11,457.44 for attorney's fees and costs, stating that they were "not authorized by this, or any other court."

The only payments made to Creditor are stated to be those that went through the Chapter 13 Trustee in Debtor's cases and the $91,700.00.

CONFIRMATION OF DEBTOR'S PLAN

Debtor, with representation of counsel, filed his Motion to Amend Chapter 13 Plan on January 21, 2022. See Dckt. 56. As discussed in the court's tentative ruling for Debtor's Motion to Confirm, both Movant and the Chapter 13 Trustee have opposed Debtor's Motion on various grounds. See Dckt. 73 and 75.

The court issued an order confirming Debtor's First Amended Plan on April 8, 2022. *See* Dckt. 88.

APRIL 26, 2022, HEARING
ON MOTION FOR RELIEF

Though the Amended Plan, which addresses prior arrearages, has been confirmed, Debtor is now in default for the March and April 2022 monthly plan payments. Debtor's counsel stated that there is a TFS payment scheduled for April 27, 2022, and he will delivered to the Chapter 13 Trustee a

cashier's check for $850, which will cure the March 2022 default.

Counsel for Movant noted that this hearing has been continued multiple times and Movant has allowed Debtor to prosecute the confirmation of the Amended Plan which was to address the pre and post-petition defaults. Unfortunately, new defaults have occurred. Movant's counsel directed the court to the history of multiple, non-successful Chapter 13 filing by Debtor in this court.

At the hearing Debtor was visibly distressed at the proceedings and his view that Movant is trying to take his property. He has previously argued that Movant will not enter into a loan modification with him. As the court noted, Debtor's counsel is effectively forcing a five year loan modification on Movant though the confirmed Amended Chapter 13 Plan. However, the Debtor must be able to perform the Chapter 13 Plan and make the modified loan payments.

In light of the Chapter 13 Trustee being able to make a distribution to Movant in the near future, the court again continues the hearing. This is to afford Debtor and Debtor's counsel to have the hard economic talk about what Debtor can fund, how it can be funded, and what Debtor may need to do to save his exempt equity value in the Property.

June 1, 2022 HEARING

As noted above, the court does not adjudicate claims objections or other substantive disputes in the context of a relief from stay motion. In these post-confirmation settings, the "cause" question focuses on whether Debtor is prosecuting his/her case – i.e. performing the Chapter 13 plan the debtor got confirmed.

The court has "strayed" into looking at the payments and the nature of the claims objection dispute for several reasons. One, to understand the magnitude of any underlying dispute. Second, and most importantly, to afford Debtor the full opportunity to not only understand the obligation and what the parties are asserting, but to make sure that Debtor understands that he and his counsel have their opportunity to present such issues to the court.

In looking at Debtor's Analysis of the payments and total claim, the court notes that he lists there being $91,699.99 in payments to Creditor for the period June 1, 2015 through July 1, 2018.

On Creditor's Exhibit 1, for the period June 1, 2015 to April 1, 2018, states that $30,568.85 was applied for the payments due during that period. Then, the remaining $61,131.14 was applied to the outstanding Interest Bearing Principal Balance of ($161,875) as of April 2018, reducing it to ($100,743.66). In addition, there would be the Deferred Non-Interest Principal balance of ($36,400.00), making the total claim as of April 2018 to be approximately ($136,400.00).

Debtor then identifies an additional payments of $10,752.50 being made after April 2018 through the commencement of this current bankruptcy case.

Proof of Claim 2-1 in Current Bankruptcy Case

The current bankruptcy case was filed on October 12, 2021, which is three years and seven months after April 2018. On Proof of Claim 2-1 in the current case, Creditor states the claim has grown to ($164,860.13). Included in this amount are ($14,994.93) in attorney's fees and other costs, and

($9,628.24) in escrow deficiency and shortage. These total an additional ($24,623.17) which is added to the claim.

If one subtracts out the ($24,623.17), which Debtor may dispute, that leaves ($140,236.83) for the total claim, which includes the ($36,400.00) Deferred Non-Interest Bearing Principal Balance. Removing this amount from the claim would leave ($103,836.83) as the Interest Bearing Principal Balance, including accrued interest.

Creditor computes the April 1, 2018 Interest Bearing Principal Balance to be ($100,743.66) after applying the $91,700.00 payment.

As discussed above, the interest rates during the April 2018 to October 2021 were 3% and 4%. Doing a rough average of 3.5% per year, the Interest Bearing Principal Balance of ($100,743.66) would accrue simple interest of ($3,526.03) a year. Extrapolating that over three years and seven months from April 2018 to the October 2021 filing of the current case, that would total ($12,634.94) in interest.

If $10,752.50 in payments were made during the fifteen months of Debtor's bankruptcy case 20-22852, then that would result in the obligation owing on the Interest Bearing Principal Balance increasing by ($1,882.54), for a total of ($103,626.20). When adding the Deferred Non-Interest Bearing Principal Balance of ($36,400) to it, the total claim, excluding costs, fees, and expenses, would appear to be around, ($140,026.20).

The court's approximation is a little less than the claim as stated by Creditor has claimed in Proof of Claim 2-1 in this case, which, including fees, costs and expenses, is stated to be ($164,860.13). When ($14,994.93) for fees, costs, and expenses are backed out, Creditor's claim for the Interest Bearing Principal Balance portion and the Deferred Non-Interest Bearing Balance portion total ($149,865.20).

This additional ($9,000.00) amount in Proof of Claim 2-1 over the court's estimate of principal and unpaid interest appears to be the Escrow Deficiency of ($8,410.82) and Escrow Shortage of ($1,217.42) listed in Proof of Claim 2-1.

Thus, it does not appear that the claim amount should be reduced further by the $91,700.00 Keep Your Home California payment and the $10,752.50 (a more than $100,000 "adjustment"), but whether the costs, fees, and expenses of ($14,994.93) should be included in the arrearage to be cured.

As stated above, the court is not making any findings or rulings on the amounts of the claim and any objection thereto, but looking at to help the court and parties clarify what issues may actually be in dispute.

Ruling on Motion for Relief

Debtor's confirmed Chapter 13 Plan requires Debtor to make increased monthly plan payments of $1,960.00 commencing with the February 2022 payment and each month thereafter during the term of the Plan. Order, Dckt. 88. Under the Plan, the arrearage claimed by Creditor is to be paid $755.00 a month for fifth seven months (the plan not being fully funded for the first three months). If there is a bona fide dispute over the ($14,994.92) in costs, fees, and expenses, those represent the tail end months of the Plan.

At the hearing on the Motion, Debtor's counsel reported that he has one payment for $1,960 and is getting the second payment shortly to cure the default. Debtor is renting more rooms in the house to increase his income, with Debtor moving into the garage.

Debtor has an application for a California grant to cure the arrearage pending.

Counsel for Movant commented that there is no evidence of the payments or other factual assertions. Counsel for Movant requested that specific information be documented, which counsel for Debtor agreed to promptly do.

The Parties agreed to continue the hearing in light of Debtor's efforts to get the Plan back on track and provide the requested information. The hearing is continued to the same date and time which is set for the Objection to Movant's claim, which the parties indicated may be a moot issue.

Trustee's Non-Opposition
to Debtor's Objection to Claim

On June 14, 2022, Trustee filed a Non-Opposition to Debtor's Objection to Allowance of Claim. Dckt. 111. Trustee explains that U.S. Bank has filed a Proof of Claim which shows a secured amount of $164,860.13 and arrears of $40,899.99. Trustee has placed a hold on U.S. Bank's claim until the objection has been resolved or the court clarifies how the claim will be paid.

June 28, 2022 Hearing

At the hearing, counsel for the Debtor reported that in light of the advances in this case, the Parties agreed to a continuance.

Creditor's Exhibits

On July 12, 2022, Creditor attached exhibits in support of its "Declaration of Loan Servicer in Support of Motion for Relief" filed "concurrently herewith." Dckt. 119. The court notes, however, "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).

Creditor's declaration indicates the $91,7000 CalHFA MAC loan proceeds were received on March 20, 2018 and applied to the following contractual payments:

Payment Dates	Total Months	Payment Amount	Total
June 1, 2015 - May 1, 2016	12 months	$810.29	$9,723.48
June 1, 2016	1 month	$819.16	$819.16

July 1, 2016 - June 1, 2017	12 months	$817.45	$9,809.40
July 1, 2017 - April 1, 2018	10 months	$893.10	$8,931.00
Total Payments Applied from CalHFA MAC loan	**35 months**		**$29,283.04**

Creditor indicates the remaining $61,481.20 of the $91,700.00 CalHFA loan were applied to the principal balance of Creditor's loan. This resulted in a remaining principal balance of $100,746.66. Additionally, $935.76 were applied to corporate advances.

The payments are reflected in Creditor's Exhibit 1. Dckt. 119.

July 26, 2022 Hearing

At the hearing, xxxxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief is xxxxxxxxx.

FINAL RULINGS

16.	**22-21160-E-13** **DPC-1**	**SUSAN BUCKNER** **Thomas Amberg**	**OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **6-13-22 [21]**

Final Ruling: No appearance at the July 26, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on June 13, 2022. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Susan Anne Buckner's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor's Response

Debtor filed a Non-Opposition on June 14, 2022 to the present Objection to Discharge. Dckt. 25.

Discussion

Debtor filed a Chapter 7 bankruptcy case on January 20, 2022. Case No. 22-20126. Debtor

received a discharge on April 19, 2022. Case No. 22-20126, Dckt. 14.

The instant case was filed under Chapter 13 on May 6, 2022.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on April 19, 2022, which is less than four years preceding the date of the filing of the instant case. Case No. 22-20126, Dckt. 14. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 22-21160), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 22-21160, the case shall be closed without the entry of a discharge.

17. **22-21164-E-13 DPC-1** **DONNA HEISCHOBER** **Mikalah Liviakis** **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **6-27-22 [19]**

Final Ruling: No appearance at the July 26, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on June 27, 2022. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Donna Louise Heischober's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter August 14, 2019. Case No. 19-25117. Debtor received a discharge on May 13, 2021. Case No. 19-25117, Dckt. 187.

The instant case was filed under Chapter 13 on May 6, 2022.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on May 13, 2021, which is less than four years preceding the date of the filing of the instant case. Case No. 19-25117, Dckt. 187. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 22-21164), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 22-21164, the case shall be closed without the entry of a discharge.

18. **19-24380-E-13 MET-2** | **ROBERTO/TANIA COTA**
Mary Ellen Terranella | **MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS ATTORNEY(S)**
6-14-22 [35]

Final Ruling: No appearance at the July 26, 2022 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2022. By the court's calculation, 42 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.

Mary Ellen Terranella, the Attorney ("Applicant") for Roberto Cota and Tania Cota, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period April 6, 2020, through June 1, 2020. Applicant requests fees in the amount of $2,275.00 and costs in the amount of $29.40.

TRUSTEE'S NONOPPOSITION

On July 5, 2022, Trustee filed a nonopposition stating they do not oppose the additional fees, however, the amount requested is not set forth within Debtor's nor Counsel's Declarations. Dckt. 37.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

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

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

A review of the application shows that Applicant's for the Estate include preparation of modified plan due to COVID related Debtor issues and related work. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy

> Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 14. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Modify Plan: Applicant spent 6.50 hours in this category. Applicant reviewed emails regarding new Debtor circumstances under COVID, prepared the modified plan, and reviewed, prepared and submitted the relevant documentation.

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**
Mary Ellen Terranella	6.50	$350.00	$2,275.00
Total Fees for Period of Application			$2,275.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $29.40 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage for 42 copies	$0.70	$29.40

Total Costs Requested in Application	$29.40

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including preparation of modified plan in response to unforseen COVID circumstances, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $2,275.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

Costs in the amount of $29.40 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.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay 100% of the fees and costs allowed by the court.

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

Fees	$2,275.00
Costs and Expenses	$29.40

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Mary Ellen Terranella ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Mary Ellen Terranella is allowed the following fees and expenses as a professional of the Estate:
>
> Mary Ellen Terranella, Professional Employed by Roberto Cota and Tania Yamilet Castillo Cota ("Debtor")

Fees in the amount of 2,275.00
Expenses in the amount of $29.40,

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

IT IS FURTHER ORDERED that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

19. 22-20594-E-13 MJD-2 — DAVID/KATHLEEN HALFORD — Matthew DeCaminada — MOTION TO CONFIRM PLAN — 6-15-22 [55]

Final Ruling: No appearance at the July 26, 2022 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, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 15, 2022. 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 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, David Alan Halford and Kathleen Louise Halford ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee") filed a Non-Opposition on July 12, 2022. Dckt. 66. 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, David Alan Halford and Kathleen Louise Halford ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 15, 2022, 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.

20. 22-21297-E-13 DPC-1 — JAY SMITH — Douglas Jacobs — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 6-29-22 [15]

Final Ruling: No appearance at the July 26, 2022 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 and Debtor's Attorney on June 29, 2022. 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter. Debtor has filed a statement of non-opposition to the Objection to Confirmation.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent in Plan payments.

B. Debtor has failed to provide Trustee with 60 days of pay advices.

C. Debtor has failed to provide for disposable income disclosed in the § 341 Meeting of Creditors

D. The proposed Plan is infeasible.

Creditor's Objection to Confirmation of Plan

TIAA, FSB ("Creditor") filed a pleading titled "Joinder to Chapter 13 Trustee's Objection to Confirmation of Chapter 13 Plan and Objection to Plan confirmation." Dckt. 19. Reasons for joining the objection are on the basis that:

A. The Plan is vague as to the intent of the Debtor in treating the Creditor's claim as a Class 1 in an amount that exceeds the current estimated total value of the claim.

B. Debtor proposes to sell the property which is speculative

C. Creditor states, the Plan may not be feasible based on the fact that the Creditor's predecessor received relief from the automatic stay in a previous Bankruptcy Case 19-25658.

The court first addresses Creditor's purported "Joinder" into the Trustee's Objection. The United States Supreme Court provides for "Joinder" in Federal Rules of Civil Procedure 18 (joinder of multiple claims by a plaintiff in one complaint), 19 (required joinder of parties), and 20 (permissive joinder of parties). Here it appears that Creditor is attempting to use Federal Rule of Civil Procedure 20, which is incorporated in to Federal Rule of Bankruptcy Procedure 7020 to force the Trustee to have Creditor be joined at the hip as co-objector with the Trustee.

In Federal Rule of Bankruptcy Procedure 9014(c) the Supreme Court does not make Federal Rule of Civil Procedure 20, which is incorporated into Federal Rule of Bankruptcy Procedure 7020, applicable in Contested Matters such as this Objection to Claim. Though authorized to pursuant to Federal Rule of Bankruptcy Procedure 9014(c), this court has not made Federal Rule of Bankruptcy Procedure 7020 applicable in this Contested Matter

Thus, there is no "Joinder" by which Creditor is an Objecting to Debtor's Plan by virtue of the Trustee's Objection to Confirmation.

Creditor's Pleading is Not Properly Noticed as an Objection to Confirmation

Pursuant to Local Rule 9014-1 (d)(5)(A) every application, motion, contested matter, or other request for an order shall be filed separately from every other request. This could be filed as a related or counter request for relief as provided in Local Bankruptcy Rule 9014-1(i). However, Creditor's "Objection" was filed and served on July 12, 2022, a mere fourteen days before the hearing on the Trustee's Objection to Confirmation. No notice of hearing on the Creditor's Objection or what responses were required were

given by Creditor.

Thus, no proper or effective Counter Objection has been filed by Creditor.

Treatment of Creditor's Pleading as Response to Trustee's Objection to Confirmation

As a part in interest, Creditor can file a response to the Trustee's Objection to Confirmation. Just as Debtor can file an opposition to the Objection, Creditor can file a Response in support of the Objection. Such a pleading is not a "joinder" (as that term has been defined by the United States Supreme Court).

Debtor's Response

Debtor filed a response on July 18, 2022 stating the wish the Plan not be confirmed so they can file a new plan and set it for confirmation. Dckt. 22.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is $2,561.74 delinquent in plan payments, which represents one month of the $2,561.74 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Pay Advices

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

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor proposes to pay $2,561.74 per month for 60 months and a sale within the next 18 months to pay the arrears of approximately $283,197.24 on a mortgage to TIAA Bank. Dckt. 3. The Debtor does not specify in the nonstandard provisions the intended sale price of the real property nor an approximate lump sum payment to the plan. *Id.* at 7. There is no pending Motion to Sell nor a Motion to Employ a Real Estate Broker on the docket. The Trustee cannot properly calculate whether the plan is feasible without this information.

Additionally, the Plan proposes to pay $2,561.74 per month for 60 months with a 54 percent dividend to unsecured claims. Dckt. 3. Debtor's Schedule J indicates monthly net income of $2,653.37.

Dckt. 1. Debtor's Schedule I indicates he receives $3,750.00 per month from rental property. *Id.* However, this information conflicts with the Debtor's testimony at the § 341 Meeting of Creditors that he currently does not have any tenants but that he may soon be receiving rental income totaling approximately $2,400.00 per month. Trustee cannot ascertain if the Debtor can afford to comply with the proposed plan. To date the Schedule I and/or J have not been amended to correct or clarify this information.

The Plan is vague as to the intent of the Debtor in treating the Creditor's claim as a Class 1 in an amount that exceeds the current estimated total value of the claim. Without the exact amount of arrears it is hard to determine if the Plan is feasible. Although not a reason to deny the Plan, it is difficult to determine the feasibility as based on the fact that the Creditor's predecessor received relief from the automatic stay in a previous Bankruptcy Case 19-25658 because Debtor failed to maintain post-petition mortgage payments and the case was dismissed.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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.

21. **22-20421-E-13 MOH-1** **LAURIE CHRISTIAN** **Michael Hays** **MOTION TO CONFIRM PLAN** **6-10-22 [36]**

Final Ruling: No appearance at the July 26, 2022 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, parties requesting special notice, and Office of the United States Trustee on June 10, 2022. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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, Laurie Ardene Christian ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on June 22, 2022. Dckt. 44. 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, Laurie Ardene Christian ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 10, 2022, 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.

22.	**22-21435-E-13** **MJD-1**	**BRADLEY NYDEGGER** **Matthew DeCaminada**	**OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 1** **6-14-22 [10]**

Final Ruling: No appearance at the July 26, 2022 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, and creditors, and on June 14, 2022. By the court's calculation, 42 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).

Under the facts and circumstances of this Motion, the court shortens the time to the 42 days given.

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 1-1 of LVNV Funding, LLC is sustained, and the claim is disallowed in its entirety.

Bradley Stuart Nydegger, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $1,665.70. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was November 9, 2008. The date of last payment on the Statement of Account Information attached to the Proof of Claim states March 13, 2008.

Trustee's Non-Opposition

Filed June 30, 2022, Trustee requests the court sustain the Debtor's objection to the claim of LVNV Funding, LLC and disallow the claim in its entirety. Dckt. 18.

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).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

Bar on Initiating Legal Proceeding
When Statute of Limitations Has Expired

The California Legislature made a substantive amendment to California Code of Civil Procedure § 337 in 2018, which became effective January 1, 2019, that moves the expiration of the statute of limitations on a contract action from an affirmative defense to affirmative bar on a creditor seeking to enforce the obligation.

> (d) When the period in which an action must be commenced under this section [contract, instrument, book account, account stated, open account, rescission of a written contract] has run, a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt. The period in which an action may be commenced under this section shall only be extended pursuant to Section 360.

Cal. C.C.P. § 337(d).

Rather than "merely" a statute of repose for which the expiration of the statute of limitation is a "mere" affirmative defense, California law now bars filing suit, initiating arbitration, or any other legal proceeding to collect the obligation for which the statute of limitations has expired.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**–
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 1-1 lists the charge off date as November 9, 2008. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after March 13, 2008. Thus, the four-year statute of limitations expired on November 9, 2012.

This bankruptcy case was filed on June 7, 2022— approximately 9.5 years after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim is sustained.

Attorney's Fees and Costs

Federal Rule of Bankruptcy Procedure 9014(c) provides that Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054 apply to contested matters such as this Objection to Claim. Costs and attorney's fees (whether contractual or statutory/rule) of the prevailing party are requested by a post-judgment (an order constituting a judgment) motion and bill of costs.

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.
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> The Objection to Claim of LVNV Funding, LLC ("Creditor") filed in this case by Bradley Stuart Nydegger, the 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 1-1 of LVNV Funding, LLC is sustained, and the claim is disallowed in its entirety.

Attorney's Fees and Costs, if any, shall be requested as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054, 9014(c).