

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 2, 2022 at 2:00 p.m.

1.	<u>21-23539</u> -E-13 <u>PGM-2</u>	DEREK WOLF Pete Macaluso	CONTINUED OBJECTION TO CLAIM OF U.S. BANK, N.A., CLAIM NUMBER 2 5-2-22 <u>[95]</u>
	1 thru 2		

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 XXXXXXXXXXXX

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, the Parties agreed to a final final continuance in light of the issues having been narrowed down and documentation provided by Creditor.

August 2, 2022 Hearing

At the hearing, **XXXXXXXXXXXX**

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 Number 2 of U.S. Bank, N.A. is **XXXXXXXXXXXXXXXXXXXX**

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 reply briefs were filed, and the final hearing set for December 14, 2021.

<p>The Motion for Relief is XXXXXXXXXXXXXXXX</p>
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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 its 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 plan 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 summarizes 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 1 st Lien	(\$170,465.08)		(\$36,400.00)	Deferred Principal 2 nd 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, the Parties agreed to a final final short continuance in light of the issues having been narrowed and the information provided by creditor.

August 2, 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 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 **XXXXXXXXXXXXXXXXXX**

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

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

Sufficient Notice Not Provided. No Proof of Service has been filed. At the hearing, ~~XXXXXXXXXX~~ 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 xxxx, 202x. By the court's calculation, xx days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition):

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

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

----- 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Curtis Terence Burks and Carmen Vernita Burks ("Debtor"), have filed evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

----- The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Curtis Terence Burks and Carmen Vernita Burks ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;

~~IT IS ORDERED~~ that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on June 27, 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 Trustee will submit the proposed order to the court.

4. [19-21022-E-13](#) **CHARLES/LORRI LAWLESS** **MOTION TO MODIFY PLAN**
[TLA-3](#) **Thomas Amberg** **6-22-22 [56]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2022. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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The debtors, Charles Edward Lawless and Lorri Ann Lawless ("Debtor") seek confirmation of the Modified Plan because Debtor moved out of their rental property and into a travel trailer located on a friends property in an effort to reduce expenses. Declaration, Dckt. 59. The Modified Plan provides \$11,202.00 to be paid from March 2019 to May 2022 and \$500.00 to be paid for the remainder of the Plan for a total of 50 months and a 0 percent dividend to unsecured claims totaling 45,975.07. Modified Plan, Dckt. 58. 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 19, 2022. Dckt. 62. Trustee opposes confirmation of the Plan on the basis that:

- A. The Trustee may not have an accurate picture of the Debtor's financial reality.

DEBTOR'S RESPONSE

On July 21, 2022, Debtor filed a response stating they filed a signed amendment coversheet with the court. Dckt. 65.

DISCUSSION

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). Debtor has filed a supporting Schedule I & J only as an exhibit (Dckt. 43) and was not signed by the Debtor. Debtor should file separate Schedules I and J and properly authenticate them.

Upon review, Debtor has filed updated Schedules I and J in the form of "an amended filing" AND "a supplement." Dckt. 64. These are two different terms of art. It is unclear to the court whether the new filings are supplemental or amended Schedules I and J. At the hearing, **XXXXXXXXXXXX**

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

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

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

~~————— The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Charles Edward Lawless and Lorri Ann Lawless ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on June 22, 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.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Extend the Automatic Stay is granted.</p>

Jermon Torja Williams ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-26722) was dismissed on October 26, 2021, after Debtor became delinquent in Plan payments. *See* Order, Bankr. E.D. Cal. No. 19-26722, Dckt. 31, October 26, 2022. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because they filed too soon after release from prison and lost their job. Their circumstances, however, have changed as they received their S.D.I. (California State Disability Insurance) benefits and Worker's Compensation which will allow more disposable income.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C.

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

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

The Motion to Extend the Automatic Stay filed by Jermon Torja Williams (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Stipulation was served by MEB Loan Trust IV, U.S. Bank National Association, and Linda Kaori Mizogami on Debtor, Debtor's Attorney, Chapter 13 Trustee, and the Office of the U.S. Trustee on July 14, 2022.

The court issued an Order for Initial Hearing for Debtor's proposed Chapter 13 Plan on July 18, 2022. This was served July 19th and 20th, 2022. The court computes that 13 and 14 days notice have been provided.

The Proposed Chapter 13 Plan is XXXXXXXXXX
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On May 16, 2022, Debtor Linda Mizogami filed a Proposed Chapter 13 Plan. Dckt. 18. On July 14, 2022, Debtor and Creditor MED Loan Trust, IV, US Bank National Association, not in its individual capacity but solely as trustee, as serviced by Specialized Loan Servicing, LLC lodged with the court, through their respective very experienced bankruptcy counsel, a proposed order titled "Stipulation Re: Chapter 13 Plan." The court rejected the proposed order on the Stipulation for several reasons, each stated in said rejection order.

The Debtor's Plan appearing to be in limbo, the court has determined that an Initial Hearing on Debtor's Proposed Chapter 13 Plan is necessary.

Trustee's Status Report

On July 25, 2022, Trustee filed a status report indicating Debtor is \$2,352.01 delinquent in Plan payments. Dckt. 28. Additionally, Debtor's Attorney failed to appear at the second continued First Meeting of Creditors. Also, Trustee has been unable to verify Debtor's Social Security Number and has not received any tax transcripts or copies of Debtor's Federal Income Tax Returns. Also, the Plan may be over the unsecured debt limit of 11 U.S.C. § 109(e) as the case was filed on April 19, 2022, prior to the debt limits changing on June 21, 2022.

Debtor has not filed a status report.

Failure to Appear at 341 Meeting

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

Failure to Provide Tax Returns

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

Failure to Provide Social Security Number

Debtor has failed to submit proof of their social security number to Trustee as required by Federal Rules of Bankruptcy Procedure 4002(b)(1)(B). Attempting to confirm a plan while failing to provide proof of identification 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).

Section for 109 Amount of Debt Compliance

On the April 19, 2022 filing, 11 U.S.C. § 109(e) limited Chapter 13 eligibility to individuals with regular income who owe “on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200.”

However, effective as of June 21, 2022, 11 U.S.C. § 109(e) was amended to provide “Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than \$2,750,000 or an individual with regular income and such individual’s spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than \$2,750,000 may be a debtor under chapter 13 of this title.”

This case having been filed on April 19, 2022, the debt limits in 11 U.S.C. § 109(e) effective that date, and not the debt limits in the June 2022 amendment, apply in this case.

August 2, 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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Linda Kaori Mizogami’s (“Debtor”) Chapter 13 Plan filed on May 16, 2022, is **XXXXXXXXXX**

7. [22-20788](#)-E-13 **JETH GANUELAS** **MOTION TO CONFIRM PLAN**
 [PSB-1](#) **Paul Bains** **6-9-22 [22]**

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

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 10, 2022. By the court’s calculation, 53 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.
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The debtor, Jeth Clemena Ganuelas (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for one month Plan payment of \$1,236.00, followed by 59 months of \$889.00 Plan payments, with no less than a 31.50% dividend for general unsecured claims. Amended Plan, Dckt. 27. 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 July 19, 2022. Dckt. 35. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has failed to fully and accurately provide all information required in their petition and schedules, such that Debtor’s Plan may not be feasible.

- B. Debtor's Amended Plan unfairly discriminates against general unsecured creditors by reducing their unsecured dividend from 100% to 31.50%.
- C. Debtor may be understating their income, as they have not explained the drastic reduction in their estimated tax refunds as shown in Debtor's schedules.

DISCUSSION

Insufficient Information – Community Debts

Debtor has supplied insufficient information relating to their non-filing spouse's creditors on Schedules D and E/F as required by 11 U.S.C. § 101(7) and § 541(a)(2) in conjunction. Debtor argues that listing their non-filing spouse's ("NFS") creditors is unnecessary because:

- (1) Debtor is filing individually;
- (2) NFS's relevant debt is based on vehicles in their own name plus their own individual consumer debt; and
- (3) NFS filed a declaration (Dckt. 26) stating that they do not consent to their debts or creditors being listed and hope to avoid potentially impacting her credit through bankruptcy.

Motion to Confirm, Dckt. 22. However, Trustee rightly points out that community property is property of the estate (11 U.S.C. § 541(a)(2)), that creditors with claims against community property are thus creditors of the estate (11 U.S.C. §§ 101(7), (10)), and that therefore a list of such creditors must be filed by Debtor (11 U.S.C. § 521(a)(1)(A)).

Unfair Discrimination Against Unsecured Claims

The Chapter 13 Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor's previous Plan proposed a dividend of 100% to unsecured claims and the current Plan is now proposing 31.50% to unsecured claims. Debtor's 2021 tax refunds show Debtor received \$4,340.00. Debtor's amended Schedule I is reflecting \$195.00 per month from tax refunds. This reflects only a \$2,340 tax refund. Trustee states if Debtor received an identical tax refund, there would be \$361.67 per month, rather than \$195.00.

Additionally, Debtor's amended Schedule J shows expenses to the NFS's credit card debt of \$600.00 per month. It is not clear what creditors are being paid and whether it is community debt.

Also, Debtor has Amended Form 122C (Dckt. 21) which calculates Debtor's monthly disposable income of \$340.58. Debtor, however, is claiming on the form that NOT regularly paid income includes NFS's car payments and credit card payments, totaling \$1,233.00. These expenses, however, are listed on Schedule J as regular expenses.

The Trustee further notes that Debtor appears to have only a single checking account, which is a joint account with their non-filing spouse.

Debtor's Forms and Schedules should clearly lay out the community debts and monthly expenses towards these debts. Without an accurate picture of these expenses, the monthly payments towards NFS's debts may be unfairly discriminatory to Debtor's unsecured claims under 11 U.S.C. § 1322(b)(1).

Insufficient Information – Tax Refunds

Debtor has supplied insufficient information relating to the assets to assist the Chapter 13 Trustee in determining the value of the assets. Debtor's Plan anticipates \$195.00 per month being included as part of Debtor's income from estimated tax refunds. Schedule I, Dckt. 20 at 2-4. However, Debtor's 2021 tax refunds show Debtor received \$4,340.00 in tax refunds. If Debtor received an identical refund, they would be able to contribute \$361.67 per month rather than \$195.00. Debtor has not explained this anticipated reduction in tax refund income.

The court notes that a large part of the confusion between the parties appears to stem from Debtor interpreting Trustee's prior Objection to Confirmation of Plan, which stated "tax refunds . . . greater than \$2,000.00, [could] be added to the Plan as an additional payment" (Dckt. 14 at 2:1-3), as meaning that Debtor should put all tax refunds in excess of \$2,000.00 toward their Plan, i.e., that a \$4,340.00 refund would lead to a contribution of \$2,340.00 into the Plan (Motion to Confirm Amended Plan, Dckt. 22 at 2:25-3:4). In contrast, Trustee appears to have intended their prior objection to mean that the entirety of the tax return, if such return exceeded \$2,000.00, should be contributed to the Plan. Opposition, Dckt. 35 at 3:17-22.

At the hearing, **XXXXXXXXXX**

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, Jeth Clemena Ganuelas ("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.

FINAL RULINGS

8. [20-25605-E-13](#) **CURTIS/CARMEN BURKS** **MOTION TO APPROVE LOAN**
[CYB-2](#) **Candace Brooks** **MODIFICATION**
6-27-22 [110]

Final Ruling: No appearance at the August 2, 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 27, 2022. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Curtis Terence Burks and Carmen Vernita Burks ("Debtor") seek court approval for Debtor to incur post-petition credit. U.S. Bank National Association as Legal Trustee for RMTP Trust Series 2021 BKM-TT-V and its mortgage servicer, Rushmore Loan Management Services, transferee to Village Capital & Investment, LLC and its Servicer, Dovenmuehle Mortgage, Inc., ("Creditor"), whose claim the Modified Plan, set for confirmation (Dckt. 104) to be heard in conjunction with this Motion, provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$3,019.89 per month to \$2,929.79 per month. The modification will capitalize the pre-petition arrears and provide for an interest rate of 3.375% over the next 30 years.

Trustee's Non-opposition

Trustee filed a non-opposition on July 19, 2022. Dckt. 115. Trustee states they do not oppose the loan modification as it relates to the existing mortgage. However, Debtors have not filed Supplemental Schedules I and J, rather, they have submitted them as Exhibits. Trustee believes this will be confusing for parties who might overlook the documents. The court agrees. Although the local rules require a declaration, “which may be in the format of Schedules I and J,” Debtor’s Supplemental Schedules should be filed separately to abate confusion.

The Motion is supported by the Declaration of Carmen Vernita Burks. Dckt. 112. The Declaration affirms Debtor’s desire to obtain the post-petition financing and provides evidence of Debtor’s ability to pay this claim on the modified terms.

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

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

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

The Motion to Approve Loan Modification filed by Curtis Terence Burks and Carmen Vernita Burks (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Curtis Terence Burks and Carmen Vernita Burks to amend the terms of the loan with U.S. Bank National Association as Legal Trustee for RMTP Trust Series 2021 BKM-TT-V and its mortgage servicer, Rushmore Loan Management Services, transferee to Village Capital & Investment, LLC and its Servicer, Dovenmuehle Mortgage, Inc., (“Creditor”), which is secured by the real property commonly known as 1630 Abilene Circle, Rocklin, California 95765, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 113).

Final Ruling: No appearance at the August 2, 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2022. By the court’s calculation, 67 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Marjorie Alcantara (“Debtor”), has filed evidence in support of confirmation the Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on July 5, 2022. Dckt. 92. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Marjorie Alcantara (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on May 26, 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 Trustee will submit the proposed order to the court

10. [20-21032-E-13](#) **MARJORIE ALCANTARA** **OBJECTION TO CLAIM OF GIMBAL**
[RLJ-4](#) **Richard Jare** **CAPITAL, INC., CLAIM NUMBER 5**
6-7-22 [\[72\]](#)

Final Ruling: No appearance at the August 2, 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 Office of the United States Trustee on June 7, 2022. By the court’s calculation, 41 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

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

The Objection to Proof of Claim Number 5 of Gimbal Capital, Inc. is sustained, and the claim is disallowed in its entirety.

Marjorie Alcantara, Chapter 13 Debtor (“Objector”) requests that the court disallow the claim of Gimbal Capital, Inc. (“Creditor”), Proof of Claim No. 5 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$9,405.28. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is May 5, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 18.

TRUSTEE’S NONOPPOSITION

Chapter 13 Trustee, David P. Cusick, filed a nonopposition on June 17, 2022 (Dckt. 77), stating they do not believe Creditor is a governmental unit and the deadline for filing normal proofs of claims was May 5, 2020. Dckt. 77.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter was May 5, 2020 for non-governmental entities. Creditor's Proof of Claim was filed on August, 2020. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

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

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

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

The Objection to Claim of Gimbal Capital, Inc. ("Creditor") filed in this case by Marjorie Alcantara, 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 5-1 of Gimbal Capital, Inc. is sustained, and the claim is disallowed in its entirety.

Final Ruling: No appearance at the August 2, 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 21, 2022. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

<p>The Objection to Confirmation of Plan is overruled.</p>

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.

July 21, 2022 Status Report

On July 21, 2022, Chapter 13 Trustee, David P. Cusick, filed a Status Report stating they no longer seek to pursue the objection to confirmation. Dckt. 18. Debtor’s Schedules I and J are tight, but at the Meeting of Creditors Debtor testified they will seek government assistance. Debtor’s attorney is *pro bono* in this matter.

The Trustee stating in the Status Report he no longer is pursuing the Objection, it is overruled without prejudice.

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

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

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

IT IS ORDERED that the Objection to Confirmation of Plan is overruled, and Richard Wanye Cruz’s (“Debtor”) Chapter 13 Plan filed on May 6, 2022, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.