

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 8, 2023 at 2:00 p.m.

1. [20-22397-E-13](#)
[CYB-2](#)

CRAIG WEBBER
Candace Brooks

MOTION TO MODIFY PLAN
6-19-23 [\[40\]](#)

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 that have filed claims, parties requesting special notice, and Office of the United States Trustee on June 20, 2023. By the court's calculation, 49 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 XXXXXXX.

The debtor, Craig Reid Webber ("Debtor") seeks confirmation of the Modified Plan because he encountered unanticipated expenses, causing him to fall behind in plan payments, and, despite attempting to cure the entire default, was unable to do so. Declaration, Dckt. 44. The unanticipated expenses stemmed from (1) having to relocate for a new job, (2) unanticipated home repairs, and (3)

vehicle repairs. *Id.* The Modified Plan provides for payments of \$3,550.00 per month for sixty (60) months and a 100 percent dividend to unsecured claims totaling \$36,956.08. Modified Plan, Dckt. 42. 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 14, 2023. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

- A. Trustee cannot assess the feasibility of the Plan and the Plan may not comply with 11 U.S.C. § 1325(a)(1) or (6) because Debtor is delinquent \$50.00 under the terms of the proposed modified Plan.

The Opposition notes that the Debtor has funded the Plan through June 2023 with payments totaling \$136,538.00, though \$136,588.00 have come due.

Presumably, by the time of the hearing the Debtor will have made the \$50.00 cure payment.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$50.00 delinquent in plan payments under the terms of the proposed modified Plan, which represents less than one month of the \$3,550.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **XXXXXXX**

~~————— The proposed Modified Chapter 13 Plan complies with 11 U.S.C. § 1322, § 1325, and § 1329; the Motion is granted and the Plan is confirmed.~~

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

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

~~————— The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Craig Reid Webber ("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 19, 2023, as amended to provide **XXXXXXX**, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, **which states the above amendment**, 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.~~

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

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

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

~~_____The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Craig Reid Webber ("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.~~

2. [22-23199](#)-E-13 MELISSA/FRANCISCO RUELAS STATUS CONFERENCE RE:
[DPC-2](#) Gary Fraley OBJECTION
2 thru 4 TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-24-23 [\[65\]](#)

Debtors' Atty: Gary Ray Fraley

Notes:

Set by order of the court filed 1/6/23 [Dckt 29]. At least one of the two Debtors and Debtors' counsel shall attend (telephonic appearance permitted).

<p>The Status Conference on the Trustee's Objection to Claim of Exemption is XXXXXXX</p>

AUGUST 8, 2023 STATUS CONFERENCE

At the Status conference, **XXXXXXX**

CIVIL MINUTES FROM JULY 11, 2023 HEARING

The Chapter 13 Trustee, David P. Cusick (“Trustee”) objects to Melissa Ann Ruelas and Francisco Ruelas’s (“Debtor”) claimed exemptions under California law. Trustee’s concerns stem from:

1. **Asset not previously disclosed:**
 - a. Debtor now exempts assets related to a personal injury claim. These were not disclosed in Debtor’s initial filings. Trustee believes this asset was concealed prior to confirmation, which could have affected the feasibility of the Plan or the extent creditors would need to be paid pursuant to the liquidation test.
2. **Wrong Exemptions Used**
 - a. The asset Debtor is now exempting is listed as a personal injury claim. Debtor is exempting under California Code of Civil Procedure § 704.140(a). It appears, however, the asset is the settlement proceeds arising from the personal injury claim.
3. **Reasonable and Necessary**
 - a. Exemptions under California Code of Civil Procedure § 704.140 are only exempted to the extent necessary for the support of Debtor, pursuant to *Sylvester v. Hafif (In re Sylvester)*, 220 B.R. 89, 91 (B.A.P. 9th Cir. 1998).

Debtor’s Opposition

Debtor filed an opposition on June 27, 2023. Dckt. 69. Debtor states:

1. **Asset not previously disclosed:**
 - a. On April 8, 2022, debtor Melissa was involved in a motor vehicle accident. Seventeen (17) days before filing the bankruptcy petition, debtor Declaration of debtor Melissa, Dckt. 70. Melissa hired a personal injury attorney. *Id.* Through inadvertence of Debtor’s Counsel, Debtor’s petition did not disclose or exempt the personal injury cause of action. Declaration of Counsel, Dckt. 71.
2. **Wrong Exemptions Used**
 - a. Debtor claims they used the proper exemptions and that it is unclear from Trustee’s opposition how the alleged exemption was improper. Additionally, because there was no award of settlement damages prior to the filing of bankruptcy, § 704.140(b) does not apply.

3. Reasonable and Necessary

- a. Debtor argues they will have ongoing costs associated with the injuries, therefore, it is reasonable and necessary for their support.

DISCUSSION

The court begins this exemption Objection review with California Code of Civil Procedure § 704.140 provides (emphasis added):

(a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, **a cause of action for personal injury** is exempt without making a claim.

(b) Except as provided in subdivisions (c) and (d), **an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support** of the judgment debtor and the spouse and dependents of the judgment debtor.

....

Exemption rights are determined as of the date of the petition. When this case was filed, Debtor could claim an exemption in injury claim. 11 U.S.C. § 522(b). Here, Debtor has belatedly done so, human error the cause for the delay.

From the evidence provided to the court, it appears the cause of action arose prior to the bankruptcy case and the settlement occurred after the filing of the petition. Therefore, as of the date of the petition, Debtor had a right to exempt the claim pursuant to California Code of Civil Procedure § 704.140(a).

Now, as one knows, merely claiming an asset as exempt generally does not remove the asset from the bankruptcy estate. *Schwab v. Reilly*, 560 U.S. 770 (2010). Here, as noted above, the right to claim the exemption is one in which the debtor can continue to control the cause of action for personal injury, but is only entitled to that portion which is necessary for support.

Purported Settlement

In the Opposition, Debtor states that in March 2023, which is while this bankruptcy case was pending, Debtor and her attorney agreed to settle the undisclosed personal injury claim that is property of this bankruptcy estate. The settlement amount is stated to have been \$47,500.00. From this undisclosed property of the Bankruptcy Estate in this case, Debtor states that she received the net sum of \$30,170 after paying several modest liens and a 29% contingency attorney's fees (which have not been authorized by this court).

Debtor has not provided a copy of the settlement, however, as evidence that the settlement occurred after the petition date. Additionally, Debtor has not submitted to the court a Motion to Approve the Stipulation between Debtor and the settling party.

Determination of Exemption in Proceeds of Claim

Once the claim was settled and reduced to cash proceeds, the exempt property shifts to the cash proceeds themselves. This shifts to the necessary for support inquiry under § 704.140(b). *See In re Altmiller-Rubio*, No. 08-17274-B-13, 2011 Bankr. LEXIS 5570, at *12 (Bankr. E.D. Cal. Sep. 13, 2011). The Ninth Circuit Bankruptcy Appellate Panel has addressed the relationship between subsection (a) and (b), stating:

[W]e believe that the California Legislature did not intend CCP § 704.140(a) to exempt personal injury claims in their entirety, without reference to necessity for support. Rather, we believe that subsection (a) merely allows a debtor to exempt personal injury claims without having to make a formal claim. Subsections (a) and (b) are not mutually exclusive; subsection (b) defines the scope of exemption identified in subsection (a). Therefore, the bankruptcy court did not err in reading the subsections together; both provisions govern the exemption in the personal injury claim. The bankruptcy court correctly required Debtors to demonstrate that the settlement proceeds from the malpractice action are necessary for their support.

Gose v. McGranahan (In re Gose), 308 B.R. 41, 48 (B.A.P. 9th Cir. 2004)

The court finds that the use of § 704.140(a) and (b) is proper for this personal injury claim. California Code of Civil Procedure § 704.140(a) and (b) are not mutually exclusive, and the court must determine whether the proceeds are necessary for the support of Debtor. Debtor Melissa's declaration (Dckt. 69) indicates:

1. Debtor Melissa was diagnosed with a soft tissue injury;
2. Debtor Melissa's chiropractors have diagnosed her with nerve root injuries and muscle sprains;
3. Debtor Melissa has ongoing injuries in that she cannot perform everyday tasks;
4. Debtor has hired assistance for housekeeping;
5. Debtor Melissa seeks chiropractic services once to twice per month, and her insurance only covers nine (9) visits annually;
6. Debtor Melissa's chiropractor requires x-rays once per year; and
7. Debtor anticipates the need to hire a landscaper.

In her Declaration Debtor identifies the following expenses going forward flowing from this injury:

1. Chiropractic Co-Pay.....(\$40) per visit, Nine Treatments.....(\$360)

2. Chiropractic Cost in Excess of Insurance Covered..... (\$1,500) annual
3. Annual X-Rays.....(\$40) co-pay

This is an additional \$1,600.00 expense annually.

Debtor also seeks to hire a “landscaper” to do the yard work, stating that this will be \$100 a month. (Possibly a little low projection.) This would be an additional \$1,200 a year.

This totals \$2,800 a year. If this injury results in requiring these medical treatments permanently, the net proceeds (assuming the court approves the legal fees for special counsel) would fund approximately 15 years of these expenses.

What the court has not been presented with is the simple testimony of Debtor’s doctor as to her medical condition, what injury remains from the accident (as opposed to any pre-existing condition).

Additionally, while Debtor seeks to claim the money proceeds as exempt, Debtor and Debtor’s counsel have not moved forward to get the court to retroactively approve the settlement, nobody has sought retroactive approval of employment of counsel, and no one is seeking allowance of legal fees for such counsel if retroactively authorized to be employed.

In reviewing Debtor’s bankruptcy counsel’s Declaration, Dckt. 71, he explains that the Amended Schedules A/B and C were filed on April 24, 2023 - which is coincidentally just shortly after it was settled sometime “In March 2023” as stated in the Opposition. Opp., ¶ 5; Dckt. 69. No testimony is provided as to how the claim was prosecuted in a way that the Debtor and her bankruptcy attorney never discussed this asset. Debtor’s bankruptcy counsel states that he is the one who referred her to the personal injury counsel, so it is clear that bankruptcy counsel knew Debtor was hiring another attorney to represent her and the estate’s interests in this bankruptcy case.

In his Declaration, Debtor’s counsel states that the clear error of this missing asset occurred because he insisted on rushing to get the Schedules completed so they could file the bankruptcy case on December 9, 2022, to stop the sale of Debtor’s truck. Dec. ¶ 5; Dckt. 71. Thus, it appears that counsel’s desire to file complete pleadings, even in an emergency and making staff work after hours rather than filing a “skeletal” petition and then follow up shortly thereafter with accurate Schedules and Statement of Financial Affairs is a recipe for this type of non-disclosure potential disaster.

At the hearing, counsel for the Debtor reported that he would be promptly filing an ex parte motion for authorization for employment of special counsel and the motion for approval of compromise. The request for allowance of fees for special counsel will be included with the prior motions.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on July 24, 2023. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Employ 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 Employ is granted.</p>

Melissa Ann Ruelas and Francisco Ruelas (“Debtor”) seeks to employ Edward A. Smith (“Attorney Smith”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330 to prosecute Debtor’s personal injury case. Debtor seeks the employment of Attorney Smith to settle Debtor’s Personal Injury claim.

Debtor argues that Attorney Smith’s appointment and retention is necessary to reach a settlement on her personal injury case.

The injury upon which the claim is based arises out of a auto accident that occurred on April 8, 2022. On November 22, 2022, Debtor retained the services of Attorney Smith to enforce her rights and interests arising from the accident. Through inadvertence the personal injury claim was not listed on Debtor’s Schedules (this Bankruptcy Case having been filed on December 9, 2022), but this was corrected with an April 23, 2023 amendment to the Schedules.

Edward A. Smith, an attorney at the Law Offices of Edward A. Smith, testifies that he entered a Contingent Fee Retainer Agreement with the Debtor on November 22, 2022 to prosecute her Personal Injury case, which has now reached a settlement. Edward A. Smith testifies that he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Fee Terms of Employment

The Motion states that proposed Attorney Smith is to be paid contingent fees on the following terms:

1. 29% of any settlement entered into prior to filing a lawsuit
2. 33 1/3% of any settlement reached prior to the date of setting a mediation, arbitration, or trial.
3. 40% of any recovery obtained at trial.
4. The above percentages are computed on the gross recovery for Debtor, and Attorney Smith will also be reimbursed for "hard costs."

Pending Settlement of Claim

Debtor further reports that a settlement has been reached and there is now pending a separate motion for approval of that settlement. The Motion to Approve Settlement (DCN:FF-05; Dckt. 83) states that the terms of the settlement for which the attorney's fees will be paid to Attorney Smith are:

8. The terms of the Settlement and disbursement of funds are as follows:

Tortfeasors/Releasees: Steven Awakuni and Nicholas Awakuni

Insurance Carrier for Releasees: Tokio Marine America Insurance Company¹

Gross Recovery: \$47,500.00

Kaiser Lien: <\$1,935.00>

Bruce Cooley, DC Lien: <\$1,605.002>

Attorney costs to obtain medical records: <\$15.00>

Attorney Smith's compensation: <\$13,775.00> (29% of gross recovery)

Net recovery to Debtor Melissa Ruelas: \$30,170.00

Motion to Approve Settlement, p. 3; Dckt. 83. Attorney Smith has been able to resolve this claim for the pre-filing contingent fee of 29% and is seeking only (\$15.00) in "hard costs."

Authorization to Employ Attorney Smith

Taking into account all of the relevant factors in connection with the employment and compensation of Attorney Smith, considering the declaration demonstrating that Attorney Smith does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Edward A. Smith as Attorney Smith for her Personal Injury Claim. As per the Contingent Fee Retainer Agreement, Attorney Smith will be compensated 33 1/3% of the settlement. The court notes, no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

The Motion to Employ 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 Employ filed by Melissa Ann Ruelas and Francisco Ruelas ("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 Employ is granted, and Debtor is authorized to employ Edward A. Smith ("Attorney Smith") as an Attorney for Debtor's Personal Injury Case on the terms and conditions as set forth in the Contingent Fee Retainer Agreement filed as Exhibit A, Dckt. 81.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that the compensation authorized to be paid Attorney Smith is authorized, subject to the provisions of 11 U.S.C. § 328, is on a contingent fee basis as follows:

1. 29% of any settlement entered into prior to filing a lawsuit
2. 33 1/3% of any settlement reached prior to the date of setting a mediation, arbitration, or trial.
3. 40% of any recovery obtained at trial.
4. The above percentages are computed on the gross recovery for Debtor, and Attorney Smith will also be reimbursed for “hard costs.”

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2023. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise 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 for Approval of Compromise is granted.

Melissa Ann Ruelas and Francisco Ruelas, Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Steven Awakuni and Nicholas Awakuni ("Settlor"). The claims and disputes to be resolved by the proposed settlement are resulting from the personal injury damages resulting from a motor vehicle collision on April 8, 2022.

Though not clearly stated, as required by Local Bankruptcy Rule 9014-1(d)(5), the court interprets the Motion to also request the court allow Attorney Edward A. Smith, special counsel for the Debtor to prosecute the claims that are the subject of the Settlement, fees and costs for that representation.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit B in support of the Motion, Dckt. 87):

- A. Tokio Marine America Insurance Company, Settlor's insurer, shall make a payment to Movant in the sum of \$47,500.00.
- B. This settlement resolves the claim as well as any past, present, or future claims relating to the claim.

Disbursement of Settlement Proceeds

The Motion to Approve Settlement sets forth the claims to be resolved, the liens to be paid, the administrative expenses to be paid, and the net proceeds to be received by Debtor.

8. The terms of the Settlement and disbursement of funds are as follows:

Tortfeasors/Releasees: Steven Awakuni and Nicholas Awakuni

Insurance Carrier for Releasees: Tokio Marine America Insurance Company¹

Gross Recovery: \$47,500.00

Kaiser Lien: <\$1,935.00>

Bruce Cooley, DC Lien: <\$1,605.00²>

Attorney costs to obtain medical records: <\$15.00>

Attorney Smith's compensation: <\$13,775.00> (29% of gross recovery)

Net recovery to Debtor Melissa Ruelas: \$30,170.00

Motion to Approve Settlement, p. 3; Dckt. 83.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant argues there is risk of loss and a delay in continuing litigation.

Difficulties in Collection

Movant notes that given there is an insurance company representing Settlor, difficulty in collection would be minimal.

Expense, Inconvenience, and Delay of Continued Litigation

Without settlement, parties would continue litigation. This would require discovery, depositions, and expert witnesses. Litigation would add expense and delay to the Estate.

Paramount Interest of Creditors

Creditors have not filed an objection to the claim of exemption. Debtor needs this settlement money to gain care and support after the accident.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because settlement will avoid costly and time consuming litigation. The Motion is granted.

Allowance of Compensation For Special Counsel For Debtor

By separate Order of the court, the employment of Edward A. Smith, Esq., has been authorized to be employed as special counsel to be compensated for the legal services on a contingent fee basis. Attorney Smith was employed by Debtor pursuant to a Contingent Fee Agreement signed by Debtor on November 22, 2022. Exhibit A, Fee Agreement; Dckt. 81. The fees and expenses computed to be paid Attorney Smith are computed by Debtor to be:

- A, Attorney Smith's costs to obtain medical records: <\$15.00>
- B. Attorney Smith's compensation: <\$13,775.00> (29% of gross recovery)

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of \$13,775.00 and Final Costs of \$15.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 13 Trustee is authorized to direct the payment of the allowed fees and costs directly from the settlement proceeds or through the Trustee's Office.

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 Compromise filed by Melissa Ann Ruelas and Francisco Ruelas, Chapter 13 Debtor, ("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 Approval of Compromise between Movant and Steven Awakuni and Nicholas Awakuni ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit B in support of the Motion (Dckt. 87).

IT IS FURTHER ORDERED that Edward A. Smith, Esq. Is allowed the following fees and expenses as a professional of the Estate:

Edward A. Smith, Esq. Professional employed by Chapter
13 Debtor

Fees in the amount of \$13,775.00

Expenses in the amount of \$15.00

as the final allowance of fees and expenses pursuant to
11 U.S.C. § 330 as counsel for Chapter 13 Debtor as an interim
allowance of fees and expenses pursuant to 11 U.S.C. § 331.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to direct the payment of 100% of the forgoing allowed fees and costs directly from the settlement proceeds or through the Trustee's Office, in a manner consistent with the order of distribution under the confirmed Plan.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2023. By the court's calculation, 26 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>

Rizzalina Mikaela Ravanera Todd ("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. 20-24263-E-13) was dismissed on February 26, 2023, after Debtor fell behind on plan payments. *See* Order, Bankr. E.D. Cal. No. 20-24263-E-13, Dckt. 53, February 26, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she fell behind on plan payments due to unexpected medical and travel expenses of a family member. Declaration, Dckt. 15.

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

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

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

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

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

Debtor has sufficiently demonstrated the case was filed in good under the facts of this case and the prior case for the court to extend the automatic stay.

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 Rizzalina Mikaela Ravanera Todd (“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.

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 14, 2023. By the court's calculation, 55 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).

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, John Salinas Mamonong ("Debtor") has provided evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on July 20, 2023. Dckt. 37. Trustee requests that the Order Confirming the Plan specifically identify which creditors will be paid directly by Debtor's non-filing spouse and not through the Plan. *Id.* The court agrees that this is a reasonable request.

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, John Salinas Mamonong (“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 13, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, including the following terms:

1. Which creditors will be paid directly by Debtor’s Non-filing Spouse and not through the Plan.

Debtor’s Counsel will 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, parties requesting special notice, and Office of the United States Trustee on July 21, 2023. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Bethany Elaine Johnson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 22-20239) was dismissed on February 23, 2023, after Debtor was delinquent in multiple months of plan payments. *See* Order, Bankr. E.D. Cal. No. 22-20239, Dckt. 75, February 23, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she did not have an attorney to help her, and she had trouble finding consistent work due to the staffing changes caused by the COVID-19 pandemic. Declaration, Dckt. 16.

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

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

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

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

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

Debtor has now hired an attorney to assist her with her case. Additionally, she earns a consistent monthly income from her medical staffing business, ClockWork Medical Staffing and will thus be able to make her planned payments. Declaration, Dckt. 16. 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 Bethany Elaine Johnson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, 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.

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest, on July 25, 2023. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. However, the Proof of service does not include an attachment of the list of persons served, as required by the EDC Form 7-005. Therefore, it is unclear who was served. At the hearing, **XXXXXXXXXX**

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>

David Karleskint ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 23-21568) was dismissed on May 5, 2023, after Debtor did not timely file documents. *See* Order, Bankr. E.D. Cal. No. 23-21568, Dckt. 12, June 2, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was focused on a mortgage relief program instead of focusing on fulfilling their duties in bankruptcy. Declaration, Dckt. 19.

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

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

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

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

Debtor has sufficiently demonstrated the case was filed in good 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 David Karleskint (“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.

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 July 13, 2023. 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 overruled.

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

A. Debtor failed to appear at a 341 meeting.

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 Continued Meeting of Creditors was held on August 3, 2023 and Trustee's Report indicates Debtor appeared. Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this Objection.

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 is overruled, and Richard Wayne Cruz's ("Debtor") Chapter 13 Plan filed on May 20, 2023, 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.

**The Court having set the Examination of Judgment Debtor Ahmed Mami,
XXXXXXX**

The Order to Appear and Examination of Judgment Debtor Ahmed Mami was issued on June 20, 2023. The court issued the Order based on Debtor Brian Sanchez's *ex parte* application for Judgment Debtor Ahmed Mami to appear and furnish information to aid in enforcement of two money judgments entered on October 5, 2022 and January 26, 2023. Additionally, Debtor Sanchez requests Judgment Debtor Mami produce documents identified in Exhibit B, Dckt. 218.

August 8, 2023 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 Order to Appear and Examination of 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 XXXXXXXXXXXXXXXX

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 8, 2023. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion to Substitute 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 Substitute is granted and Joint Debtor Ned Ellis Smith is substituted in for the late Co-Debtor Edna Smith.

Joint Debtor, Ned Ellis Smith, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Edna Smith. This motion is being filed pursuant to Federal Rules of Bankruptcy Procedure 1016 and 9014(c) and Federal Rule of Civil Procedure 25.

Debtor filed for relief under Chapter 13 on April 1, 2020. On January 26, 2021, Debtor's Chapter 13 Plan was confirmed. Dckt. 81. On April 24, 2023, Debtor Edna Smith passed away. Joint Debtor asserts that he is the lawful successor and representative of Debtor.

Pursuant to Federal Rules of Bankruptcy Procedure 1016 and 9014(c) and Federal Rule of Civil Procedure 25, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Suggestion of Death was filed on June 8, 2023. Dckt. 97. Joint Debtor is the husband of

the deceased party and is the successor's heir and lawful representative. Joint Debtor states that he will continue to prosecute this case in a timely and reasonable manner.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David P. Cusick, ("Trustee") filed an Opposition on July 10, 2023. Dckt. 111. Trustee opposes the Motion on the basis that:

1. Debtor's Schedule A/B (Dckt. 1) listed life insurance policies, but the Motion to Substitute and declaration in support do not address these policies.
2. The feasibility of the plan is unclear based on Debtor's Schedule I (Dckt. 53), which indicated that the deceased Debtor was receiving certain Social Security and pension or retirement income, and the Motion to Substitute and declaration in support do not address what the status of this income will be in light of deceased Debtor's death.

DEBTOR'S REPLY

Debtor filed a reply to the Trustee's Opposition on July 12, 2023. Dckt. 115. Debtor addresses each of Trustee's concerns and includes a declaration in support. Dckt. 116. Debtor states that although they had life insurance policies at the time the Chapter 13 case was filed, the life insurance policy of the deceased Debtor was canceled by the insurance provider just months before deceased Debtor's death. Dckt. 115; Dckt. 116.

Debtor further states that his adult son has been providing Debtor with financial assistance since deceased Debtor's death and is willing and able to assist Joint Debtor through the completion of the Chapter 13 case. Dckt. 115; Dckt. 116.

Debtor filed Supplemental Schedules I and J on July 12, 2023. Dckt. 114.

DISCUSSION

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

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

Here, Joint Debtor has not provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. Although Joint Debtor states that their adult son, Jason Smith, is assisting Joint Debtor with Plan payments, Joint Debtor has not provided evidence in the form of a declaration from Jason that Jason is able and willing to assist Joint Debtor for the remainder of the Plan.

Further, based on Debtor's Supplemental Schedules I/J, Dckt. 114, Debtor's net income, including the assistance from son, Jason Smith, is \$448.00. The confirmed Plan, however, states Plan payments are to be \$448.00 for 24 months, then \$515.00 for 36 months. Plan, Dckt. 52. Here, we are in the third year of the Plan. Therefore, even if there were sufficient evidence that Jason would contribute to the Plan, there is not enough net income to fund the Plan.

Clearly supplemental evidence is required. The court continues the hearing to afford the Joint Debtor to provide evidence of the additional income (such as the son's declaration of his ability and commitment to provide the support through the term of the Plan), evidence of the ability to make the increased Plan payment amount, and how the Joint Debtor will investigate and document the stated cancellation of the late Debtor's insurance policy and whether there are claims that exist for the Estate with respect to the stated cancellation of the Policy.

Declaration of Debtor's Son

On August 1, 2023, the Declaration of Jason Smith was filed in support of this Motion. Dckt. 120. Jason Smith testifies that he is residing with the surviving co-debtor He provides additional testimony of other support and the life insurance plan of the late debtor.

The court continues the hearing for the convenience of the parties and to avoid the need for multiple appearances.

August 8, 2023 Hearing

At the hearing, **XXXXXXX**

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

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

~~The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Joint Surviving Debtor is substituted as the successor-in-interest to the Late Debtor Edna Smith and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.~~

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's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 3, 2023. By the court's calculation, 36 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).

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

The debtors, Armando Gonzalez and Emily Gonzalez ("Debtor") seek confirmation of the Modified Plan because Debtor's household income has increased to afford increased monthly Plan payments because Mrs. Gonzalez is now employed and Mr. Gonzalez's income is steady again. Declaration, Dckt. 33. The Modified Plan provides \$1,635.00 to be paid through 60 months and a 62.0 percent dividend to unsecured claims totaling \$46,535.62. Modified Plan, Dckt. 40. 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 14, 2023. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

- A. The plan may not be feasible. Debtor's plan payments listed in the Motion to Confirm and the Modified Plan conflict. Debtor's Motion states the proposed plan payments are to be \$14,610.00 total paid in from April 2022 to June 2023 then \$1,200.00 per month for the remainder of

the plan. Dckt. 33, p. 3, lines 2-4. However, Section 7.01 of Debtor's Modified Plan states the monthly payment for the remainder of the Plan will be \$1,635.00. Dckt. 40. Trustee calculates the \$1,635.00 payment will be feasible under the Plan.

DEBTOR'S RESPONSE

Debtor filed a Response on July 18, 2023. Dckt. 44. Debtor acknowledges the error in conflicting monthly payment amounts and asks the court to grant the motion on the basis that the monthly plan payment will be \$1,635.00 from July 2023 through the remainder of the plan as stated in Section 7.01.

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 debtors, Armando Gonzalez and Emily Gonzalez ("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 July 6, 2023, with payments of:

\$14,610.00 from April 2022 to June 2023, followed by monthly payments of \$1,635.00 for the remainder of the Plan

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.

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 29, 2023. By the court's calculation, 40 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).

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

The debtor, Song Lim ("Debtor") seeks confirmation of the Modified Plan because Debtor's IRS priority claim of \$9,593.23 is more than Debtor's scheduled amount of \$3,210.00. Declaration, Dckt. 32. Debtor seeks to reduce the dividends paid to unsecured creditors to pay the IRS priority claim in full. *Id.* The Modified Plan provides \$610.00 be paid through 60 months and a 7% percent dividend to unsecured claims totaling \$95,727.19. Modified Plan, Dckt. 28. 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 14, 2023. Dckt. 34. Trustee opposes confirmation of the Plan on the basis that:

- A. The plan may not be feasible.

DISCUSSION

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). Debtor has not filed any current Schedules I and J with the Modified Plan for Trustee to show Debtor can afford the payments. Debtor's original Schedules I and J were filed on May 9, 2019 and indicate Debtor is self-employed. Dckt. 11. Trustee is concerned that Debtor's income and expenses may have changed, which would affect the plan's feasibility. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Song Lim ("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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 26, 2023. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

-----.

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

California Auto Finance ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The plan fails to provide the value of the secured claims. Creditor argues the Till rate of their claim should be 11.25%, the prime rate of 8.25% + 3%.

PLEADINGS FILED AS ONE DOCUMENT

Creditor filed the Amended Objection to Confirmation of Plan and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as

separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

DEBTOR’S RESPONSE

Debtor agrees to pay 9.25% interest on the secured loans for both the Chevy Silverado and the Lincoln Navigator.

DISCUSSION

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 6.00%. Creditor’s claim is secured by a Debtor’s two vehicles, a Chevy Silverado and a Ford Lincoln Navigator. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.25%, plus a 1.25% risk adjustment, for a 9.50% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

~~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 California Auto Finance (“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 is overruled, and Miguel Luna and Teresita Luna (“Debtor”) Chapter 13 Plan filed on May 27, 2023, as amended:~~

~~Debtor will pay 9.50% percent interest on the secured loans for the Chevy Silverado and the Ford Lincoln Navigator.~~

~~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.~~

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 29, 2023. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$24,127.19.

The Motion filed by Larry Dave Walsh ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 17. Debtor is the owner of a 2018 Dodge Ram 1500 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$18,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S NONOPPOSITON

The Chapter 13 Trustee, David P. Cusick ("Trustee"), filed a nonopposition on July 11, 2023. Dckt. 19.

CREDITOR'S OPPOSITION

Creditor filed an opposition on July 25, 2023. Dckt. 25. Creditor states the value of the Vehicle should be \$35,743.00. *Id.* Creditor provides a Declaration and Exhibit of a Kelley Blue Book Valuation to substantiate its claim. Declaration and Exhibit D, Dckt. 26. It is not clear to the court who ran the report and whether, based on personal knowledge, it accurately reflects the value of the vehicle.

Though the Kelley Blue Book Valuation Report is attached as an Exhibit, it is not properly authenticated.

Additionally, pursuant to the Local Bankruptcy Rules, “[m]otions, 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). Creditor is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a).

At the hearing, **XXXXXXXXXX**

DEBTOR'S REPLY

Debtor filed a Reply on August 1, 2023. Dckt. 34. Debtor states Creditor has failed to submit any admissible evidence as to the value of the Vehicle. Debtor directs the court to their Declaration, indicating there are scratches and dings on the door, the Vehicle drifts right, the shocks need to be readjusted, and the right front tire needs to be replaced, makes the Vehicle worth only \$18,000. *See* Declaration, Dckt. 17. Debtor requests their Motion be granted or the court set an evidentiary hearing.

At the hearing, **XXXXXXXXXX**

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on July 6, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$24,127.19. Declaration, Dckt. 17.

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). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). 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. *Id.* 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.

~~————— Creditor’s Objection states that the value of the vehicle, on the date the petition was filed, was \$35,743.00 and provides a Kelley Blue Book Report supporting this valuation. Dckt. 26. At the hearing, Creditor properly authenticated the Report.~~

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

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

~~————— The Motion to Value Collateral and Secured Claim filed by Larry Dave Walsh (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Travis Credit Union (“Creditor”) secured by an asset described as 2018 Dodge Ram 1500 (“Vehicle”) is determined to be a secured claim in the amount of \$24,127.19. The value of the Vehicle is \$35,743.00 and is encumbered by a lien securing a claim that does not exceed the value of the asset.~~

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 24, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Trustee cannot assess the feasibility of the Plan because Debtor has failed to provide all information required by the schedules and budget.
- B. The Plan may not be Debtor's best efforts, as it appears that Debtor has additional disposable income to pay toward the Plan.

DISCUSSION

Trustee's objections are well-taken.

Failure to List All Community Debts

Debtor indicated to Trustee at the initial meeting of creditors that the non-filing spouse has a car loan and credit card debt and makes payments on them using community funds. Debtor has not listed these assets and claims on their Schedules, however, they have amended their Schedule J to include “Non-filing Spouse Credit Cards.” Amended Schedule, Dckt. 18 at 3:21. Amended Schedule J does not provide payment for the non-filing spouse’s vehicle.

Given Debtor’s failure to file Amended Schedules to include these assets and claims, and expenses, the court cannot determine whether the Plan complies with provisions of the Code, pursuant to 11 U.S.C. § 1325(a)(1). Additionally, it indicates 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 Disposable Income

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan provides for monthly plan payments of \$850.00, and a 100% dividend to unsecured claims totaling \$40,654.00. Dckt. 3. Debtor’s 2022 tax returns indicate that Debtor was entitled to a \$9,578.00 combined refund, which is not listed in Schedule I. This is significant, as it appears that Debtor has additional disposable income to pay toward the Plan. Thus, the court may not approve the Plan.

At the hearing, counsel for the Trustee reported that Debtor has addressed some issues and is now going to propose some final amendments. The Trustee requested the court continue the hearing.

DEBTOR’S RESPONSE

Debtor states they have addressed Trustee’s concerns by:

- a. Spouse’s car was listed in original Schedule A/B. Dckt. 1 line 3.1
- b. Spouse’s car payment was disclosed in the original Schedules. Dckt. 1 line 17a.
- c. Debtor filed an amended Schedule J and Means Test to list Spouse’s credit card payments. Dckts. 18, 19.
- d. Debtor filed amended Schedules D, E/F to disclose all of spouse’s debts.

- e. Spouse's creditors were served a copy of the Notice of Chapter 13 Bankruptcy Case Meeting of Creditors and a copy of the Chapter 13 Plan filed. Dckt. 26.
- f. Debtor served the required amendment coversheet. Dckt. 27.
- g. All of Debtor and Spouse's creditors were served the amendments. Dckt. 28.

Trustee's Reply

Trustee filed a Reply to Debtor's Response on July 28, 2023. Dckt. 30. Trustee would like a clarification of how many vehicles the Debtor and their non-filing spouse owns. Additionally, Trustee agrees that Debtor has amended Schedule J to reflect the non-filing spouse's credit card payments. Trustee believes the tax expense are less than listed in Schedule I and Debtor can provide additional disposable income into the Plan. Trustee requests any tax refunds greater than \$2,000 be included in the Plan as additional payments or the Order Confirming Plan states the unsecured dividend remains at 100% for any future modifications of the Plan.

August 8, 2023 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.**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2023. 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 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).

<p>The Motion to Confirm the Amended Plan is denied.</p>

The debtor, Matt Denny Sanchez and Esther Anna Maria Sanchez ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan includes the same payment plan as in the First Amended Plan and maintains that 0% be paid to unsecured claims. Amended Plan, Dckt. 72. Debtor claims that their assets are fully exempt. Declaration, Dckt. 70. 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 25, 2023. Dckt. 83. Trustee opposes confirmation of the Plan on the basis that:

1. Plan relies on Motion to Value Collateral.
2. There is reason to doubt both the feasibility of the plan and Debtors' best efforts
 - A. Plan still proposes zero percent to unsecured claims.

- B. Debtor has failed to provide sufficient evidence of income.
- C. Debtor has failed to provide sufficient evidence of expenses.
- D. Debtor does not explain their Schedule I withholdings.
- E. Debtor has failed to sufficiently reduce their expenses.

DEBTOR'S REPLY

Debtor filed a Reply on August 1, 2023. Dckt. 88. Debtor addresses Trustee's concerns, as stated further below.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Internal Revenue Service. Debtor filed a Motion to Value the Secured Claim of Internal Revenue Service, and this motion was granted on July 25, 2023. As such, Trustee's Objection on these grounds appears resolved.

Feasibility / Not Best Efforts

The Chapter 13 Trustee alleges that it is unclear if Debtor will be able to comply with the Plan, has the ability to make Plan payments, or is in Debtor's best efforts. 11 U.S.C. §§ 1325(a)(6), (b)(1). Trustee states:

- A. **Zero Percent to Unsecured Claims** - Debtor's prior Amended Plan was denied on the grounds that debtor might not be making their best effort. Trustee objects to the Second Amended Plan on the grounds that it still pays 0 percent dividend to unsecured creditors and relies on the same payment plan, thereby still failing to make best efforts.

Debtor states there are no non-exempt assets, and the liquidation analysis requires a 0% Plan.

- B. **Insufficient Evidence of Income** - While Debtor states changes in employment in their declaration, Trustee notes that Debtor has not amended Form 122C-1 to provide evidence of their actual income.

It is not clear to the court why Debtor would be amending Form 122C-1, the Statement of Currently Monthly Income and Calculation of Commitment Period. Dckt. 1 at 47-49. The income information is the average monthly income for the six month period prior to the commencement of the bankruptcy case. See Form 122C-1 Part 1, ¶ 1. It is not a statement of Debtor's actual monthly income as of the commencement of the case or post-petition changes.

Debtor states they have \$8,301.96 is Gross Income. Debtor claims they are now working as a part-time employee with the Department of Corrections, and Debtor's Spouse was working in a Dental office from April to Mid-July 2022, then went on unemployment, and is now back working in the Dental Office.

- C. **Insufficient Evidence of Expenses** - Trustee objects that Debtor has not amended Form 122C-2 to provide evidence of their actual expenses. Without sufficient evidence, Trustee is unable to determine whether Debtor passes the means test.

Debtor still has not provided an updated Form 122C-1.

- D. **Withholding in Schedule I** - Based on the supplemental Schedule I, Trustee infers a combined income withholding of approximately 3 percent and questions the selection of this nominal amount.

Debtor claims they are withholding a total of \$1,654.45. Debtor states that they will provide Trustee with copies of all tax returns for the five (5) year commitment period.

- E. **Failure to Sufficiently Reduce Expenses** - Trustee states that Debtor has failed to sufficiently reduce expenses. Debtor has reduced some expenses, but fails to reduce high expenses for phone, cable, and internet services, and have allocated additional expenses to 'Social Security'. Declaration, Dckt. 84.

Debtor states they seek to have their budget last for the five-year commitment period. Debtor addresses the expenses for their vehicles, but does not address the other high expenses.

Debtor states the Social Security benefits began post-petition. These funds are intended to help stabilize Debtor's ability to pay, and not to incur further income tax claims.

Additionally, Trustee notes discrepancies between Debtor's Declaration and their Amended Schedule J. Trustee contends that these discrepancies are grounds for continued concern that the Amended Schedules J is a MAI (made as instructed) set of expenses created by Debtor and Debtor's counsel to avoid having any money in projected disposable income for the repayment of general unsecured claims.

As Debtors have failed to provide sufficient evidence regarding employment and expenses, Trustee doubts both the feasibility of the plan and Debtor's best efforts. The Second Amended plan, much like the First Amended Plan that was denied by the court, maintains the same payment plan and proposes to pay a 0 percent dividend to unsecured claims. Thus, the court may not approve the Plan.

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, Matt Denny Sanchez and Esther Anna Maria Sanchez (“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.

18. [20-20164-E-13](#)
[MOH-2](#)

CAROL ANGLIN
Michael Hays

MOTION TO MODIFY PLAN
6-14-23 [44]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 20, 2023. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Carol Anglin (“Debtor”) seeks confirmation of the Modified Plan because Debtor fell behind two plan payments and has tax debt with the IRS that was not included in the original Plan.

Declaration, Dckt. 46. Debtor now has increased Social Security and Pension benefits to afford increased plan payments. *Id.* The Modified Plan provides \$3,197.00 to be paid through 60 months and a 0.00 percent dividend to unsecured claims totaling \$24,748.56. Modified Plan, Dckt. 47. 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 14, 2023. Dckt. 54. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor does not provide an amended cover sheet for Schedules I and J.
- B. Debtor's Plan states Debtor has paid \$103,770, when Debtor has actually paid \$106,974.00. Trustee would have no opposition if this were corrected in the order confirming.

DEBTOR'S RESPONSE

Debtor filed a response on July 26, 2023. Dckt. 57. Debtor states they have re-filed their Supplemental Schedules I and J with a signed Amendment Coversheet. *See* Dckt. 60. Additionally, Debtor hopes the order confirming can resolve the overpayment.

At the hearing, ~~XXXXXXXXXX~~

~~The Modified Plan, as amended, 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, Carol Anglin ("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 14, 2023, as amended:~~

~~A total of \$106,974.06 paid through June 25, 2023, followed by monthly payments of \$3,197.00 starting July 25, 2023 for the remainder of the Plan:~~

~~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 Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 8, 2023. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXX

Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The plan does not cure Creditor's pre-petition arrears.

Failure to Provide Evidence

Creditor's Counsel filed this Motion making several factual assertions. However, no declaration of the Creditor was filed to support those assertions.

The Objection does reference Proof of Claim No. 17-1 which was filed by Creditor. In the Proof of Claim Creditor states that the arrearage to be cured as of the filing of the case was (\$4,037,31). POC 17-1, ¶ 9. A copy of the Proof of Claim is provided as Exhibit A. Dckt. 23.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$4,037.31 in pre-petition arrearages. Proof of Claim 17-1. The Plan does not propose to cure those arrearages.

At the hearing Debtor and Creditor discussed information necessary to resolve the question of whether a default exists and the amount, and jointly requested that the hearing be continued so they and the Parties can focus on resolving this factual question.

August 8, 2023 Hearing

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 the Chapter 13 Plan filed by Lakeview Loan Servicing ("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 the Objection is xxxxxxxx

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2023. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<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, Rebecca Mann ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on July 14, 2023. Dckt. 40.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an response on July 14, 2023. Dckt. 40. Trustee does not oppose the plan if the following clarifications are made:

- A. The total paid through month 24 (June 2023) is \$8,190.00, not the \$8,184.00 stated in the modified plan.
- B. Payments of \$366.00 begin in month 25 (July 2023) for the remaining 24 months.

~~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, Rebecca Mann (“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, 2023, as amended:~~

- ~~1. Debtor shall pay \$8,190.00 through June 2023 (month 24), followed by monthly payments of \$366.00 per month for the rest of the Plan.~~

~~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.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 13, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

-----.

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

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

- A. Debtor has failed to appear at the first Meeting of Creditors
- B. Debtor is delinquent in plan payments

Debtor's Reply

Debtor filed a Reply on August 1, 2023. Dckt. 25. Debtor states their Meeting of Creditors was continued to August 3, 2023 and they intend to conclude the Meeting on that date. Additionally, Debtor's intend to be current on or before July 25, 2023.

Trustee's Report filed on August 3, 2023 indicates Debtor appeared at the 341 Meeting and the Meeting was concluded.

DISCUSSION

Delinquency

Debtor is \$200.00 delinquent in plan payments, which represents one month of the \$200.00 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).

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

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

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

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

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

22 thru 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.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2023. By the court's calculation, 32 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). At the hearing, **XXXXXXXXXX**

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 XXXXXXX .

The debtor, Shawn Scott Dickinson and Monique Denee Dickinson ("Debtor") seeks confirmation of the Modified Plan because of present, unexplained delinquency. Declaration, Dckt. 80. The Modified Plan provides plan payments shall increase to \$2,081.63 per month for 23 months beginning July 25, 2023, and a 100 percent dividend to unsecured claims totaling \$12,237.62. Modified Plan, Dckt. 79. 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, 2023. Dckt. 83. Trustee opposes confirmation of the Plan on the basis that:

- A. Sufficient notice has not been provided;

- B. Plan and pleadings were not served;
- C. Plan is overextended, possibly taking 74 months;
- D. Debtor is delinquent;
- E. The motion is not plead with particularity and includes no basis for modification request;
- F. Inclusion of additional attorney's fees to be paid through the plan not accounted for in the plan; and
- G. Debtor has not filed supplemental Schedules I & J to demonstrate feasibility of payments.

DISCUSSION

Insufficient Time for Notice

The Chapter 13 Trustee objects that the Motion was not set on the proper amount of notice. Local Bankruptcy Rule 3015-1(d)(2) require thirty-five days' notice for a motion to confirm. Debtor provided 32 days' notice.

Insufficient Notice

Local Bankruptcy Rule 9014-1(e)(1) requires service of all pleadings and documents filed in support of, or in opposition to a motion shall be made on or before the date they are filed with the Court. Debtor's Certificate of Service does not list that the Notice of Hearing, Motion, Declaration, Exhibit, or Plan have been served. That failure to provide notice violates Local Bankruptcy Rule 9014-1(e)(1).

At the hearing, **XXXXXXX**

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 74 months due to inadequate funding of the plan. Debtor's payments would leave \$47,719.33 to creditors where \$56,959.66 is required. Further, Debtor does not account for additional requested attorney's fees. Trustee sees this having resulted from under reports of priority claims and unsecured claims on the schedules. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$3,869.11 delinquent in plan payments, which represents multiple months of the \$1,774.27 plan payment. Trustee notes a processing transaction dated July 10, 2023 for the amount of \$2,025.00. Even if this payment is processed, Debtor remains \$1,844.11 delinquent. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Review of Minimum Pleading Requirements for a Motion

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

The grounds stated with particularity in the Motion consist of (identified by the paragraph number in the Motion):

1. Debtor filed bankruptcy on May 4, 2020.
2. Debtor’s prior Confirmed Plan requires payments of \$1,774.27 per month for five months, \$1,959.00 per month for eighteen months; and \$2,019.19 per month for thirty-seven months.
3. The Plan term is sixty months and provides for a 100% dividend for general unsecured claims.
4. Debtor has defaulted on the Confirmed Plan.
6. Debtor requests that the Confirmed Plan be modified to provide:
 - a. A delinquency of \$1,931.65 will be caught up.
 - b. Plan payments will be suspended for months twenty-one through twenty-three of the Plan.
 - c. Debtor’s attorney will file an application for additional fees totaling \$825.00.
 - d. Chapter 13 Plan payments shall increase to \$2,081.63, commencing in July 2023.

These do not state grounds sufficient to satisfy the requirements of 11 U.S.C. §§ 1329, 1325, and 1322.

The Debtor provides a Declaration in support of the Motion. Dec.; Dckt. 80. The Declaration is a copy and paste of the text in the Motion with some minor grammatical changes). Curiously absent from the Declaration is the cause of the default and how Debtor will now have the “extra” money to cure the default and make increased Plan payments.

Failure to Provide for Attorney’s Fees

Debtor’s modified plan indicates Debtor’s Attorney intends to file Application for Additional Compensation in the amount of \$825.00. However, the plan proposes to pay \$0.00 towards these fees.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's supplemental Schedules I & J were most recently filed May 4, 2020. Dckt 1. Neither the Trustee or court can adequately assess the feasibility of the increased plan payments without evidence of a current budget. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

However, when reviewing Schedules I and J filed on May 4, 2020 (Dckt. 1 at p. 32-35), Debtor reports having \$3,193.12 in monthly net income - the Debtor's projected disposable income to fund a Chapter 13 plan. ^{FN.1.} The current confirmed Chapter 13 Plan in this Case requires monthly payments of "only" \$1,959.00. Plan, § 7; Dckt. 35. Based on the projected disposable income, that would leave a \$1,000 a month cushion for unexpected expenses.

FN. 1. Looking at Schedule J, Debtor's and Counsel (consistent with his and his firm solid representation of his clients) have provided reasonable expenses and a realistic projected disposable income. With an explanation as to why the default occurred, this several year old financing information may be adequate.

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Shawn Scott Dickinson and Monique Dence Dickinson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

IT IS ORDERED that the Motion is ~~xxxxxxx~~, and Debtor's Modified Chapter 13 Plan filed on July 7, 2023, as amended to provide ~~xxxxxxx~~, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, ~~which states the above amendment~~, 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.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Dismiss is XXXXXXXXXX

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

1. The debtor, Shawn Scott Dickinson and Monique Deneé Dickinson ("Debtor"), is delinquent in Plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on July 7, 2023. Dckt. 73, 79. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 80.

A review of Debtor's Declaration in support of Confirmation provides the following testimony:

1. Debtor requests the court modify the Plan pursuant to 11 U.S.C. § 1329 and Local Bankruptcy Rule 3015-1(d)(2).
2. Debtor became delinquent in the amount of \$3,874.92 as of June 16, 2023.

3. Debtor has made payments to cure part of the delinquency, however, they have not cured the entire amount.
4. Debtor requests modifications to the Plan to catch up on the remaining delinquency.
5. Plan payments shall increase from \$1,760.00 to \$2,081.63 beginning July 25, 2023 for the remainder of the Plan. All other terms remain the same.

Declaration, Dckt. 80. Such testimony does not provide evidence to satisfy the requirements of 11 U.S.C. § 1325 and § 1322. Debtor does not explain why they became delinquent and how they will be able to maintain payments on the proposed Plan, which calls for higher monthly payments, when they were unable to stay current on the original Plan.

The court notes Debtor has not filed Supplemental Schedules indicating their current income and expenses. The court only has Debtor's original schedules filed on the petition date, which date back to 2020.. Schedules I & J, Dckt. 1. The original Schedules indicate Debtor's net income is \$3,193.12. *Id.* If Debtor's income remains unchanged, Debtor has sufficient income to fund the Plan. Additionally, Debtor is proposing a 100% plan, therefore, creditors do not appear prejudiced. Plan, Dckt. 79.

At the hearing, counsel for the Trustee reported that the Debtor a payment is being processed on July 17, 2023. The Trustee requested a short continuance of this hearing.

August 8, 2023

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

IT IS ORDERED that the Motion to Dismiss is **XXXXXXXXXX**

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 Not Provided. No Notice or Proof of Service has been filed.

Debtor filed a Motion to Confirm Debtor's First Amended Chapter 13 Plan, along with a Notice of Hearing, Declaration, exhibits, and the Amended Plan, on July 5, 2023. Dckt. 25-29. The filing did not include any proof of service. Pursuant to Local Bankruptcy Rule 9014-1(e), a certificate of service must be filed concurrently with the pleadings or not more than three (3) days after they are filed.

Not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion and for sanctions. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

~~The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), 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)(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).~~

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Ernesto Reyes Placencio, Jr. ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 25, 2023. Dckt. 32. 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, Ernesto Reyes Placencio (“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 July 3, 2023, 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 Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 26, 2023. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXXXXX

Bank of America, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Proposed plan does not accurately list arrearages
- B. Plan is not feasible

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$60,393.91 in pre-petition arrearages. Proof of Claim 1-1. The Plan lists \$52,000.00 as the Amount of Arrears. Plan, Dckt. 3. 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). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Insufficient Plan Payments

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The proposed plan accounts for \$52,000.00 of the \$60,393.91 arrearages owed to Creditor. Debtor needs to increase payments to provide the additional \$8,393.91 to Creditor. The plan provides for monthly payments of \$2,300.00, which is equivalent to Debtor's net income. Schedule J, Dckt. 1. Debtor has insufficient funds to increase plan payments to account for the full arrearage in plan payments. Thus, the Plan may not be confirmed.

At the hearing, the parties reported that the Debtor has amendments to the proposed plan, which they believe will resolve the Objection, as well as the concerns of the Trustee. The court continues the hearing so counsel for the Debtor can confirm the sufficiency of the amendments and file a supplemental pleading stating such amendments.

August 8, 2023 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 Bank of America, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

26 thru 27

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

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

Sufficient Notice Not Provided. No Notice or Proof of Service has been filed.

Debtor filed a “Notice of Motion to Confirm Plan” on July 10, 2023. Dckt. 36. The filing did not include a proof of service. Pursuant to Local Bankruptcy Rule 9014-1(d) and (e), notice and a certificate of service must be filed with any matter for which a hearing is necessary.

Additionally, Debtor has not specified clearly whether the “Notice of Motion to Confirm Plan” is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Debtor has used “Official Form 420A (Notice of Motion or Objection)” from the [uscourts.gov](https://www.uscourts.gov) website; however, Debtor has failed to adapt that form to conform to this court's local rules. The instructions for use of that form even indicate that “[a]lterations may be made to this form in accordance with applicable local court rules.” U.S. Courts, *Instructions, Form 420A* (Dec. 1, 2017), <https://www.uscourts.gov/file/22700/download>.

Not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion and for sanctions. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1), 9014-1(l).

~~The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), 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)(9); LOCAL BANKR. R. 3015-1(d)(1).~~

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Aaron Steven Joseph Mcconville (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of \$300.00 for thirty-six (36) months. Amended Plan, Dckt. 36. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

PROCEDURAL DEFECTS

In addition to the service deficiencies, the filing is procedurally defective in other ways. Movant is reminded that a motion must include the following five components, all filed as separate documents under one docket control number: (1) motion, (2) notice, (3) plan, (4) evidence in the form of a declaration or otherwise, (5) certificate of service. Failure to comply with the local rules is, in and of itself, cause to deny the motion. LOCAL BANKR. R. 3015-1(d)(1), 9014-1(c)(1).

Here, Debtor has not filed a Motion to Confirm. Additionally, Debtor has not provided evidence to support the Amended Plan. The filing consists of merely the “Notice of Motion to Confirm Plan” and the Amended Plan.

No Docket Control Number Provided

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

Pleadings Filed as One Document

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

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

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on July 24, 2023. Dckt. 44. Trustee shares the court’s concerns with the above procedural deficiencies, and opposes on additional grounds including:

- A. Debtor has failed to provide the total amount owed to unsecured claims and the estimated percent dividend paid to unsecured claims;

- B. Plan relies on a Motion to Value Collateral of Jefferson Capital;
- C. Debtor has received previous tax refunds for \$8,922.00 in 2021 and \$4,200 in 2022. Trustee believes the expense for taxes is overstated and Debtor should pay any amount over \$2,000 in annual tax refunds to the Plan.

DISCUSSION

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). Debtor has not provided the total amount owed to unsecured claims and the estimated percent dividend to these claims. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Jefferson Capital. Debtor has failed to file a Motion to Value the Secured Claim of Jefferson Capital, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Failure to Provide Disposable Income / Not Best Effort

The Chapter 13 Trustee alleges that Debtor's tax expenses are overstated, and Debtor should be paying into the Plan any refund over the annual \$2,000 in net tax refunds. Failure to provide the excess refunds demonstrates not best efforts under 11 U.S.C. § 1325(b)(1).

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, Aaron Steven Joseph Mcconville ("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.

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

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) filed an opposition on July 10, 2023. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is XXXXXXXXXXXX

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

1. The debtor, Aaron Steven Joseph Mcconville ("Debtor"), has engaged in unreasonable delay that is prejudicial to creditors because Debtor does not have a plan set for confirmation. Trustee states that although Debtor filed an amended plan on June 5, 2023, the amended plan was not served on creditors (or at least no proof of service was filed with the court) and Debtor has not filed a Motion to Confirm, Notice of Hearing, and Declaration as required by the Local Bankruptcy Rules.

DEBTOR'S RESPONSE

Debtor filed a Response on July 10, 2023. Dckt. 35. Debtor states that they have filed a new plan and are current in plan payments and able to make plan payments. Debtor requests that the court not dismiss the case. However, Debtor's Response is procedurally deficient because there is no Certificate of Service or declaration in support of the Motion to Confirm.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan on July 10, 2023. Dckt. 36. The court has reviewed the Motion to Confirm the Amended Plan. The basic terms of the Chapter 13 Plan attached to the Notice of Motion are (identified by paragraph number in the Plan):

- 2.01. Monthly Plan payment by Debtor of \$300.00
- 2.03 Duration of Plan is 36 months.
- 3.07 Class 1 Secured Claims, section is blank.
- 3.08. Class 2 Secured Claims, Creditor Jefferson Capital, \$300/month payment.
- 3.09. Class 3 Secured Claims, section is blank.
- 3.10. Class 4 Secured Claims, section is blank.
- 3.12. Class 5 Priority Unsecured Claims, section is blank.
- 3.13. Class 6 Unsecured Claims, section is blank.
- 3.14. Class 7 General Unsecured Claims, section is blank.
- 6.01. Vesting of Property of the Estate on Confirmation, section is blank.

Dckt. 36.

In reviewing the Proofs of Claim filed, sixteen (16) creditors have filed claims. All are filed as unsecured claims other than the claim of Jefferson Capital Systems, LLC for (\$16,448.14). POC 14-1.

On Amended Schedule I, Debtor's gross monthly wages/salary is \$6,300.00. After taxes and insurance, his take-home income is \$4,802. Dckt. 19. On Amended Schedule J, Debtor's monthly expenses for a family of one adult and two children are stated to be (\$3,715.00), which yields a projected disposable income of \$1,087 a month. Dckt. 20. Included in the monthly expenses are rent or mortgage payment. In reviewing the expenses, it appears that many are substantially understated (such as \$100 a month for food and housekeeping supplies).

No Motion to Confirm Filed

The Pro Se Debtor has filed a Notice of Motion to Confirm form with the proposed plan attached. Dckt. 36. However, no Motion to Confirm has been filed.

No Certificate of Service Filed with Motion to Amend

Debtor did not file a Certificate of Service. A Certificate of Service is required by Local Rule 7005-1. Without proof of service, it is unclear to the court whether the Amended Plan was, in fact, served on the required parties.

No Declaration Filed in Support of Motion to Amend

Debtor did not file a declaration in support of the Amended Plan and Motion to Confirm. Evidence is required to show the Amended Plan satisfies the requirements of 11 U.S.C. §§ 1325 and 1322. Debtor has not demonstrated how they will be able to make \$300 in monthly plan payments.

Without a declaration, there is no evidence that Debtor will be able to make the monthly plan payments. Debtor should have been aware of the requirement to file these documents because Trustee specifically pointed out this issue in this Motion, regarding the procedural defects with their prior Amended Plan.

Prior Cases Filed by Debtor

Debtor has filed several other recent cases, one each in 2017, 2019, and 2023. In each of these he has attempted to prosecute these Chapter 13 cases in *pro se*. Each was dismissed within six months of being filed.

At the hearing, the Trustee concurred with the continuance of this hearing to the date and time stated on the Notice of Hearing in light of the Debtor prosecuting this case in *pro se*.

August 8, 2023 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 to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXXXXX**

FINAL RULINGS

28. [22-21905-E-13](#)
[AVN-3](#)

SCOTT WILLIAMS / YANCEY
CUYUGAN
Anh Nguyen

CONTINUED MOTION TO CONFIRM
PLAN
6-13-23 [\[53\]](#)

Final Ruling: No appearance at the August 8, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 13, 2023. By the court's calculation, 42 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 granted and the Chapter 13 Plan is confirmed.

The debtor, Scott Brian Williams and Yancey Bataclan Cuyugan ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of \$372.00 for a period of four (4) months, followed by monthly Plan payments of \$979.00 for a period of six (6) months, followed by monthly Plan payments of \$1,248.00 for a period of fifty (50) months. Amended Plan, Dckt. 57. The Amended Plan also provides for payment in full of the IRS's priority claim in the amount of \$1,418.11. *Id.* The Amended Plan further provides for an approximately 43% dividend to unsecured creditors. *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 July 3, 2023. Dckt. 63. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is slightly delinquent (by \$127.00) in Plan payments.

DEBTOR'S REPLY

Debtor filed a reply to the Trustee's Opposition on July 6, 2023. Dckt. 66. Debtor states that they made a payment of \$127.00 through TFS, thereby curing the delinquency, and they are now current with their Plan payments. *Id.*

DISCUSSION

In light of the small amount in default and the stated cure in process, the court continued the hearing to 2:00 p.m. on August 8, 2023. This will allow the Trustee to confirm that the payment has been made and file a supplemental statement that the Trustee no longer opposes confirmation. The court can then prepare a final ruling in advance of the continued hearing, saving counsel for Debtor having to appear.

August 8, 2023 Hearing

On August 1, 2023, the Chapter 13 Trustee filed his Status Report (Dckt. 70), stating that the default has been cured and the Trustee does not oppose confirmation.

The proposed Second Amended Chapter 13 Plan complies with 11 U.S.C. § 1322, and § 1325; and the Motion is granted and the Plan is confirmed.

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

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

The Motion to Confirm the Second Amended Chapter 13 Plan filed by the debtors, Scott Brian Williams and Yancey Bataclan Cuyugan ("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 Second Amended Chapter 13 Plan filed on June 13, 2023, 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.

Final Ruling: No appearance at the August 8, 2023 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, Creditor, and Office of the United States Trustee on June 30, 2023. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Yolo Federal Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$14,550.00.

The Motion filed by Raul Contreras Cardenas (“Debtor”) to value the secured claim of Yolo Federal Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 23. Debtor is the owner of a 2017 Dodge Challenger (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$14,550.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee’s Nonopposition

Chapter 13 Trustee, David P. Cusick (“Trustee”), filed a nonopposition on July 14, 2023. Dckt. 28. Trustee requests the Motion is granted.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on March 11, 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,766.58. Proof of Claim, No. 5-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$14,550.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Raul Contreras Cardenas ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Yolo Federal Credit Union ("Creditor") secured by an asset described as 2017 Dodge Challenger ("Vehicle") is determined to be a secured claim in the amount of \$14,550.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$14,550.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

30. [23-21331](#)-E-13
[WW-1](#)

RAKESH/ASHIKA REDDY
Mark Wolff

MOTION TO CONFIRM PLAN
6-27-23 [\[40\]](#)

Final Ruling: No appearance at the July 25, 2023 hearing is required.

The Motion to Confirm the Amended Plan is dismissed without prejudice.

The debtor, Rakesh Reddy and Ashika Reddy ("Debtor"), seek confirmation of the Amended Plan in order to change and clarify the treatment of Class 2 claims of creditors Toyota Motor Credit and Bank of America, following an agreement made with these creditors. As such, the Amended Plan includes the same monthly payment plan, but provides for amended interest rates for each Class 2 claim. Amended Plan, Dckt. 42. 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 25, 2023. Dckt. 52. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor fails Liquidation Analysis due to alleged failure to report all their assets.
- B. Debtor's plan would take 76 months to complete.

DEBTOR'S REQUEST TO WITHDRAWAL

On August 1, 2023, Debtor filed a "Request to Withdraw Motion." Dckt. 55. Debtor did not provide the court with legal grounds to unilaterally "drop" a motion.

A search of the Bankruptcy Code, Federal Rules of Civil Procedure, and Federal Rules of Bankruptcy Procedure will show that there is not a basis for merely "withdrawing" from the court a matter.

The court construes the Request to be an Ex Parte Motion to Dismiss the pending Motion; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Trustee; the Ex Parte Motion is granted, Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Rakesh Reddy and Ashika Reddy ("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 dismissed without prejudice.

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 8, 2023 hearing is required.

The Motion to Confirm Amended Plan is dismissed without prejudice.

Eric Eugene Hutton and Stephanie Michelle Hutton (“Debtor”) having filed a Notice of Withdrawal”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion to Confirm Amended Plan on July 18, 2023, Dckt. 58; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Carmax Business Services, LLC (“Creditor”) and David Cusick (“the Chapter 13 Trustee ”); the Ex Parte Motion is granted, Debtor’s Motion to Confirm is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Confirm Amended Plan filed by Eric Eugene Hutton and Stephanie Michelle Hutton (“Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 58, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the August 8, 2023 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 23, 2023. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Joe Manuel Garcia (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on July 24, 2023. Dckt. 22. The 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 Chapter 13 Plan filed by the debtor, Joe Manuel Garcia (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on June 16, 2023, 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.