

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

August 12, 2025 at 2:00 p.m.

1. [17-25403](#)-E-13

BYLLIE DEE
Bert Carter

MOTION FOR SANCTIONS FOR
VIOLATION OF THE AUTOMATIC STAY
6-2-25 [[238](#)]

DEBTOR DISMISSED: 03/26/18

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 the attorney for Creditor, Edward singer Jr., on June 6, 2025. By the court's calculation, 67 days' notice was provided. 28 days' notice is required. Service on the entity itself, and not merely counsel for Arvus Equity, LLC, is required. At the hearing, **XXXXXXX**

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

The Motion for Sanctions for Violation of the Automatic Stay is denied.

Debtor Byllie Dee ("Debtor") moves the court for sanctions against Creditor and Landlord Arvus Equity, LLC for alleged violations of the automatic stay. This case was filed under Chapter 13 on August 15, 2017, and then dismissed without discharge on March 26, 2018. Debtor alleges the following violations fo the automatic stay occurred:

1. Changed locks to the Debtor's residence on multiple occasions including but limited to December 27, 2017, and December 28, 2017.

2. Filed unlawful detainer case number 21 CV00 1386 in Superior Court of Alameda County, Hayward Hall of Justice, in November 2021.
3. Continued collection attempts by filing various court actions in unlawful detainer case number 21CV0013865 in violation of the automatic stay.
4. Initiated multiple attempts through various representatives discouraging subtenants from honoring lease agreements.
5. Changed the Debtor's property physical description and legal mailing address without giving proper notification as required by law.
6. Made changes within the Google maps platform without obtaining debtor's consent that incorrectly displayed debtors physical address location, misdirecting potential customers depriving revenue source.
7. These actions interfered with the Debtor's right to possession and quiet enjoyment of their residence and business.

Mot. 2:5-19.

LANDLORD'S OPPOSITION

Landlord filed the Declaration of its attorney, Edward C. Singer, in Opposition. Docket 266. Mr. Singer testifies that on February 2, 2021, Landlord purchased the real property located at 5600 International Blvd., Oakland, California ("the Property"). Decl. ¶ 5, Docket 266.

Landlord states that it took no action to assert its rights in the Property until on or after February 2, 2021, the date it purchased the Property. *Id.* at ¶ 6.

DISCUSSION

When the case was dismissed on March 26, 2018, the automatic stay ceased to be in effect as to Debtor. *See* 11 U.S.C. § 349. When property is revested to an individual upon dismissal, 11 U.S.C. § 362(c) specifies the automatic stay no longer protects that property. Therefore, any alleged violation of the stay must have occurred while the case was pending and ongoing between August 15, 2017 and March 26, 2018.

Debtor has only alleged one potentially wrongful act that occurred during that time period. Specifically, Debtor asserts that the Landlord of the Property changed locks to the Debtor's residence on multiple occasions including but not limited to on December 27, 2017, and December 28, 2017.

Looking at the court's Docket, the Motion is filed at Docket 238. The grounds stated with particularity in the Motion (as required by Federal Rule of Bankruptcy Procedure 9013) are (the court has interlined specific comments identified as "*Court Note: xxxxxxxx*" for ease of reading):

4. The case was subsequently dismissed without discharge on 03/26/2018 and recently reopened on 04/01/2025 to allow for the filing of this Motion. Despite the stay, Arvus Equity, LLC willfully took the following action:

- Changed locks to the Debtor's residence on multiple occasions including but limited to December 27, 2017, and December 28, 2017.

- Filed unlawful detainer case number 21 CV00 1386 in Superior Court of Alameda County, Hayward Hall of Justice, in November 2021.

Court's Note: The Bankruptcy Case was dismissed on March 26, 2018, and the automatic stay terminated by operation of law (11 U.S.C. § 362(c)(2)(B)), which is well before the November 2021, unlawful detainer action.

- Continued collection attempts by filing various court actions in unlawful detainer case number 21CV0013865 in violation of the automatic stay.

Court's Note: Again, the cited action is the 2021 State Court Action, which is several years after the Bankruptcy Case was dismissed and the automatic stay terminated by operation of law.

- Initiated multiple attempts through various representatives discouraging subtenants from honoring lease agreements.

Court's Note: The Debtor provides no grounds as to when and with whom this alleged conduct occurred.

- Changed the Debtor's property physical description and legal mailing address without giving proper notification as required by law.

Court's Note: The Debtor provides no grounds as to when and with whom this alleged conduct occurred.

- Made changes within the Google maps platform without obtaining debtor's consent that incorrectly displayed debtors physical address location, misdirecting potential customers depriving revenue source.

Court's Note: The Debtor provides no grounds as to when this alleged conduct occurred.

- These actions interfered with the Debtor's right to possession and quiet enjoyment of their residence and business.

Court's Note: The Debtor provides no grounds as to when and with whom this alleged conduct occurred.

Motion, ¶ 4; Dckt. 238.

Looking through the file, the court cannot identify any declarations or exhibits filed in support of the Motion.

Based on the grounds stated in the Motion, it appears that Debtor may be arguing about an event that occurred between December 27th and December 28th as the “ink was drying” on the Debtor’s bankruptcy Petition. The time of 3:21 p.m. is written on the Petition that was filed on August 15, 2017. Dckt. 1 at 1.

Landord Opposition Pleadings

However, Landlord has provided evidence it did not own the Property until it purchased it on February 2, 2021. Landlord provides further evidence it did not exercise any rights in the Property until that date. Therefore, it could not be Landlord who violated the stay, if such a violation indeed occurred.

Edward Singer, Jr., Esq., counsel for Landlord testifies that the Landlord purchased the Property on February 2, 2021. Dec., ¶ 4; Dckt. 251. Exhibit 1 (Dckt. 251) is authenticated by Mr. Singer as being a copy of the Deed by which Landlord acquired title to the Property. Further he testifies that the unlawful detainer proceedings were commenced on November 2, 2021 and proceeded thereafter.

Mr. Singer further testifies that the Debtor commenced a Chapter 13 Bankruptcy Case in the Northern District of California on December 29, 2023. Dec., ¶ 9; Dckt. 251. He testifies that the Northern District Bankruptcy Case was dismissed on February 8, 2024. *Id.*

Ruling

While stating that he asserts there was a violation of the automatic stay, Debtor provides no evidence in support thereof. Taken in the best light, the grounds stated in the Motion would be that in the 24 hours following the filing of the Bankruptcy Case in this Court, which was four and one-half years before Landlord obtained title to the Property, an act may have been taken.

The court notes that Debtor commenced an Adversary Proceeding in this court, 21-02070, in which he, with the assistance of counsel, alleged that it was creditor BDM Mortgage Services (“BDM”) that violated the automatic stay, which alleged acts included:

1. On November 22, 2017, BDM conducted a foreclosure sale on the Property. 21-02070; Amended Complaint, ¶ 18, Dckt 68.
2. Leiber & Galperinm, as legal counsel for BDM, caused the locks to be changed on December 17, 2017. *Id.*; ¶ 25.
3. Leiber & Galperinm, as legal counsel for BDM, caused the locks to be changed on December 27, 2017, for a second time. *Id.*; ¶ 26.
4. Leiber & Galperinm, as legal counsel for BDM, caused the locks to be changed on December 30, 2017, for a third time. *Id.*; ¶ 27.
5. On January 10, 2018 Leiber & Galperinm served a “Three-Day Notice to Quit” the subject property. *Id.*; Second ¶ 31

In the Amended Complaint, it is not the Landlord who is identified as the violator.

In the Adversary Proceeding Judgment was entered for the Defendants and against Debtor on all claims alleging that the automatic stay was violated. 21-02070; Judgment, Dckt. 104.

In asserting that events occurring in 2021 are in violation of the automatic stay, Debtor is admitting that they cannot be in violation of the automatic stay that terminated on March 26 2018.

At the hearing,

The court having considered the grounds stated in the Motion for Sanctions, the evidence presented, the files in this Bankruptcy Case, and application of the law, the Motion for Sanctions is denied.

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

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

The Motion for Sanctions for Violation of the Automatic Stay filed by Debtor Byllie Dee (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied and no sanctions are ordered.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on July 1, 2025. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Selena Lynn Contreras ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 41; Ex., Docket 42. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a limited Opposition on July 1, 2025, noting Debtor was delinquent under the terms of the Modified Plan in the amount of \$1,327.00. Opp'n, 1:22-23. Debtor filed a Declaration and supporting Exhibits on August 5, 2025, showing that the delinquency has been cured, and the Modified Plan may be confirmed.

In confirming if the delinquency has been cured, at the hearing, **XXXXXXX**

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

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on July 1, 2025, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

3. [24-25011-E-13](#)
[THN-3](#)

DENNIS MCCAFFERTY
Teresa Hung-Nguyen

MOTION TO MODIFY PLAN
6-9-25 [65]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors and parties in interest, attorneys of record, and Office of the United States Trustee on June 9, 2025. By the court’s calculation, 64 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 debtor, Dennis Michael McCafferty (“Debtor”) seeks confirmation of the Modified Plan because Debtor now wishes to retain his residence, whereas the terms of the prior Plan required Debtor to complete the case by selling his residence. Declaration ¶ 4, Docket 67. The Modified Plan provides for monthly payments of \$250 for the first three months, then payments of \$3,300 for the next five months, and

then payments of \$3,025 for the next 53 months. Modified Plan, Docket 68. 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 29, 2025. Docket 78. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent \$3,025.00 under the terms of the proposed modified plan. Opp’n 1:27-28.
 - a. Debtor filed a Reply to the Opposition on August 1, 2025. Docket 82. Debtor asserts the delinquency has now been cured and Debtor apologizes for the late payment. Reply 2:10-12.
2. No supplemental Schedules I and J have been filed to support this motion so the Court may find the Debtor has not proven he can afford the payments. Opp’n at 2:7-9.
 - a. Debtor replies and states on August 2, 2025, Supplemental Schedules I and J were filed and show Debtor can make plan payments. Reply 2:19-21.
3. The proposed modified plan moves the claim of Wells Fargo Bank from Class 1 to Class 4 but there is no information as to why the Debtor is trying to reclassify this claim. The Creditor filed a Proof of Claim #1 asserting that there are pre-petition arrears owing on the claim, so Class 1 appears to be the proper classification for the claim. Opp’n 3:3-8.
 - a. Debtor replies and states he has communicated with Wells Fargo and the parties believe, as the pre-petition arrearage amount is the same amount as one monthly payments, the issue may have been from a timing of accounting for the payment coinciding with the filing date. Reply at 3:3-10.

CREDITOR’S OPPOSITION

Wells Fargo Bank, N.A. (“Creditor”) holding a secured claim filed an Opposition on July 29, 2025. Docket 75. Creditor opposes confirmation on the basis that its pre-petition arrearage has not been cured. However, Debtor states Creditor and Debtor have resolved this issue and agree that Creditor is properly placed in Class 4.

At the hearing, **XXXXXXX**

DISCUSSION

It appears the Parties have diligently worked together and created a confirmable Plan. At the hearing, **XXXXXXX**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Dennis Michael McCafferty (“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 9, 2025, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

4. 25-20612-E-13 SMJ-3	DAVID/JENNIFER OROZCO Scott Johnson	CONTINUED MOTION TO CONFIRM PLAN 6-2-25 [44]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on June 2, 2025. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is XXXXXXX.

August 12, 2025 Hearing

The court continued the hearing on this Motion to allow Debtor to become current in plan payments and provide documentation of the secured claim of Raymond Kong. Trustee filed a Status Report on August 5, 2024. Docket 76. Trustee states:

1. Debtor remains \$1,660.00 delinquent but an electronic payment of \$2,500.00 is pending since August 3, 2025. Status Report, 1:21-22.
2. Trustee has yet to receive any documentation as to Raymond King's secured claim.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

The debtor, David Orozco and Jennifer Solange Orozco ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid a total of \$19,240.00 through May 2025. Starting June 2025, Debtor shall pay \$7,200.00 per month for the remainder of the plan. Amended Plan, Docket 46. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The court would note that creditor Navy Federal Credit Union ("Creditor") is being provided for in Class 4 with ongoing payments of \$2,709. However, Debtor has moved the court for a loan modification lowering this payment to \$1,846.56 per month, which does not reconcile with the Plan.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 13, 2025. Docket 57. Trustee opposes confirmation of the Plan on the basis that:

- A. There are issues with the Schedules. Debtor does not provide for paying Class 4 claims in the Schedules. Moreover, Debtor's historic income has decreased by more than 50% from 2022 to 2023, so the Trustee cannot determine without more current information whether Debtor can afford the payments or whether they may be able to afford significantly higher payments. Obj. 1:22-2:7.
- B. There may be a liquidation problem. The Trustee estimates unsecured claims will receive \$42,918.80, over 12% dividend distribution. Based on Debtor's values the Trustee estimates non-exempt equity at \$45,000.00 based on the scheduled value of \$45,000.00 for the business "One Speed Ventures LLC." Debtor also omitted from their Schedules a business owned in Columbia as an Airbnb. *Id.* at 2:8-23.

DISCUSSION

As an initial matter, Debtor filed Amended Schedules A/B and I and J on July 1, 2025, which may help illuminate some of these issues. The Airbnb was disclosed in the Am. Schedule A/B. Am. Schedule A/B at 5, Docket 67. There is also an attachment to Schedule I detailing business income and expenses. *Id.* at 10.

However, it still appears Class 4 creditors are not included in the Schedule J. For example, debtor does not include an expense for a mortgage payment to Creditor. *Id.* at 11. Class 4 claims are paid by the Debtor, not Trustee. The Class 4 claims must be provided for in the Schedules.

At the hearing, counsel for the Trustee reports that Amended Schedules I and J appear to resolve the expense payment questions.

The Trustee reports that the Debtor is delinquent \$830.00 (approximately 10%) of the Amended Plan payment. The Parties requested the hearing be continued to allow the Debtor to address these questions.

The hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on July 29, 2025.

July 29, 2025 Hearing

Debtor resolved many of Trustee's points of opposition at the prior hearing. However, Debtor was \$830.00 (approximately 10% of a plan payment) delinquent, and so the Parties requested a continuance.

On July 25, 2025, the Chapter 13 Trustee filed an updated Status Report. Dckt. 73. The Trustee reports that while significant progress has been made toward confirmation, several issues remain:

- A. The Debtor is delinquent in plan payment in the amount of \$1,660.00.
- B. The Debtor has not provided documentation that Raymond Kong has a secured claim which is to be paid through the Plan.

The Trustee requests that the hearing be further continued to allow such documentation to be produced and reviewed by the Trustee, as well as the default cured.

The hearing is continued to 2:00 p.m. on August 12, 2025.

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

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

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

IT IS ORDERED that the Motion to Confirm the Amended Plan is
XXXXXXX.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 22, 2025. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Erika Danae Bouie ("Debtor") failed to submit proof of her government issued photo identification prior to the 341 Meeting. Obj. 1:25-2:3.
2. The plan is overextended to 71 months and is not funded to pay all of the claims within the 60 months proposed as the Plan does not properly provide for the IRS' priority claim \$9,556. *Id.* at 2:4-8.

Trustee submits the Declaration of Angelina Fernandez to authenticate the facts alleged in the Objection. Decl., Docket 40.

DISCUSSION

Failure to Authenticate Identification Prior to Meeting of Creditors

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court she did not provide the required identification. That is cause to sustain the objection.

Overextended Plan

The plan is overextended to 71 months and is not funded to pay all of the claims within the 60 months proposed as the Plan does not properly provide for the IRS' priority claim \$9,556. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

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

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

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

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

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

Item 6 thru 7

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on May 22, 2025. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

August 12, 2025 Hearing

The court continued the hearing on this Objection to again allow time for Debtor to have the opportunity to find counsel. A review of the Docket on August 7, 2025 reveals Debtor is yet to obtain competent counsel.

At the hearing, XXXXXXX

REVIEW OF OBJECTION

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

1. Debtor Matthew Brian Del Real's ("Debtor") schedules contain missing or inaccurate information.

2. The Plan fails to state any specific amount of plan payments. *Id.* at 2:20-24.
3. Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. §1325(a)(4.) The Debtor's non-exempt equity totals \$674,548.00 and the Debtor is proposing a 0% dividend to unsecured creditors. *Id.* at 2:25-28.
4. Debtor has not provided 11 U.S.C. § 521 documents, including tax returns and pay advices. *Id.* at 3:4-14.
5. Debtor failed to submit proof of his social security number, and a copy of a government issued picture identification to the Trustee before the First Meeting of Creditors held on May 15, 2025, as required pursuant to FRBP 4002(b)(1)(A) and (B). *Id.* at 3:15-21.
6. Debtor failed to provide business documents in response to Schedule I. *Id.* at 3:22-4:2.

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

DISCUSSION

Inaccurate or Missing Information

Debtor's Schedules A/B, I and J, Statement of financial Affairs, and Forms 122C-1 and 122C-2 contain outdated or inaccurate information. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Liquidation Analysis

Trustee argues that Debtor fails a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." Here, General unsecured creditors will receive a 0% distribution, but Trustee estimates Debtor has \$674,548.00 in non-exempt equity in assets of the estate.

Failure to Provide Pay Stubs / Pay Advices

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

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED.

R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Authenticate Identification Prior to Meeting of Creditors

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause to sustain the objection.

Failure to File Business Documents Required by Schedule I

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

The Debtor, in *pro se*, appeared at the hearing and explained how he was addressing the Trustee’s issues. The Trustee concurred that some of the issues have been addressed and that Debtor was working on other issues.

The Parties concurred with a continuance of the hearing. The Court also addressed with the Debtor that given the significant assets and income in this Case, the Debtor should be able to afford counsel, with a substantial amount of the fees paid through the Chapter 13 Plan.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 on July 29, 2025.

July 29, 2025 Hearing

The court continued the hearing on this Objection given Debtor was proceeding in *pro se* and looking for counsel. On July 16, 2025, Debtor filed a Motion to Continue this hearing the related hearings. Docket 37. Debtor acknowledges in that Motion mistakes he had made in preparing the schedules and the need to obtain counsel.

To provide Debtor with more time to find competent counsel and correct the filing errors, the court continues the hearing on this Objection to 2:00 p.m. on August 12, 2025.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on June 25, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is xxxxxxx.

August 12, 2025 Hearing

The court continued the hearing on this Objection to again allow time for Debtor to find counsel. A review of the Docket on August 7, 2025 reveals Debtor is yet to obtain competent counsel.

At the hearing, xxxxxxx

REVIEW OF MOTION

David Cusick ("the Chapter 13 Trustee") objects to Matthew Brian Del Real's ("Debtor") claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts, and because Debtor did not use the California exemption scheme.

On July 16, 2025, Debtor filed a Motion to Continue this hearing the related hearings. Docket 37. Debtor acknowledges in that Motion mistakes he had made in preparing the schedules and the need to obtain counsel. To provide Debtor with more time to find competent counsel and correct the filing errors, the court continues the hearing on this Objection to 2:00 p.m. on August 12, 2025.

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

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

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

IT IS ORDERED that the Objection to Claimed Exemptions is **XXXXXXX**.

8.	<u>24-24644-E-13</u> <u>DPC-1</u>	ROXANNE LEE Mikalah Liviakis	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 7-2-25 [24]
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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 on July 2, 2025. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Claimed Exemptions is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”) objects to Roxanne K Lee’s (“Debtor”) claimed exemptions under California law. Trustee objects to Debtor claiming as exempt a “lawsuit against the State Controller’s Office for wrongful termination” in the amount of \$150,000 pursuant to Cal. Code Civ. P. § 703.140(b)(11)(B). Trustee argues Debtor has not proven she is eligible to claim the exemption.

Trustee further objects to Debtor claiming exempt \$38,700.00 in the following assets:

1. Cash \$ 100.00

2. Bank Accounts USAA \$ 360.00
3. Lawsuit against State Controller's Office \$38,240.00

pursuant to Cal. Code Civ. P. § 703.140(b)(5). Trustee argues it appears Debtor is only allowed to exempt \$33,500.00 and has over-exempted assets by \$5,200.00 under C.C.P. 703.140(b)(5). Obj. 2:12-20.

JOINT STATUS REPORT SETTLING OBJECTION

On August 6, 2025, Debtor and Trustee filed a Joint Status Report. Docket 38. The Parties state:

1. Debtor shall be permitted an exemption under Cal. Code Civ. P. § 703.140(b)(5) in the amount of \$33,040.
2. In addition, Debtor shall be permitted an exemption under Cal. Code Civ. P. § 703.140(b)(11)(B) in the amount of \$50,000, plus any amount above \$50,000 shall be exempt with 65% of the funds exceeding \$50,000 being retained by Debtor and 35% be paid into the Plan.
3. Debtor shall seek employing professional working on claims for Debtor no later than September 1, 2025.

Status Report 1:25-2:4.

Therefore, this Objection is sustained and the exemptions claimed on the Amended Schedule C are disallowed and are replaced by the exemptions as listed in the Joint status 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 Objection to Claimed Exemptions filed by The Chapter 13 Trustee, Name of Trustee ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and the exemptions claimed on the Amended Schedule C are disallowed and are replaced by the exemptions as listed in the Joint status Report. The following exemptions are allowed as listed in the Joint Status Report:

1. Debtor shall be permitted an exemption under Cal. Code Civ. P. § 703.140(b)(5) in the amount of \$33,040.
2. In addition, Debtor shall be permitted an exemption under Cal. Code Civ. P. § 703.140(b)(11)(B) in the amount of \$50,000. Additionally, any amount above \$50,000 shall be exempt with 65% of the funds

exceeding \$50,000 being retained by Debtor and 35% of the funds exceeding \$50,000 being paid into the Plan.

9. [25-22345-E-13](#)
[PGM-1](#)

ELMER CRESPIN ZAMORA
Peter Macaluso

MOTION TO VALUE COLLATERAL OF
CORNERSTONE FINANCIAL SERVICES
7-9-25 [16]

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

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 Creditor and other parties in interest on July 9, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of David Robert Stone d/b/a Cornerstone Financial Services ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$20,000.

The Motion filed by Elmer N. Crespin Zamora ("Debtor") to value the secured claim of David Robert Stone d/b/a Cornerstone Financial Services ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 19. Debtor is the owner of a 2016 Freightliner Cascadia ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$20,000 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).

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 25, 2025. Docket 22.

Creditor, being in its own Chapter 7 bankruptcy case, filed a Conditional Non-Opposition on July 29, 2025. Docket 24. The Chapter 7 Trustee in Creditor's case, Larry Simons, filed the Pleadings. Mr. Simons asserts that he does not oppose relief, agreeing that the value is \$20,000, but requests the court enter

in the order granting this Motion approval of the Stipulation attached to the Conditional Non-Opposition. Stip., Ex. 3, Docket 25.

The Stipulation provides the following:

1. The fair market value of the Vehicle is \$20,000.
2. The Stone Estate (Creditor) shall continue to have a secured lien secured by the Vehicle in the amount of \$20,000.
3. The Stone Estate shall have a general unsecured claim for \$48,328.
4. Debtor shall continue to make timely payments to the Stone Estate on account of its secured lien, based on the terms set forth in the Equipment Financing Agreement.
5. If the Debtor fails to make timely payments, then the Stone Trustee (Mr. Simons) may seek to enforce its rights and remedies pursuant to the secured lien, without obtaining further approval for the court.

Stip. 3:14-4:4, Docket 25.

The court declines to grant all the relief in the Stipulation for two reasons. First, the Stipulation asks the court to value Creditor's unsecured claim. There has been no evidence presented to the court to support the court determining the amount of the portion of the unsecured claim. 11 U.S.C. § 506(a) provides the court may value the secured claim and only mentions the balance shall be a general unsecured claim.

Second, the Stipulation asks the court modify the stay so that in the event of default Creditor can exercise its rights without a noticed hearing. Fed. R. Bankr. P. 4001 governs motions for relief from stay and states:

(a) Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property.

(1) Motion . A motion under §362(d) for relief from the automatic stay—or a motion under §363(e) to prohibit or condition the use, sale, or lease of property—must comply with Rule 9014. The motion must be served on:

(A) the following, as applicable:

- a committee elected under §705 or appointed under §1102;
- the committee's authorized agent; or
- the creditors included on the list filed under Rule 1007(d) if the case is a Chapter 9 or Chapter 11 case and

no committee of unsecured creditors has been appointed under §1102; and

(B) any other entity the court designates.

(2) Relief Without Notice . Relief from a stay under §362(a)—or a request under §363(e) to prohibit or condition the use, sale, or lease of property—may be granted without prior notice only if:

(A) specific facts—shown by either an affidavit or a verified motion—clearly demonstrate that the movant will suffer immediate and irreparable injury, loss, or damage before the adverse party or its attorney can be heard in opposition; and

(B) the movant's attorney certifies to the court in writing what efforts, if any, have been made to give notice and why it should not be required.

(3) Notice of Relief; Motion for Reinstatement or Reconsideration.

(A) Notice of Relief . A party who obtains relief under (2) and under §362(f) or §363(e) must:

(i) immediately give oral notice both to the debtor and to the trustee or the debtor in possession; and

(ii) promptly send them a copy of the order granting relief.

There are circumstances that allow the court to grant relief from the stay without notice, none of which have been presented to the court here. Therefore, the court declines to modify the automatic stay as requested. The Stipulation is not approved.

The lien on the Vehicle's title secures a purchase-money loan incurred on November 19, 2020, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$68,328.00. POC 13-1. 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 \$20,000, 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 Elmer N. Crespin Zamora ("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 David Robert Stone d/b/a Cornerstone Financial Services (“Creditor”) secured by an asset described as 2016 Freightliner Cascadia (“Vehicle”) is determined to be a secured claim in the amount of \$20,000, 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 \$20,000 and is encumbered by a lien securing a claim that exceeds the value of the asset.

10. [25-21560-E-13](#)
[PGM-1](#)

HARRY CHAFFEE
Peter Macaluso

MOTION TO CONFIRM PLAN
7-2-25 [63]

Item 10 thru 12

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on July 2, 2025. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtor, Harry Michael Chaffee (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid of total of \$450.44 through June 2025, and plan payments of \$4,660.00 per month will commence July 25, 2025 for 58 months. Amended Plan, Docket 67. 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 29, 2025. Docket 85. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$3,759.12 delinquent in Plan payments to the Trustee. The next scheduled payment of \$4,660.00 is due on August 25, 2025, and according to TFS, Debtor has scheduled his next payment for August 20, 2025, in the amount of \$450.44. *Id.* at 1:26-2:7.
 - a. Debtor filed a Reply on August 5, 2025. Docket 90. Debtor states he will become current on or by the hearing date on this Motion. *Id.* at 1:20-21.

CREDITOR’S OPPOSITION

Kamaljit S. Takhar (“Creditor”) holding a secured claim filed an Opposition on July 24, 2025. Docket 80. Creditor opposes confirmation of the Plan on the basis that:

1. In Debtor’s 2024 Bankruptcy, on 10/30/2024, the I.R.S. filed its Proof of Claim in the total amount of \$161,329.62 (Claim 8-1). Under ¶ 9, the amount of \$91,397.20 was identified as a secured claim. *Id.* at 1:26-28.
2. Thereafter, on 03/18/2025, the I.R.S. filed a new Proof of Claim in the same amount of \$161,329.62 (Claim 8). The difference is in the amount claimed as secured: \$44,245.00; the balance of \$117,084.12 is unsecured. *Id.* at 2:1-3.
3. Debtor fails to provide for the I.R.S. secured claim of \$44,245.00 and any additional priority unsecured amounts. *Id.* at 2:4-8.
4. The interest rates for the mortgagees are incorrect. As to Creditor, the contractual rate should be 15%. As to Karen J. Nolan, the contractual rate is 4%. Debtor has provided for both claims at 6%. Debtor similarly fails to account for interest on the IRS claim from the previous case. Therefore, the Plan is underfunded. *Id.* at 2:16-3:22.
 - a. In Debtor’s Reply, Debtor states the IRS’ claim in the 2024 case, case no. 24-24159, are estimated, and the IRS has not filed a Proof of Claim in this case. The deadline is September 29, 2025. Reply 1:22-2:2.

DISCUSSION

Debtor is \$3,759.12 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

In confirming if the delinquency has been cured, at the hearing, **XXXXXXX**

The other outstanding objections made by Creditor, specifically that the Plan is underfunded because it does not provide for the proper interest rate on mortgagees' claims, are not persuasive. This objection implicates the provisions of 11 U.S.C. §§ 1325(a), 1322(b)(2), and 1322(c)(2). As this court has previously stated:

Beginning with the prohibition on modifying some secured claims in Chapter 13 plans, the Bankruptcy Code provides in 11 U.S.C. § 1322(b)(2) (emphasis added):

(b) Subject to subsections (a) and (c) of this section, the plan may

—

...

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

As the Ninth Circuit Court of Appeals addressed in *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); if there is no value in the collateral for the holder of the secured claim, then it may be valued at \$0, there being no “secured claim” to be protected by the above. However, if there is any value, then the entire secured claim is protected from valuation under 11 U.S.C. § 506(a).

Debtor asserts that the above restriction on modifying claims secured by the debtor's residence is itself limited by 11 U.S.C. § 1322(c)(2), which provides (emphasis added):

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) ...; and

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

Going to 11 U.S.C. § 1325(a)(5), it states in the provisions applicable to the treatment of Creditor's claim (emphasis added):

(5) with respect to each allowed secured claim provided for by the plan—

(B)

(i) the plan provides that—

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

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

(bb) discharge under section 1328; and

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

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

(iii) if—

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

Looking at the “plain language” of 11 U.S.C. § 1325(a)(5), as made applicable by 11 U.S.C. § 1322(c)(2), it allows for the debtor to provide for the claim of a creditor secured only by the debtor's primary residence by paying that creditor the value of the secured claim, as determined pursuant to 11 U.S.C. § 506(a), and not any amount in excess of the 11 U.S.C. § 506(a) as part of the allowed secured claim.

In re Collier-Abbott, 616 B.R. 117, 120-21 (Bankr. E.D. Cal. 2020).

In this case, Creditor's claim is secured by Debtor's principal residence. However, the Claim is fully matured. The language of 11 U.S.C. § 1322(c)(2) then kicks in and permits modifying Creditor's secured claim.

When a secured claim may be modified under 11 U.S.C. § 506(a), the Supreme Court held in a plurality in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) that the claim's interest rate may be modified under the “formula approach” for fixing post-petition interest rates. 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)).

Therefore, the issue is not whether Debtor need to provide for the contractual rate of interest, but whether Debtor is providing for the proper rate of interest for a modified secured claim under the formula approach. The burden is on Creditor to show why the interest rate should be higher. *Till*, 541 U.S. at 464-65 (“Thus, the formula approach, which begins with a concededly low estimate of the appropriate interest rate

and requires the creditor to present evidence supporting a higher rate, places the evidentiary burden on the more knowledgeable party, thereby facilitating more accurate calculation of the appropriate interest rate.”).

At the hearing, **XXXXXXX**

~~The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, 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, Harry Michael Chaffee (“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**.

PROTECTION

5-20-25 [\[24\]](#)

KAMALJIT S. TAKHAR VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and all creditors and parties in interest on May 20, 2025. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

No opposition was stated at the hearing.

The hearing on the Motion for Relief from the Automatic Stay is XXXXXXX.

August 12, 2025 Hearing

The court continued the hearing on this Motion to be heard in conjunction with Debtor's Motion to Confirm Amended Plan. On August 1, 2025, Trustee filed a Status Report. Docket 88. Trustee states:

1. Debtor has provided Trustee with necessary documents and has filed a Motion to Confirm Amended Plan, but the Debtor is delinquent \$3,759.12 where Debtor continues to make the original lower payment. Trustee recommends dismissal. *Id.* at 1:21-26.

It appears Debtor is delinquent in adequate protection payments, and if the case is not dismissed due to delinquency, relief from stay should be granted.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Kamalajit S. Takhar (“Movant”) seeks relief from the automatic stay with respect to Harry Michael Chaffee’s (“Debtor”) real property commonly known as 16028 and 16048 Bridge Street, Meridian, CA 95957 (“Property”). Movant has provided his own Declaration and the Declaration of his attorney, Terrance Kilpatrick, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decls., Dockets 26, 27.

Movant argues Debtor has not made two post-petition payments for the months of April and May of 2025. Mot. 6:26. Movant also provides evidence Debtor has failed to pay property taxes in the amount of \$5,634.83. Declaration 3:1-3, Docket 26.

Movant seeks further relief pursuant to 11 U.S.C. § 362(d)(4), arguing this case is part of a scheme to hinder or delay collection by Debtor filing multiple cases. Mot. 8:16-21.

Movant requests adequate protection payments of \$1,973.86 if this Motion is not granted. *Id.* at 8:25-28.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$248,977.36 (Declaration ¶ 13, Docket 26), while the value of the Property is determined to be \$182,920.50, as stated in Schedules A/B and D filed by Debtor.

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

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

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

11 U.S.C. § 362(d)(4)

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* In this case, there is one other case filed that affects the Property:

- A. Case No. 24-24159
 - 1. Filed: September 18, 2024
 - 2. Chapter 13
 - 3. Dismissal Date: April 16, 2025
 - 4. Reason for Dismissal: Failure to timely file documents and a Chapter 13 plan.

What is striking here, however, is Debtor filed this present case on April 2, 2025, while the prior case was still ongoing. Debtor appears to have filed this present case in response to Judge Clement granting Movant's Motion for Relief From Stay in the prior case. *See* Case No. 24-24159, Order, Docket 52.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of multiple and concurrent filings made to frustrate Movant's collection efforts.

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, based on Debtor's unjustified delay and frustration efforts, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 9:2-12.

OPPOSITION STATED AT THE HEARING

The present Motion was set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(2). No written opposition is required, and may be presented orally at the hearing. Debtor has now obtained counsel, the basics of the opposition was stated, including that Debtor will promptly have on file a Chapter 13 Plan and motion to confirm.

The hearing on the Motion for Relief from the Automatic Stay continued to 1:30 p.m. on July 15, 2025. Opposition Pleadings shall be filed and served on or before June 25, 2025, and Reply Pleadings, if any, shall be filed and served on or before July 3, 2025.

July 15, 2025 Hearing

The court continued the hearing on the Motion as the Motion was set pursuant to Local Bankruptcy Rule 9014-1(f)(2) and a briefing schedule was set. Order, Docket 47. Debtor filed his Opposition on June 24, 2025. Docket 52. Debtor states:

1. Debtor filed in *pro per* and Counsel substituted into the case on June 9, 2025. Amended schedules and Plan have been/will be filed and set for hearing on August 12, 2025. *Id.* at 12:21-23.
 - a. The Amended Plan was filed on July 2, 2025, with a Motion to Confirm and supporting evidence.
2. Creditor has been properly provided for as a Class 2 claim to be paid in full under the proposed Plan. *Id.* at 1:24-25.
3. The value of the Property is \$180,000 and creditor is adequately protected. *Id.* at 1:26-2:1.

Movant's Reply

Movant filed their Reply Brief on July 2, 2025. Docket 69. Movant states:

1. Debtor has not met their burden of proof in showing cause does not exist for granting relief. *Id.* at 1:23-2:3.
2. There is no equity in the Property that adequately protects Movant. The total secured debts amount to \$243,342.53 while the Property is valued at \$180,000. *Id.* at 2:4-20.
3. Debtor's only chance in performing a Plan that could make adequate protection payments would involve selling the Property, but there is no Motion to Employ a broker on file. *Id.* at 2:21-3:6.
4. If Debtor has made payments Movant would request, if relief is not granted, that the court authorize Trustee to disburse those payments to Movant directly prior to confirmation of a Plan as adequate protection payments. *Id.* at 3:7-21.

Review of Second Amended Chapter 13 Plan

Debtor filed the Second Amended Plan on July 2, 2025. Dckt. 67. The basic terms of the Plan are:

- A. Monthly Plan Payments:
 - 1. \$450.44 through June 2025; and
 - 2. \$4,660.00 each for the remaining 58 months of the Plan. 2nd Amd Plan, § 7; Dckt. 67.
- B. Term of Plan.....60 Months. *Id.*; ¶ 2.03.
- C. Class 1 Secured Claims.....None. *Id.*; ¶ 3.07(c).
- D. Class 2 Secured Claims:
 - 1. Karen J Nolan, DOT
 - a. (\$32,682.00) Secured Claim.
 - b. Paid with 6% Interest, with monthly payments of \$655.00.
 - 2. Kamaljit Takhar
 - a. (\$166,235.03) Secured Claim.
 - b. Paid with 6% Interest, with monthly payments of \$3,310.00. ^{Fn.1.}
 - c. No other Class 2 secured claims. *Id.*; ¶ 3.08

FN. 1. With payments of \$3,310.00 a month for 58 months, the total amount paid on this Secured Claim would be \$191,980.

- E. Class 3 Secured Claims - Surrender.
 - 1. Capitol One Auto Finance, surrender of Explorer. *Id.*; ¶ 3.09.
- F. Class 4 Secured Claims - Direct Payment.....None. *Id.*; ¶ 3.10.
- G. Class 5 Priority Claims
 - 1. Estimated Total.....(\$766.11). *Id.*, ¶ 3.12.
- H. Class 6 Designated Unsecured Claims.....None. *Id.*; ¶ 3.13.
- I. General Unsecured Claims
 - 1. 8% dividend on estimated (\$50,419.49) in Claims. *Id.*; ¶ 3.14.

In the Motion for Relief, Creditor makes reference to unpaid property taxes and that in the prior bankruptcy case filed by Debtor, a Proof of Claim was filed by the I.R.S. stating a secured claim in the amount of (\$44,245.50). Motion, ¶ 12; Dckt. 24. See Amended Proof of Claim 8-2 filed in Debtor's prior Bankruptcy Case, 24-24159.

DISCUSSION

In this contested matter the court finds cause is not present for relief from the stay. Debtor has met their burden in showing that there is no cause for relief. There is an Amended Plan on file that provides for paying Movant in full in Class 2 at 6% interest. Am. Plan, Docket 67. Movant will be receiving a dividend of \$3,310 per month. *Id.* This payment constitutes adequate protection as the claim is paid in full. In denying the Motion, the court grants Movant's requests in authorizing Trustee to disburse the dividend of \$3,310 to Movant prior to confirmation, pursuant to 11 U.S.C. § 1326 and Local Bankruptcy Rule 3015-1(f)(2).

At the hearing, counsel for the Debtor requested that the court authorize the Chapter 13 Trustee to pay the monthly Plan distribution to Movant pending confirmation. The Chapter 13 Trustee did not oppose the requested adequate protection payment pending confirmation of the Plan.

The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on August 12, 2025 (Specially Set Time), to be conducted in conjunction with the hearing on the Motion to Confirm Debtor's proposed Chapter 13 Plan.

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

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

The Motion for Relief from the Automatic Stay filed by Kamalajit S. Takhar ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is
XXXXXXX.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 5, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted.

August 12, 2025 Hearing

The court continued the hearing on this Motion to be heard in conjunction with Debtor's Motion to Confirm Amended Plan. On August 1, 2025, Trustee filed a Status Report. Docket 88. Trustee states:

1. Debtor has provided Trustee with necessary documents and has filed a Motion to Confirm Amended Plan, but the Debtor is delinquent \$3,759.12 where Debtor continues to make the original lower payment. Trustee recommends dismissal. *Id.* at 1:21-26.

Delinquency

Debtor is \$3,759.12 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

~~The Motion to Dismiss is granted, and the case is dismissed.~~

REVIEW OF MOTION

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

1. The debtor, Harry Michael Chaffee ("Debtor"), is appearing in *pro se*. It is not clear Debtor has served all interested parties the Plan or Motion to Confirm.

2. Debtor has not filed 11 U.S.C. § 521 documents such as a tax transcript. *Id.* at 2:5-12.
3. The Petition and Schedules contain inaccurate or incomplete information. *Id.* at 3:1-4:9.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 38.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration on June 24, 2025. Dockets 49, 50. Debtor acknowledges the mistakes with the case but informs the court on June 9, 2025, Mr. Macaluso substituted in as counsel for Debtor. Debtor requests more time to have an Amended Plan on file and assures the court Trustee has now received all 11 U.S.C. § 521 documents.

DISCUSSION

Debtor's struggles in the case included procedural issues, such as serving proper parties, and substantive issues, such as failing to properly disclose or describe assets in the Schedules. However, Mr. Macaluso recently substituted in as counsel and assures the court the errors will be rectified. On June 24, 2025, Debtor filed Amended Schedules and other required documents. Dockets 54-61. Debtor now having employed competent counsel and the case being diligently prosecuted, the Debtor's odds of successfully prosecuting this case have risen significant.

The Chapter 13 Trustee requested that the hearing be continued, rather than the Motion denied. Debtor's counsel did not oppose the continuance.

The hearing on the Motion to Dismiss is continued 2:00 p.m. on August 12, 2025 (Specially Set Day and Time).

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 granted, and the case is dismissed.

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 and all creditors and parties in interest on July 24, 2025. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

The Motion to Withdraw as Attorney 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 Withdraw as Attorney is granted.

Catherine King of Kind Law Office APC (“Movant”), counsel of record for Rachel Leilani Bagwell (“Debtor”), filed a Motion to Withdraw as Attorney as Debtor’s counsel in the bankruptcy case. Movant requests the court substitute Debtor in *pro se* and permit Movant to withdraw as counsel.

On July 24, 2025, the court ordered Movant to set a noticed hearing on the Motion to allow counsel to withdraw and Debtor to proceed in this case *pro se* as provided in Local Bankruptcy Rule 2017-1(e). Order, Docket 93.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client’s interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the

withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

- (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
- (b) seeks to pursue an illegal course of conduct, or
- (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
- (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
- (e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or

(f) breaches an agreement or obligation to the member as to expenses or fees.

CAL. R. PROF'L. CONDUCT 3-700(C)(1).

DISCUSSION

Movant provides no grounds for withdrawal and does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice.

At the hearing, **XXXXXXX**

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

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

The Motion to Withdraw as Attorney filed by Catherine King of Kind Law Office APC ("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 to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for Rachel Leilani Bagwell ("Debtor").~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on May 28, 2025. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is XXXXXXX.

August 12, 2025 Hearing

The court continued the hearing on this Motion at Debtor's request to properly document the Stipulation on the record. A review of the Docket on August 8, 2025 reveals nothing new has been filed with the court.

At the hearing, XXXXXXX

REVIEW OF MOTION

The debtor, Elizabeth Ann Andrade ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid \$42,522 from December of 2024 through May of 2025, with Debtor then making monthly plan payments in the amount of \$6,725 from June 2025 through November 2029. Amended Plan, Docket 53. 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 1, 2025. Docket 71. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$6,899.00 delinquent in Plan payments to the Trustee. The next scheduled payment of \$6,725.00 is due on July 25, 2025. *Id.* at 2:3-7.
2. Debtor has a pending Objection to Claim of Huntington National Management, which is set for hearing on July 15, 2025, (DN 55). If this objection is not sustained by the Court, and the claim is allowed, the Plan has insufficient funds to pay unsecured creditors the 100% dividend that is called for. *Id.* at 2:13-16.
 - a. The court intends to sustain this Objection to Claim being heard concurrently with this Motion.
3. The IRS has filed a claim showing an unsecured non-priority amount of \$36,428.62. The Plan does not provide for this claim but states that unsecured claims will be paid at 100%. Debtor informed Trustee the IRS would be amending their proof of claim to reflect \$0 in unsecured claims, but as of the court’s review on July 10, 2025, the IRS has not amended its proof of claim. *Id.* at 2:17-24.
4. Debtor and Real Time Resolutions, Inc. (“Creditor”), entered into, and filed, a stipulation that the Debtor agrees to pay the creditor \$3,102.42 directly to creditor in a lump sum payment within 30 days of confirmation of the Chapter 13 Plan. The court has not approved this stipulation. It is not clear what the source fo the funds will be. *Id.* at 2:25-3:2.

DISCUSSION

Delinquency

Debtor is \$6,899.00 delinquent in plan payments, which represents approximately one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Plan depends on the IRS amending proof of claim 1-1 to show its unsecured claim is 0\$. The Plan provides for paying unsecured claims at 100%. The IRS has not amended its claim, so the Plan is underfunded. Thus, the Plan may not be confirmed.

Stipulation Between Debtor and Creditor

On May 7, 2025, Debtor and Creditor filed with the court a Stipulation. The Stipulation was never noticed or set for a hearing. Fed. R. Bankr. P. 9019 provides:

(a) Approving a Compromise or Settlement . On the trustee's motion and after notice and a hearing, the court may approve a compromise or settlement. Notice must be given to:

- all creditors;
- the United States trustee;
- the debtor;
- all indenture trustees as provided in Rule 2002 ; and
- any other entity the court designates.

Local Bankruptcy Rule 9019-1 provides:

Except stipulations entered into during the course of a deposition and set forth in the transcript thereof, stipulations shall be:

- (a) In writing, signed by all counsel or parties in propria persona who have appeared in the proceeding and are affected by the stipulation;
- (b) Made in open court and noted by the courtroom deputy upon the minutes or by the court reporter in the notes; or
- (c) Recited in a pretrial order or other court order. Stipulations not in conformity with these requirements will not be recognized unless necessary to prevent manifest injustice.

It appears this Stipulation should have been set for hearing in accordance with Local Bankruptcy Rule 9019, or at least have been made in open court.

At the hearing, counsel for Debtor requested a continuance to allow Debtor to address these issues. The Trustee did not oppose such a continuance.

The hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on August 12, 2025.

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

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

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

IT IS ORDERED that the Motion to Confirm the Amended Plan is
XXXXXXX.

15. [25-21564-E-13](#)
[SS-1](#)

MICHAEL WARD
Scott Shumaker

MOTION TO CONFIRM PLAN
7-7-25 [\[36\]](#)

Item 15 thru 16

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

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 parties in interest on July 7, 2025. By the court's calculation, 36 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 XXXXXXX.</p>

The debtor, Michael Derek Christoph Ward ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$12,280 having been paid in through month 2 (June 2025). Beginning in month 3 and continuing for the balance of the Plan, the Plan payment shall be \$6,742.00. Amended Plan, Docket 40. 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 29, 2025. Docket 46. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$5,881.02 delinquent in Plan payments to the Trustee, and while an electronic payment of \$6,140 is scheduled to start August 3, 2025, that may not clear before the hearing on this matter. *Id.* at 1:25-28.
2. Debtor failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. §521(a) (1)(B)(iv). Opp’n 2:10-14.

CREDITOR’S OPPOSITION

U.S. Bank National Association, as Trustee for Velocity Commercial Capital Loan Trust 2021-4 (“Creditor”) holding a secured claim filed an Opposition on July 29, 2025. Docket 49. Creditor opposes confirmation of the Plan on the basis that:

1. On May 29, 2025, Creditor filed a proof of claim in this action, setting forth Creditor’s secured claim in the amount of \$590,606.42 secured by a deed of trust in Debtor’s residence, 1455 E. Bach Street, Carson, CA 90746 (“Property”). Debtor values the Property at \$713,000, so Creditor is oversecured. POC 8-1.
2. The Plan misidentifies Creditor, reporting instead the name of Creditor’s mortgage servicer, PHH Mortgage. Opp’n 4:11-12.
3. The Plan attempts to modify the interest rate paid on its arrearage to 0% which is in violation of 11 U.S.C. §§ 1322(e), 506(b). The proper interest rate should be the contractual rate of 10.49%. Opp’n 4:13-17.
4. The Plan is not feasible because it commits too much of Debtor’s income to the Plan. Opp’n 6:5-6.
5. The Plan contradicts itself on the amount of monthly payments to be made. Creditor states:
 - a. [Debtor reports] in section 2.01 that the monthly plan payment to be made to the Trustee shall be \$6,742.00, while noting in section 3.07(c) that the combined arrearage dividend and monthly contractual installments total \$6,031.45, with a further \$253.31 per month to the Franchise Tax Board and \$105 per month in child support payments. No other debts or expenses are purported to be paid under the Plan other than a \$75 monthly payment to the Trustee and \$4,500 in Debtor’s additional attorney fees (which breaks down to \$75 per month over 60 months), totaling \$6,539.76—leaving the \$202.24 discrepancy between this value and the higher \$6,742.00 value unexplained.
6. Opp’n 6:13-20.
7. Debtor is delinquent in plan payments. *Id.* at 7:24-8:2.

8. Debtor has further failed to provide the Trustee with sixty days of employer payment advices prior to the petition's filing, as required by statute. *Id.* at 8:19-20.

DISCUSSION

Delinquency

Debtor is \$6,140 delinquent in plan payments, although a payment is pending. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

In confirming if the delinquency has been cured, at the hearing, **XXXXXXX**

Interest Rate on Arrearage

Many of Creditor's objections are based on the premise that Debtor cannot adjust the interest rate on its arrearage to 0%, and so when accounting for the proper interest rate, the Plan is underfunded. Creditor cites to 11 U.S.C. §§ 1322(e), 506(b) in support of its position. Those Sections state:

(b)To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

11 U.S.C. § 506(b).

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

Collier's Treatise states in regard to 11 U.S.C. § 1322(e):

Section 1322(e) was enacted to overrule the Supreme Court decision in *Rake v. Wade*. In that case, the Court had required debtors curing home mortgage defaults to pay not only the interest on the principal of their loans, but also interest on that interest, as well as interest on other elements of the arrearage, such as interest, late fees, escrow payments and attorney's fees. Section 1322(e) provides that the amount necessary to cure a default is to be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

The legislative history of this section states the intent to overrule *Rake*, which had required interest payments even when applicable law prohibited them and they were not contemplated by the parties to the original transaction. The House Report describes such payments as a "windfall to secured creditors," which often came at the expense of the unsecured creditors.

Under section 1322(e), the amount necessary to cure a default is the same amount as would be required to cure if the debtor were not in bankruptcy. Two conditions must be met before interest or other charges can be required as part of a bankruptcy cure. First, the interest or charges must be required under the original agreement, and second, they cannot be prohibited by state law. In other words, the bankruptcy court will never require interest in excess of that permitted by state law, and will require none unless the agreement provides for interest. Some courts have held that the statute's deference to the mortgage contract's provisions, along with the general prohibition of modification, may compel the debtor to pay a higher default interest rate if the contract so requires and state law permits.

Rake v. Wade had relied on Code section 506(b) to require preconfirmation interest from an oversecured creditor and section 1325(a)(5) to require postconfirmation interest. By its introductory language specifically mentioning those sections, as well as section 1322(b)(2), section 1322(e) makes clear that these sections have no applicability in a cure situation, in which the debtor is merely keeping the original contract in place and bringing it up to date. Thus, in *Deutsche Bank Nat'l Trust Co. v. Tucker*, the Court of Appeals for the Sixth Circuit held that section 506(b) cannot be used to limit a claim for arrearages in a cure situation.

8 COLLIER ON BANKRUPTCY ¶ 1322.19.

Creditor, in passing, argues that “[Debtor must pay interest on the arrearage] despite the legislative overruling of the U.S. Supreme Court decision in *Rake v. Wade*, because the increased interest is contingent upon and sourced from the terms of the parties’ underlying agreement and applicable nonbankruptcy law, and not the Bankruptcy Code.” Opp’n 4:23-25. However, it appears to the court Creditor is misinterpreting 11 U.S.C. §§ 506(b) and 1322(e) and too quickly dismisses the decision in *Rake*.

Rake stood for the proposition that “[c]onstruing §§ 506(b) and 1322(b)(5) together, and giving effect to both, we conclude that § 1322(b)(5) authorizes a debtor to cure a default on a home mortgage by making payments on arrearages under a Chapter 13 plan, and that where the mortgagee's claim is oversecured, § 506(b) entitles the mortgagee to preconfirmation interest on such arrearages.” *Rake*, 508 U.S. 464, 472. 11 U.S.C. § 1322(e) was enacted to directly overrule this proposition.

Creditor makes the argument that the overturning of *Rake* is not applicable because the Note secured by the Deed of Trust provides for interest rate on an arrearage. Creditor does not cite the court to any sections of the Note that support such a contention. The court has read the Note and has not found any provision that compels a Debtor to pay interest on an arrearage. The only relevant section of the Note the court found is as follows:

12. Costs and Expenses, Default Rate, Late Charge

The Borrower agrees to pay, upon demand, costs of collection of all amounts under this Note including, without limitation, principal and interest, or in connection with the enforcement of, or realization on, any security for this Note, including, without limitation, to the extent permitted by applicable law, reasonable attorneys' fees and expenses. Upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal to the aggregate of 4% plus the rate

provided for herein. If any payment due under this Note is unpaid for 10 days or more, the Borrower shall pay, in addition to any other sums due under this Note (and without limiting Lender's other remedies on account thereof), a late charge equal to 5% of such unpaid amount.

This section only provides for a default interest rate and late fees, not paying interest on the arrearage. Therefore, the court has not been presented with any agreement between the parties that compels Debtor to pay interest on the arrearage pursuant to 11 U.S.C. § 1322(e), at least to the portion of the arrearage that is itself interest. The court notes there is case law from the District that supports this finding.¹

At the hearing, **XXXXXXX**

Insufficient Expenses Budgeted

Creditor opposes confirmation on the basis that Debtor's budget is too tight and the Plan is not feasible. The court has reviewed Debtor's Amended Schedules I and J. Am. Schedules I and J, Docket 42. The court agrees some expenses are not properly accounted for. Debtor lists income from "rent" in the amount of \$4,200 per month. Am. Schedule I at 3. This would imply Debtor owns real property to rent. However, Debtor has schedule \$0 in real property taxes for any real property. Am Schedule J at 4. The budget is overall extremely tight. For example, Debtor only schedules \$100 per month in entertainment and \$300 per month in food and housekeeping supplies. *Id.* at 5. Such an expense would equate to roughly \$10 per day for three meals and necessary housekeeping supplies.

It may be that Debtor is comfortable with this budget and it is feasible, but there is no evidence on the record to support that finding. Debtor, in explaining how the budget is reasonable, at the hearing, **XXXXXXX**

Amount of Plan Payment

Finally, Creditor opposes confirmation based on the amount of the plan payment being inconsistent with itself. The court computes the monthly plan payment as follows:

1. Total dividend for the deeds of trust holders: \$6,031.45;
2. Total dividend to the California Franchise Tax Board: \$253.31;
3. Total dividend for attorney's fees: \$75; and

1

See, e.g., In re Bagne, 219 B.R. 272, 278 (Bankr. E. D. Cal. 1998) ("Turning to the contract in this case, it enumerates a "Rate of Charge" (an interest rate), of 21.0%. However, the "Rate of Charge" only applies to the "unpaid balance of the Amount Financed," which is the unpaid principal. While the contract provides for a "Late Charge" of 6% on the "Monthly Installment", there is no provision in the contract for interest on interest. Accordingly, the contract rate of interest (21%) must only be paid on the portion of the arrearage which constitutes unpaid principal. To the extent the arrearage also includes accumulated interest, no interest on that interest is required.")

4. Total dividend for Trustee's fees, assuming 7.8%: \$496.06 would equal

a. **Total payment:** \$6,855.82.

Debtor has provided for a monthly plan payment of \$6,742.00. In clarifying the plan payment and whether the court has made any error's in its calculations, at the hearing, **XXXXXXX**

The Motion is **XXXXXXX**

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

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

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

IT IS ORDERED that the Motion to Confirm the Amended Plan is **XXXXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 5, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

August 12, 2025 Hearing

The court continued the hearing on this Motion to be heard in conjunction with Debtor's Motion to Confirm Amended Plan. On August 1, 2025, Trustee filed a Status Report. Docket 53. Trustee requests, as Debtor is prosecuting this case, that the Motion be denied.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

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

1. The debtor, Michael Ward ("Debtor"), filed a Chapter 13 Plan on April 30, 2025. The Debtor has failed to file a Motion to Confirm the Plan and set a hearing confirmation of the Plan. Mot. 1:24-2:2, Docket 24.
2. Debtor failed to provide Trustee with 11 U.S.C. § 521 documents, including pay advices and tax returns. *Id.* at 2:4-14.
3. Debtor's proposed Plan does not work mathematically. According to the Trustee's calculations the Plan will complete in approximately 169 months. *Id.* at 2:15-27.

4. Debtor indicated he has expenses for alimony and child support payments in the amount of \$105.00 per month, but Debtor has not filed the Domestic support Obligation Checklist pursuant to Local Bankruptcy Rule 3015-1(c)(2). *Id.* at 3:2-15.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 26.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration on June 25, 2025. Dockets 29-30. Debtor states the required tax returns will be filed shortly, and counsel for Debtor states that he will be filing an Amended Plan prior to the hearing on this Motion.

DISCUSSION

Never Noticed Initial Plan

Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Overextended Plan

The Plan would take 169 months to complete by Trustee's calculations. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to dismiss the case.

Domestic Support Obligation

Debtor has indicated he has domestic support obligations. Therefore, Debtor must file with the court EDC.003-088, Domestic Support Obligation Checklist. Debtor has not filed this document with the court.

Debtor states only tax returns will be filed and says nothing of the missing pay advices. Debtor states an amended plan will be on file prior to the hearing on this Motion. A review of the Docket on July 1, 2025 reveals nothing new has been filed with the court.

At the hearing, counsel for the Trustee reported that the 341 Meeting of Creditors has been continued to July 17, 2025. Additionally, that some documents have been received, but some still need to be produced. Additionally, at this time Debtor is delinquent in Plan payments.

Notwithstanding the forgoing, counsel for the Trustee concurred with the request by counsel for the Debtor for a continuance of the hearing.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on August 12, 2025 (Specially Set Day and Time), to be conducted in conjunction with the hearing on the Motion to Confirm the Debtor's Chapter 13 Plan.

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 denied without prejudice.~~

DEBTOR DISMISSED: 07/16/25

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on July 18, 2025. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Vacate is granted, and the order dismissing the case (Dckt. 31) is vacated.

Jewel Renee Burgess ("Debtor") filed the instant case on November 30, 2020. Docket 1. A plan was confirmed on February 22, 2021. Docket 15..

On June 3, 2025, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to the plan being overextended and completing beyond 60 months. Docket 25. On July 9, 2025, a hearing on the Motion to Dismiss was held, and the Motion was granted. Docket 30. The ruling was set pursuant to Local Bankruptcy Rule 9014-1(f)(1), but the court held a hearing without any opposition filed due to the age of the case.

On July 18, 2025, Debtor filed this instant Motion to Vacate, claiming Debtor's counsel was in the process of converting the case to Chapter 7 then missed the hearing due to a calendaring issue.

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

APPLICABLE LAW

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

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

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

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

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

DISCUSSION

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

As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

At the hearing, **XXXXXXX**

However, in light of the advanced age of the case and progress made, and Debtor's attorney explaining his mistake in inadvertently letting the case be dismissed, the court grants the Motion.

Therefore, in light of the foregoing, the Motion is granted, and the order dismissing the case (Dckt. 31) is vacated.

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

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

The Motion to Vacate filed by Jewel Renee Burgess ("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 order dismissing the case (Dckt. 31) is vacated.

18. [23-24174](#)-E-13
[THS](#)-10

MICHAEL/SUSAN MARASCO
Timothy Stearns

MOTION TO CLARIFY AMENDED PLAN
7-16-25 [[186](#)]

Item 18 thru 19

The Motion to Clarify, which the court interprets to be a supplemental pleadings related to the Motion to Confirm Plan, is addressed in the related Motion to Confirm Plan, Docket Control Number THS-9.

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

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 parties in interest on May 28, 2025. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

At the hearing, counsel for the Debtor addressed this error and reported that he and his staff will follow the Local Bankruptcy Rules in the future, including using the correct certificate of service form.

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 granted.</p>

August 12, 2025 Hearing

The court continued the hearing on this Motion to allow Debtor to file Supplemental Pleadings and correct any language in the Plan that implied plan payment changes were retroactive. The court set the deadline of July 18, 2025, for Debtor to file their Supplemental Pleadings, and Oppositions, if any, to be filed on before August 1, 2025. Order, Docket 191.

On July 16, 2025, Debtor complied with their time line and filed a Motion for Clarification, which the court construes to be a Supplemental Pleading related to this Motion. Docket 186. In their

Motion to Clarify, Debtor states the increase in monthly payment is to be effective from the date of approval of the Amended Plan, and not retroactive.

On July 30, 2025, Trustee filed a Non-Opposition and requested the Order confirming the Plan clarify whether the plan payment increase begins in July or August of 2025.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

The debtor, Michael Joe Marasco and Susan Diane Marasco (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for 60 monthly payments of \$2,528 with 5% dividend to creditors holding general unsecured claims. Amended Plan, Docket 179. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 13, 2025. Docket 182. Trustee opposes confirmation of the Plan on the basis that:

The plan increases the payment retroactively to \$2,528.00, making the Debtor \$9,529 delinquent; the plan did not account for the prior plan allowing the Debtor to pay \$675 per month to priority claims. In the event the Court allows the plan to be modified to account for such payments, the Trustee shows the Debtor would be \$754 delinquent.

Opp’n. 1:25-2:2.

DISCUSSION

It appears Debtor inadvertently included language in the Plan that retroactively increases the plan payment; however, if this language is fixed, Debtor would still be delinquent in plan payments, but only in the sum of \$754. 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, the Trustee’s counsel reported that there is a \$10,262.00 delinquency by Debtor, the Amended Plan inadvertently providing for a retroactive increase in the monthly Plan payment rather than an increase for future payments. Counsel for Debtor will correct this error by filing and serving a supplemental pleading stating proposed amendments to the Chapter 13 Plan.

The hearing on the Motion to Confirm the Amended Plan is 2:00 p.m. on August 12, 2025. Debtor shall file and serve Supplemental pleadings on or before July 18, 2025, and Opposition pleadings, if any shall be filed and served on or before August 1, 2025.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael Joe Marasco and Susan Diane Marasco (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on May 28, 2025, is confirmed as amended to state the plan payment increase is only effective from the date of confirmation and not retroactively. The Amended Plan is also confirmed as amended to state the plan payment increase will begin on **XXXXXXX**. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. [25-21985-E-13](#)
[DPC-1](#)

MANUEL GONZALEZ AND
REGINA SAUCEDO
Mary Ellen Terranella

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
DAVID P. CUSICK
6-18-25 [\[20\]](#)

Item 20 thru 21

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 18, 2025. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

August 12, 2025 Hearing

The court continued the hearing to allow Debtor to cure the delinquency and get the Proper amendment on file to show Debtor signed the Plan. On July 27, 2025, the Amended Plan was filed that properly contained Debtor's signatures. Docket 39. Debtor also filed a supporting Declaration testifying they signed the Plan, but Debtor's attorney inadvertently uploaded the wrong version. Decl., Docket 40.

With the signatures corrected, it appears the only outstanding portion of the Objection is delinquency.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

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

1. Debtor Manuel Saucedo Gonzalez and Regina Rodriguez Saucedo ("Debtor") are \$4,740.00 delinquent in Plan payments to the Trustee. Obj. 1:25-2:6.
2. Moreover, the Plan is not signed by Debtor. *Id.* at 2:11-19.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 22.

DISCUSSION

Delinquency

Debtor is \$4,740.00 delinquent in plan payments, which represents approximately one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Signatures

Local Bankruptcy Rule 9004-1(c) provides:

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

Here, Debtor's Plan at Docket 3 has not been signed. This is cause to deny confirmation.

At the hearing, the Trustee reports that Debtor is still delinquent in the Plan payments.

\$3,888.70 delinquent at the time of the hearing. Debtor's counsel reports that the payment is "on the way"

The Trustee requested that the hearing be continued, with counsel for Debtor requested that the hearing be continued to 2:00 p.m. on August 12, 2025.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on August 12, 2025.

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

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

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

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

Final Ruling: No appearance at the August 12, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on June 30, 2025. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, (“Objector”) objects to Manuel Saucedo Gonzalez and Regina Rodriguez Saucedo’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on February 6, 2024. Case No. 24-20464. Debtor received a discharge on May 29, 2024. Case No. 24-20464, Docket 25.

The instant case was filed under Chapter 13 on April 25, 2025.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on May 29, 2024, which is less than four years preceding the date of the filing of the instant case. Case No. 24-20464, Docket 25. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 25-21985), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 25-21985, the case shall be closed without the entry of a discharge.

FINAL RULINGS

22. [24-24194-E-13](#) **BONH/THONGCHANH NAKHAM** **MOTION TO MODIFY PLAN**
[MS-1](#) **Mark Shmorgon** **7-1-25 [22]**

Final Ruling: No appearance at the August 12, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on July 1, 2025. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Bonh Nakham and Thongchanh Nakham (“Debtor”), has filed evidence in support of confirmation. *See Decl.*, Docket 24; *Ex.*, Docket 26. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on July 29, 2025. Docket 28. 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, Bonh Nakham and Thongchanh Nakham (“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 1, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

23. [24-25731-E-13](#)
[WLG-1](#)

DAVID/MARY GILL
Nicholas Wajda

MOTION TO CONFIRM PLAN
6-25-25 [\[41\]](#)

Final Ruling: No appearance at the August 12, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on June 25, 2025. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<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, David Norman Gill and Mary Elizabeth Gill ("Debtor") have provided evidence in support of confirmation. *See* Decl., Docket 43; Exhibits, Docket 44. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 25, 2025. Docket 51. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, David Norman Gill and Mary Elizabeth Gill (“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 25, 2025, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. [24-25862-E-13](#)
[DPC-3](#)

SUSAN SCOTT
Cindy Lee Hill

**OBJECTION TO HOMESTEAD
EXEMPTION
7-2-25 [65]**

Final Ruling: No appearance at the August 12, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on July 2, 2025. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) objects to Susan C. Scott’s (“Debtor”) claimed homestead exemption under California law because Debtor claimed 100% of fair market value, instead of claiming a specific dollar amount. California Code of Civil Procedure § 703.140(b)(1)–(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor’s Amended Schedule C at Docket 53 shows that real dollar amounts have not been claimed. The Chapter 13 Trustee’s Objection is sustained, and the claimed exemption is disallowed.

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed homestead exemption for the real property commonly known as 511 Glen Rd, PO Box 306, Weaverville, CA 96093 under California Code of Civil Procedure § 704.730 is disallowed in its entirety. Sustaining the Objection is without prejudice to Debtor amending her Schedule C and claiming a specific dollar amount.

25. [24-24173-E-13](#) **JESUS/ALISHA GUTIERREZ** **MOTION TO CONFIRM PLAN**
[PGM-2](#) **Peter Macaluso** **6-25-25 [91]**

Final Ruling: No appearance at the August 12, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on June 25, 2025. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Jesus Figueroa Gutierrez and Alisha Marie Gutierrez (“Debtor”) has provided evidence in support of confirmation. *See* Decl., Docket 95; Exhibits, Docket 94. The Chapter 13 Trustee, David Cusick

("Trustee"), filed a Non-Opposition on July 22, 2025. Docket 100. 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, Jesus Figueroa Gutierrez and Alisha Marie Gutierrez ("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 25, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the August 12, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on July 1, 2025. By the court’s calculation, 42 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Amended Plan is denied as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, the debtor, Anne Marie Weber (“Debtor”), filed a Second Amended Plan and corresponding Motion to Confirm on July 28, 2025. Dckts. 67, 69. Filing a new plan is a *de facto* withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, 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 Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Anne Marie Weber (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the August 12, 2025 hearing is required.

The court having already confirmed the Plan, the Parties resolving the Objection prior to the hearing, the Objection is overruled as moot without prejudice. Order, Docket 22.

The Objection to Confirmation is overruled as moot without prejudice.

The Objection was resolved pursuant to a Stipulation of the Parties, including the Chapter 13 Trustee, which is filed at Docket 21 at a Status Report. The Stipulated Terms are stated in the Order confirming the amended Chapter 13 Plan filed on August 8, 2025. Order; Dckt. 22.

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot without prejudice, the court having already confirmed the Plan with the Parties resolving the Objection prior to the hearing.