

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

August 20, 2024 at 2:00 p.m.

1. 24-21404-E-13	JAMES/SARAH STAFFORD	MOTION TO CONFIRM PLAN
SLH-1	Seth Hanson	7-3-24 [22]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 3, 2024. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, James Lawrence Stafford and Sarah Ann Stafford ("Debtor"), has provided evidence in support of confirmation. Decl., Docket 25; Exhibits, Docket 24.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 7, 2024, but notes some issues for consideration. Docket 27. Trustee informs the court that Plan pays 100% to unsecured creditors, and debtor is current, but the Internal Revenue Service has filed a secured claim for

\$12,612.43 for 2021 taxes, (POC 30-3), which is not provided for in the plan as secured, so the Trustee cannot pay the claim. Non-Opp'n 1:25-27, Docket 27.

At the hearing, **XXXXXXX**

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, James Lawrence Stafford and Sarah Ann Stafford ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~———— **IT IS ORDERED** that the Motion is granted, and Debtor's Chapter 13 Plan filed on April 5, 2024, as amended to provide for the Internal Revenue Service Secured Claim, is confirmed. Docket 3. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which includes the forgoing amendments, 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.~~

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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, Chapter 13 Trustee, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on July 15, 2024. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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 Sell Property and Approval of Brokers' Compensation is granted.
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The Bankruptcy Code permits Morgan Reyes and Frederica Leyba Reyes, the Chapter 13 Debtor, ("Movant") to sell property of the estate or under a confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 7548 Chappelle Way, Elk Grove, Ca 95757 ("Property"). Movant has proposed a Modified Plan accounting for this sale, which will be heard in conjunction with this Motion. *See* Docket Control No. JTN-6.

The proposed purchasers of the Property are Michael Cruz Reyes, Morgan Rico Reyes Jr., and Dulce M. Huerta ("Buyer"). Michael Cruz Reyes and Morgan Rico Reyes Jr. are Debtor's son, and Dulce M. Huerta is the spouse of Morgan Rico Reyes, Jr. Mot. 2:12-14, Docket 92. The terms of the sale are:

- a. Sales Price: \$725,000.00;
- b. Title/Escrow Company: WFG National Title Insurance Company;
- c. After paying all costs, the mortgage, and taxes, the estimated net at closing is \$437,752.42, which would allow for paying off all creditors in full. Mot. 2:10-27, Docket 92.

David Cusick, the Chapter 13 Trustee (“Trustee”) submitted a nonopposition on August 6, 2024. Docket 110.

LoanCare, LLC servicer for Lakeview Loan Servicing, LLC (“Creditor”) filed its nonopposition on July 26, 2024. Docket 106. Creditor states it has no opposition to the Debtor’s Motion so long as any form of order states that approval of the sale is contingent upon Lakeview’s receipt of proceeds sufficient to pay Lakeview’s lien in full. *Id.* at 2:2-4.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will generate enough proceeds to pay off all creditors’ claims in the case while also realizing a net benefit for the Debtor.

Movant has estimated that a 4 percent broker’s commission from the sale of the Property will equal approximately \$29,000, and it is to be split evenly between Debtor and Buyer’s agents. Mot. 3:16-16, Docket 91. However, Real Estate Agent Thomas Meza (aka Tommy Ramos Meza III), of PRG Real Estate (“Broker”), represents both the Seller and Buyer.

At the hearing, **XXXXXXX**

As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 4 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court to allow Trustee to make his demand and have the creditors paid immediately. *Id.* at 3:19-20.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief 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 Sell Property filed by Morgan Reyes and Frederica Leyba Reyes, the Chapter 13 Debtor, (“Movant”) having been presented to the court, and

upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Morgan Reyes and Frederica Leyba Reyes, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Michael Cruz Reyes, Morgan Rico Reyes Jr., and Dulce M. Huerta or nominee (“Buyer”), the Property commonly known as 7548 Chappelle Way, Elk Grove, Ca 95757 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$725,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 93, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to pay a real estate broker’s commission in an amount not more than 4 percent of the actual purchase price upon consummation of the sale. The 4 percent commission shall be paid to Broker, Thomas Meza (aka Tommy Ramos Meza III), of PRG Real Estate.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee’s demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on July 15, 2024. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

The debtor, Morgan Reyes and Frederica Leyba Reyes (“Debtor”) seeks confirmation of the Modified Plan to sell the real property commonly known as 7548 Chappelle Way, Elk Grove, Ca 95757 (“Property”) and pay off all creditors in full. Declaration2:1-8, Docket 98. The Modified Plan provides that Debtor shall submit to the supervision and control of Trustee \$45,295.00 by July 1, 2024 and then pay, from the sale of the Property, an amount sufficient to complete the Chapter 13 plan and pay unsecured creditors 100% and additional court-approved attorney fees, if any. Modified Plan § 7.01, Docket 99. 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 August 6, 2026. Docket 112. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s proposed plan payments need clarification, it appears Debtor is paid ahead by \$1,700.00 pursuant to the terms listed in the proposed plan.

Id. at 1:25-28. Trustee requests that the Debtor clarify that the actual amount paid in through month 32, (July 2024), is \$46,995.00.

- B. Debtor has not submitted supplemental Schedules I and J, so there is no evidence Debtor can afford plan payments if the Motion to Sell is denied. *Id.* at 2:5-11.
- C. The Plan relies on the Motion to Sell, which may not be granted by the court. *Id.* at 2:12-19.

DEBTOR'S RESPONSE

Debtor filed a Response on August 13, 2024. Docket 115. Debtor states:

- A. Debtor agrees that the total amount paid into their Chapter 13 Plan through July of 2024 is \$46,995. Resp. 1:21-22, Docket 115.
- B. Debtor is filing Supplemental Schedules I and J. *Id.* at 1:23.
- C. Trustee does not oppose the Motion to Sell which will generate funds to pay all creditors in full. *Id.* at 1:24-26.

DISCUSSION

The court having granted the Motion to Sell, which Trustee's main Objection hinged upon, at the hearing, **XXXXXXX**

In clarifying the amount paid through July of 2024, 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, Morgan Reyes and Frederica Leyba Reyes ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 15, 2024, ~~as amended to provide that the total amount paid into their Chapter 13 Plan through July of 2024 is \$46,995~~, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, stating the forgoing amendments, 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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on July 15, 2024. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Jasmine T. Nguyen, the Attorney ("Applicant") for Morgan Reyes and Frederica Leyba Reyes, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Applicant requests additional fees in the amount of \$3,150.00 and no costs. Applicant originally opted for the no look provision of Local Rule 2016-1(c) where the original fee was \$4,000. Mot. 2:1-6, Docket 101. That fee has been paid in full. *Id.* However, Movant states the case has required nontypical work, including numerous motions and complications in the case due to missed plan payments and motions to dismiss. *Id.* at 3:27-4:2. The fee agreement originally specified a discounted hourly rate of \$250.00 per hour for Debtor's Chapter 13 case, despite Applicant's normal rate of \$450 per hour, so the hourly rate for additional work in this case was billed at \$250. *Id.* at 2:8-18.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s for the Estate include addressing a tax lien to Internal Revenue Service, Sacramento County utility lien, priority claims as well as deferred second mortgage. There were several motions to dismiss in this case for default on their plan payments, so Debtors eventually opted for move for court approval to sell their primary residence and to pay off their creditors 100%. Mot. 2:25-3:12, Docket 101. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Under the Local Rules prior to the

August 2023 revisions, which are in effect in this case, Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 61. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re*

Yermakov), 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Jasmine T. Nguyen	12.6	\$250.00	\$3,150.00
Total Fees for Period of Application			\$3,150.00

Costs and Expenses

Applicant does not seek the allowance and recovery of costs and expenses.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including defending multiple Motions to Dismiss and getting a Motion to Sell in order, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$3,150.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the

Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$3,150.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Jasmine T. Nguyen (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Jasmine T. Nguyen is allowed the following fees and expenses as a professional of the Estate:

Jasmine T. Nguyen, Professional Employed by Morgan Reyes and Frederica Leyba Reyes (“Debtor”)

Fees in the amount of \$3,150.00,

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 11, 2024. By the court’s calculation, 40 days’ notice was provided. 14 days’ notice is required.

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

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

Ally Bank (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Lisa Ann Galt’s proposed Chapter 13 Plan does not account for paying the applicable prime plus interest rate. Obj. 2:13, Docket 15.

DISCUSSION

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 8%. Plan, Docket 4. Creditor’s claim is secured by a 2022 Toyota Scion RAV 4 XLE Premium. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till*

to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.5%, plus a 1.25% risk adjustment, for a 9.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Ally Bank (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 23, 2024. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx.

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

1. It is unclear how Debtor’s attorney will be paid. Neither box in Section 3.05 of the Plan was checked, and the Plan calls for \$0 in administrative expenses under Section 3.06. Obj. 2:1-6, Docket 13; *see* Plan, Docket 3.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 15.

DEBTOR’S RESPONSE

Debtor filed a Response on August 6, 2024. Docket 17. Debtor’s attorney states she has reached out to Trustee about the fees issue, informing the court she inadvertently failed to check the box for the no-

look fees when filing the Plan. Resp. 1:22-2:3, Docket 17. Debtor requests confirmation with the Order confirming correcting this error.

DISCUSSION

In correcting how attorney's fees will be paid in the Order confirming, at the hearing, **XXXXXXX**

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

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

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

IT IS ORDERED that the Objection is overruled, and Suzanne Marie Peck's ("Debtor") Chapter 13 Plan filed on June 9, 2024, is confirmed, with the following amendments: **XXXXXXX**. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7 thru 8

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 18, 2024. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

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

1. The debtor Divino Pacardo San Pedro and Dinnah Santiaguel San Pedro failed to timely provide business documents. Obj. 2:1-9, Docket 18.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 20.

DISCUSSION

Failure to File Documents Related to Business

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

- A. Two years of tax returns,
- B. Six months of profit and loss statements,
- C. Six months of bank account statements, and
- D. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); Fed. R. Bankr. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 26, 2024. By the court’s calculation, 55 days’ notice was provided. 14 days’ notice is required.

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

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

T.D. Bank, N.A. (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. The debtor Divino Pacardo San Pedro and Dinnah Santiaguel San Pedro’s (“Debtor”) Plan fails to pay Creditor’s claim at the proper interest rate.

Creditor submits the Declaration of John Eng to authenticate the facts alleged in the Objection. Decl., Docket 15.

DISCUSSION

Proposed Stipulation

The parties submitted a Stipulation with the court on August 9, 2024, where they agree to pay Creditor’s claim at a 9.5% interest rate, resolving this Objection. Stipulation 2:4, Docket 24.

However, the court having sustained the Chapter 13 Trustee's Objection to Confirmation in this case, at the hearing, **XXXXXXX**

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

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

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

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

9 thru 10

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

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

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

1. Debtor Douglas Arthur Dixon (“Debtor”) failed to appear and was not examined at the First Meeting of Creditors held on July 11, 2024. Obj. 1:26-37, Docket 18.
2. The 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 July 11, 2024, as required pursuant to FRBP 4002(b)(1)(A) and (B). *Id.* at 2:4-7.
3. Debtor failed to provide the 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing of the petition, a tax transcript or a copy of his Federal Income Tax Return with attachments

for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. *Id.* at 2:11-21.

4. Debtor's Schedules and other documents filed in the case include missing and/or inaccurate information. *Id.* at 2:23-24.
5. Debtor did not use the correct plan form. *Id.* at 2:26.
6. Debtor is over the median income so Form 122C-2 would be required to be filed. Debtor did not file Form 122C-2. *Id.* at 3:7-8.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 20.

DISCUSSION

Inaccurate or Missing Information

Debtor did not comply with Local Bankruptcy Rule 3015-1(a), which requires the use of the mandatory Plan Form EDC 003-080. This is cause for denial.

Furthermore, Debtor failed to file Form 122C-2, which is required in this case. 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).

Failure to Provide Tax Returns

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

Failure to Provide Pay Stubs

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 Appear at 341 Meeting

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

Failure to 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 for dismissal.

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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on June 21, 2024. By the court's calculation, 60 days' notice was provided. 14 days' notice is required.

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

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

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

1. Debtor Douglas Arthur Dixon's ("Debtor") proposed Plan has inconsistent terms, both providing for a monthly payment and not providing for a monthly payment. Obj. 2:9-14, Docket 15.
2. If there is a monthly payment of \$5,000 per month for 60 months, that payment is insufficient to cure the arrearage and pay ongoing payments, failing to provide for Creditor's claim in full. *Id.* at 2:15-18.
3. Debtor's Chapter 13 Plan was filed in bad faith and is not confirmable under its current terms. Debtor has filed three Chapter13 bankruptcy cases

within one year and has not filed a Motion to Impose the automatic stay. *Id.* at 2:19-21.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$673,870.83 in this case, including a prepetition arrearage of \$96,017.72, secured by Debtor's primary residence located at 7970 Cobb St., Citrus Heights, CA 95610 ("Property"). POC19-1. The Plan, on the incorrect Plan form, provides for treatment of this claim by remitting to Creditor \$5,000 over the course of 60 months. Plan 2:3.1, Docket 10.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it does not fully provide for payment of Creditor's entire obligation, and at the proper interest rate, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a claim secured only by the debtor's primary residence, but may modify other secured claims (11 U.S.C. § 1322(b)(2)). Notwithstanding the forgoing limitation, 11 U.S.C. § 1322(b)(3) authorizes the curing of any default on a secured claim—including a home loan. In addition, the Plan may provide for maintaining ongoing contract installment payments on a secured claim while curing default on such secured claim. 11 U.S.C. § 1322(b)(5).

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

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

Here, the Plan provides for Creditor's claim, which is secured by a primary residence, but attempts to modify the claim by paying it at a lower amount. That is reason 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 Lakeview Loan Servicing, LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

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

The Objection to Confirmation of Plan is xxxxxxx.

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

1. Debtor Daniel Opondo Mittow ("Debtor") is unable to make the payments called for under the Plan. Debtor proposes to make monthly payments of \$1,000.00 and in month 12, Debtor proposes a lump sum payment from savings in the approximate amount of \$63,000.00. Schedule I identifies Debtor's monthly income as \$6,833.88.00. Schedule J shows the Debtor's monthly expenses as \$10,927.00, and monthly net income of negative (\$4,093.12). Debtor did provide a bank statement that shows a significant balance, approximately \$129,000.00. Obj. 1:3-11, Docket 18.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 20.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor shows on Schedule I as having a monthly net income of \$6,833.88. Schedule I at 33:12, Docket 1. Debtor shows on Schedule J expenses of \$10,927.00, leaving a negative monthly income of \$4,093.12. Schedule J at 35:22-23 Docket 1. Although Debtor has shown he has significant sums in savings, it is not clear how disbursements will be made when a portion of that money will also need to go toward expenses.

DEBTOR'S RESPONSE

Debtor filed a Reply on August 13, 2024. Docket 22. Debtor states that the monthly expense of (\$7,588) for “in home care” will be starting in the next six to twelve months, so there are sufficient sums to make plan payments until this expense begins. Resp. 1:22-25, Docket 22. Without that childcare expense, Debtor's expenses are only \$3,339, leaving \$3,494 in monthly disposable income.

Debtor states he will complete the Plan in month 12, using his savings to pay creditors in full, and Debtor has enough monthly disposable income to afford plan payments until then. Debtor is waiting twelve months for the claims bar date to pass. *Id.* at 2:10-15.

What Debtor does not address is why, if he has sufficient disposable income and savings as of the commencement of this Bankruptcy Case, why he is “saving” monies to pay in twelve months, rather than using the monthly extraordinary savings to pay the plan off in monthly equal installments based on the Debtor's actual projected income and non-exempt cash holdings.

At the hearing, **XXXXXXX**

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

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

The Objection to the Chapter 13 Plan filed by 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 **XXXXXXX**.

12 thru 14

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 28, 2024. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

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

1. Debtor Jamall Joseph Robinson's ("Debtor") Plan does not account for the arrearage of Creditor's claim. Obj. 3:18-23, Docket 26.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by the real property commonly known as 10331 Pebble Beach Way, Kelseyville CA 95451. Creditor has filed a timely proof of claim in which it asserts \$19,412.56 in pre-petition arrearage. POC 3-1. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C.

§§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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 Lakeview Loan servicing, LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

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

1. Debtor Jamall Joseph Robinson's ("Debtor") failed to timely 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 July 11, 2024, as required pursuant to FRBP 4002(b)(1)(A) and (B). Obj. 1:25-2:1.
2. Debtor failed to provide the 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing of the petition, a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. *Id.* at 2:5-15.

3. The Plan hinges on a Motion to Value the property commonly known as 467 Baywood Drive, Vallejo, CA (“Property”), which Debtor has not filed. *Id.* at 2:16-26.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 24.

DISCUSSION

Debtor’s Reliance on Motion to Value Secured Claim

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

Failure to Provide Tax Returns

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

Failure to Provide Pay Stubs

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 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 for dismissal.

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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 12, 2024. By the court’s calculation, 39 days’ notice was provided. 14 days’ notice is required.

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

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

DCELK Irrevocable Trust (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor holds a note secured by a deed of trust in second position in the real property commonly known as 467 Baywood Drive, Vallejo, CA 94591 (“Property”).
2. Debtor Jamall Joseph Robinson (“Debtor”) is attempting to reduce Creditor’s secured claim to \$0 without filing a Motion to Value. Obj. 2:3-5, Docket 18.

DISCUSSION

Debtor’s Reliance on Motion to Value Secured Claim

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

Creditor has submitted a timely proof of claim, asserting a secured claim in the amount of \$213,927.72. POC 5-1. According to the Plan Form EDC 003-080, the proof of claim determines the amount and classification of a claim, not the Plan. Plan Form EDC 003-080 § 3.02.

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 DCELK Irrevocable Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on Jun 26, 2024. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

August 20, 2024 Hearing

The court continued the hearing on this Objection from its July 16, 2024 calendar to afford counsel additional time to review the Local Bankruptcy Rules and file supplemental pleadings stating amendments that will be stated in the order confirming the Plan. Counsel fo Debtor did not file anything new with the court.

The Chapter 13 Trustee, David Cusick ("Trustee") filed a Status Report on August 7, 2024. Docket 36. Trustee informs the court there are issues with Debtor attempting to claim a homestead exemption in two separate properties, so Trustee has filed an Objection to Claimed Exemptions at Docket 32. Status Report 1:23-27, Docket 36. Trustee states there may be a liquidation problem in this case regarding Debtors' claimed exemptions. *Id.* Moreover, the issue surrounding payment of attorneys' fees is still outstanding. *Id.* at 2:1-7.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Trustee opposes confirmation of the Plan on the basis that:

1. Willie Kenneth Hyde and Brandy Tiani Norman-Hyde (“Debtor”) could not be examined at the 341 Meeting because they failed to provide their government issued photo identification and proof of social number prior to the meeting as required. Obj. 1:23-28, Docket 22.
2. Debtor failed to submit proof of their social security numbers to the Trustee by the First Meeting of Creditors held on June 20, 2024, as required pursuant to §521(h)(2). Obj. at 2:9-13.
3. Debtor’s attorney’s monthly payment is too high. The Plan proposes to pay \$400.00 each month toward the Debtor’s attorney fee balance of \$6,500.00 under the “no look” fee of LBR 2016-1(c). The rule requires payment of the fee in “equal monthly installments over the term” of the plan, and the Plan has a 60-month term, the monthly payment is too high. Obj. at 2:19-23.

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Objection. Decl., Docket 24.

DISCUSSION

Failure to Authenticate Identity

11 U.S.C. § 521(h)(1) and (2) states:

(h)If requested by the United States trustee or by the trustee, the debtor shall provide—

(1)a document that establishes the identity of the debtor, including a driver’s license, passport, or other document that contains a photograph of the debtor;
or

(2)such other personal identifying information relating to the debtor that establishes the identity of the debtor.

Here, Trustee has requested such documentation and Debtor has not complied. This is cause to sustain the Objection.

Attorney’s Fees

Local Bankruptcy Rule 2016-1(c)(4)(B) states, “[a]fter confirmation of the debtor(s)’ plan, the Chapter 13 trustee shall pay debtor(s)’ counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received.” Where the Plan proposes to pay \$400 per month, the Plan violates this rule because it will front

load plan payments, thereby not paying attorney's fees in equal monthly installments over the term of the most recently confirmed Plan.

July 16, 2024 Hearing

At the hearing, counsel for the Trustee reported that Debtor is delinquent is \$1,200.00, and the 341 Meeting has been continued. The Trustee has received the California Driver's License and Social Security information, as well as the tax returns, resolving all but the attorney's fee issue.

At the hearing the court reviewed with Debtor's counsel Local Bankruptcy Rule 2016-1, the most recent July 2023 amended version, which applies to this Bankruptcy Case filed in May 2024.

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

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

The Objection to the Chapter 13 Plan filed by 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties in interest, and Office of the United States Trustee on August 6, 2024. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of Name of Creditor (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$10,883.

The Motion filed by Sonia Eldaene Villalpando (“Debtor”) to value the secured claim of CarMax Business Services, LLC (“Creditor”) is accompanied by an authenticated Kelley Blue Book Price Valuation Report. Declaration, Docket 18; Ex. A, Docket 19. Debtor is the owner of a 2018 Toyota C-HR XLE Sport Utility 4D (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$10,883 as of the petition filing date.

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on November 20, 2021, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,688.27. Proof of Claim, No. 1-1. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of

\$10,883, 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 Sonia Eldaene Villalpando (“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 CarMax Business Services, LLC (“Creditor”) secured by an asset described as 2018 Toyota C-HR XLE Sport Utility 4D (“Vehicle”) is determined to be a secured claim in the amount of \$10,883, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$10,883 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on July 4, 2024. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is XXXXXXX.</p>
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The debtor, Georgene Francis Hicks and Ricardo Esparza, Jr. ("Debtor") seek confirmation of the Modified Plan. Debtor states they became delinquent under the terms of the previous Plan "because [their] home was foreclosed upon, but the sale was rescinded, and [their] attorney had to contact Specialized Loan Servicing, to file a proper proof of claim so that the funds that we have paid gets properly disbursed." Declaration § 2, Docket 139.

The Modified Plan provides for having paid a of total of \$54,000.00 through June 2024, and commencing plan payments of \$6,000 per month for 50 months beginning July 25, 2024. Modified Plan § 7, Docket 141. The Modified Plan also calls for a lump sum payment of \$30,000.00 to be made on or before August 25, 2024. *Id.* 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 August 6, 2024. Docket 147. Trustee opposes confirmation of the Plan on the basis that:

- A. It appears Debtor is paid ahead by \$3,000, so Trustee requests the amount paid be clarified in the order confirming. Opp'n 1:25-2:2, Docket 147.
- B. The trustee is unable to fully assess the feasibility of the plan or effectively administer the Plan, the Modified Plan failing to specify the correct post-petition arrearage amount. *Id.* at 2:3-13.
- C. Debtor does not clearly explain the need for the modification or what led to the delinquency. *Id.* at 2:14-22.
- D. The Certificate of Service (Docket 142) shows service was accomplished on 07-04-2024 but does not list supplemental Schedules I & J as a document that was served on interested parties. *Id.* at 2:23-3:2.

DEBTOR'S RESPONSE

On August 13, 2024, Debtor filed a Response to Trustee's Opposition. Docket 150. Debtor states:

- 1. Debtor is current through August of 2024. *Id.* at ¶ 1.
- 2. Debtor believes the lump sum payment of \$30,000 is sufficient to cover any post-petition arrearage and can be clarified in the Order confirming. *Id.* at ¶ 2.
- 3. Debtor was unsure that they would be successful reversing the foreclosure, and saved the funds for reconciliation with the Trustee's payments when due. *Id.* at ¶ 3.
- 4. Debtor served the Supplemental Schedules I & J, but counsel inadvertently failed to list service of these documents on the Proof of Service. Counsel will file a Certificate of service to show they were served on July 4, 2024. *Id.* at ¶ 4.

DISCUSSION

Debtor has addressed much of Trustee's concerns. In confirming the amount paid through the Plan to date, at the hearing, **XXXXXXX**

In confirming the \$30,000 lump sum payment can go toward sufficiently curing the post-petition arrearage, at the hearing, **XXXXXXX**

Debtor has docketed a second a Proof of Service of the Supplemental Schedules I & J on August 13, 2024, showing the Schedules were served on July 4, 2024. Docket 152.

The court's calculation shows that, under the terms of the original Plan, Debtor would have paid \$91,200 through August of 2024 (including \$33,000.00 paid through November 2023, \$3,000 paid in December 2023, then eight monthly payments of \$6,900 through August of 2024). Plan § 7, Docket 81.

The proposed Modified Plan shows Debtor having paid \$96,000 through August of 2024, with subsequent monthly payments dropping to \$6,000 (including \$54,000.00 being paid through June 2024, payments of \$6,000 commencing in July of 2024 and continuing for 50 months, and a lump sum payment of \$30,000 in August of 2024). Modified Plan § 7, Docket 141. Trustee asserts Debtor is actually \$3,000 overpaid. Debtor, in explaining the decrease and reason for modification, 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, Georgene Francis Hicks and Ricardo Esparza, Jr. ("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 4, 2024, is confirmed, as amended to state **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.

18 thru 19

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on April 2, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

August 20, 2024 Hearing

The court continued the hearing to allow the Debtor to file a supplemental pleading which sets forth the amended terms of the Plan and the agreement with Creditor, United Shore Financial Services, LLC d/b/a United Wholesale Mortgage ("USFS").

On August 16, 2024, a Stipulation to Resolve Objection to Confirmation was filed by the Debtor and USFS. Dckt. 53. The terms stated in the Stipulation are:

- A. USFS claim is provided for in Class 4.
- B. Debtor will make the current monthly installment payments directly to USFS.
- C. The parties have agreed that the arrearage of \$3,255.40 is to be repaid over twelve months in equal payments of \$271.28 as part of the Class 4 payment.

At the hearing, **XXXXXXX**

REVIEW OF THE OBJECTION

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

1. The Debtor cannot make the plan payments and does not appear to have the ability to make the plan payments. Objection, Docket 21, p. 1:25-27.
2. The Debtor’s Plan does not comply with 11 U.S.C. § 1325(a)(1) and (6). *Id.* at p. 2:1-2.
3. The Debtor has failed to accurately disclose information in the Plan and Schedules, as well as provide documents to the Trustee. *Id.* at p. 2:3-4.
4. The Debtor listed United Shore Financial Services, LLC d/b/a United Wholesale Mortgage as a class 4 claim, but the Trustee believes this creditor should be listed as a class 1 claim and paid through the Plan. *Id.* at p. 2:5-13.

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

DISCUSSION

Trustee’s objections are well-taken.

Improper Classification of a Claim

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

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor’s Plan needs to account for the \$7,747.11 arrearage owed to Creditor. In order to account for this arrearage, Debtors monthly plan payment will need to increase by a minimum of \$129.12. However, based on Debtor’s Schedule J, it does not appear that they can afford an increase in plan payments. The Debtor’s proposed Plan calls for a \$990.00 monthly plan payment for 60 months. Plan, Docket 3, § 2. According to Debtor’s Schedule J, their net monthly income is \$990.50. Petition, Docket 1, p. 34. Thus, the Debtor is already putting all of their net monthly income into the proposed plan payment and would not

be able to afford an increase. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Inaccurate or Missing Information

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

July 2, 2024 Hearing

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

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

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

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

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

- A. Creditor's claim will be provided for in Class 4 of the Chapter 13 Plan.
- B. For the \$3,255.40 projected escrow shortage, Debtor is to make payments into the escrow account, in addition to Debtor's regular post-petition monthly payment.

At the hearing, counsel for Creditor reported that Debtor is current on the payments.

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**.

19. [24-20549-E-13](#)
[JCW-1](#)

RYAN/SHARLENE BECK
Mikalah Liviakis

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY UNITED
SHORE FINANCIAL SERVICES, LLC
3-26-24 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 26, 2024. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX.

August 20, 2024 Hearing

The court continued the hearing to allow the Debtor to file a supplemental pleading which sets forth the amended terms of the Plan and the agreement with Creditor, United Shore Financial Services, LLC d/b/a United Wholesale Mortgage (“USFS”).

On August 16, 2024, a Stipulation to Resolve Objection to Confirmation was filed by the Debtor and USFS. Dckt. 53. The terms stated in the Stipulation are:

- A. USFS claim is provided for in Class 4.
- B. Debtor will make the current monthly installment payments directly to USFS.
- C. The parties have agreed that the arrearage of \$3,255.40 is to be repaid over twelve months in equal payments of \$271.28 as part of the Class 4 payment.

At the hearing, **XXXXXXX**

REVIEW OF THE OBJECTION

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

- 1. Debtor is in default in the amount of \$7,747.11 as of the date of the Petition. Objection, Docket 17, ¶ 1.
- 2. Debtor’s Plan does not include arrearage owed to the Creditor. *Id.* at ¶ 2. In order for the Debtor to cure the arrearage within 60 months, Creditor would need to receive \$129.12 increase in plan payments. *Id.*
- 3. Debtor’s plan payment is in the amount of \$990.00, and Debtor’s net monthly income is \$990.50, therefore, the Debtor will not be able to afford the increased plan payment when it accurately accounts for the arrearage owed to the Creditor. *Id.*

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

DISCUSSION

Creditor’s objections are well-taken.

Failure to Afford Plan Payment

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

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

July 2, 2024 Hearing

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

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

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

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

- A. Creditor's claim will be provided for in Class 4 of the Chapter 13 Plan.
- B. For the \$3,255.40 projected escrow shortage, Debtor is to make payments into the escrow account, in addition to Debtor's regular post-petition monthly payment.

At the hearing, counsel for Creditor reported that Debtor is current on the payments.

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

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

The Objection to the Chapter 13 Plan filed by United Shore Financial Services, LLC d/b/a United Wholesale Mortgage ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 18, 2024. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

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

1. Debtor Charles Vernon Romero and Teresa Ann Romero may not be committing all disposable income to the Plan as required by 11 U.S.C. § 1325(b)(1)(B). Debtor has not contributed income received in the amount of \$6,223.00 from tax refunds. Obj. 2:1-4, Docket 17.
2. Additionally, Debtor's Schedule I shows a monthly voluntary contribution to their retirement account in the amount of \$707.31. The Trustee does not believe this contribution is permissible since it is a voluntary and not mandatory deduction. *Id.* at 2:4-8.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 19.

DISCUSSION

Failure to Provide Disposable Income

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

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

Here, Debtor is not contributing any amount of the tax refund to the Plan, and Debtor is contributing the sum of \$707.31 voluntarily to their retirement account. These payments do not fit within any exception to disposable income found in 11 U.S.C. § 1325(b)(2). It appears Debtor is not committing all disposable income to fund the Plan.

At the hearing, **XXXXXXX**

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.

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on July 18, 2024. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Movant is two days late of the required notice period.

The Certificate of Service states that only the Debtor, the Chapter 13 Trustee, and the U.S. Trustee were served. No Creditor or other parties in interest who are entitled to notice of motion and the motion itself were served. The Service of the Motion is deficient.

At the hearing, **XXXXXXX**

~~The Motion to Sell Property 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 Sell Property is **denied.**

The Bankruptcy Code permits Daniel Zinn Crain, the Chapter 13 Debtor, ("Movant," "Debtor") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 18178 Roseleaf Lane, Redding, Ca 96003 ("Property").

The proposed purchasers of the Property are Robin Little and Robert Little ("Buyer"), and the terms of the sale are:

- A. The price is \$490,000,
- B. Proceeds of the sale will be used to pay all closing costs and all liens of record with the balance being paid directly to Movant at close of escrow

pursuant to Movant's homestead exemption under Ca. Code Civ. P. § 704.730,

C. There were no brokers or agents involved in the transaction.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee") filed an Opposition on August 6, 2024. Docket 138. Trustee opposes on the basis that the transaction may not be an arm's length sale, Movant proposing to sell to a buyer who resides at the same address, and that Movant is currently delinquent two plan payments in the amount of \$3,580.00. Opp'n 1:22-2:3, Docket 138. Proceeds of the sale are not going toward curing the delinquency. *Id.*

DEBTOR'S DECLARATION IN RESPONSE

Debtor filed a supplemental Declaration responding to Trustee's Opposition on August 8, 2024. Docket 141. Debtor states he will use the proceeds of the sale to become current under the Plan. *Id.* at ¶ 1. He also states the price is fair, valuing the Property at \$245 per square foot. *Id.* at 2:17-18. The Buyer does not live at the Property with Movant, but is listing Movant's address as their own as Buyer currently lives in an RV. *Id.* at 2:22-24. Buyer intends to use the proceeds to relocate from Redding, California to find work elsewhere. *Id.* at ¶ 2.

DISCUSSION

Debtor does not intend to use proceeds of the sale to complete the Chapter 13 Plan, although there are not many outstanding payments left in this case. Debtor proposes to keep the entire amount of the proceeds of the sale pursuant to his homestead exemption without explaining where these funds of the Estate will be allocated.

Moreover, Debtor has not marketed this Property, so it is unclear if this purchase price reflects the true market price. Although Debtor provides the price estimation based on a square foot estimate, the court notes that a construction square footage price estimate usually does not account for the price of the real estate on which the Property sits. Debtor could sell the Property for the price he sees fit if the Plan were completed. However, Debtor is not proposing to complete the Plan, but only cure the delinquency.

As the fiduciary of the Bankruptcy Estate, exercising the powers of a bankruptcy trustee to sell property, the Debtor must do so in a commercially reasonable manner, which includes the proper marketing of the property by a real estate professional. The Debtor cannot do a "good enough" sale when he is not paying his creditors in full from or at the time of the sale.

At the hearing, **XXXXXXX**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because debtor will have funds to establish himself in an area better suited for his work, and also cure the delinquency in his plan payments:

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 Sell Property filed by Daniel Zinn Crain, the Chapter 13 Debtor, ("Movant," "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.

~~Granted and Daniel Zinn Crain, the Chapter 13 Debtor, ("Movant," "Debtor"), is authorized to sell pursuant to 11 U.S.C. § 363(b) 1303 to Robin Little and Robert Little or nominee ("Buyer"), the Property commonly known as 18178 Roseleaf Lane, Redding, Ca 96003 ("Property"), on the following terms:~~

- ~~_____ A. The Property shall be sold to Buyer for \$490,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1-3, Dckt. 132, and as further provided in this Order.~~
- ~~_____ B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~_____ C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~_____ D. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

~~_____ If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee's demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.~~

22 thru 24

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 16, 2024. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

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

REUSED DOCKET CONTROL NUMBER

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

THE OBJECTION

Capital One Auto Finance, a division of Capital One, N.A. ("Creditor"), opposes confirmation of the Plan on the basis that:

1. Tyler-James Wilson McCall's ("Debtor") proposed Plan does not pay the full allowed secured claim of Creditor, nor does it make payments in equal monthly installments, all in violation of 11 U.S.C. § 1325(a)(5).

The Plan does not provide for this Claim.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a secured claim of \$5,957.89 in this case, secured by a 2012 Hyundai Sonata SE Sedan 4D. POC 3-1. Debtor does not provide for this Creditor in the proposed Plan at Docket 14.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1325(a)(5)(B) because it does not fully provide for payment of Creditor's entire obligation, and it does not offer to pay the claim in equal monthly payments. *See* 11 U.S.C. §§ 1325(a)(5)(B)(ii) & (iii)(I).

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a claim secured only by the debtor's primary residence, but may modify other secured claims (11 U.S.C. § 1322(b)(2)). Notwithstanding the forgoing limitation, 11 U.S.C. § 1322(b)(3) authorizes the curing of any default on a secured claim—including a home loan. In addition, the Plan may provide for maintaining ongoing contract installment payments on a secured claim while curing default on such secured claim. 11 U.S.C. § 1322(b)(5).

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

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason 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 Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 2, 2024. By the court's calculation, 49 days' notice was provided. 14 days' notice is required.

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

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

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

1. Under the hanging paragraph of § 1325(a)(9)(*), Tyler-James Wilson McCall's ("Debtor") may not use 11 U.S.C. § 506 to limit the secured portion of a claim to the Collateral's value if the creditor has a purchase money security interest securing the debt that is the subject of the claim and the Collateral was purchased within 910 days of the petition date. Obj. 2:13-16, Docket 32. The balance due on the claim is stated to be (\$18,014.04).
2. Additionally, the Plan fails to pay the applicable prime plus interest rate on Creditor's claim in violation of *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Obj. 2:20-3:1, Docket 32.

DISCUSSION

Improper Modification of Creditor's Secured Interest

According to the hanging paragraph of 11 U.S.C. § 1325(a)(9),

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

Creditor alleges its collateral is the type described in this statute, as the Collateral was purchased within the 910-day period preceding filing, and the Collateral is a vehicle acquired for personal use. Creditor has filed a proof of claim in the amount of \$18,014.04, valuing the collateral at \$9,713. POC 2-1 at 2. Debtor's Plan values the collateral at \$7,503. Plan § 3.08, Docket 14. Debtor purchased the collateral on December 7, 2021, when this case was filed on May 22, 2024. Ex. A 3, Docket 34. December 7, 2021 just inside the 910-day window. Therefore, the court agrees the hanging paragraph of 11 U.S.C. § 1325(a)(9) does not permit modification of Creditor's claim.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5%. Plan § 3.08, Docket 14. Creditor's claim is secured by a 2017 Toyota Corolla LE Sedan 4D. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.5%, plus a 1.25% risk adjustment, for a 9.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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 Bridgecrest Acceptance Corporation (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

24. [24-22258-E-13](#)
[DPC-1](#)

TYLER-JAMES MCCALL
Pro Se

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK**
7-17-24 [43]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

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

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

1. Tyler-James Wilson McCall (“Debtor”) is \$1,600.00 delinquent in Plan payments to the Trustee. Obj. 1:25-2:2, Docket 43.

2. Debtor failed to appear and was not examined at the First Meeting of Creditors held on July 11, 2024. *Id.* at 2:8-9.
3. 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 July 11, 2024, as required pursuant to FRBP 4002(b)(1)(A) and (B). Obj. 2:13-19, Docket 43.
4. Debtor failed to provide the 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing of the petition, a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. *Id.* at 2:20-3:3.
5. Debtor is unable to make the payments called for under the Plan, his Schedules I and J indicating a negative monthly income of (\$2,458). *Id.* at 3:4-10.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 45.

DISCUSSION

Delinquency

Debtor is \$1,600 delinquent in plan payments, which represents 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).

Failure to Appear at 341 Meeting

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

Failure to 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 for dismissal.

Failure to Provide Tax Returns

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

Failure to Provide Pay Stubs

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 Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor shows on Schedule I as having a monthly net income of \$2,370. Schedule I at 24:10, Docket 17. Debtor shows on Schedule J expenses of \$4,828, leaving a negative monthly income of (\$2,458). Schedule J at 27:22 Docket 17. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

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

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

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

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

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

1. Debtor Neshell Faison (“Debtor”) failed to appear and was not examined at the First Meeting of Creditors held on July 18, 2024. Obj. 1:25-2:2, Docket 17.
2. 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 July 18, 2024, as required pursuant to FRBP 4002(b)(1)(A) and (B). *Id.* at 2:3-9.
3. Debtor failed to provide the 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing of the petition, a

tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. *Id.* at 2:10-21.

4. Debtor may be unable to make plan payments as OneMain Financial Group filed a secured claim in the amount of \$6,350.00 on July 7, 2024, (Claim 15). This debt is not provided for in the Plan or listed on Schedule D, and there is no expense listed on Schedule J to provide for payment of this claim. *Id.* at 2:22-3:3.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 19.

DISCUSSION

Failure to Appear at 341 Meeting

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

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 for dismissal.

Failure to Provide Tax Returns

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

Failure to Provide Pay Stubs

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 for a Secured Claim

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

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

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

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

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

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

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

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

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

1. Debtor Ismael Castillo and Jackie Castillo (“Debtor”) failed to appear and was not examined at the First Meeting of Creditors held on July 18, 2024. Obj. 1:25-2:2, Docket 19.
2. 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 July 18, 2024, as required pursuant to FRBP 4002(b)(1)(A) and (B). *Id.* at 2:3-9.
3. Debtor failed to provide the 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing of the petition, a

tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. *Id.* at 2:10-21.

4. Debtor has failed to provide business documents, including 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documentation exists. *Id.* at 2:23-27.
5. Debtor's Plan may be overextended as Marlin Leasing Corporation d/b/a Peac Solutions ("Creditor") filed a secured claim in the amount of \$45,626.47 on June 20, 2024, (Claim 1). The Non-Standard Provisions of Debtor's Plan propose payments to Creditor of \$641.00 per month for 60 months and a loan balance of \$30,500.00. According to the Trustee's calculations, this is a difference of \$15,126.47. *Id.* at 3:1-9.

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

DEBTOR'S RESPONSE

Debtor filed a Response to Trustee's Objection on August 6, 2024. Docket 25. Debtor states:

1. Debtor will attend the continued 341 Meeting on August 15, 2024. *Id.* at 1:21-23.
2. Debtor has provided Trustee with all 11 U.S.C. § 521 documents, including business and personal documents. *Id.* at 1:23-25.
3. Creditor's claim is actually unsecured, not secured as Debtor had originally thought. Creditor's entire claim can be paid as a general unsecured creditor, although Debtor is investigating whether Creditor's accounting is correct. *Id.* at 1:26-2:10.

DISCUSSION

Failure to Appear at 341 Meeting

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

In confirming whether Debtor appeared at the continued 341 Meeting, at the hearing, **XXXXXXX**

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.

In confirming whether Debtor has given Trustee the necessary documentation at the hearing,

XXXXXX

Failure to Provide Tax Returns / Failure to Provide Pay Stubs / Business Documents

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).

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 further cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

- A. Two years of tax returns,
- B. Six months of profit and loss statements,
- C. Six months of bank account statements, and
- D. Proof of license and insurance or written statement that no such documentation exists.

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

In confirming whether Debtor has given Trustee the necessary documentation at the hearing,

XXXXXX

Plan Feasibility

Trustee asserts Creditor filed a secured claim in the amount of \$45,626.47. However, the court's review of Proof of Claim 1-1 shows that the claim is unsecured, so it can be provided for in the pot of general unsecured creditors. POC 1-1 at 2:9. At the hearing, **XXXXXXX**

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

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

The Objection to the Chapter 13 Plan filed by 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 **XXXXXXX**.

~~**IT IS ORDERED** that the Objection is overruled, and Debtor Ismael Castillo and Jackie Castillo's ("Debtor") Chapter 13 Plan filed on June 18, 2024, is confirmed, as amended to state **XXXXXXX**. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 23, 2024. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Motion to Disgorge Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, 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, **XXXXXXX**.

<p>The Motion to Disgorge Fees is XXXXXXX.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), moves the court for an Order disgorging attorney’s fees in this case pursuant to 11 U.S.C. § 329(b). Trustee Argues, Debtor’s attorney Peter Macaluso, charged fees in this case of \$10,000 with \$2,500 paid prior to filing. Mot. 2:4-5, Docket 91. Mr. Macaluso charged this amount pursuant to Local Bankruptcy Rule 2016-1(c)(1) based on the assertion that this is a Chapter 13 business case, which permits no-look fees up to \$12,500, permitting a 25% retainer up front. Local Bankruptcy Rule 2016-1(c)(1)(A). The same rule only permits a maximum of \$8,500 in fees for a non-business case.

Here, Trustee argues this is not a business case as Debtor’s petition reflected he was not a sole proprietor of any full or part-time business and his debts are primarily consumer debts. Mot. 2:16-17, Docket 91. Trustee states while Schedule A/B reflects two wholly owned LLCs, it reflects only \$1.00 of value for each. *Id.* at 2:18-19. Trustee requests the court disgorge \$375 of the \$2,500 retainer Mr. Macaluso accepted, and the court limit the total fees sought to \$8,500.

PETER MACALUSO’S RESPONSE

Mr. Macaluso filed a Response on August 13, 2024. Docket 101. Mr. Macaluso argues Debtor operates a furniture sales business online that results in the above listed case qualifying as a “Business Case.” Resp. 1:22-23, Docket 101. Debtor owns an operational LLC that is the source of any income reflected in Schedule I. *Id.* at 1:25-2:1. The fees should be allowed as the case qualifies as a business case.

DISCUSSION

11 U.S.C. § 329(b) gives the court authority to disgorge fees under certain circumstances, stating:

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—

(1) the estate, if the property transferred—

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

Local Bankruptcy Rule 2016-1(c)(1)(A) only permits the fees paid and requested in this case if the court finds the case is a Chapter 13 business case. Local Bankruptcy Rule 2016-1(c)(1)(B) states:

For the purposes of this subdivision, there is a **rebuttable presumption that any Chapter 13 case is a nonbusiness case**. That presumption may be rebutted by a preponderance of the evidence where the original petition, schedules, and statements demonstrate that: (1) the debtor(s) or a contributing non-filing member of the debtor(s)' household has an ownership interest in a business, e.g., sole proprietorship, partnership, or an entity, i.e., an S corporation or LLC, in which profits and losses are passed through to the equity holders for tax purposes, or in one or more rental properties; and (2) either (A) without consideration of the amount due any purchase money residential mortgage lender, a significant portion of the scheduled debt arose out of business or rental operations; or (B) a significant portion of the debtor(s)' and/or contributing non-filing member of the debtor(s)' household's aggregate gross going forward income is attributable to the business or rental operations.

(emphasis added). This rule constricts the court to the facts found in the original petition, schedules, and statements, but may be considered as amended where amendments date back to the filing of the petition. The rebuttable presumption that any Chapter 13 Case is a nonbusiness case can only be overcome when two factors are met: first, Debtor must have an ownership interest in a business or rental property, and second, either a significant portion of the scheduled debt arose out of business or rental operations, or a significant portion of Debtor's going forward income is attributable to the business or rental operations.

In this case, Debtor's Schedule A indicates he owns an interest in two LLCs: "New Age Financial, LLC - rent to own online," and "New Age Electronic, LLC (sale online furniture)". Schedule A/B 6:19, Docket 20. Therefore, this prong in rebutting the presumption is met.

Debtor must also show either a significant portion of the scheduled debt arose out of business or rental operations, or a significant portion of Debtor's going forward income is attributable to the business or rental operations. The court finds this second prong necessary for rebutting the presumption is also met. Debtor's most recently filed Amended Schedules I and J indicate a net income of \$9,700 per month, solely

from operating a business or rental property. Am. Schedule I at 5:8a, Docket 71. Therefore, because all of Debtor's aggregate gross going forward income is attributable to the business or rental operations, the court finds that the presumption has been sufficiently rebutted.

However, the court need not rely on Local Bankruptcy Rule 2016-1(c) to disgorge fees as 11 U.S.C. § 329(b) permits disgorging fees when "compensation exceeds the reasonable value of any such services." This Debtor has filed a string of unsuccessful bankruptcy petitions in recent years, either appearing *pro se* or being represented by Mr. Macaluso. *See* Civil Minutes at 7-10, Docket 86 (explaining the bankruptcy history and granting relief from stay pursuant to 11 U.S.C. §§ 362(d)(1), (2), and (4)). The current case has resulted in a string of failures with the court denying confirmation of another Amended Plan on August 12, 2024. Docket 100.

The case began by the court not extending the automatic stay, the court finding that Debtor was unable to overcome the presumption of bad faith. Order, Docket 37. Debtor initially made a bold and compelling argument that this case can work, largely depending on insurance proceeds of \$70,000 or more coming in as a lump sum payment. Those sums were never paid as required under the initial Plan filed with this court. As the case progressed, the court slowly learned those insurance proceeds had been paid elsewhere, without consent or knowledge of creditors or this court, resulting in unauthorized postpetition payments of Estate assets.

While the services of counsel may have been "financially beneficial" to the Debtor personally, those services were not provided in assisting the Debtor in fulfilling his duties and obligations as the Debtor, and in performing his fiduciary duties in exercising the powers of a trustee to obtain and hold possession of the property of the Bankruptcy Estate, which monies the Debtor diverted to his personal uses and not as permitted under the Bankruptcy Code.

As addressed by the court in the Civil Minutes for the July 2, 2024 hearing on the Motion for Relief From the Automatic Stay:

On June 26, 2024, Debtor filed an Amended Chapter 13 Plan with supporting evidence and a Motion to Confirm. Docket 76. The new Plan no longer calls for the lump sum payment of \$70,000. Debtor explains in his supporting Declaration that money has mostly been spent on various things, including the first two plan payments of \$8,100 each. Debtor states:

After both my wife and I have both lost our jobs, and I have utilized the insurance check to pay our bills which I have deposited in Banner Bank for \$70,000.00, in which I paid to the Plan in the last two months for the amount of \$16,200.00 and bought a truck with cash for \$8,000.00 to rebuild my business and obtain the ability to deliver furniture purchased through my business in order to make the proposed plan payments. I also paid my mother \$20,000.00 that I owed her a couple years back to start up my business but was quickly shut down. My mother in law passed away on Mother's day and had to pay for the funeral expenses which cost \$10,000.00 for cremation, service, and burial.

Decl. ¶ 3, Docket 74.

The court has concerns over this change in events. Debtor's previous Plan was to be funded with this \$70,000. However, it has now come to light Debtor has used this money elsewhere, likely during the time period the previous Plan came into formation, meaning Debtor misrepresented his intent to use the \$70,000 payment to fund the Plan.

While Debtor frames the situation in which he had to use the monies for the other purposes in order to service, Debtor testifies under penalty of perjury that \$20,000 was paid to his Mother, outside of the bankruptcy case, for a business loan and then \$10,000 for cremation and burial expenses of his Mother in Law.

Debtor's testimony, Dckt. 74, is that he knowingly and intentionally has transferred monies from the bankruptcy estate post-petition to his Mother, to pay a pre-petition debt, and to pay his Mother in Law's funeral expenses. This is in violation of the Debtor's fiduciary duties to the Bankruptcy Estate in his exercise of the powers of a trustee in administering property of the Bankruptcy Estate.

Civ. Minutes, p. 4-5; Dckt. 86.

Mr. Macaluso, in explaining how the compensation in this case has not exceeded reasonable value of the services, 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 Disgorge Fees 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 Disgorge Fees 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—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, attorneys of record who have appeared in the case, and Office of the United States Trustee on July 9, 2024. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p>The Motion to Confirm the Amended Plan is granted.</p>
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The debtor, Rakesh Kumar Bains and Baljit Kaur Bains (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for two monthly payments of \$8,750 each, then 58 monthly payments of \$7,250. Amended Plan § 7, Docket 127. One of the problems of the initial Plan was that Debtor attempted to modify rights of creditors on various secured obligations owed by Red Wing Carrier, Inc. (“Red Wing”), and Debtor has corrected that issue by removing those provisions. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S NONOPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 6, 2024. Docket 154. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is slightly delinquent in plan payments in the amount of \$89.07. Opp’n 1:22-23, Docket 154.

- B. Debtor has corrected the errors relating to modifying rights and interests of creditors of Red Wing, so Trustee argues the Plan has been submitted in good faith and recommends confirmation. *Id.* at 2:4-20.

CREDITOR'S OPPOSITION

U.S. Bank National Association ("Creditor") filed an Opposition on August 6, 2024. Docket 156. Creditor opposes confirmation of the Plan on the basis that:

- A. On or about March 31, 2022, Bains Marinated Meat Shop ("Non-Filing Borrower"), through Debtor as guarantor, executed a SBA Guaranteed Cash Flow Manager Line of Credit Agreement and Terms with Guaranty ("Agreement") with a credit limit in the sum of \$25,000.00, which was made payable to Creditor. Opp'n 1:25-2:2., Docket 156.
- B. Creditor filed a Proof of Claim asserting a secured claim in the amount of \$26,696.95 on May 3, 2024. *Id.* at 2:14-15.
- C. Debtor's Plan fails the requirements of 11 U.S.C. § 1322(b)(8) by not providing for Creditor's Claim.

DEBTOR'S RESPONSE

Debtor filed a Response on August 13, 2024. Docket 166. Debtor states:

- A. Creditor is a secured creditor of Non-Filing Borrower, not Debtor. Debtor Rakesh Bains is merely the guarantor of the loan made to Non-Filing Borrower. Therefore, Creditor's claim in this case is wholly unsecured by virtue of the guarantee. Debtor cannot modify the rights of creditor on secured debts and obligations owed by Non-Filing Borrower. Resp. 2:4-16, Docket 166.

Review of Creditor's Claim

Creditor has filed Proof of Claim 32-1 on May 3, 2024, asserting a secured claim of \$26,969.95, with interest at the rate of 15% per annum. The Claim is asserted to be fully secured. The property securing the claim is stated to be "ALL ASSETS AS DESCRIBED UNDER THE CONTRACT'S SECURITY PROVISION." POC 23-1, p. 2.

The collateral perfection document is a UCC 1 statement filed with the California Secretary of State. POC 32-1, p.14. The key information about the collateral, the person granting the security interest, and related information includes:

- A. Debtor Name: "BAINS MARINATED MEAT SHOP."
- B. Secured Party Information: "US BANK NA."

C. The Collateral Securing the debt.

Description:

All of the following property now owned or existing or hereafter acquired by the Debtor or by Debtor with spouse, wherever located: all accounts; inventory: equipment; fixtures; instruments; documents; chattel paper; investment property; deposit accounts; letter of credit rights and all accessions to, replacements of and substitutions for and all supporting obligations, products and proceeds of any of the foregoing in whatever form: and all books, records and data relating to any of the foregoing in whatever form; together with Debtors right title and interest in and to all software required to utilize, create, maintain and process such records or data on electronic media. other than the sale or lease of inventory in the ordinary course of Debtors business, the purchase by or pledge to another person of any of described collateral violates the rights of the Secured Party. Any receipts of proceeds of the collateral by a subordinate secured party violated the rights of the Secured Party

The “DEBTOR” identified in the UCC-1 whose property is encumbered by Creditor’s security interest is “BAINS MARINATED MEAT SHOP,” not Rakesh Kumar Bains, the individual who is the debtor in this Bankruptcy Case.

On Schedule A/B Debtor lists “Bains Marinated Meat Shop” as an “incorporated and unincorporated business, including an interest in an LLC, partnership, and joint venture,” and that Debtor owns 100% of the interests in that business. Dckt. 1 at 6-1.

In the Reply, Debtor states that Bains Marinated Meat Shop is a corporation, and Exhibit A filed with the Reply, is a corporation. Ex. A; Dckt. 167.

At the hearing, **XXXXXXX**

DISCUSSION

Creditor’s Opposition is without merit. 11 U.S.C. § 1322(b) only specifies which provisions a plan *may* include. 11 U.S.C. § 1322(b) (“Subject to subsection (a) and (c) of this section, the plan *may*. . .”). Therefore, opting not to include in a plan a certain provision of 11 U.S.C. § 1322(b) is not dispositive of confirmation.

Moreover, Debtor is not the primary debtor of the secured obligation owed to Creditor. Creditor itself admits that Non-Filing Borrower is the entity liable on the secured debt, being subject to the UCC-1. *See* POC 32-1 at 14 (listing “Bains Marinated Meat Shop” as the debtor under the UCC-1). Debtor cannot modify the secured rights of Creditor in this case as only Non-Filing Borrower would be eligible to do so in its own bankruptcy. By modifying the obligation owed by Non-Filing Borrower in this case, as Creditor suggests is proper, Debtor would in essence be giving Non-Filing Borrower a third party release. Such a

release is not permitted under the Code. *See In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995) (holding “Section 524 does not. . . provide for the release of third parties from liability; to the contrary, § 524(e) specifically states that ‘discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.’”). Creditor’s proposal in its Opposition is an attempted modification that is not permitted by law and is in violation of 11 U.S.C. § 1325(a)(3).

However, Creditor is an unsecured creditor in this case to the extent that Debtor Rakesh Bains is the guarantor for that loan in his personal capacity. Therefore, Creditor is properly classified as a general unsecured creditor in this case.

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, Rakesh Kumar Bains and Baljit Kaur Bains (“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 9, 2024, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, attorneys of record who have appeared in the case, and Office of the United States Trustee on July 23, 2024. By the court's calculation, 28 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). Movant is seven days short of the required notice period.

At the hearing, **XXXXXXX**

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

The Motion to Confirm the Modified Plan is XXXXXXX.

REUSED DOCKET CONTROL NUMBER

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

THE MOTION

Calvin and Joanna Mitchell, the debtors, ("Debtor") have filed their Motion, Dckt. 43, seeking confirmation of a 1st Modified Chapter 13 Plan. The Motion hits the statutory requirements for modification of a Plan, though not citing to the provisions of 11 U.S.C. §§ 1329, 1325, and 1322. The modification is to delete the step-up in monthly payments to \$6,700 that is required in the confirmed 1st Amended Plan.

Mtn., ¶ 8; Dckt. 43. This step-up is not necessary due to the Internal Revenue Service secured/priority claim being reduced to (\$245,975) from the (\$328,186) originally claimed. Amd POC 5-2.

The Modified Plan also includes a final lump sum payment in the amount of \$52,000. *Id.* 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. This is consistent with the confirmed 1st Amended Plan which provided for a final \$59,000 lump sum payment.

It is additionally stated in the Motion that debtor Calvin Mitchell is not making sufficient income from Self-employment and various jobs to afford the stepped up payments. *Id.*; ¶ 9.

The Declaration of debtor Calvin Mitchell is filed in support of the Motion. Dec.; Dckt. 46. The last page of the Plan is attached as the “first page” of the Declaration in what appears to be a clear clerical error. There is no signature page for the Declaration. *Id.*

The Declaration of debtor Calvin Mitchell was refiled (not as an amended or corrected declaration) on August 13, 2024. Dckt. 52. In it, debtor Calvin Mitchell (“CM”) testifies (identified by paragraph number in the Declaration):

2. CM states he attempted to work full-time this past winter at Palisades Tahoe, but was not employed 40 hours a week. He also did fill-in work for a snow removal company. CM plans to continue with that employment next year.
3. To supplemental income, CM has done small remodel/maintenance jobs as “Mitchell Construction.” He has no employees. This adds \$2,000 a month to income, which when added to the Palisades and snow removal fill-in work, would total \$5,200 a month.
4. CM has formed a new home inspection business called “Tahoe Inspection Services” and has completed the required certifications. This business has not begun generating income as of the time of the Declaration.
7. If CM’s income is not sufficient to make the Plan payments, including the final \$52,000 lump-sum payment, then Debtor plans on selling their residence.

Dckt. 52.

The debtor, Calvin Marx Mitchell and Joanna Klinker Mitchell (“Debtor”) seek confirmation of the Modified Plan without specifying any reason for the requested Modification. The Docket is unclear and jumbled with multiple Motions listed under the same Docket Control Number. Debtor Calvin Mitchell’s Declaration in support is improperly attached to the bottom page of the Modified Plan. Docket 46.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 6, 2024. Docket 48. Trustee opposes confirmation of the Plan on the basis that:

- A. No supplemental Schedule I & J have been filed to support this motion so the Court may find the debtor has not proven they can afford the payments. Opp’n 1:25-27, Docket 48.
- B. The plan payment relies on seasonal or part time employment of Debtor Calvin Mitchell, and there is no additional evidence that Debtor will be employed during the summer, fall and winter seasons and can make the proposed plan payment, especially the final lump sum payment of \$52,000.00 due in month 60. *Id.* at 2:6-24.
- C. Debtor is slightly paid ahead by \$500. *Id.* at 2:25.
- D. Debtor’s counsel appears to propose an additional \$1,400 in attorney’s fees under the Modified Plan, but Debtor opted into the no-look fee provision originally and cannot seek additional fees without a Motion for Approval of Professional Fees being granted. *Id.* at 3:3-15.
- E. The claim for Hennessey Heating & Air, Inc (“Creditor”) (POC 6-1) was filed for \$17,224.00 priority on April 11, 2024. This priority claim has been filed for higher than Debtor anticipated and is not properly accounted for, and Debtor has not objected to the claim. *Id.* at 3:17-21.

The Hennessey Heating & Air, Inc. Claim is asserted to be entitled priority is that it is for “wages, salaries, or commissions . . . earned within 180 days before the bankruptcy petition was filed. . . .” POC 6-1, § 12. It is unclear how this Corporation was owed wages,

- F. The modified plan proposes to the percentage to unsecured creditors is no less than 2%. The Trustee calculates that the modified plan may pay approximately 10% to unsecured creditors. *Id.* at 3:23-26.

DEBTOR’S RESPONSE

Debtor filed a Response to Trustee’s Opposition on August 13, 2024. Docket 53. Debtor states:

- A. Debtor has filed Supplemental Schedules I and J in support of the Motion at Docket 51. Opp’n 1:25-26, Docket 53.
- B. Debtor Mr. Mitchell can contribute \$5,000 toward the plan payment through construction work and through his newly formed home inspection service. *Id.* at 1:27-2:3.
- C. Debtor requests the paid ahead amount of \$500 be subtracted from the final lump sum payment of \$52,000, meaning Debtor’s lump sum payment is reduced to \$51,500. *Id.* at 2:4-6.
- D. Debtor’s counsel will file a motion to approve additional fees set for September 24, 2024. *Id.* at 2:7-8.

- E. Debtor will object to the claim of Creditor and set that objection for September 24, 2024. *Id.* at 2:9-10.

DISCUSSION

On Amended and Supplemental Schedule I (Debtor having checked both boxes, stating under penalty of perjury that Amended and Supplemental Schedule I date back to the June 30, 2023 filing of this Bankruptcy Case and also are only changes from June 1, 2024 going forward), Debtor states the following income information:

1. Debtor Joanna Mitchell has gross monthly income of \$16,529.
2. Debtor Calvin Mitchell has “Other Monthly Income, such as Odd Jobs, Construction, Inspection Services” of \$5,000 a month.

Dckt. 51. This monthly income is listed under “Other Monthly Income” and not as income from a business (or businesses) operated by debtor Calvin Mitchell. The income from a business must be listed under section 8 of Schedule I and a gross income and expense attachment must be part of the Schedule I. No business income and expense attachment is part of Schedule I.

On Amended and Supplemental Schedule J (it too being a Janus-faced Schedule) states that Debtor has (\$10,742.98) in reasonable and necessary monthly expenses. Dckt. 51. These monthly expenses, for a family of two adults and two teenage children, include:

1. Food and Housekeeping Supplies.....(\$1,800)
2. Transportation.....(\$1,500)
3. Taxes.....(\$1,100).

It is unclear what business costs and expenses, as well as self-employment taxes, income taxes, and Social Security taxes that are being paid from debtor Calvin Mitchell’s gross business income.

In looking at Schedule A/B filed on July 28, 2023, the Debtor lists having property used in Debtor’s business that consists of “Trailer, Tools, and Equipment” having a value of only \$5,000. Dckt 21 at 8. Debtor also lists having a 2015 Ford F350, with approximately 200,000 miles on it. *Id.* at 4.

In looking at the above expenses it is not clear how there are \$1,500 a month in transportation expenses (\$18,000 a year). If debtor Calvin Mitchell’s gross income is \$5,000 from his business, it is not clear what the net income is from the business.

At the hearing, **XXXXXXX**

In carnifying the amount paid to unsecured creditors, 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 Confirm the Modified Chapter 13 Plan filed by Calvin Marx Mitchell and Joanna Klinker Mitchell (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

30. [23-22592-E-13](#)
[CK-3](#)

AMANDA WILSON
Catherine King

MOTION TO CONFIRM PLAN
7-15-24 [\[76\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 15, 2024. 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 confirmed.</p>
--

The debtor, Amanda Dean Wilson (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$665 for 18 months through February of 2025. Amended Plan § 7, Docket 79. The Plan also calls for Debtor selling her residence within 18 months to pay the class 1 mortgage in full. *Id.* If Debtor cannot sell the Property no later than December, 2024, Debtor will

surrender the residence to the mortgage holder, US Bank N.A. *Id.* 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2024. Docket 88. Trustee opposes confirmation of the Plan on the basis that:

- A. The terms of the proposed sale are unclear. Trustee does not know if the sale must be completed by the end of 2024 or some time early in 2025 by the terms. *Id.* at 2:2-10.
- B. Debtor's Schedules I and J at Docket 1 do not indicate she can afford a \$665 monthly payment. *Id.* at 2:11-15.

DEBTOR'S RESPONSE

Debtor and her attorney filed Declarations in Response on August 13, 2024. Decls., Dockets 92, 93. Both testify that if the home is not sold by the end of December 2024, then Debtor will surrender the home. Additionally, Debtor filed Supplemental Schedules I and J at Docket 91, showing she can afford the proposed monthly payment.

DISCUSSION

Having worked to resolve Trustee's concerns, including resolving the sale time line as well as filing Supplemental Schedules I and J, 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, Amanda Dean Wilson ("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 15, 2024, as amended to provide **XXXXXXX** is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court's calculation, 34 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 Merrilee Rose Zerrougui ("Debtor") is \$2,271.00 delinquent in Plan payments to the Trustee. Obj. 1:22-27, Docket 16.
2. Debtor failed to submit proof of her social security number and a copy of a government issued picture identification to the Trustee before the First Meeting of Creditors held on July 11, 2024, as required pursuant to FRBP 4002(b)(1)(A) and (B). *Id.* at 2:3-9.
3. Debtor failed to provide the 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing of the petition, a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. *Id.* at 2:10-21.

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

DISCUSSION

Delinquency

Debtor is \$2,271.00 delinquent in plan payments, which represents 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).

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 for dismissal.

Failure to Provide Tax Returns

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

Failure to Provide Pay Stubs

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).

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.

32. [24-23095-E-13](#)
[MRL-1](#)

PATRICIA PEREZ
Candace Brooks

**MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL GROUP, LLC
7-24-24 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on July 24, 2024. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of OneMain Financial Group, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$5,250.00.

The Motion filed by Patricia Lorraine Marie Perez (“Debtor”) to value the secured claim of OneMain Financial Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Docket

14. Debtor is the owner of a 2011 Lexus ES350 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$5,250.00 as of the petition filing date.

However, the court notes the Motion also seeks to value the Vehicle at \$14,929.00, as well as to value it at \$5,250.00. Mot. 1:23, Docket 12.

On Proof of Claim 1-1, Creditor states the value of the Vehicle is \$10,500.00, there is an unsecured claim for \$5,209.21, and the contractual interest rate is 33.32% per annum. POC 1-1, § 9.

At the hearing, **XXXXXXX**

Debtor offers her testimony that replacement value of the Vehicle is \$5,250.00. Decl. 2:9, Docket 14. 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, filed a nonopposition on August 6, 2024. Docket 20.

DISCUSSION

The lien on the Vehicle’s title secures a non-purchase money loan incurred on June 14, 2023, to secure a debt owed to Creditor with a balance of approximately \$15,709.21. Proof of Claim, No.1-1. 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 \$5,250.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

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

The Motion to Value Collateral and Secured Claim filed by Patricia Lorraine Marie Perez (“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 ~~OneMain Financial Group, LLC (“Creditor”) secured by an asset described as 2011 Lexus ES350 (“Vehicle”) is determined to be a secured claim in the amount of \$5,250.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$5,250.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2024. By the court’s calculation, 48 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, Craig Reid Webber (“Debtor”) seeks confirmation of the Modified Plan because Debtor’s father-in-law passed away, and Debtor incurred unexpected expenses related to the funeral giving rise to plan payment delinquency. Decl. 1:27-2:2, Docket 70. The Modified Plan provides Debtor having paid \$174,838 through July of 2024, followed by monthly payments of \$3,749 through completion. Modified Plan § 7, Docket 69. 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 a limited Opposition on August 6, 2024. Docket 78. Trustee opposes confirmation of the Plan on the basis that:

- A. There are some procedural issues that may prevent confirmation, including a failure to serve Supplemental Schedules I and J, and Debtor did not comply with Local Bankruptcy Rule 9004-1(c)(1)(A) & (C) in signing the Certificate of Service. Opp’n 1:25-2:10.

DISCUSSION

A review of the Docket shows Debtor indeed served the Supplemental Schedules I and J, but included them as Exhibits at Docket 71. As Debtor also filed these Schedules independently at Docket 73, there are no procedural issues with this practice that would prevent confirmation.

Debtor's Attorney's Signature

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 attorney has not signed the Certificate of Service at Docket 72 in compliance with this rule. 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, Craig Reid Webber ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~granted, and Debtor's Modified Chapter 13 Plan filed on July 3, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

FINAL RULINGS

34. [24-22622-E-13](#)
[DPC-1](#)

WILLIAM/CHARLENE
BARTHOLOME
Seth Hanson

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-30-24 [\[22\]](#)

Final Ruling: No appearance at the August 20, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 30, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Hearing on the Objection to Confirmation of Plan is continued to September 10, 2024 at 2:00 p.m. to be heard in conjunction with the Motions to Value (DCNs: SLH-1, SLH-2) on which this Plan depends.

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

1. Debtor William Douglas Bartholome and Charlene Denise Bartholome's Plan depends on Motions to Value. Obj. 2:1-10, Docket 22.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 24.

DEBTOR'S RESPONSE

Debtor filed a Response on August 1, 2024, requesting the Objection be continued to be heard in conjunction with the Motion to Value. Resp. 1:21-23, Docket 32.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of CarMax Auto Finance and Schools First FCU. Plan, Docket 3. Debtor has filed the Motions to Value on July 30, 2024, to be heard on September 10, 2024 at 2:00 p.m. Dockets 17, 26. The hearing on this Objection is continued to be heard in conjunction with the Motions to Value.

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 continued to **September 10, 2024 at 2:00 p.m.** to be heard in conjunction with the Motions to Value (DCNs: SLH-1, SLH-2) on which this Plan depends.

35. [24-22024-E-13](#)
[MOH-1](#)

EDWARD VALLERGA
Michael Hays

MOTION FOR COMPENSATION FOR
MICHAEL O. HAYS, DEBTORS
ATTORNEY(S)
7-15-24 [\[33\]](#)

DEBTOR DISMISSED: 06/18/24

Final Ruling: No appearance at the August 20, 2024 Hearing is required.

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

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

It is not clear if and when notice was provided as 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).

It appears that through a clerical error no Certificate of Service was not filed.

The Trustee's Non-Opposition documents that service has been made via Electronic Service by the Clerk of the Court. Only three proofs of claim have been filed in this case consisting of a (\$4,30.53) unsecured claim by PG&E, an (\$8,702.94) unsecured claim by Discover Bank,, and a (\$319,977.01 fully secured claim by PHH Mortgage. POC 1, POC 2, and POC 3. The fees requested are of *de minimis* economic consequence to these creditors.

The Master Mailing List only adds two others, Bank of America and Clear Recon Corp. Dckt. 4.

Under the circumstances, the court concludes that service of the Motion is sufficient as provided by the Clerk of the Court and the Chapter 13 Trustee's Response.

The Motion for Allowance of Professional Fees is granted.
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Michael O. Hays, the Attorney ("Applicant") for Edward Enrico Vallerga, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Applicant requests authorization to retain the initial \$1,500 retainer that was paid in this case that was supposed to be an \$8,000 non-business Chapter 13 case. Applicant does not request reimbursement for any costs.

Applicant explains that Client came into his office and needed last minute help with a foreclosure sale that had already occurred. Applicant was able to rescind the sale and offer Client new solutions to either keep his home or salvage the equity in the home. Mot. 2:17-22, Docket 33. Applicant offers no Declaration in support or other authenticated evidence of his efforts, although Applicant includes unauthenticated Exhibits at Docket 35 purporting to depict Applicant's efforts in rescinding the sale.

The Chapter 13 Trustee submitted a nonopposition on August 7, 2024. Docket 36.

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s services for the Client include having the foreclosure sale rescinded, as well as assisting the Debtor in preserving equity in his home. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Michael O. Hays	-----	-----	<u>\$1,500.00</u>
Total Fees for Period of Application			\$1,500.00

FEES ALLOWED

Fees

The court finds that the requested fees are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$1,500 are approved pursuant to 11 U.S.C. § 330 and authorized to be retained by the Applicant with no further act required of Client or the Chapter 13 Trustee.

Applicant is allowed, and authorized to retain, the following amounts as compensation to this professional in this case:

Fees	\$1,500
------	---------

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

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

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

The Motion for Allowance of Fees and Expenses filed by Michael O. Hays, the Attorney (“Applicant”) for Edward Enrico Vallergera, the Chapter 13 Debtor (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael O. Hays is allowed the following fees and expenses as a professional of the Estate:

Michael O. Hays, Professional employed by the Chapter 13 Debtor

Fees in the amount of \$1,500,

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

IT IS FURTHER ORDERED that Applicant is authorized to retain the fees allowed by this Order from the initial retainer paid by the Chapter 13 Debtor. No further act is required of the Chapter 13 Debtor or the Chapter 13 Trustee.

Final Ruling: No appearance at the August 20, 2024 Hearing is required.

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

The court set the hearing for July 16, 2024. Docket 10. The court ordered Movant to serve all affected creditors by first class mail no later than July 12, 2024.

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

No opposition was stated at the hearing.

The Motion to Extend the Automatic Stay is granted, with the Stay extended pursuant to 11 U.S.C. § 362(c)(3)(B) unless terminated by law or by order of this court.

REVIEW OF THE MOTION

Cynthia Denise Miller (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 24-21044) was dismissed on April 15, 2024, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 24-21044, Dckt. 17, April 15, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was not dismissed due to the willful inadvertence or negligence of Debtor. Decl. 2:4, docket 12. She determined that a workout with her creditors outside of a bankruptcy was a better alternative and decided to let the Prior Case dismiss. *Id.* at 2:5-6. Those efforts appear to have failed, so Debtor files the instant case to stop a Trustee Sale scheduled on July 8, 2024 against her primary residence located at 512 Ojai, Granite Bay, CA 95746 (“Property”). *Id.* at 2:11-12. Debtor plans to actively prosecute this case and reorganize her debts.

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

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

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

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

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor is actively prosecuting the instant case, already having filed the required Schedules and a Chapter 13 Plan. See Dockets 1, 3. Debtor also informs the court she let her case be dismissed due to her working out deals outside of bankruptcy, but those efforts having failed, she now turns to prosecute a meaningful repayment plan under the protection of the Bankruptcy Code.

The Motion is granted, and the automatic stay is extended through and including 11:59 p.m. on August 30, 2024, for all purposes and parties, unless terminated by operation of law or further order of this court.

August 20, 2024 Final Hearing

The court continued the hearing on this Motion to conduct the final hearing. Debtor was ordered to provide notice of the continued hearing on or before July 22, 2024, with written oppositions, if any, filed and served on or before August 5, 2024; and replies, if any, filed and served on or before August 12, 2024. Interim Order, Docket 17. A review of the Docket on August 13, 2024 reveals no oppositions have been filed with the court.

The Motion to Extend the Automatic Stay is granted, with the Stay extended pursuant to 11 U.S.C. § 362(c)(3)(B) unless terminated by law or by order of this court.

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

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

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

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

Final Ruling: No appearance at the August 20, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2024. 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, Flynn Earl Jemerson (“Debtor”), has filed evidence in support of confirmation. **See** Decl., Docket 45; Exhibits, Docket 46. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on August 6, 2024. Docket 53. 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, Flynn Earl Jemerson (“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 9, 2024, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

38. [24-22251](#)-E-13 OSCAR MOLINA AND SONIA MOTION TO CONFIRM PLAN
[BMV-2](#) ELIZABETH SANTAMARIA DE 7-19-24 [30]
Bert Vega

Final Ruling: No appearance at the August 20, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2024. By the court’s calculation, 32 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). Movant is three days short of the required notice period.

The court shortens the service period to that given, determining that it not of prejudice to any party in interest in light of the facts and circumstances of this Motion.

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). Therefore, the defaults of the respondent and other parties in interest are entered.

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, Oscar De Jesus Vasquez Molina and Sonia Elizabeth Santamaria de Molina (“Debtor”) has provided evidence in support of confirmation. *See* Decl., Docket 33; Exhibits, Docket 32. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition August 6, 2024. Docket 35. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Oscar De Jesus Vasquez Molina and Sonia Elizabeth Santamaria de Molina

(“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 17, 2024, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

39. [24-21659-E-13](#)
[LRR-1](#)

ROBERT BILLS
Len ReidReynoso

MOTION TO CONFIRM PLAN
6-6-24 [23]

Final Ruling: No appearance at the August 20, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 6, 2024. By the court’s calculation, 75 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>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Robert Ronald Bills (“Debtor”) has provided evidence in support of confirmation. *See* Decl., Docket 25; Exhibits, Docket 29. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on August 5, 2024. Docket 33. 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, Robert Ronald Bills (“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 6, 2024, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

40. 23-24588-E-13 TBG-1	WENDI/MELISSA PRYDE Stephan Brown	MOTION TO CONFIRM PLAN 7-9-24 [36]
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Final Ruling: No appearance at the August 20, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and parties in interest, and Office of the United States Trustee on July 9, 2024. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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, Wendi Marie Pryde and Melissa Diane Pryde (“Debtor”) have provided evidence in support of confirmation. *See Decl., Docket 38.* No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick (“Trustee”), or by creditors. 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, Wendi Marie Pryde and Melissa Diane Pryde (“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 9, 2024, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the August 20, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 23, 2024. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on September 24, 2024.

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

1. Debtor Steven A. Nommsen and Debbie L. Nommsen ("Debtor") failed to appear and were not examined at the First Meeting of Creditors held on July 18, 2024, as Debtor Steven Nommsen was still recovering from a medical procedure. Obj. 1:25-28, Docket 15.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 17.

DISCUSSION

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned

by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Trustee requests, given Debtor's circumstances, that this Objection be continued until after the rescheduled 341 Meeting that will take place on September 5, 2024.

On July 31, 2024, Debtor filed a Response to the Objection to Confirmation and concurrence in the request for a continuance. Dckt. 19.

The Response pleading is listed as having Docket Control Number. JMF-1, which is incorrect. Opposition, response, and other related pleadings in a contested matter bear the same Docket Control Number as the first pleading initiating the contested matter (such as a motion, objection to confirmation, objection to claim, and the like). Here, the correct Docket Control Number is DPC-1.

The Hearing is continued to 2:00 p.m. on September 24, 2024.

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

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

The Objection to the Chapter 13 Plan filed by 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 hearing on the Objection to Confirmation of the Plan is continued to 2:00 p.m. on September 24, 2024.

42. [24-22192-E-13](#)

CHRISTOPHER TULLY
Eric Schwab

MOTION TO DISMISS CASE
7-31-24 [24]

Final Ruling: No appearance at the August 20, 2024 Hearing is required.

Creditor Heather Tully ("Movant") having filed a Stipulation of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041 (Docket 32), **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**