UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 10, 2024 at 2:00 p.m.

1.	**19-25597-E-13** **TDD-2**	**CHRISTOPHER CHANG AND ALISON HOYER** **Timothy Ducar**	**MOTION TO VACATE DISMISSAL OF CASE** **7-26-24 [59]**

DEBTORS DISMISSED: 07/12/24

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all parties in interest on July 26, 2024. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 Vacate is granted, and the order dismissing the case on July 12, 2024 (Dckt. 56) is vacated.

Christopher Michael Chang and Alison Elizabeth Hoyer ("Debtor") filed the instant case on September 5, 2019. A plan was confirmed on January 2, 2020 by order of the court. Docket 43.

On May 10, 2024, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to payment delinquency. Docket 50. On July 10, 2024, a hearing on the Motion to Dismiss was held, and the Motion was granted. Docket 56. The ruling was final because Debtor did not file any opposition.

On July 26, 2024, Debtor filed this instant Motion to Vacate, claiming Debtor mistakenly believed that plan payments were complete. Docket 59. Debtor testifies that they paid 58 monthly payments without incident, and due to a misunderstanding, did not make the final two payments as they believed they had completed the Plan. Decl. ¶¶ 3-4, Docket 61. Debtor states they have the funds available to immediately cure the delinquency and complete the Plan. *Id.* at ¶ 6. Therefore, Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

The Chapter 13 Trustee filed a nonopposition on August 5, 2024, clarifying that Debtor had only in fact made 56 payments, not 58. Non-Opp'n 4:6-9, Docket 63. Trustee also wishes to clarify that Debtor's attorney has moved to 9280 E. Raintree Drive, Suite 104 Scottsdale, AZ 85260.

Debtor filed a Reply to Trustee's nonopposition on August 6, 2024, reporting Debtor's attorney does reside at the Arizona address. Docket 65.

APPLICABLE LAW

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

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

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

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken

as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

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

DISCUSSION

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

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

However, Debtor has show that the mistake was likely due to a change in the attorney's address or other clerical mistake. Evidence on the record shows Debtor will make the plan payments and complete the Plan, there only being four months of payments left to make. There have been no prior Motions to Dismiss on the Docket.

Therefore, in light of the foregoing, the Motion is granted, and the order dismiss the case (Docket 56) is vacated.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Christopher Michael Chang and Alison Elizabeth Hoyer ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the order dismissing the case on July 12, 2024 (Dckt. 56) is vacated.

2. 24-20297-E-13 LJL-98 | **LORELL LEAL** | **MOTION TO CONFIRM PLAN**
Pro Se | **7-29-24 [98]**

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

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

The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 29, 2024. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

In Debtor's Notice of Hearing, she informs parties that the last day to file written opposition is August 28, 2024, which is 13 days prior to the hearing. However, Local Bankruptcy Rule 9014-1(f)(1) only permits a time period of 14 days prior to the hearing for written opposition. As a 13 day notice period will not prejudice parties, actually granting them an extra day to file written opposition, the court extends the deadline for purposes of this Motion to August 28, 2024, for written opposition.

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, Lorell Jo Leal ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 101. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on August 27, 2024. Docket 112. Trustee notes the Notice of Hearing issue that the court has addressed above, but otherwise requests this Motion be granted.

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, Lorell Jo Leal ("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 29, 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.

3. 24-23095-E-13 MRL-1 — PATRICIA PEREZ — Candace Brooks — AMENDED MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC — 8-23-24 [23]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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.

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.

September 10, 2024 Hearing

The court continued the hearing on this Motion because Debtor mistakenly stated two different valuations for the Vehicle, and the court ordered Debtor to file an *errata* that clearly states the Motion seeks a valuation for the Vehicle of $5,250. Order, Docket 27.

On August 23, 2024, Debtor filed an Amended Motion to Value and accompanying Notice that corrected the error, stating the correct valuation of $5,250.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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, counsel for the Debtor concurred with a continuance of the hearing, with the Debtor to file an errata correcting the clerical error stating the value of $14,929.00 in one line of the Motion.

The hearing on the Motion to Value Collateral and Secured Claim of OneMain Financial Group, LLC ("Creditor") is continued to 2:00 p.m. on Septembr10, with errata filed and served by August 23, 2024.

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.

At the hearing, counsel for the Debtor concurred with a continuance of the hearing, with the Debtor to file an *errata* correcting the clerical error stating the value of $14,929.00 in one line of the Motion and providing Creditor with clear, nonconflicting notice that the valuation is sought to be $5,250.00..

The hearing on the Motion to Value Collateral and Secured Claim of OneMain Financial Group, LLC ("Creditor") is continued to 2:00 p.m. on Septembr10, with errata filed and served by August 23, 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 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 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.

4.	**24-22674-E-13 DPC-1**	**ANDREW/JOANNA NEWBOLD Eric Schwab**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-7-24 [13]**

Item 4 thru 5

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 August 7, 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 xxxxxxx.

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

1. Debtor Andrew Francis Newbold and Joanna Hennessee Newbold ("Debtor") failed to appear at the 341 Meeting. Obj. 1:25-28, Docket 13.

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

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).

The Continued Meeting of Creditors was held on August 22, 2024, and Trustee's Report indicates Debtor appeared. Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this Objection.

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**.

5. 24-22674-E-13 GB-1 | ANDREW/JOANNA NEWBOLD Eric Schwab | OBJECTION TO CONFIRMATION OF PLAN BY ATHENE ANNUITY AND LIFE COMPANY 8-9-24 [20]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 9, 2024. By the court's calculation, 32 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.

Athene Annuity and Life Company, its successors and/or assignees ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Andrew Francis Newbold and Joanna Hennessee Newbold's ("Debtor") Plan does not account for Creditor's arrearage. Obj. 2:18-24, Docket 17.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor asserts it holds a deed of trust secured by Debtor's residence. Creditor asserts it is owed $64,482.80 in pre-petition arrearage. *Id.* at 2:18. However, Creditor submits no evidence in support of its Objection, and Creditor has not yet filed a proof of claim. Debtor has not listed this Creditor

in their Schedules, instead listing creditor "Planet Home Lending" as being the mortgagee of the real property commonly known as 4524 Robertson Ave, Sacramento, CA 95821 ("Property"). Schedule D 24:2.2, Docket 1. Creditor submits no authenticated documentation showing it is the holder of the note in due course and is entitled to payments under the note.

In the proposed Plan, Class 1 contains Planet Home Lending, listing arrears in the amount of $45,543. Docket 3. Planet Home Lending has also not filed a proof of claim in the case.

Proof of Claim 34-1

On August 29, 2024, Proof of Claim 34-1 was filed for Athene Annuity and Life Company by Planet Home Lending, LLC. The secured claim is filed in the amount of ($642,576.30), for which the pre-petition arrearage is stated to be ($56,617.77). POC 34-1, Part 2, ¶ 9. This is greater than the ($45,543.00 provided for in the proposed Plan.

At the hearing, **xxxxxxx**

~~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 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 Athene Annuity and Life Company, its successors and/or assignees ("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**.

6. 24-21498-E-13 EJS-1 MICHAEL/SUSAN COLE Eric Schwab MOTION TO CONFIRM PLAN 7-9-24 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 9, 2024. By the court's calculation, 63 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Michael Allan Cole and Susan Rae Cole ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for 60 monthly payments of $5,260, with general unsecured creditors receiving a 2% dividend. Amended Plan, Docket 45. 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 27, 2024. Docket 55. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan appears to be underfunded. Trustee provides the following calculation:

> Plan proposes $315,600.00 in payments, (60 x $5,260) After Trustee fees of $22,723.20, (7.2% of $315,600), $292,876.80 is available for creditors. After ongoing mortgage payments of $219,660.00, (60 x

$3,661), $73,216.80 is available for creditors. Mortgage arrears alone total $91,900.00, Class 2(A) claims total $20,598, (not counting interest), Attorney fees are $9,375.00, priority claims total $6,633.00, and 2% of unsecured claims total $35,510.42.

Opp'n 1:22-26, Docket 55.

CREDITOR'S OPPOSITION

Safe Credit Union ("Creditor") filed an Opposition on August 27, 2024. Docket 58. Creditor opposes confirmation of the Plan on the basis that:

A. Creditor has filed a proof of claim for two secured claims and five unsecured claims. The secured claims are secured by first and second deeds of trust on the residence of the Debtor. Three unsecured claims are deficiency balances for automobile loans. One unsecured claim is for a personal credit card. The fifth unsecured claim is for a business credit card.

B. Debtor must establish that the plan has been filed in good faith, is feasible and Creditor will receive more under the plan than it would in a Chapter 7 proceeding. Opp'n 3:13-18, Docket 58.

C. Debtor has not submitted evidence to establish compliance with 11 U.S.C. §1325(a).

D. Debtor's Declaration is devoid of any facts to show compliance with 11 U.S.C. § 1325(a). Opp'n 3:25-25, Docket 58.

E. The Amended Plan does not comply with 11 U.S.C. § 1325(a)(6) and confirmation should be denied on that ground. Opp'n 4:3-4, Docket 58.

F. In response to Question 27 of the Statement of Financial Affairs ("SOFA"), Debtor listed four businesses. The address listed for all four businesses is 3310 Bird Haven Loop, Cool, CA 95614, which is the residence address of the Debtor. *Id.* at 4:5-12.

G. However, the address listed for the sole proprietorship Lavish Gardens Landscaping does not match the address listed for the business in the online records of the Contractor's License Board, the website of the business, or Schedule C of the Debtor's personal tax return. The address listed on those documents is 5515 Pacific St, Unit 3250, Rocklin, CA 95667, which address is in Placer County. A search of the Placer County online records for Placer County does not list a current fictitious business name statement for Lavish Gardens Landscape. Debtor has failed to comply with Business & Professions Code § 17915, which requires that the fictitious business name be recorded in the county in which the principal place of business is located. Opp'n 4:13-21, Docket 58.

H. On Schedule I, Michael Cole stated that he is self employed by Lavish Garden Landscape and Empower Performance Stategies (sic) for 6 months. In response to line 8.a. he listed net income of $11,976.00. No statement of business income and expenses was attached to Schedule I. *Id.* at 4:22-25.

I. No business attachments have been filed with Schedule I to confirm business income and expenses. *Id.* at 4:27-5:2.

J. Debtor has not explained why the business has no expenses. *Id.* at 5:5-6.

K. Debtor has not explained how an expense of $600 for income taxes is reasonable for a self employed debtor with a monthly income of $12,000 per month when social security taxes are 15.3% for self employed persons. *Id.* at 5:6-8.

L. Movant has received conflicting information on Profit and Loss statements with different versions of statements for the same months reporting different information. *Id.* at 5:9-18.

M. Lavish Enterprises Inc was a subchapter S corporation so the net losses of the corporation were listed on the tax returns of the Debtor. However, none of the losses from the corporation that were included in the personal tax returns are reflected on the SOFA or disclosed in the Declaration of the Debtor. The Debtor has not explained how a business that has been losing money since at least 2019 is now profitable and will continue to be profitable in the next five years. *Id.* at 5:19-24.

N. Additionally, the First Amended Plan does not comply with 11 U.S.C. § 1325(b) and confirmation should be denied on that ground. Opp'n 6:4-5, Docket 58.

O. Debtor owns a business named Empower that has only lost money since its inception, while Debtor uses their own personal funds to pay Empower's expenses. These funds should be used to pay the unsecured creditors. *Id.* at 6:9-15.

P. The petition was not filed in good faith as required by 11 U.S.C. § 1325(a)(7) and the Plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3). Opp'n 6:18-20, docket 58.

Q. In going through the good faith factors outline in *In re Warren* 89 B.R. 87, 92 (9th Cir. BAP 1988), citing *Goeb v Heid* (*In re Goeb*), 675 F.2d 1386, 1389-1390 (9th Cir. 1982), Debtor's Plan and petition were not filed in good faith.

Creditor submits the Declarations of Roxanne T. Daneri (Docket 59) and Robin Boyce (Docket 60) in support of its Opposition. Ms. Daneri authenticates the facts alleged in the Opposition. She also

authenticates the Exhibits filed in support of the Opposition at Dockets 61 and 62. Ms. Boyce similarly authenticates the facts alleged in the Opposition in her Declaration in support.

DISCUSSION

Trustee and Creditor's oppositions are well taken. As an initial matter, the court agrees with Trustee's calculation that the Plan is simply underfunded as proposed. The monthly payments of $5,260 are insufficient to pay the class 1 arrearage, Trustee's fees, attorney's fees, and a 2% dividend to the unsecured creditors. This is cause enough to deny confirmation.

The court also agrees with Creditor's argument that Debtor's Declaration in support is woefully lacking in any meaningful testimony providing the court with grounds to confirm a Plan. All that is stated in the Declaration is that they filed a Motion to Confirm due to there being a delay between filing the petition and filing the Chapter 13 Plan. Decl. ¶ 3, Docket 46. Debtor gives no testimony whatsoever as to any factors the court considers under 11 U.S.C. § 1325(a). The lack of evidence in support of confirmation is further reason to deny confirmation.

Creditor has identified other reasons for the court to deny confirmation, including Debtor's failure to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor has not submitted such a statement with the Schedules filed at Docket 22.

Moreover, Debtor may not be committing all disposable income to the Plan as required under 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.

Creditor's pleadings reveal Debtor is funding a business that has only lost money, Empower, and those funds could be used to increase the dividend to unsecured creditors.

Creditor further identifies areas of conflicting information from Debtor in documents related to the petition. For example, Debtor does not explain how they operate their business without any expenses, and how they only pay an expense of $600 for income when Debtor is self employed with a monthly income of $12,000. Such inaccuracies present a good faith filing and Plan proposal argument, as Creditor identifies.

11 U.S.C. § 1325(a)(3) states:

> (a) Except as provided in subsection (b), the court shall confirm a plan if—
> . . .
> (3) the plan has been proposed in good faith and not by any means forbidden by law;

The Ninth Circuit has ruled "[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner" in ruling on whether a Plan was proposed in bad faith. *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

Here, Debtor has filed Schedules and related documents with missing or inaccurate information, so the court may find the Plan was not filed in good faith.

At the hearing, **xxxxxxx**

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael Allan Cole and Susan Rae Cole ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

7. **23-22540-E-13 RLL-3** | **SATINDER SINGH** **Ryan Wood** | **CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7** **1-11-24 [121]**

ITEMS 7 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors that have filed claims, persons having filed a Request for Notice, and Office of the United States Trustee on January 11, 2024. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss or Convert is xxxxxxx.

SEPTEMBER 10, 2024 HEARING

On September 2, 2024, Peter G. Macaluso, Esq., filed four pleadings titled "Appearance and Request for Substitution of Attorney," each as a response to four matters now pending before this court:

(1) Motion to Dismiss or Convert this Case (filed by Creditor Placerville Investment Group, LLC, DCN: RLL-3), Dckt. 282;

(2) Motion to Dismiss this Case (filed by Humas Madaan, adult son of Deceased Debtor and proposed successor representative, RCW-016), Dckt. 284;

(3) Motion to Appoint Humas Madaan (Deceased Debtor's adult son) as the successor representative for the Decease Debtor (filed by Humas, RCW-014), Dckt. 286; and

(4) Motion to Value Secured Claim of Creditor Placerville Investment Group, LLC (filed by the Deceased Debtor and prosecuted by Humas Madaan as proposed successor representative, RCW-09), Dckt. 288.

Each of these "Appearance and Request for Substitution of Attorney" titled pleadings begins with the same informational paragraph:

> Debtor's heirs consist of two minor children and Humas Madaan, age 19 and are represented by Sonia Madaan, their natural Mother and Legal/Representative for the Deceased Debtor's Heirs, by and through their proposed attorney of record, Peter G. Macaluso, hereby request that his appearance be noted for the record and requests that the Court substitute himself as the attorney of record.

Appearance and Request for Substitution of Attorney pleadings, Page 1; Dckts. 282, 284, 286, 288.

No substitution of attorney has been filed with respect to representation in this case. From the face of these Appearance and Request for Substitution of Attorney pleadings, it appears that Mr. Macaluso is representing Sonia Madaan, who asserts to be the legal representative of the Deceased Debtor's two minor sons and his adult son (Humas Madaan, whose attorney of record in this Case is Ryan C. Wood, Esq.).

Statement That Ryan C. Wood, Esq.
No Longer Represents Humas Madaan

On September 4, 2024, Ryan C. Wood, Esq., counsel of record for the Deceased Debtor and for Humas Madaan, the proposed successor representative adult son of the Deceased Debtor, filed an *Ex Part*e Motion requesting to be allowed to make a telephonic appearance at the September 10, 2024 hearings. Mtn.; Dckt. 294. In the *Ex Parte* Motion Mr. Wood states that he is no longer counsel for Humas Madaan "as it appears Ms. Madaan now represents Humas Madaan and Ms. Madaan is represented by counsel Peter Macaluso." *Id*.; p. 2:3-6. Mr. Wood includes in his testimony that it appears that Ms. Madaan is representing Humas Madaan. Dec.; Dckt. 295.

It is significant that in the *Ex Parte* Motion Mr. Wood does not state that he no longer represented Humas Madaan and has substituted out, or that he has conferred with his client Humas Madaan, the adult son of the Deceased Debtor, and has been terminated from such representation, but merely that "it appears" that Mr. Wood might not be representing Humas Madaan.

No substitution of attorney order has been entered by the court authorizing the withdrawal of Mr. Wood as counsel for Humas Madaan.

An attorney search on the State Bar of California website disclosed that there is no person named Sonia Madaan who is licensed to practice law in the State of California. [Fn.1.]

FN. 1.

https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch?FreeText=sonia+madaan&SoundsLike=false
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Chapter 13 Status Report

On September 3, 2024, the Chapter 13 Trustee filed his Status Report. Dckt. 292. The Chapter 13 Trustee reports that the Plan payments under the proposed Chapter 13 Plan are current, with $55,497.00 having been paid into the Plan as of the Status Report date.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Placerville Investment Group, LLC ("Creditor"), seeks dismissal of the case on the basis that:

1. The debtor, Satinder Singh ("Debtor"), has not been diligent in prosecuting this bankruptcy case, resulting in creditor not being paid and suffering economic loss.

2. Debtor's case was filed in bad faith in a coordinated effort with Sonia Madaan to frustrate Creditor's recovery attempts.

Motion, Docket 5. Creditor submits the Declaration of Dalip Gupta to authenticate the facts alleged in the Motion. Decl., Docket 123.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 30, 2024. Docket 126. In his Opposition, Debtor states:

1. Cause does not exist to dismiss or convert this case. Debtor has been diligent in prosecuting the case. Any delay is due to Creditor not cooperating in obtaining a valuation of its secured collateral.

Debtor submits his own Declaration (Docket 159) and his counsel's Declaration (Docket 160) in support of his Opposition. In his Declaration, Debtor states:

1. The only issue in the case is the value of his business. Debtor has obtained an appraisal of the business and has tried to work with Creditor in good faith to reach an agreed value. Decl., Docket 159 ¶ 3.

2. Debtor has done everything he is supposed to do to prosecute his case. *Id.* at ¶ 5.

3. The case has been filed in good faith, including by providing the Chapter 13 Trustee with all necessary documents. *Id.* at ¶¶ 7, 8.

4. Debtor is not trying to hinder collection efforts in any way. *Id.* at ¶ 22.

Debtor's counsel, Mr. Wood, testifies that:

1. This case is all about the value of Satinder Singh's business and we have tried in good faith to reach an agreement as to the value of Satinder Singh's business with Placerville Investment Group, LLC. Decl., Docket 160 ¶ 1.

2. I/we are trying to not increase expenses in this case and that is the sole and only reason any party in this case can argue "delay." Which is supposed to be an ethical obligation of attorneys. *Id.* at ¶ 2.

3. Instead of continuing to operate in good faith, Placerville Investment Group, LLC, on January 11, 2024, communicated we are filing a motion to dismiss and motion for relief from stay. *Id.* at ¶ 6.

4. All Placerville Investment Group, LLC accomplished is unnecessarily increasing the expense of administration to arrive at a secured value of the Satinder Singh's business. *Id.* at ¶ 7.

5. I told this Court I would try to work this out in good faith informally to save money. That is the truth and up until January 11, 2024, I thought both parties were working together to accomplish this. I believe I should have been told long ago that would never happen because we can see now that is the truth. *Id.* at ¶ 8.

6. We wanted to file one more amended plan, file one more motion to confirm a plan that includes acceptable terms to all parties. That was possible with cooperation. *Id.* at ¶ 9.

7. To try and be efficient our goal was to value Placerville's secured value then file motions to value regarding the other two secured creditors, secured by the Debtors business as well. *Id.* at ¶ 19.

8. There is no cause for relief from stay or to dismiss or convert Satinder Singh's case. Satinder Singh is not the cause of delay in this case and only sought to not increase the cost of administration; it has obviously failed. *Id.* at ¶ 22.

CREDITOR'S REPLY

On February 6, 2024 Creditor filed a Reply (Docket 162), stating:

1. Debtor is responsible for filing an Amended Plan and Motion to Value, not Creditor.

2. Debtor says nothing about the orchestrated bad faith filing of Debtor and Ms. Madaan.

3. Creditor is not to blame for the delay in prosecuting this case.

DISCUSSION

Failure to Prosecute the Case / Bad Faith

11 U.S.C. § 1307(c) provides:

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a

> case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including –
>
> > (1)unreasonable delay by the debtor that is prejudicial to creditors.
> > . .

Unreasonable delay includes "delay in the filing of necessary modifications of a plan, in obtaining necessary acceptances from the holders of allowed secured claims or in taking actions required under the plan are other examples of delays warranting conversion or dismissal under this paragraph." 8 COLLIER ON BANKRUPTCY ¶ 1307.04 [1]. Further, "[a] debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *In re Ellsworth*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011).

The statutory list of enumerated reasons to dismiss a case in 11 U.S.C. § 1307(c) does not include a case being filed or prosecuted in bad faith, but courts have decided bad faith is a valid reason to warrant dismissal or conversion. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) ("Although not specifically listed, bad faith is a 'cause' for dismissal under § 1307(c)."); *See also In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) ("A Chapter 13 petition filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."). When deciding whether a petition has been filed in bad faith, "courts are guided by the standards used to evaluate whether a plan has been proposed in bad faith." *Id.*

Failure to Prosecute the Case

The court does not find that the facts of this case support a finding that Debtor has engaged in unreasonable delay that results in prejudice to creditors. Debtor has complied with the court's extensions in filing its documents. Debtor has also cooperated with the Trustee in providing the required documents. Moreover, the record shows Debtor and Creditor originally were working together in trying to accomplish a valuation of the business, with the case taking a less agreeable disposition only in January, 2024, further explaining some of the delay. Debtor has a Plan on file as well with a Motion to Confirm, showing that Debtor may be attempting to prosecute this case.

However, as the court notes above, the Debtor provides conflicting information about the assets of the Estate. He states that the business is his sole proprietorship, but that he owns only 50% of his sole proprietorship. Debtor fails to disclose who "owns" the other 50% of Debtor's sole proprietorship.

Bad Faith

Creditor argues that this case may be filed in bad faith because Debtor allegedly misled Creditor about the status of his marriage with Ms. Madaan. Then, Creditor asserts Debtor and Ms. Madaan "leveraged their superficial divorce proceeding into two separate bankruptcy cases, filed months apart, so as to maximize the delay to Creditor." Motion, Docket 121 p. 6:7-8.

Again, this argument relies on the premise that Debtor is engaging in unreasonable delay, albeit by acting in concert with Ms. Madaan to delay recovery. The record shows this may not be the case. Debtor has been making plan payments with the Trustee who is currently holding a balance on hand of $19,970. Debtor has filed a Motion to Value Creditor's secured claim, alongside an Amended Plan and Motion to Confirm, so the case can move forward.

Alternatively, this argument may be that Debtor is continuing in the misrepresentations and is trying to hide assets in this Bankruptcy Case.

CONTINUANCE OF THE FEBRUARY 13, 2024 HEARING

The February 13, 2024 scheduled hearing is not being conducted by the judge to whom this case is assigned and has personal knowledge of the prior proceedings in this case. The court notes that there appear not only to be substantial deficiencies with respect to the Motion to Value and Motion to Confirm, but also with Creditor who cannot state a value for its collateral in its Original and Amended Proof of 6-2.

With Debtor having stated on Schedule A/B only a 50% valuation for his Sole Proprietorship, it appears that the Debtor's assets may be substantially higher.

As addressed above, it appears that there are substantial "challenges" facing the Debtor in this case, possibly greater value for assets, possible fraudulent conveyances, and possible contributions from a joint venturer.

Given the substantial history of this case, as well as the Motion to Value (DCN: RCW-9), Motion to Confirm (DCN: RCW-89), Motion to Dismiss or Convert (DCN: RLL-3), and the Motion for Relief From the Stay (DCN: RLL-2), the court continues the hearings on all of these Contested Matters to 2:00 p.m. on February 28, 2024, so the judge to whom this case is assigned can hear all such matters.

February 27, 2024 Hearing

A review of the Docket on February 22, 2024 reveals that no new documents have been filed with the court under this Docket Control Number. At the hearing, the parties requested that the court continue the hearing on the Motion to Dismiss to be conducted with the hearing on the Motion to Value Creditor's Claim at 2:00 p.m. on June 4, 2024.

June 4, 2024 Hearing

The Motion to Dismiss or Convert was continued form the February 27, 2024 date to be heard in conjunction with these related matters.

At the hearing, the Debtor requested that the hearing on the Motion to Dismiss be continued to be conducted in conjunction with the final hearing on Debtor's Motion to Value Creditor's Secured Claim.

The hearing on the Motion to Dismiss or Convert is continued to 2:00 p.m. on August 6, 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 Motion to Dismiss the Chapter 13 case filed by Placerville Investment Group, LLC ("Creditor"), 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 Dismiss or Convert is **xxxxxxx**.

8.	**23-22540-E-13** **RCW-16**	**SATINDER SINGH** **Ryan Wood**	**MOTION TO DISMISS CASE** **8-13-24 [268]**

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

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

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

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

The Motion to Dismiss 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 Dismiss is xxxxxxx.

SEPTEMBER 10, 2024 HEARING

On September 2, 2024, Peter G. Macaluso, Esq., filed four pleadings titled "Appearance and Request for Substitution of Attorney," each as a response to four matters now pending before this court:

(1) Motion to Dismiss or Convert this Case (filed by Creditor Placerville Investment Group, LLC, DCN: RLL-3), Dckt. 282;

(2) Motion to Dismiss this Case (filed by Humas Madaan, adult son of Deceased Debtor and proposed successor representative, RCW-016), Dckt. 284;

(3) Motion to Appoint Humas Madaan (Deceased Debtor's adult son) as the successor representative for the Decease Debtor (filed by Humas, RCW-014), Dckt. 286; and

(4) Motion to Value Secured Claim of Creditor Placerville Investment Group, LLC (filed by the Deceased Debtor and prosecuted by Humas Madaan as proposed successor representative, RCW-09), Dckt. 288.

Each of these "Appearance and Request for Substitution of Attorney" titled pleadings begins with the same informational paragraph:

> Debtor's heirs consist of two minor children and Humas Madaan, age 19 and are represented by Sonia Madaan, their natural Mother and Legal/Representative for the Deceased Debtor's Heirs, by and through their proposed attorney of record, Peter G. Macaluso, hereby request that his appearance be noted for the record and requests that the Court substitute himself as the attorney of record.

Appearance and Request for Substitution of Attorney pleadings, Page 1; Dckts. 282, 284, 286, 288.

No substitution of attorney has been filed with respect to representation in this case. From the face of these Appearance and Request for Substitution of Attorney pleadings, it appears that Mr. Macaluso is representing Sonia Madaan, who asserts to be the legal representative of the Deceased Debtor's two minor sons and his adult son (Humas Madaan, whose attorney of record in this Case is Ryan C. Wood, Esq.).

Statement That Ryan C. Wood, Esq.
No Longer Represents Humas Madaan

On September 4, 2024, Ryan C. Wood, Esq., counsel of record for the Deceased Debtor and for Humas Madaan, the proposed successor representative adult son of the Deceased Debtor, filed an *Ex Parte* Motion requesting to be allowed to make a telephonic appearance at the September 10, 2024 hearings. Mtn.; Dckt. 294. In the *Ex Parte* Motion Mr. Wood states that he is no longer counsel for Humas Madaan "as it appears Ms. Madaan now represents Humas Madaan and Ms. Madaan is represented by counsel Peter Macaluso." *Id*.; p. 2:3-6. Mr. Wood includes in his testimony that it appears that Ms. Madaan is representing Humas Madaan. Dec.; Dckt. 295.

It is significant that in the *Ex Parte* Motion Mr. Wood does not state that he no longer represented Humas Madaan and has substituted out, or that he has conferred with his client Humas Madaan, the adult son of the Deceased Debtor, and has been terminated from such representation, but merely that "it appears" that Mr. Wood might not be representing Humas Madaan.

No substitution of attorney order has been entered by the court authorizing the withdrawal of Mr. Wood as counsel for Humas Madaan.

An attorney search on the State Bar of California website disclosed that there is no person named Sonia Madaan who is licensed to practice law in the State of California. [Fn.1.]

FN. 1.

https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch?FreeText=sonia+madaan&SoundsLike=false

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At the hearing, **xxxxxxx**

MOTION TO DISMISS

Humas Madaan, proposed Substitute Representative ("Movant") of the deceased debtor, Satinder Singh ("Deceased Debtor"), seeks to dismiss Deceased Debtor's case. A Debtor may dismiss a Chapter 13 Case at any time, so long as the case has not been previously converted. 11 U.S.C. § 1307(b). The right is nearly absolute. 8 COLLIER ON BANKRUPTCY ¶ 1307.03 states:

> In a case originally commenced under chapter 13, as distinguished from a case converted to chapter 13 from chapter 7, chapter 11 or chapter 12, the debtor is entitled, as a matter of right, to obtain a dismissal of the chapter 13 case at any time. In keeping with the congressional intent that chapter 13 be completely voluntary, the right to a dismissal of the chapter 13 case cannot be waived by the debtor. Nor may it be denied or delayed by the court, even where other parties oppose the dismissal or seek to have the court convert the case to another chapter, since to do so would force a debtor to remain in chapter 13 involuntarily. . . [The absolute right to dismiss] serves the critical purpose of ensuring that chapter 13 remains a voluntary proceeding, and that a debtor who initially files a chapter 13 case cannot be forced to remain in a repayment proceeding or required to proceed under chapter 7 if the debtor chooses not to continue the case

However, the court has not been presented with evidence that Movant has standing to seek dismissal. Movant has not submitted evidence sufficient to establish that Movant has inherited Deceased Debtor's property, which is the property of the Estate, or that Movant is executor of the Deceased Debtor's probate estate.

In Mr. Wood's Declaration, he testifies that "[a]fter a lengthy conversation with Probate Attorney Mindin Reid and Humas Madaan it is now clear that seeking to appoint Humas Madaan as the Substitute Representative is no longer tenable. We learned of new information regarding Satinder Singh's estate and had to reevaluate seeking to appoint Humas Madaan as the Substitute Representative." Decl. ¶¶ 3, 4, Docket 269. Mr. Wood does not testify as to any of the particulars or provide any basis for the court finding Movant is eligible to seek a dismissal.

Fed. R. Bankr. P. 1016 states:

> Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Therefore, the court may dismiss a Chapter 13 Case, if it finds further administration is not possible and not in the best interest of the parties.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by Humas Madaan, proposed Substitute Representative ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is **xxxxxxx**.

9.	**23-22540-E-13** **RCW-14**	**SATINDER SINGH** **Ryan Wood**	**CONTINUED MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR AND/OR MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR** **6-25-24 [243]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors and parties in interest, and Office of the United States Trustee on June 25, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Substitute 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. Opposition was stated.

The Motion to Substitute is ~~denied~~.

SEPTEMBER 10, 2024 HEARING

On September 2, 2024, Peter G. Macaluso, Esq., filed four pleadings titled "Appearance and Request for Substitution of Attorney," each as a response to four matters now pending before this court:

(1) Motion to Dismiss or Convert this Case (filed by Creditor Placerville Investment Group, LLC, DCN: RLL-3), Dckt. 282;

(2) Motion to Dismiss this Case (filed by Humas Madaan, adult son of Deceased Debtor and proposed successor representative, RCW-016), Dckt. 284;

(3) Motion to Appoint Humas Madaan (Deceased Debtor's adult son) as the successor representative for the Decease Debtor (filed by Humas, RCW-014), Dckt. 286; and

(4) Motion to Value Secured Claim of Creditor Placerville Investment Group, LLC (filed by the Deceased Debtor and prosecuted by Humas Madaan as proposed successor representative, RCW-09), Dckt. 288.

Each of these "Appearance and Request for Substitution of Attorney" titled pleadings begins with the same informational paragraph:

> Debtor's heirs consist of two minor children and Humas Madaan, age 19 and are represented by Sonia Madaan, their natural Mother and Legal/Representative for the Deceased Debtor's Heirs, by and through their proposed attorney of record, Peter G. Macaluso, hereby request that his appearance be noted for the record and requests that the Court substitute himself as the attorney of record.

Appearance and Request for Substitution of Attorney pleadings, Page 1; Dckts. 282, 284, 286, 288.

No substitution of attorney has been filed with respect to representation in this case. From the face of these Appearance and Request for Substitution of Attorney pleadings, it appears that Mr. Macaluso is representing Sonia Madaan, who asserts to be the legal representative of the Deceased Debtor's two minor sons and his adult son (Humas Madaan, whose attorney of record in this Case is Ryan C. Wood, Esq.).

Statement That Ryan C. Wood, Esq.
No Longer Represents Humas Madaan

On September 4, 2024, Ryan C. Wood, Esq., counsel of record for the Deceased Debtor and for Humas Madaan, the proposed successor representative adult son of the Deceased Debtor, filed an *Ex Part*e Motion requesting to be allowed to make a telephonic appearance at the September 10, 2024 hearings. Mtn.; Dckt. 294. In the *Ex Parte* Motion Mr. Wood states that he is no longer counsel for Humas Madaan "as it appears Ms. Madaan now represents Humas Madaan and Ms. Madaan is represented by counsel Peter Macaluso." *Id*.; p. 2:3-6. Mr. Wood includes in his testimony that it appears that Ms. Madaan is representing Humas Madaan. Dec.; Dckt. 295.

It is significant that in the *Ex Parte* Motion Mr. Wood does not state that he no longer represented Humas Madaan and has substituted out, or that he has conferred with his client Humas Madaan, the adult son of the Deceased Debtor, and has been terminated from such representation, but merely that "it appears" that Mr. Wood might not be representing Humas Madaan.

No substitution of attorney order has been entered by the court authorizing the withdrawal of Mr. Wood as counsel for Humas Madaan.

An attorney search on the State Bar of California website disclosed that there is no person named Sonia Madaan who is licensed to practice law in the State of California. [Fn.1.]

FN. 1.

https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch?FreeText=sonia+madaan&SoundsLike=false

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At the hearing, **XXXXXXX**

OVERVIEW OF MOTION AND BANKRUPTCY CASE

Satinder Singh commenced this voluntary Chapter 13 case on July 31, 2023. No Plan has yet been confirmed in this Bankruptcy Case. Several issues in this Case, including the death of the Debtor Satinder Singh ("Debtor," "Deceased Debtor") and pending contested matter litigation for valuation of a secured claim, have placed the confirmation process on hold.

On June 25, 2024, a Notice of Debtor's Death and Motion to Substitute Humas Madaan ("Mr. Madaan") Representative of Deceased was filed. Dckt. 243. This was timely filed two days after Satinder Singh's death. Ryan Wood, Esq., counsel for Satinder Singh for the filing of the Chapter 13 Case and its prosecution up to the time of Satinder Singh's death, has filed the Notice of Death and Motion for the court to appoint Humas as successor representative of the Deceased Debtor for the continued prosecution of this Bankruptcy Case as counsel for Humas Madaan.

The court reviews the Motion for Appointment of Successor Representative for the Deceased Debtor below.

This Bankruptcy Case has not been the "typical Chapter 13 case," with it not only involving a substantial retail business operation but also significant creditor-debtor litigation. Debtor commenced this Bankruptcy Case on July 31, 2024, with Ryan C. Wood, Esq. as his counsel.

On August 25, 2023, Debtor filed a Chapter 13 Plan. Dckt. 30. No Motion to Confirm was filed with the proposed Plan and no hearing set by Debtor for confirmation of the Plan.

On October 12, 2023, the Debtor filed a Motion to Confirm the Chapter 13 Plan and supporting Declaration. Dckts. 66, 68. Oppositions to the Motion to Confirm were filed by the Chapter 13 Trustee and Creditor. Dckts. 80 and 83, respectively.

One basis for opposition asserted by Creditor was that the only Declaration in Support of the Motion was that of Ryan C. Wood, Esq., counsel for Debtor. Opposition, p. 3:4-9; Dckt. 83. It is asserted that Debtor has not provided evidence for the court to factually determine that the requirements of 11 U.S.C. § 1325 are met. The Opposition makes reference to this court prior Order continuing the hearing on the Chapter 13 Trustee's Motion to Dismiss this case, which Order includes:

> At the hearing, the court noted that the Debtor had not filed a declaration in support of the Motion to Confirm. Debtor's counsel did file a Declaration (Dckt. 68), some of which appears to be stated on only information and belief (not the personal knowledge as required by Federal Rule of Evidence 602). It is unclear how Debtor's

> counsel would have personal, non-hearsay, knowledge of the financial information necessary for confirmation of a Chapter 13 Plan.
>
> The court noted at the hearing that given the above, the Debtor may well want to file a supplemental declaration providing testimony (personal knowledge, not information and belief) evidence to support the Motion to Confirm.

Order; Dckt. 72.

The Opposition notes that no supplemental declaration had been filed during the period of October 19, 2023, the entry of the court's order continuing the hearing on the Motion to Dismiss, and the November 21, 2023 filing of the Opposition. Opp.; p. 3:4-9; Dckt. 83. The court's docket reflects that no supplemental declaration was filed by Debtor by the December 12, 2023 continued hearing for the Motion to Confirm.

The Motion to Confirm was denied. Civ. Minutes; Dckt. 97. Confirmation was denied on several grounds, including, because the Debtor had not refiled a Motion to Value Creditor's Secured Claim (the original Motion to Value, DCN: RCW-1, was denied without prejudice on October 5, 2024), the Plan appearing to not satisfy the liquidation test in light of the Objection to Exemptions (the court sustaining the Objection to Exemptions claimed in a liquor license; Order, Dckt. 110, entered on January 3, 2024), and the Chapter 13 Plan providing a 0% interest rate for Creditor's secured claim. Civ. Minutes; Dckt. 97 at 3. Debtor's counsel advised the court that Debtor would prosecute an amended Chapter 13 plan. *Id*.

Amended Chapter 13 Plan

On January 30, 2024, the Debtor's Amended Chapter 13 Plan, Motion to Confirm, and Declaration of Debtor in support of the Motion to Confirm [Fn.1.] were filed. Dckts. 151, 148, 150, respectively. Both the Chapter 13 Trustee and Creditor filed Oppositions to the Motion to Confirm Amended Plan. Dckts. 192, 194.

FN. 1. In reviewing Debtor's Declaration filed in support of the Motion to Confirm Amended Plan, a recurring evidentiary practice is shown. The Declaration, which is not signed, (Dckt. 150 at 2), does not provide the court with personal knowledge testimony of facts from which the court can make factual findings necessary to determine that the requirements of 11 U.S.C. § 1325, and 1322 are satisfied. *See*, Fed. R. Evid. 602, personal knowledge testimony required for a non-expert witness.

Rather, the fourteen (14) lines of testimony merely provide the Debtor's personal factual conclusions and the Debtor's legal conclusions, including:

> 8. My Plan meets the requirements set out in 11 U.S.C. Sections 1322(a), 1322(b), 1323(c) and 1325(a) for confirmation of my Plan.

Dec., ¶ 8; Dckt. 150. Nothing has been provided to the court showing that the Debtor had any legal training or would have any knowledge of the statutory provisions or requirements therein of 11 U.S.C. § 1322 and 1325.

Other examples addressed by the court are, Order Continuing Hearing on Motion to Dismiss, Dckt. 72 (October 19, 2023), discussed below; and Civ. Minutes, unsigned declaration (Dckt. 150) of Debtor filed, in which Debtor provides legal opinion testimony, Dckt. 168 at 4.

The court denied confirmation of the Amended Plan. Civ. Minutes, Order; Dckts. 200, 201. The Civil Minutes for the March 26, 2024 hearing on the Motion to Confirm Amended Plan addresses a number of issues concerning information provided to the court by Debtor. One set of information addressed related to the Debtor's Amended Schedules I and J, including the lack of reasonable living expenses or paying taxes.

> For example, Debtor tells the court that he never needs to spend money on household items for home repairs, meaning he never needs to buy replacement light bulbs or other similar items. Apparently neither Debtor nor his dependents will ever need to visit the doctor or the dentist in five years, proposing $0 in medical expenses. Debtor lists having a life insurance policy on his most recently Amended Schedule A/B (Docket 181 ps. 4-5 line 31), but Debtor informs the court he makes no monthly payments on this life insurance policy.
>
> Debtor also makes no monthly payments on any renter's or homeowner's insurance policies, either of which is usually required in a lease or mortgage agreement. Debtor does schedule $355 per month in vehicle insurance. Debtor's sole vehicle listed is an old, 2000 Dodge Dakota, which Debtor states under penalty of perjury that it is in "Poor Condition" and has a value of only $2,500. At $355 per month, Debtor's annual car insurance bill would be $4,020, which appears to be extraordinarily high for a poor condition twenty-five year old model vehicle.
>
> Debtor schedules $325 per month in both food and housekeeping supplies. For just the Debtor alone, this is an unrealistic, unreasonable budget. However, Debtor lists three teenage sons as dependents, and the record appears to indicate Debtor's ex-spouse, Sonia Madaan, also cohabitates with Debtor.
>
> Assuming $50 a month for housekeeping supplies, in a thirty (30) day month, and providing three meals per day in a four-person household, with Debtor having only $275 a month for food, Debtor has scheduled only $0.76 per meal per person each day. *See*, Original Schedule J, Dckt. 29. Debtor has not otherwise indicated to the court that he and his dependents are receiving outside help for food or housekeeping expenses.

Civ. Minutes; Dckt. 200 at 3-4. The Original and Amended Schedules were prepared with and filed by Debtor's counsel.

Related Chapter 7 Case of Sonia Madaan

The court notes from its records that Sonia Madaan filed her own Chapter 7 Bankruptcy Case (23-23637) on October 16, 2023, which was two months after Debtor commenced his Bankruptcy Case. On her Petition Sonia Madaan lists 807 Mc Devitt Dr., Wheatland, California as her residence address. 23-22540; Dckt. 1 at 2. That is the same address as the Debtor in this Case, Satinder Singh, lists as his residence. Dckt. 1 at 2.

Sonia Madaan states on her Schedule I that she has $4,230.00 a month in income. 23-23637; Schedule I; Dckt. 16 at 33. On the Business Income and Expenses Attachment to Schedule I, Sonia Madaan states that from the gross monthly income of $4,340.00 from her business, which she states is "Liquor Store Managements (*Id.*; Statement of Financial Affairs, Part 11, ¶ 27) she has monthly net income of $4,230.00 – Sonia Madaan stating that she has $0.00 monthly expenses. *Id*. at 16. On Sonia Madaan's Schedule J no expenses are listed for current taxes - such as income, self-employment, and Social Security. *Id*. at 34-35.

As the court addresses below, on the Income and Expense Schedule I Addendum, Dckt. 40 at 3, it shows salary and wage expenses of only ($3,720) a month and Professional Fees, Bank Fees, and ATM Fees of only ($2,093.00). If Sonia Madaan's client is the Debtor's business, it does not appear that the payment of her fees are provided for in the Schedule I Attachment Income and Expense information.

The court also denied confirmation because Debtor was continuing to provide for a 0% interest rate on Creditor's Secured claim. *Id*. at 4. Additionally, the court denied confirmation because the expenses listed on the Schedules were greater than the evidence presented at the hearing with respect to computing the disposable income which would be funding the Amended Plan. *Id*. at 4-5.

Passing of the Debtor

On June 23, 2024, Debtor Satinder Singh passed away. Mr. Madaan asserts that he is the lawful successor and representative of Debtor. Madaan Decl. 2:1-2, Docket 244.

MOTION TO APPOINT SUCCESSOR REPRESENTATIVE

Mr. Madaan, Deceased Debtor Satinder Singh's son, by and through Mr. Madaan's attorney Ryan C. Wood, Esq., has requested the court appoint Mr. Madaan the successor representative of the Deceased Debtor and allow him to continue in the prosecution of the Chapter 13 Bankruptcy Case.

Pursuant to Federal Rule of Bankruptcy Procedure 1016, Mr. Madaan requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Notice of Death was filed on June 25, 2024. Dckt. 243. Mr. Madaan is the son of the deceased party and is the successor's heir and lawful representative. Mr. Madaan states he will continue to prosecute this case in a timely and reasonable manner. Madaan Decl. 2:1-2, Docket 244. The Motion asserts that Mr. Madaan is the only "competent heir" of the Debtor. Motion, ¶ 3; Dckt. 243.

DISCUSSION

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

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of

the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004. . . .**

(emphasis added); *see also Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

FED. R. BANKR. P. 1016. The court will not make this adjudication until it has a substituted real party in interest for the deceased debtor.

Appointment of Successor Representative to Prosecute a Chapter 13 Case

LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

9 COLLIER ON BANKRUPTCY ¶ 1016.04 provides a discussion of the application of Federal Rule of Bankruptcy Procedure 9016 in Chapter 13 cases, including the following (emphasis added):

> In a chapter 12 or 13 case, the confirmation and successful completion of a chapter 12 or 13 plan are almost always dependent upon the debtor's future earnings. Thus, the debtor's death will often lead to dismissal of the case because the debtor will likely have no future income. Alternatively, if a plan has been confirmed, the court may enter a hardship discharge under section 1328(b), which would preserve the benefits of discharge for the debtor's estate.
>
> **Nevertheless, since chapter 13 is viewed as a voluntary proceeding, in many cases, unless a plan was confirmed prior to the debtor's death, the case will be dismissed even if the debtor's estate has sufficient income to fund a plan.** Indeed, it has been held that if the originally proposed plan cannot be confirmed after a debtor's death, the case must be dismissed because no one but the debtor may propose a plan under section 1321.[3] The same court held that the case could not be converted to chapter 7 because, under section 109, a probate estate is not eligible to be a debtor in a chapter 7 case.[4] Courts have also held that conversion, which would prevent creditors from reaching assets they could otherwise pursue, would not be in the interest of creditors and therefore would not satisfy the dictates of Rule 1016.*5* However, if a debtor has proposed a confirmable plan and that plan is still feasible after the death of the debtor, the court may allow the case to continue for the benefit of the debtor's estate.[6] And a court may permit the debtor's estate to propose a plan that would allow the case to proceed.[7]
>
> 3. *In re Martinez*, 2013 Bankr. LEXIS 4853 (Bankr. W.D. Tex. Nov. 15, 2013); *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999).
>
> 4. *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999); *see also* 11 U.S.C. § 1307(f) (case may not be converted from chapter 13 to another chapter unless debtor may be a debtor under that chapter).
>
> 5. *In re Hancock*, 2009 Bankr. LEXIS 2174 (Bankr. N.D. Okla. Aug. 10, 2009); *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999).
>
> 6. *In re Fogel*, 550 B.R. 532 (D. Colo. 2015) (reversing order that dismissed case and denied waiver of financial education requirement where plan had been completed and personal representative sought deceased debtor's discharge); *In re Perkins*, 381

B.R. 530 (Bankr. S.D. Ill. 2007) (denying trustee's motion to dismiss and rejecting argument that Rule 1016 is inconsistent with the statute); *In re Stewart*, 52 C.B.C.2d 1197 (Bankr. D. Or. 2004) (completion of plan was in interest of creditors and debtor's heirs).

7. *In re Terry*, 543 B.R. 173 (E.D. Pa. 2015) (affirming confirmation of plan in case of deceased debtor where debtor's income not necessary to plan); *In re Lewis*, 2011 Bankr. LEXIS 1765 (Bankr. E.D.N.C. May 12, 2011) (debtor's executor proposed plan under which debtor's family would lease debtor's residence, providing income to pay creditors).

The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Notice of Death.

Declaration of Mr. Maddan

The Declaration of Mr. Maddan was filed in support of the Motion for the court to appoint him the successor representative for the Deceased Debtor and to continue with the prosecution of this Bankruptcy Case. In his Declaration, Mr. Maddan's testimony consists of:

A. He is nineteen years old and the son of the Deceased Debtor. Dec. ¶ 1; Dckt. 244.

B. He is the only heir of the Deceased Debtor. *Id.*; ¶ 3.

C. He will have the death certificate filed shortly. *Id.*; ¶ 4.

D. He requests the court allow the case to proceed "pursuant to LBR 1016-1." *Id.*; ¶ 5.

E. He requests a waiver of the post-petition education requirement for entry of a discharge and the 11 U.S.C. § 1328 certifications to the extent he as successor cannot provide them. *Id.*; ¶ 6.

In the above, nothing is provided as to how Mr. Maddan, the Deceased Debtor's nineteen year old son, has the knowledge and ability to take over running the Deceased Debtor's business that is in the Bankruptcy Estate, prosecute this case, and perform a Chapter 13 Plan.

Supplemental Declaration of Mr. Maddan

An unsigned Supplemental Declaration for Mr. Maddan was filed on July 12, 2024. Dckt. 250 The Supplemental Declaration states that Mr. Maddan is communicating with the Alcohol Beverage and Control (regarding the liquor license), that he is meeting with probate attorneys, that he will make the July 2024 payment due under the latest Chapter 13 Plan filed, and that he is operating the Wheatland 99 Cents & Liquor Store daily.

Declaration of Ankit Madaan

The Declaration of Ankit Maddan ("Ankit") has been filed in support of the Motion. Dckt. 252. In it Ankit states that: he is the thirty-four year-old nephew of the Deceased Debtor, Ankit had lived with

the Deceased Debtor for the past two years, Ankit owns and operates his own business, and he is committed to helping Humas Maddan for the full 60 month terms of the Plan.

Continuance of Hearing

Opposition was stated to this Motion at the hearing, the Motion having been set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(2). The hearing on the Motion to Substitute is continued to 2:00 p.m. on August 6, 2024. Opposition pleadings shall be filed and served on or before July 24, 2024, and Reply Pleadings, if any, filed and served on or before July 31, 2024.

August 6, 2024 Hearing

The court continued the hearing on this Matter to allow for Opposition and Reply Pleadings to be filed. The court ordered "Opposition pleadings shall be filed and served on or before July 24, 2024, and Reply Pleadings, if any, filed and served on or before July 31, 2024." Docket 257.

The secured creditor in this case Placerville Investment Group, LLC ("Creditor") filed its Opposition on July 24, 2024. Opp'n., Docket 260. Creditor states:

1. The case is almost a year old with no Chapter 13 Plan confirmed. *Id.* at 1:22-23.

2. Most cases applying Fed. R. Bankr. P. 1016 involve substitution where a plan has already been confirmed. *Id.* at 2:15-16.

3. The interest of pre-petition and post-petition creditors must be considered, not the interests of the deceased debtor or his heirs (citing *In re Sanford*, 619 B.R. 380, 388-89. (Bankr. E.D. Mich. 2020)). Opp'n. at 2:23-24.

4. The case should be dismissed because there is no confirmed plan, and under 11 U.S.C. § 1321 only a debtor (not the estate or a debtor's representative) may propose a plan. *Id.* at 3:4-7.

5. A case should presumptively not proceed in bankruptcy where a debtor dies before plan confirmation (citing *In re Spiser*, 232 B.R. 669, 674 (Bankr. N.D. Tex. 1999)). Opp'n. at 3:10-12.

6. Proceeding with this bankruptcy case would interfere with the probate proceedings. The proposed substitution of Mr. Madaan may be improper where he is not the sole heir, having two siblings who were also dependent on the deceased Debtor, each being entitled to an equal share of the deceased Debtor's estate in probate. *Id.* at 4:11-14.

7. The Motion fails to satisfy Rule 1016's requirement that going forward is in the best interest of the parties. *Id.* at 5:25-26. Mr. Humas, only nineteen years of age, would be charged with operating a liquor store over a five-year period to generate profits for the benefit of creditors. This idea is wholly impractical and a likely failure. *Id.* at 5:27-6:2.

8. Mr. Humas cannot hold the liquor license because he is not yet twenty-one years of age. *Id.* at 6:3-4. Furthermore, it appears the license is to be transferred to Sonia Madaan, who is not subject to the jurisdiction of this court. The license is the only unencumbered asset of the estate with material value. The license is set to expire at the end of August of this year, and there is no evidence that fees have been paid to ensure the license does not expire shortly. *Id.* at 6:3-17. There are too many risks involved in having Mr. Humas run the business while being too young to hold the liquor license.

9. The Amended Plan proposes that upon confirmation assets of the estate revest in the Debtor. There is no precedent for "revesting" assets in a non-debtor such as Mr. Humas, who of course is a stranger to the chapter 13 case and the court's jurisdiction, and thus the course of action proposed by Humas is not feasible. For all these reasons the Motion should be denied. *Id.* at 7:8-14.

On this last point, the court notes that the assets are currently in the Bankruptcy Estate and that a Chapter 13 plan may provide for such assets to remain in the Bankruptcy Estate and not revest in the debtor.

Reply, Mr. Madaan

On July 31, the proposed substitute representative Mr. Madaan filed a Reply to Creditor's Opposition. Docket 263. Mr. Madaan argues:

1. The cases Creditor cites are distinguishable from this case. *Id.* at 3:8-12.

2. *In re Wells 2024* WL 3029484 (Bankr. W.D. Wash. 2024) is directly on point and is applicable. *Id.* at 3:13-16.

3. There will be no California Probate Case involved here. *Id.* at 4:5-9.

4. Mr. Madaan is currently operating the 99 Cent Store generating the necessary income to continue to fund the Chapter 13 Plan. *Id.* at 4:12-13.

5. There has been substantial work toward confirming a plan with the last outstanding issue the Motion to Value Creditor's collateral. *Id.* at 2:2-6.

6. Ankit Madaan has made a firm commitment to help fund the Chapter 13 Plan if necessary to ensure feasibility and ensure "possible" as provided in FRBP 1016. *Id.* at 4:20-21.

7. The present Chapter 13 case requires one order valuing the 99 Cent Store. There are no other pending issues. Confirming the proposed Chapter 13 Plan is in the best interest of all parties. *Id.* at 5:9-10.

8. Creditor requests this Court only look at their subjective opinion which is not credible. Creditor has opposed everything in this case and has not supported their opposition with admissible factual evidence or declaratory support. This is consistent with Creditor's approach in the present case. *Id.* at 5:11-13.

9. General unsecured creditors are to receive a pot of $52,000.00 that they will not receive if this case is dismissed and none of the general unsecured creditors have objected to the Chapter 13 Plan. *Id.* at 5:20-22.

10. All creditors in this case will receive funds with the continuation of this Chapter 13 case more quickly than if this case were dismissed, and some will not receive anything upon dismissal. *Id.* at 6:3-4.

11. FRBP 1016 does not suggest that if a debtor dies before the Plan is confirmed then the case should be dismissed. FRBP 1016 provides: "the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." The plain unambiguous language provides the continuation of the Chapter 13 AND conclusion do not have be exactly as the case would have been; so far as possible. *Id.* at 7:7-10.

Mr. Madaan submits two more Declarations in support of the Reply. Dckts. 264, 265. In his own Declaration, Mr. Madaan testimony includes:

a. "[Creditor] has opposed everything in the case, so [he] does not find their opposition credible . . . [Creditor] clearly does not want human beings to obtain the relief the Bankruptcy Code provides." Decl.¶¶ 4, 7, Docket 264.

b. Mr. Madaan testifies that he is currently running the store without any issue with his mother and continues to make Chapter 13 Plan payments. *Id.* at ¶ 8.

c. Mr. Madaan also testifies he has support from a family member Ankit Madaan, as well as his entire community. *Id.* at ¶ 9.

d. Mr. Madaan testifies all fees are paid with the liquor license and it will not expire in August of 2024. *Id.* at ¶ 12.

e. Mr. Madaan makes his personal legal conclusion that it is in the best interest of all creditors to continue the case. *Id.* at ¶¶ 22, 23. (The court addresses this testimony in greater detail below.)

Attorney Mindin J. Reid, Esq. testifies in her Declaration in support that there is no need for a probate proceeding in this case, and that the liquor license will not expire this year in August of 2024. Decl. ¶¶ 4, 5, Docket 265. Other than this conclusory statement, Attorney Reid does not provide the court with any factual and legal basis for such a conclusion for the assets of this Bankruptcy Estate which generate

more than $800,000 a year in gross revenues. The court addresses Attorney Reid's declaration in greater detail below.

DISCUSSION

11 U.S.C. § 1321 provides "The debtor shall file a plan." There is no language of a substituted representative having authority to file a plan. Fed. R. Bankr. P. 3015 further states:

> The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

Again, only the debtor in a Chapter 13 case is given the authority to file a plan. "Debtor" is defined as a "person or municipality concerning which a case under this title has been commenced." 11 U.S.C. § 101(13). Mr. Madaan did not commence the case and is not the debtor in this case. Collier's treatise on bankruptcy states:

> The chapter 13 debtor has the exclusive right to file a plan. The exclusive right on the part of the debtor to file a chapter 13 plan is in keeping with the voluntary nature of chapter 13 relief. The chapter 13 trustee is expected to advise and assist the debtor in the preparation of a plan, but may not file a plan.

8 COLLIER ON BANKRUPTCY ¶ 1321.01. Only the debtor appears to be authorized to file a plan. The same holds true for filing an amended plan. 11 U.S.C. § 1323 states:

> (a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1322 of this title.

Collier's treatise on bankruptcy states on the issue of modifications that, "[o]nly the debtor may file a chapter 13 plan and only the debtor may file a modification of the plan prior to confirmation." 8 COLLIER ON BANKRUPTCY ¶ 1323.02.

As shown in the discussion in 9 COLLIER ON BANKRUPTCY ¶ 1323.02, while lower courts have opined on whether a successor representative of a deceased Chapter 13 debtor may propose and prosecute to confirm a Chapter 13 plan, there is no Circuit or Supreme Court appellate level decisions on this question.

In a review of the annotations for Federal Rule of Bankruptcy Procedure 1016 available on LEXIS+, the focus of the decisions appear to be on whether there is regular income "from the debtor" available to fund a plan.

The plain language of Federal Rule of Bankruptcy Procedure 1016 provides the court with a clearer path in concluding that the pre-confirmation death of a debtor does not bar a successor representative from prosecution of a plan and completion of the plan, so long as it is the deceased debtor's income stream (business, investments, and the like) that will fund the plan (as opposed to third-parties who are merely using

the deceased debtor as a figurehead to reorganize a business without subjecting the third-parties to the duties and obligations of an individual debtor).

Federal Rule of Bankruptcy Procedure 1016 provides as follows, with **emphasis** added:

> Rule 1016. Death or Incompetency of Debtor
>
> Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If a** reorganization, family farmer's debt adjustment, or **individual's debt adjustment case is pending under** chapter 11, chapter 12, or **chapter 13**, the case may be dismissed; or if further administration is possible and in the best interest of the parties, **the case may proceed and be concluded in the same manner, so far as possible**, as though the death or incompetency had not occurred.

The rule makes no distinction between death or incompetency. If the *per se* rule was that the incompetency of a debtor rendered the case unable to be prosecuted if no plan had yet been confirmed, the Rule would say such. One would be hard pressed to read the above Rule that way and to conclude that a debtor with regular income and assets to be restructured who became incompetent was automatically "booted from bankruptcy" and thrown to the "debt collection wolves." No provision is made for such an incompetent debtor in a Chapter 13 case to be deprived the benefits of the Bankruptcy Code.

The provisions for the death of a debtor and for the incompetency of a debtor are made in the same sentence with no distinction between the two.

Congress provides in 11 U.S.C. § 109(e) that for an individual to be eligible to file a case under Chapter 13, the individual must have regular income. Here, when the Debtor commenced this case, he had his regular income from the operation of his business - the Wheatland 99 Cents & Liquor Store. Taking the Amended Schedule I filed on May 23, 2024 under penalty of perjury, Debtor states having monthly net income from his business of $6,449. Dckt. 227 at 1-2. That was his net income after paying all of his employees and business expenses.

Though Debtor did neglect to attach to the Schedule I filed on May 23, 2024, the required statement of gross income and expenses for a business that is required for ¶ 8 of Schedule I, the court has found one attached to an Amended Schedule I filed on September 14, 2023. Dckt. 40. The information provided by Debtor on that Schedule I Attachment of Income and Expenses includes the statement that monthly gross income for the business is $64,782.00. This equals $777,384 in annual gross income. As discussed below, the Statement of Financial Affairs information indicates a higher annual income of $800,000+ per year.

As the business of the Debtor is property of the Bankruptcy Estate, this business of the Debtor can generate the $6,449 in monthly income to fund a plan, and likely have a larger projected disposable income given that the expenses of Deceased Debtor are substantially reduced. Thus, this case would not fall into the "no income from debtor" category of cases.

Since no Plan has been confirmed in this Bankruptcy Case, much of the argument has focused on the provisions of 11 U.S.C. § 1321 that says "The **debtor shall** file a plan" (emphasis added). It is argued

that since no plan has been confirmed and the proposed plan will likely need to be amended – there is no Debtor to file such Plan/amendments.

As the court and counsel know, the Supreme Court provides in Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 7025, 9014 that in the event of a party in interest, including the debtor, a successor representative can be appointed and the litigation (whether adversary proceeding or the bankruptcy case) can proceed. The successor representative then fulfills the obligations of the debtor and has all of the fiduciary duties and obligations to the bankruptcy estate and arising under the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

After reading the plain language of the Statutes and Rules, the court concludes that the death of the Debtor does not automatically result in the dismissal of the case merely because a Chapter 13 plan has not been confirmed.

Thus, the court continues in the analysis of whether the proposed successor representative should be appointed.

Review of Mr. Madaan's Additional Testimony

As noted above, the court continued the hearing to August 6, 2024, to allow for the filing of the Opposition and Reply Pleadings. The Reply pleadings include a Third Declaration of Mr. Madaan. Dec.; Dckt. 264. In this Third Declaration for Mr. Madaan's testimony, as summarized by the court, is:

A. Mr. Madaan testifies that he has no idea why the deceased Debtor's death certificate states that Debtor was married to Sonia Madaan. Second Dec., ¶ 3; Dckt. 264.

B. Mr. Madaan states a conclusion that:

1. " Facts in this case support it is more than possible, in the best interest of the parties, that this Chapter 13 case may proceed and be concluded in the same manner as though my father had never committed suicide ." *Id.*; ¶ 5.

2. "The facts of this case are precisely in line with this case continuing given the untimely death of my father." *Id.*; ¶ 6.

While concluding that such "facts" exist, Mr. Madaan fails to provide the court with personal knowledge testimony of such facts. Fed. R. Evid. 602.

C. Mr. Madaan then states his conclusion that the objecting Creditor "[c]learly does not want human beings to obtain the relief the Bankruptcy Code provides." *Id.*; ¶ 7.

D. Mr. Madaan states that he is "running the store without issue with the help of my mom," who is not identified in the testimony of Mr. Madaan. *Id.*; ¶ 8. (Mr. Madaan's mother has been identified in other contexts in this case as Sonia Madaan, who, as discussed above, is a debtor in a parallel Chapter 7 Case that has now been closed.)

E. Mr. Madaan states that he has the support of his family member Ankit Madaan, plus all of Humas Madaan's family members, and "the entirely community of Wheatland. . . ." *Id*.; ¶¶ 9, 10.

F. Mr. Madaan and his mother are in discussions with the ABC regarding the Liquor License, the fees have been paid, and that Humas Madaan believes that issues relating to the Liquor License are "just a matter of procedure." *Id*.; ¶¶ 11-12.

G. Mr. Madaan testifies that unidentified probate attorneys have been consulted and there will be no probate proceeding filed. *Id*.; ¶ 13.

H. Mr. Madaan testifies that he has worked at the Wheatland 99 Cent Store & Liquor for around five years and knows the operation. *Id*., ¶ 14.

I. Mr. Madaan testifies that numerous family members, who are more than 21 years old, are involved in the business and will be responsible for selling liquor until Humas Madaan turns 21 years of age. *Id*.; ¶ 15.

J. Mr. Madaan testifies his conclusion that he can operate the business. *Id*.; ¶ 18.

This Declaration "testimony" is long on Mr. Madaan's conclusions that he dictates to the court and short with testimony of personal knowledge facts. This testimony is in the nature of Mr. Madaan being a nineteen year old figurehead, with others behind the scene "running the show" and having control of the assets of this Bankruptcy Estate.

Review of Mindin J. Reid, Esq. Declaration

The Declaration of Mindin J. Reid, Esq. is also filed in support of the Motion. Dec.; Dckt. 265. This testimony includes that Attorney Reid is a licensed attorney who has practiced probate law for nine (9) years, and has administered forty-one (41) probate cases. *Id*.; ¶ 1, 2.

Attorney Reid states a conclusion that there is "no need for a probate case to be opened" and that such a case would not be in the best interest of the parties. *Id*.; ¶ 4. Further, that Attorney Reid has reviewed Debtor's holographic will. *Id*.; ¶ 3.

While dictating a conclusion that no probate proceeding needs to be opened, Attorney Reid provides no factual testimony of the facts and the applicable law that would lead to such a conclusion. The testimony provided could be construed to sound more in the nature to trying to avoid probate proceedings and use bankruptcy as a "backdoor workaround" California probate law.

Attorney Reid does not provide testimony and analysis of the holographic will, and no copy of the holographic will has been provided. This further enhances the appearance that Mr. Madaan is being used as a figurehead for those behind the scenes family members seeking to obtain the property of the Bankruptcy Estate, as well as attempting to use the Bankruptcy Laws to subvert California probate and inheritance law with people who have no right to the Deceased Debtor's assets by taking the assets through the Bankruptcy Case.

In the Reply Points and Authorities filed by counsel for Mr. Madaan, the court notes that while long on arguments, it is short on legal authorities. With respect to the issue of whether a probate proceeding needs to be commenced and who under California law is the successor to Debtor's assets and rights (inheritance) there is no legal analysis of facts and law, but only the argument that based on Attorney Reid's conclusion, no probate proceedings need to be commenced. Reply, p. 2:13-17; Dckt. 263.

Review of Schedules
Filed by Debtor

On May 23, 2024, Debtor filed an Amended Schedule I and Amended Schedule J. Dckt. 227. On Amended Schedule I Debtor states that he is a self-employed owner of Wheatland 99 Cents & Liquor. Sch. I; Dckt. 227 at 1. Debtor states in response to ¶ 8 of Amended Schedule I that he has $6,449.00 in monthly net income from running his Business. *Id*. at 2. However, Debtor failed to attach and file with Amended Schedule I the required gross income and expenses statement for the Business. *Id*. The court has review the prior filed Amended and Original Schedules I and did find a self-created (not using the Bankruptcy Form) gross income and expense attachment filed, which expenses include:

1. Business Property Rent/Lease.....($4,500.00)

2. Salaries and Wages of Employees.....($3,720.00)

3. Professional Fees, Bank Fees, ATM Fees.....($2,093.00)

Dckt. 40 at 3. This show that there are not significant employee wages, nor significant professionals fees (such as for someone providing Liquor Store Management professional services).

On Amended Schedule J Debtor states that he has three sons, ages 13, 16, and 18. *Id*. at 3. On Amended Schedule J Debtor states under penalty of perjury that his housing expense is $800 a month, that he $0.00 in any repair and maintenance expense, that his utilities (gas and electric) are only $75 a month, his water/sewer/garbage expense is $50 a month, his and his son's clothing expense is only $20 a month, and food and housekeeping supplies for his family unit (Debtor and three teenage sons) are only $390 a month. *Id*. at 3-4.

On Amended Schedule J Debtor states under penalty of perjury that he pays no income tax, self-employment tax, and no Social Security tax. *Id*. at 4.

In reviewing the Statement of Financial Affairs, Part 2, Debtor states that for the first seven months in 2023, Debtor's gross income from his business was $421,000. Additionally, that for 2022 it was $855,082 and for 2021 it was $822,636. That averages $60,142 in monthly gross income in 2023, $71,256 in 2022, and $68,553 in 2021.

Using the lower monthly gross income of $60,142 a month and Debtor having net income of only $6,449, then Debtor's monthly expenses are eating up 89% of the monthly gross income, with the business having only an 11% profit margin.

Issues Relating to Whether to Appoint
Humas Madaan as the Successor Representative

The court considers the evidence presented by Mr. Madaan and his attorney, who also served as counsel for the deceased debtor. The court has allowed supplemental pleadings to be filed, affording Mr. Madaan and his attorney an extended opportunity to provide the court with evidence to support granting the Motion. The evidence, as presented, appears to be the best that could be provided.

As is discussed above, the court concludes that Mr. Madaan, the nineteen year son of the deceased Debtor, has not provided the court with evidence that he can fulfill the duties and obligations of a successor representative.

Mr. Madaan is the nineteen year son of the deceased Debtor. He does not provide any testimony about his experience in running this type of business, what he has been employed to do at the business in the past, and how running this business (and being the fiduciary in this Case and under any Chapter 13 Plan) fits with his post high school plans for the next five years.

The testimony of Mr. Madaan fails to provide testimony and evidence of his knowledge and ability to run a business with gross income of approximately $800,000 a year (using the average for seven months in 2023, 2022, and 2021). Rather, he states conclusions he reaches and then dictates them to the court.

Mr. Madaan's testimony further reflects that there are a multitude of other family members working behind the scenes to run the business. He makes reference to his mother as a person who is running the business with him.

The court has quoted the two Declarations of Mr. Madaan to show how they do not contain relevant facts concerning his ability to run this business, fulfill the fiduciary duties as the successor representative of the Deceased Debtor, and perform a Chapter 13 Plan. If Mr. Madaan had such facts to present the court, he would have done so with the assistance of his experienced bankruptcy counsel (who also was counsel for the Deceased Debtor).

From the evidence presented, the court identifies that Mr. Madaan is a figurehead that has been placed to obfuscate the persons who are running/intend to run and profit from the business operation and assets. He has presented the court with general conclusions and statements, which do not provide the court with evidence to conclude that he can do the job.

Real Parties in Interest

The court is also presented with the dilemma of who are the heirs to the Deceased. While Mr. Madaan tells the court that he is the only heir of the Deceased Debtor, that would then appear to say that the Deceased Debtor cut out his other two sons from any inheritance.

The court is further concerned given the testimony of Mindin J. Reid, Esq., a probate attorney presented to the court. Attorney Reid just dictates a conclusion that no probate proceedings are required, providing no evidence or even summary legal analysis as to why such is dictated to the court.

While Attorney Reid references a holographic will, no copy of it is provided to the court. The court finds it further interesting that Attorney Reid fails to provide even a conclusion to the court who the heirs are of the Deceased Debtor and who are the real parties in interests who have inherited the Deceased Debtor's rights and property.

Though the court does not make any findings of fact with respect to the following, from what has been presented to the court it may well be that the various persons who are behind the proposed figurehead Mr. Madaan are attempting to divert assets from the actual heirs of the Deceased Debtor and divert those assets to themselves. This further undercuts the credibility of what has been presented to the court in this Motion.

Final Continuance of Hearing

Though the evidence presented by Mr. Madaan and his counsel have been wanting in substance, the court continues the hearing one final time. The court does this for several reasons.

From the information provided by penalty of perjury by the Debtor and filed with the court by Debtor's counsel, it would appear that Wheatland 99 Cents & Liquor Store could be an $800,000 a year gross revenue business. This is not insubstantial and could be the basis for a reorganization that saves the business for the Deceased Debtor's heirs.

The court is concerned that if dismissed, nobody has provided the court with any evidence of and law pertaining to whom the assets of the Bankruptcy Estate would be abandoned. 11 U.S.C. §§ 349 and 554(c). The Debtor being deceased, the property of the Bankruptcy Estate cannot be abandoned to him.

While the court has been presented with summary conclusions by an attorney that no probate proceedings are necessary (notwithstanding Debtor having two minor children and a business that generates $800,000 plus in gross revenues), the court has not been presented with any law and facts to so establish. As discussed above, while referencing a holographic will, none was presented to the court by Mr. Maddan, his counsel Riley C. Wood, Esq., or attorney Minden J. Reid, Esq.

The hearing is continued to 2:00 p.m. on September 10, 2024. Mr. Maddan is afforded a final opportunity to file and serve on or before August 23, 2024, Final Supplemental Pleadings which provide the court with evidence (and not merely conclusions or conjecture) that meet the requirements of the Federal Rules of Evidence and law which supports the relief sought. Replies to the Final Supplemental Pleadings shall be filed and served on or before September 6, 2024. These deadlines were set orally at the August 6, 2024 continued hearing.

MOTION TO DISMISS CASE

As the court was finishing the Minutes for the August 6, 2024 hearing (which required significant restructuring of how the Minutes were organized due to the multiple continuances), the court discovered on the Docket that Mr. Madaan has filed a Notice of Motion and Motion to Dismiss Case. Dckt. 268. In it, Mr. Madaan and Ryan C. Wood, Esq., Mr. Madaan's counsel, state the following as grounds for the dismissal of this Bankruptcy Case:

1. Mr. Madaan, who is nineteen years old, is the only competent heir of Satinder Sing, the Deceased Debtor. Motion, ¶ 2; Dckt. 268.

2. Mr. Madaan no longer seeks to be appointed as the substitute representative of the Deceased Debtor. *Id*..

3. Upon further discussion with counsel of Probate Attorney Mindin Reid, Esq., and challenges relating to the California Liquor License used in the Deceased Debtor's Business (which is property of the Bankruptcy Estate), "it is no longer tenable to seek Humas Madaan be appointed Substitute Representative." *Id.*; ¶ 4.

The Declaration of Ryan C. Wood, Esq., counsel for Mr. Madaan and counsel for the now Deceased Debtor, is filed in support of the Motion to Dismiss. Dckt. 269. In it, Mr. Wood testifies that:

> (1) After long conversations between Mr. Madaan and Probate Attorney Mindin Reid, Esq., it is clear that seeking to appoint Mr. Madaan as substitute representative is not tenable;
>
> (2) new information regarding the Deceased Debtor's estate (which is in the Bankruptcy Estate) has been learned; and
>
> (3) the ABC is not cooperative about the transfer of the Liquor License (which is property of the Bankruptcy Estate) into trust for the benefit of Mr. Madaan (as opposed to for the benefit of the Bankruptcy Estate).

Dec.; Dckt. 29.

The Motion does not clearly state the standing of Mr. Madaan to file a Motion to Dismiss in this Bankruptcy Case. He is not the successor representative. He is not a creditor (no proof of claim being filed). He has not provided the court with any documentation that he is an heir or has any rights or interests to assert in the property of the Bankruptcy Estate.

Of even more significance, the Motion to Dismiss is devoid of any evidence, law, or other information as to whom the property of the Bankruptcy Estate would be abandoned if the case is dismissed. Rather, it appears that the property of the Bankruptcy Estate would be abandoned to no one and then lost.

Again, probate attorney Mindin Reid, Esq. is cited as providing a significant basis for first seeking the appointment of Mr. Madaan as the substitute representative for the Deceased Debtor and now a significant basis for stating that such should not be done and the Bankruptcy Case dismissed.

Additionally, there is "new information" about the Deceased Debtor's Estate, but no information is provided as to how that "new information" effects the Bankruptcy Estate.

The hearing on the Motion to Dismiss is set for 2:00 p.m. on September 10, 2024, which is the same date and time for other continued hearings on motions in this Bankruptcy Case.

PERSONS ORDERED TO APPEAR
AT THE SEPTEMBER 10, 2024 CONTINUED HEARING

Prior to the Motion to Dismiss being filed, the court had already drafted an order requiring that Mr. Madaan, Ryan C. Wood, Esq., attorney for Mr. Madaan, and any and other family members who will be assisting Humas Madaan in the administration of this case, prosecution of a Chapter 13 Plan, and operation of the Wheatland 99 Cents & Liquor Store or administration of other assets of the Bankruptcy Estate were required to attend the continued hearing in person, no telephonic appearances permitted.

Attorney Mindin Reid, Esq. now having been cited as the basis for first seeking the appointment of Mr. Madaan as the substitute representative, and then be stated as the basis for not seeking such appointment, as well as having provided Attorney Reid's Declaration which merely dictated legal conclusions to the court and failed to provide the court with a copy of the holographic will, the court has determined that the attendance in person at the September 10, 2024 hearings on this Motion to Dismiss and the Motion to Appoint Mr. Madaan as the Substitute Representative is necessary and proper, with No Telephonic Appearance permitted for Attorney Reid.

In light of the Parties not identifying to whom or what entity the assets of the Bankruptcy Estate would be abandoned if the case is dismissed, the court orders that counsel for the U.S. Trustee appear and provide insight as to whom or what such property would be abandoned, or whether at this juncture conversion to Chapter 7 is proper in light of there being no State Court proceeding identifying a successor in interest (such as executor, representative, administrator) and no party appearing showing a right to take possession of property of the Bankruptcy Estate.

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

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

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

~~**IT IS ORDERED** that the Motion to Substitute is denied.~~

10. 23-22540-E-13 RCW-9

SATINDER SINGH
Ryan Wood

CONTINUED MOTION TO VALUE COLLATERAL OF PLACERVILLE INVESTMENT GROUP, LLC
1-11-24 [127]

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, other parties in interest, parties requesting special notice, and Office of the United States Trustee on January 11, 2024. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Placerville Investment Group, LLC ("Creditor") is denied without prejudice.

SEPTEMBER 10, 2024 HEARING

On September 2, 2024, Peter G. Macaluso, Esq., filed four pleadings titled "Appearance and Request for Substitution of Attorney," each as a response to four matters now pending before this court:

(1) Motion to Dismiss or Convert this Case (filed by Creditor Placerville Investment Group, LLC, DCN: RLL-3), Dckt. 282;

(2) Motion to Dismiss this Case (filed by Humas Madaan, adult son of Deceased Debtor and proposed successor representative, RCW-016), Dckt. 284;

(3) Motion to Appoint Humas Madaan (Deceased Debtor's adult son) as the successor representative for the Decease Debtor (filed by Humas, RCW-014), Dckt. 286; and

(4) Motion to Value Secured Claim of Creditor Placerville Investment Group, LLC (filed by the Deceased Debtor and prosecuted by Humas Madaan as proposed successor representative, RCW-09), Dckt. 288.

Each of these "Appearance and Request for Substitution of Attorney" titled pleadings begins with the same informational paragraph:

> Debtor's heirs consist of two minor children and Humas Madaan, age 19 and are represented by Sonia Madaan, their natural Mother and Legal/Representative for the Deceased Debtor's Heirs, by and through their proposed attorney of record, Peter G. Macaluso, hereby request that his appearance be noted for the record and requests that the Court substitute himself as the attorney of record.

Appearance and Request for Substitution of Attorney pleadings, Page 1; Dckts. 282, 284, 286, 288.

No substitution of attorney has been filed with respect to representation in this case. From the face of these Appearance and Request for Substitution of Attorney pleadings, it appears that Mr. Macaluso is representing Sonia Madaan, who asserts to be the legal representative of the Deceased Debtor's two minor sons and his adult son (Humas Madaan, whose attorney of record in this Case is Ryan C. Wood, Esq.).

Statement That Ryan C. Wood, Esq.
No Longer Represents Humas Madaan

On September 4, 2024, Ryan C. Wood, Esq., counsel of record for the Deceased Debtor and for Humas Madaan, the proposed successor representative adult son of the Deceased Debtor, filed an *Ex Parte* Motion requesting to be allowed to make a telephonic appearance at the September 10, 2024 hearings. Mtn.; Dckt. 294. In the *Ex Parte* Motion Mr. Wood states that he is no longer counsel for Humas Madaan "as it appears Ms. Madaan now represents Humas Madaan and Ms. Madaan is represented by counsel Peter Macaluso." *Id*.; p. 2:3-6. Mr. Wood includes in his testimony that it appears that Ms. Madaan is representing Humas Madaan. Dec.; Dckt. 295.

It is significant that in the *Ex Parte* Motion Mr. Wood does not state that he no longer represented Humas Madaan and has substituted out, or that he has conferred with his client Humas Madaan, the adult son of the Deceased Debtor, and has been terminated from such representation, but merely that "it appears" that Mr. Wood might not be representing Humas Madaan.

No substitution of attorney order has been entered by the court authorizing the withdrawal of Mr. Wood as counsel for Humas Madaan.

An attorney search on the State Bar of California website disclosed that there is no person named Sonia Madaan who is licensed to practice law in the State of California. [Fn.1.]

FN. 1.

https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch?FreeText=sonia+madaan&SoundsLike=false

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At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The Motion filed by Debtor to value the secured claim of Creditor is accompanied by the declaration's of Debtor and John Toney, professional appraiser. Declaration, Dckts. 130, 133. Debtor is the owner of a business called Wheatland 99 Cent & Liquor Store ("Business"). Creditor has a perfected secured interest in the inventory, good will, furniture, fixtures, and equipment ("Collateral") of the Business. Debtor seeks to value the Collateral at a replacement value of $166,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Collateral secures two separate loans, one incurred in April of 2022, and one incurred in November 2022. The court notes Debtor states the debt owed is actually $245,000 (Mtn., Docket 127 ¶ 3); however, Creditor asserts the Claim could be in the amount of $304,310.34. Proof of Claim, No. 6-2.

Debtor's Declarations and Exhibits

Debtor submits his own Declaration (Docket 130) and the Declaration of his appraiser, John W. Toney (Docket 133), in support of this Motion. Debtor testifies:

1. The testimony is rationally based on my own perception, is helpful to a determination of a fact in issue, and is not based on scientific, technical, or other specialized knowledge within the scope of federal Rule of Evidence 703. Decl., Docket 130 ¶ 3.

2. In 2022, Debtor entered into allegedly legal and enforceable loans with Creditor. *Id.* at ¶ 4.

3. As of the petition date the fair market value of the Collateral was $166,000. *Id.* at ¶ 5.

Mr. Toney testifies:

1. He is an Accredited Senior Appraiser as designated by the American Society of Appraisers since 2007. Decl., Docket 133 ¶ 1.

2. The Appraisal analyses, opinions, and conclusions are limited only by the reported assumptions and limited conditions, and are his personal, unbiased professional analyses, opinions, and conclusions. *Id.* at ¶ 12.

3. As of August 6, 2023, the appraised value of the Business is $256,000. This valuation includes:

a. Inventory: $59,644
b. Liquor License: $90,000
c. Furniture, Fixtures, and Equipment: $5,000
d. Goodwill: $101,356.

Id. at ¶ 19.

4. The valuation is based upon the Business's current physical condition, market conditions, inventory, goodwill, and other market factors. *Id.* at ¶ 20.

Debtor also filed with the court the Collateral Appraisal Report and Analysis ("Report"). Exhibit 1, Docket 132.

CREDITOR'S OPPOSITION

On January 30, 2024 Creditor filed an Opposition to the Motion. Docket 137. In its Opposition, Creditor states:

1. This is Debtor's second Motion to Value, the first being denied on October 5, 2023.

2. Debtor led Creditor to believe the co-borrower on the note, Sonia Madaan, was Debtor's wife; however, it was later uncovered that they were divorced but still cohabitate and share expenses.

3. Debtor has not provided the court with reliable evidence to establish the value of the Collateral. Debtor has engaged in under the table transactions, meaning the value is higher than reported.

4. Debtor's own testimony as to value is not sufficient to establish the value of the Collateral.

5. Debtor's expert, John W. Toney of Wallace & Toney Valuation Advisors, Inc., does not provide a reliable valuation because Debtor's expert valued the Collateral based on second-hand data provided by Debtor.

Creditor submits the Declaration of Dalip Gupta in support of its Opposition. Docket 138. In his Declaration, Mr. Gupta recites the history of the loan transactions between Creditor and Debtor, and that Creditor has recently retained an appraiser to value the Collateral. *Id.* at ¶ 11.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee"), submitted an Opposition on January 30, 2024. Docket 145. In his Opposition, Trustee states:

1. Trustee opposes the Motion to Value because Debtor has no Plan pending.

2. Debtor's Declaration in support of his Motion to Value may not be Debtor's own opinion based on personal knowledge.

3. There is a typographical error on the Notice of Hearing.

DISCUSSION

Here, Debtor's opinion can be admissible reliable evidence the court will consider in valuing collateral. But the court is not impressed by Debtor's legal knowledge. The court is unsure whether or not the Declaration is indeed Debtor's opinion, at the hearing,

Creditor argues that Mr. Toney has not relied on proper information in forming his professional opinion of the Business's valuation in the Report. The court disagrees. Creditor states,

> [T]he Appraisal Report does not clearly evidence that the Appraiser reviewed source documents to determine the Store's revenues and expenses. Rather than, for example, identify annual tax returns that were reviewed (reference is made to a tax return schedule, but no statement is included that the schedule or the relevant returns were examined) and rather than evidence a review of contemporaneous sales reports (such as "register rolls") and basic records of business expenses, the Appraisal Report refers includes a single-page summary of "Historical Income Statements," the origin of which is unclear.

Opposition, Docket 137 ps. 4:26-28–5:1-4. However, the Report explicitly details what information Mr. Toney relied on, stating,

> The [Business's] historical income statements are shown in Exhibit A for the past six full operating years and the six-month period ended June 30, 2023. The data for 2017-2021 has been taken from Schedule C of Mr. Singh's personal income tax returns. The data for 2022 is based upon the compiled profit and loss statement prepared by IBS Tax Services and the data for the six-month period ended June 30, 2023, is based upon an internal profit and loss statement.

Exhibit 1, Docket 132 p. 3. Copies of the Exhibits Mr. Toney relied on are included in the Report.

Creditor focuses the court's attention on the "Assumptions and Limiting Conditions" section of the Report, suggesting the Report should not be accepted because the information Debtor submitted to Mr. Toney that founded the basis of the report has not been independently verified. Opposition, Docket 137 p. 5:5-20. However, Creditor has not filed its own valuation with the court or offered any of its own evidence to suggest why Mr. Toney's Report should be discredited.

Creditor argues that the information Debtor provided Mr. Toney is irreconcilable with the information Debtor and Ms. Madaan provided in their bankruptcy Schedules. *Id.* at p. 5:21-25. Yet Creditor acknowledges that information in the Schedules "is not precisely on the same topics as included in the Debtor's appraisal." *Id.* Creditor has provided the court with much argument but little evidence to consider its position.

However, Creditor has informed the court that it has retained an appraiser to value the Collateral.

CONTINUANCE OF THE FEBRUARY 13, 2024 HEARING

The February 13, 2024 scheduled hearing is not being conducted by the judge to whom this case is assigned and has personal knowledge of the prior proceedings in this case. The court notes that there appear not only to be substantial deficiencies with respect to the Motion to Value and Motion to Confirm, but also with Creditor who cannot state a value for its collateral in its Original and Amended Proof of 6-2.

With Debtor having stated on Schedule A/B only a 50% valuation for his Sole Proprietorship, it appears that the Debtor's assets may be substantially higher.

As addressed above, it appears that there are substantial "challenges" facing the Debtor in this case, possibly greater value for assets, possible fraudulent conveyances, and possible contributions from a joint venturer.

Given the substantial history of this case, as well as the Motion to Value (DCN: RCW-9), Motion to Confirm (DCN: RCW-89), Motion to Dismiss or Convert (DCN: RLL-3), and the Motion for Relief From the Stay (DCN: RLL-2), the court continues the hearings on all of these Contested Matters to 2:00 p.m. on February 28, 2024, so the judge to whom this case is assigned can hear all such matters.

February 27, 2024 Hearing

On February 20, 2024, Placerville Investment Group, LLC ("Creditor") submitted a status report with the court. Docket 173. In the Status Report, Creditor states:

1. **On February 13, 2024 Creditor served a formal Request for Production of Documents on Satinder Singh ("Debtor") to gain information related to conducting a valuation** of Debtor's business and related to objecting to confirmation of Debtor's Plan. Debtor's Response is due by March 14, 2024, under Federal Rule of Civil Procedure 34(b), made applicable by Federal Rules of Bankruptcy Procedure 7034 and 9014.

2. Creditor suggests the following time line for approximate discovery deadlines:
   a. Expert and Non-Expert Discovery Closes May 1, 2024;
   b. Hearing of Discovery Motions May 14, 2024;
   c. Debtor's Supplemental Pleadings May 21, 2024; Creditor's Supplemental Opposition May 28, 2024; and
   d. Continued Hearing June 4, 2024 at 2:00 p.m.

3. Creditor requests this time line apply to all related matters in this case (Motion to Confirm (DCN: RCW-89), Motion to Dismiss or Convert (DCN: RLL-3), and the Motion for Relief From the Stay (DCN: RLL-2)).

Docket 173, ¶¶ 2-6.

No update has been filed by Debtor.

At the hearing, counsel for Creditor provided the court with a proposed discovery schedule and continued hearing date. Dckt. 173. Debtor's counsel agreed to the schedule, and noted that he would reach out with Creditor's counsel to see if an agreed valuation could be quickly reached.

The hearing is continued to 2:00 p.m. on June 4, 2024.

June 4, 2024 Hearing

The court continued this matter to let discovery proceed as to the value of the inventory, good will, furniture, fixtures, and equipment ("Collateral") of Wheatland 99 Cent & Liquor Store ("Business"). The court set the following discovery schedule in this Contested Matter:

1. Expert and Non-Expert Discovery Closes on May 1, 2024

2. All other discovery closes, including the hearing on discovery motions, May 14, 2024.

3. Supplemental Pleadings shall be filed by Debtor on or before May 21, 2024.

4. Supplemental Pleadings shall be filed and served by Creditor on or before May 28, 2024.

Satinder Singh ("Debtor") did not submit any Supplemental Pleadings. Placerville Investment Group, LLC ("Creditor") submitted its Supplemental Pleadings by its required deadline of May 28, 2024. Dockets 228-233. As Supplemental Pleadings, Creditor submitted a Supplement to its Opposition (Docket 228), two Declarations in support (Dockets 230 & 231), and supporting Exhibits (Dockets 231 & 232). Creditor makes the following assertions:

1. Debtor has materially under reported revenues of his Business. Creditor's appraiser values the Business at $309,000, much higher than Debtor's valuation of $166,000. Suppl. Opp'n 1:24-2:4, Docket 228.

2. As previously raised, Creditor reasserts that the $166,000 appraisal is not based on an examination of any source documents in connection with revenues or expenses of the business, but is instead based entirely on inconsistent second-hand information from Debtor. *Id.* at 2:25-3:7. Debtor did not supplement the record and failed to rebut this issue.

3. Debtor frustrated Creditor's discovery attempts by not complying with discovery requests. Specifically, Debtor did not produce bank statements for the year before the petition date or produce the register roll (the point of sale documentation) as requested. *Id.* at 3:12-6:2.

   a. The register roll was a big point of contention. Debtor responded in discovery that he either did not keep a register roll or was unsure of what Creditor was referring to. When Debtor sent pictures to Creditor, it was apparent that Debtor did keep a register roll. *See* Exhibit E 12, Docket 232. The register roll is important here as it keeps detailed transaction information automatically as purchases are made.

4. Creditor discovered that Debtor owned a bank account that was not reported on the Schedules. This account was with Sierra Central Credit Union ("SCCU Account"). The SCCU Account was open as of the petition date but was not disclosed. *Id.* at 4:1-5.

5. Finally, by interpreting the bank statements that were provided, Creditor's appraiser concluded that the value of the Business is $308,000, not $166,000. *Id.* at 6:5-13.

Creditor submits Anthony Asabedo's Declaration in support. Decl., Docket 229. Mr. Asabedo testifies as to the facts allege din the Supplemental Opposition, detailing the process of discovery.

Creditor also submits the Declaration of Stephen J. Goldberg, Creditor's appraiser. Decl., Docket 230. Mr. Goldberg testifies as to the authenticity of his valuation as well as to his experience in business valuations generally.

Creditor also submits Exhibits in support. Exhibits A and B at Docket 231 are Mr. Goldberg's business valuation, valuing the business at $399,000 (or $309,000 less the $90,000 liquor license). Exhibits A through G at Docket 232 include what Creditor requested and uncovered during discovery.

At the hearing, counsel for the Debtor requested time to file a final reply brief to the supplemental pleadings filed. Though objected to by the Creditor, the court allowed for such final reply brief and set the following schedule for the final hearing (both parties indicating that they did not believe that either would request an evidentiary hearing:

A. Debtor shall file and serve his Final Reply Brief on or before June 25, 2024.

B. Evidentiary Objections, if any, shall be filed and served on or before July 2, 2024.

C. Opposition, if any, to the Evidentiary Objections shall be filed and served on or before July 12, 2024.

D. The Final Hearing on the Motion to Value Secured Claim shall be conducted at 2:00 p.m. on August 6, 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 Motion to Value Collateral and Secured Claim filed by Satinder Singh ("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 Value Collateral and Secured Claim of Placerville Investment Group, LLC is denied without prejudice.

11. 24-22708-E-13 DPC-1 | **DONNA JOHNSON** / **Mark Wolff** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **8-7-24 [15]**

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

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 August 7, 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 Donna Kathryn Johnson ("Debtor") did not file tax returns for the year 2023. Obj. 1:25-2:2, Docket 15.

2. The Trustee does not know what the Debtor's Attorney is to be paid or how he expects to be paid. The Debtor did not check either box in §3.05 of the Plan and is it unclear if the Debtor's attorney chose to comply with Local Bankruptcy Rule 2016-1(c) or will seek the Court's approval by a motion in accordance with 11 U.S.C. §§329 and 330, Fed. R. Bankr. 2002, 2016 and 2017. Obj. 2:3-8, Docket 15.

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

DISCUSSION
Attorney's Fees: Retainer

When opting into the no-look fee provisions of Rule 2016-1(c), "an attorney shall not seek, nor accept, a retainer greater than the sum of (A) 25% of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7); and (B) the amount of costs in subdivision (c)(2), as increased by subdivision (c)(7)." Local Bankruptcy Rule 2016-1(c)(3). The fee specified in Rule 2016-1(c) is $8,500, which is what Debtor's attorney will be receiving in connection with prosecuting this case. Plan § 3.05, Docket 3. Debtor failed to check either box.

At the hearing, **xxxxxxx**

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2023 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

12. 24-22917-E-13 DPC-1 | **JERMAINE FORD** **Candace Brooks** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-14-24 [28]**

Item 12 thru 13

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 August 14, 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 sustained.

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

1. The Internal Revenue Service ("IRS") filed a Proof of Claim claiming the Debtor owes $215,817.91 total, claiming an unsecured priority in the amount of $146,880.99, and an unsecured general claim in the amount of $68,936.92 (Claim #6). The Debtor's Plan estimates the priority claim in

the amount of $86,907.00. The Plan is overextended as proposed, not properly accounting for the IRS' claim. Obj. 2:1-12, Docket 28.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 30.

DISCUSSION

Overextended Plan

With the IRS' claim (POC 6-1) and Debtor's proposed monthly payments of $6,500, the Plan will take 101 months to complete. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

13. 24-22917-E-13 NLG-1 | **JERMAINE FORD**
Candace Brooks | **OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY**
8-2-24 [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.

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 August 2, 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 ----------.

The Objection to Confirmation of Plan is sustained.

Deutsche Bank National Trust Company, as Trustee for Carrington Home Equity Loan Trust Series 2005-NC4 Asset-Backed Pass-Through Certificates ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor is the holder of the underlying Note and Deed of Trust secured by Debtor's real property located at 2929 Muttonbird Way, Sacramento, CA 95834 ("Property").

2. The Plan cannot be confirmed as proposed as it fails to properly provide for the cure of Creditor's pre-petition arrears. Creditor's pre-petition arrears approximately total $87,750.50. Debtor's Plan proposes to cure $82,000.00 in pre-petition arrears. Obj. 2:19-21, Docket 22.

DISCUSSION
Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $87,750.50 in pre-petition arrearage. The Plan does not propose to cure that arrearage. Creditor computes that the monthly plan payment must be increased by an additional $95.84 a month to fully provide for the pre-petition 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 Deutsche Bank National Trust Company, as Trustee for Carrington Home Equity Loan Trust Series 2005-NC4 Asset-Backed Pass-Through Certificates ("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.

14. 24-22622-E-13 DPC-1
WILLIAM/CHARLENE BARTHOLOME
Seth Hanson
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-24 [22]

Item 14 thru 16

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

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 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. At the hearing, **xxxxxxx**

The Objection to Confirmation of Plan is overruled.

September 10, 2024 Hearing

The court continued the hearing on the Objection to be heard in conjunction with the related Motions to Value on which this Plan depends. The court by final ruling granted those two related Motions to value.

The proposed Chapter 13 Plan complies with 11 U.S.C. § 1322, and § 1325. The Objection is overruled and the Plan is confirmed.

REVIEW OF THE OBJECTION

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 overruled, and William Douglas Bartholome and Charlene Denise Bartholome's ("Debtor") Chapter 13 Plan filed on June 17, 2024, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. 24-22622-E-13 SLH-1 | **WILLIAM/CHARLENE BARTHOLOME** | **MOTION TO VALUE COLLATERAL OF CARMAX AUTO FINANCE**
Seth Hanson | **7-30-24 [17]**

Final Ruling: No appearance at the September 10, 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, all creditors and parties in interest, and Office of the United States Trustee on July 30, 2024. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Carmax Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $24,306.00.

The Motion filed by William Douglas Bartholome and Charlene Denise Bartholome ("Debtor") to value the secured claim of Carmax Auto Finance ("Creditor") is accompanied by Debtor's declaration. Decl., Docket 19. Debtor is the owner of a 2018 Mercedes GLE ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $24,306 as of the petition filing date. Decl. ¶ 3, Docket 19. 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).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on November 24, 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 $32,874.92. 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 $24,306, 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 William Douglas Bartholome and Charlene Denise Bartholome ("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 Auto Finance ("Creditor") secured by an asset described as a 2018 Mercedes GLE ("Vehicle") is determined to be a secured claim in the amount of $24,306, 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 $24,306 and is encumbered by a lien securing a claim that exceeds the value of the asset.

16. 24-22622-E-13 SLH-2 | **WILLIAM/CHARLENE BARTHOLOME** | **MOTION TO VALUE COLLATERAL OF SCHOOL'S FIRST CREDIT UNION**
Seth Hanson | **7-30-24 [26]**

Final Ruling: No appearance at the September 10, 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, all creditors and parties in interest, and Office of the United States Trustee on July 30, 2024. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Carmax Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $24,306.00.

The Motion filed by William Douglas Bartholome and Charlene Denise Bartholome ("Debtor") to value the secured claim of School's First Credit Union ("Creditor") is accompanied by Debtor's declaration. Decl., Docket 29. Debtor is the owner of a 2017 Chevy Silverado ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $12,608.00 as of the petition filing date. Decl. ¶ 3, Docket 29. 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).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on or around June of 2020, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14493.86. Proof of Claim, No. 8-1. 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 $12,608.00, 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 William Douglas Bartholome and Charlene Denise Bartholome ("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 School's First Credit Union ("Creditor") secured by an asset described as a 2017 Chevy Silverado ("Vehicle") is determined to be a secured claim in the amount of $12,608.00, 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 $12,608.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

17. 24-22626-E-13 DPC-1 | **MOISES GARCIA** Pro Se | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-7-24 [47]**

Item 17 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 (*pro se*), parties requesting special notice, and Office of the United States Trustee on August 7, 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 Moises Serrano Garcia ("Debtor") is $4,025 delinquent in Plan payments to the Trustee. Obj. 1:28-2:4.

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 August 1, 2024. *Id.* at 2:7-11.

3. Debtor failed to submit to Trustee 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing of the petition, and 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 2:14-24.

4. There appear to be some inaccuracies on the Schedules. Debtor admitted at the 341 Meeting that he had paid someone several hundred dollars to assist him in his bankruptcy, but this was not reported; similarly, this person collects rent form Debtor's sister who resides at the property Debtor claims is his residence. *Id.* at 2:25-3:1.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 49.

DISCUSSION

Delinquency

Debtor is $4,025 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Pay 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). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Tax Returns

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

Failure to Authenticate Identification Prior to Meeting of Creditors

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

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

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

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

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

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

Inaccurate or Missing Information

Debtor has omitted certain information from his Schedules, including the fact that a person who assisted Debtor with this case collects rent form Debtor's sister who lives at the Property that Debtor claims as his residence. 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).

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.

18. 24-22626-E-13 PHL-2 | **MOISES GARCIA, Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY MEDALLION SERVICING LLC 8-8-24 [58]**

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, parties requesting special notice, and Office of the United States Trustee on August 8, 2024. By the court's calculation, 3 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.

Secured creditor Medallion Servicing LLC ("Creditor"), opposes confirmation of the Plan on the basis that:

1. Creditor services a loan in the amount of $375,000.00 to Debtor arranged by Medallion's affiliate, Medallion Gold Inc. The loan is evidenced by a Note Secured by Deed of Trust dated July 12, 2023 in the amount of $375,000.00 and secured by a Deed of Trust and Assignment of Rents covering real property commonly known as 26 Wilshire Avenue, Vallejo, California ("Property").

2. Debtor did not file the Plan in good faith, especially considering Debtor's improper transfer of a 99% interest in the Property to a third party, and the failure to disclose this transfer. Obj. 2:17-23, Docket 58.

3. Debtor cannot afford plan payments as he has under-reported his expenses. *Id.* at 2:26-3:19.

DISCUSSION

Good Faith Requirement of 11 U.S.C. § 1325(a)(3)

11 U.S.C. § 1325(a)(3) states:

(a) Except as provided in subsection (b), the court shall confirm a plan if—
. . .
(3) the plan has been proposed in good faith and not by any means forbidden by law;

The Ninth Circuit has ruled "[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner" in ruling on whether a Plan was proposed in bad faith. *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

The court agrees this Plan has not been proposed in good faith. The record reveals hidden or missing information from Debtor's Schedules, of most concern being the 99% interest in the Property being transferred and concealed. The Plan has not been submitted in good faith when material information has been intentionally omitted from Debtor's filing. The court sustains 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 secured creditor Medallion Servicing LLC ("Creditor") 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.

19. 24-22626-E-13 SBL-2 | **MOISES GARCIA** | **OBJECTION TO CONFIRMATION OF PLAN BY LUCILA PEREZ GARCIA**
Pro Se | **8-7-24 [52]**

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

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, parties requesting special notice, and Office of the United States Trustee on August 7, 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.

Lucila Perez Garcia, priority creditor and Debtor's ex-spouse ("Creditor"), opposes confirmation of the Plan on the basis that:

1. Debtor Moises Serrano Garcia's ("Debtor") proposed Plan does not provide for his ongoing domestic support obligation ("DSO") to Creditor. Obj. 1:21-2:2.

2. The Plan similarly does not propose to pay the arrearage on the DSO. *Id.* at 4:5-12.

3. Mr. Garcia's Plan, at Section 3.09, shows that he intends to surrender to Pennymac the property at 2875 Ross Drive in San Juan Bautista ("Property"). This Property is Creditor's residence. Creditor and her children have been paying the mortgage on the Property. Debtor cannot call for surrendering the Property in his Plan. *Id.* at 4:21-5:8.

4. The Plan may fail the liquidation test as Debtor has failed to disclose an interest in certain pieces of property. *Id.* at 5:11-24.

Creditor submits the Declaration of her attorney, Susan B. Luce, to authenticate the facts alleged in the Objection. Decl., Docket 54.

DISCUSSION

Domestic Support Obligations

11 U.S.C. § 1325(a)(8) states:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

. . .

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation. . .

Here, Creditor provides evidence that Debtor has not complied with this provision. Creditor has presented evidence showing that Debtor has not paid all amounts under the court-ordered DSO (*see* Ex. 6 at 37-45, Docket 54; Decl. ¶ 8, Docket 54); moreover, Debtor does not provide for these DSO payments going forward. This is cause for sustaining the Objection.

The court notes that the Objection based on Debtor surrendering the Property is without merit. Debtor may surrender his interest in the Property under Class 3 without affecting Creditor's rights and interests in the Property. EDC Form 003-080 ¶ 3.11 states:

Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.

Debtor's interest in the Property terminating does not terminate Creditor's interest in the Property. Therefore, Creditor would still retain all of her rights and interests in the Property against the mortgagee, Pennymac Loan Services, LLC. The mortgagee would be unable to foreclose on or otherwise infringe on Creditor's right sin the Property, especially as it appears the loan is current.

At the hearing, **XXXXXXX**

Liquidation Analysis

Creditor argues that Debtor's Plan may fail a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." Creditor states in the Objection that Debtor has omitted an interest in a parcel of real property located in Albuquerque, New Mexico. Obj. 5:14-18, Docket 52. Creditor has not provided any evidence of this parcel's existence or location, Debtor's purported interest, or a valuation thereof. 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 Lucila Perez Garcia, priority creditor and Debtor's ex-spouse ("Creditor") 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.

20. 24-22633-E-13 SMJ-1 | **ERIC JENKINS** | **MOTION TO CONFIRM PLAN**
Scott Johnson | **7-30-24 [15]**

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

Local Rule 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, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on July 30, 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).

The Motion to Confirm the Amended Plan is xxxxxxx.

The debtor, Eric Antonio Jenkins ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $975.00 for 48 months, then monthly payments of $1,145.00 for 12 months with unsecured creditors receiving a 6% dividend. Am. Plan, Docket 18. 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 27, 2024. Docket 20. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor's Schedules and other filings documents contain missing or inaccurate information. Debtor testified at the meeting of creditors and he and/or his non-filing spouse ("NF-Spouse") own a Venmo account that is not listed on Schedule A/B. Debtor also provided the Trustee with a copy of his California Driver's License that lists a prior address that he has lived at and/or used in the last three years. The Debtor testified at the Meeting of

Creditors that he has used this address in the last three years and agreed that it should be listed on the Statement of Financial Affairs. Obj. 2:7-17, Docket 20.

2. Debtor's Plan is discriminating unfairly against creditors in the same class. Specifically, Trustee argues:

   a. The Debtor is proposing to treat her general unsecured creditors and her NF-Spouse's community debt unsecured creditors differently. While the court allows different treatment of creditors within the same class according to 11 U.S.C. §1322(b)(1), that treatment cannot "discriminate unfairly." *Id.* at 2:18-22.

   b. Unfair discrimination is "wildly debated" amongst the Circuits, so Trustee is requesting this court weigh in on the issue. *Id.*

   c. The main test that has been adopted stems from 9th and 8th Circuits (*In re Wolff*, 22 B.R. 510 (B.A.P. 9th Cir. 1982) and *In re Leser*, 939 F.2d 669 (8th Cir. 1991)). *Id.* at p. 2:17-18. *Wolff* outlines the four factors a court should consider:

      i. whether the discrimination has a reasonable basis;

      ii. whether the debtor can carry out a plan without the discrimination;

      iii. whether the discrimination is proposed in good faith; and

      iv. whether the degree of discrimination is directly related to the basis or rationale for the discrimination. Restating the last element, does the basis for the discrimination demand that this degree of differential treatment be imposed?

   d. Trustee argues there would be unfair discrimination if Debtor's general unsecured claims were paid a 6% dividend (totaling $5,134.11 over the life of the Plan) while NF-Spouse's debts are paid at a 100% (totaling $94,680 over the life of the Plan). Opp'n 3:5-8, Docket 20.

   e. In applying the *Wolff* factors, Trustee argues:

      i. Whether the discrimination has a reasonable basis: The Debtor has not offered a reason for the discrimination other than their testimony at the meeting of creditors stating that the NFS did not file the bankruptcy case with them since they do not believe in bankruptcy. California is a community property state so the concept of "mine"

vs "yours" shouldn't be a factor for assets and debts that were incurred during the marriage, which it appears at least some of these have been. There does not appear to be a rational basis to discriminate other than to pay one person's debts over the other which seems to lean more toward the "unfair" side of the argument. Opp'n 3:17-24, Docket 20.

ii. Whether the Debtor can carry out a plan without the discrimination. The Trustee believes that the plan could still be successful without the discrimination by increasing the plan payments. Opp'n 3:25-27, Docket 20.

iii. Whether the discrimination is proposed in good faith. The Trustee believes that this treatment is not being proposed in good faith. The Trustee has requested information regarding the NFS' debts and to date, still has not received it. *Id.* at 4:1-3.

iv. Whether the degree of discrimination is directly related to the basis or rationale for the discrimination. Restating the last element, does the basis for the discrimination demand that this degree of differential treatment be imposed? There does not appear to be anything in the evidence filed that would "demand" this degree of discrimination between the spouses. It simply appears that the NF-Spouse wants to do what he wants to do without being bound by the Bankruptcy rules. *Id.* at 4:4-9.

3. In conclusion, Trustee argues a dividend of 6% to Debtor's general unsecured creditors would amount to unfair discrimination, and the Plan should not be confirmed.

DEBTOR'S RESPONSE

Debtor filed a Response on September 6, 2024. Dckt. 24. Debtor directs the Parties to the Amended Schedules and Statement of Financial Affairs having been filed on August 29, 2024, to address the Trustee's questions about assets of the Debtor.

The Debtor then argues in general about "the vast majority" of the payments for the NF-Spouse's separate debt would be for the student loan debt. Debtor provides no evidence of or analysis of the amount of the student loan debt, how much is actually being paid, what percentage payment is this generating for the student loan debt creditor, and what the impact would be if the student loan debt was included in the Class 7 claims.

From what is argued, it appears that the NF-Spouse did not want to file bankruptcy, and that Debtor and the NF-Spouse believed that it was grossly unfair that if the NF-Spouse jointly filed the case and all unsecured claims received the pro rata unsecured claim distribution, then the NF-Spouse would still have some nondischargeable student loan debt to be paid. Response, ¶ 2.b.; Dckt. 24.

What the response "keeps secret" is the amount of the debt which Debtor and his NF-Spouse desire to pay around the bankruptcy Plan and the actual economic impact on the other creditors with general unsecured claims.

The Response states that the Debtor and the NF-Spouse have been married for five years and the NF-Spouse has little dischargeable debts. Further, the NF-Spouse does not want to file bankruptcy. *Id*., ¶ 2.e. Thus, the Debtor is put between a "rock and a hard place," not being able to fund a Plan and the NF-Spouse funding her student loan debt.

APPLICABLE LAW

The section of the Code implicated here, 11 U.S.C. § 1322(b)(1), states:

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

> (1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims. . .

By this language, 11 U.S.C. § 1322(b)(1) allows for treatment of unsecured claims differently, so long as the debt is consumer debt of the debtor, and an individual is also liable on such consumer debt with the debtor. No reference is made to "community debt" in the Federal Statute, but specifically that there must be personal liability of the debtor and the non-debtor.

11 U.S.C. § 1322(b)(1) did not originally contain the language allowing a debtor to treat claims for which a debtor and another person are <u>both</u> personally liable different from other claims in the class and not be subject to an unfair discrimination test. Prior to the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub.L. No. 98-353, 98 Stat. 333 (1984) ("BAFJA"), 11 U.S.C. § 1322(b)(1) ended with the words "so designated."

This subsequently added text, referred to as the "however clause," "has been the subject of a significant amount of debate. Neither courts nor commentators have agreed precisely on what Congress intended to accomplish by adding the 'however clause.'" *Meyer v. Renteria* (*In re Renteria*), 470 B.R. 838, 841 (B.A.P. 9th Cir. 2012). As the Bankruptcy Appellate Panel for the Ninth Circuit (B.A.P.) has explained,

> The focus is on the emphasized "however" clause. That clause - which was added to § 1322(b)(1) in 1984 - has perplexed and divided courts as to whether it obviates, or merely qualifies, the fairness requirement.

> Most courts hold that separately classified co-obligor debts must still clear the § 1322(b)(1) unfair discrimination hurdle. The consequence is that the "however" clause permitting co-obligor debts to be treated "differently" is more in the nature of a qualification to the application of the unfair discrimination analysis than an exemption from it. *See, e.g., Ramirez v. Bracher* (*In re Ramirez*), 204 F.3d 595, 596 (5th Cir. 2000); *Chacon v. Bracher* (*In re Chacon*), 202 F.3d 725, 726 (5th Cir. 1999); *Spokane Ry. Credit Union v. Gonzales* (*In re Gonzales*), 172 B.R. 320, 328-30 (E.D. Wash. 1994); *In re Cheak*, 171 B.R. 55, 58 (Bankr. S.D. Ill. 1994); KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY: 3D § 150.1 n.3 (2000) (gathering cases).
>
> A minority of courts, including the bankruptcy court in this appeal, conclude that the "however" clause excuses compliance with the § 1322(b)(1) ban on unfair discrimination. *In re Dornon*, 103 B.R. 61, 64-65 (Bankr. N.D.N.Y. 1989); LUNDIN, § 150.1 n.2 (gathering cases).
>
> A few courts think the debate of little consequence because overreaching in favor of co-obligors can be dealt with under the good faith requirement of 11 U.S.C. § 1325(a)(3). *Dornon*, at 64; *In re Hill*, 261 B.R. 495, 497-98 (Bankr. N.D. Fla. 2001).

In re Hill, 268 B.R. 548, 551-52 (B.A.P. 9th Cir. 2001). The court in *Hill* declined to answer the question surrounding the "however clause," but the B.A.P. picked back up and substantively answered the question in *Meyer*.

The B.A.P. goes through a statutory construction analysis regarding the "however clause." *Meyer* 470 B.R. at 842-44. It takes into account different statutory constructions of 11 U.S.C. § 1322(b)(1), including the plain meaning rule and the rule of the last antecedent, discussing how courts across the nation have wrestled with the "however clause." *Id.* Ultimately, the B.A.P. found that " [a]t least one thing is clear to us from the above-referenced differing interpretations and battling canons of construction: courts have been unable to derive from the text of the statute a plain and unambiguous meaning for the 'however clause.' Accordingly, we turn to the legislative history to facilitate our analysis." *Id.* at p. 844. The Senate Report accompanying the Omnibus Bankruptcy Improvements Act of 1983 ("OBIA"), the predecessor bill leading up to the BAFJA, cited in *Meyer* states:

> A number of cases have considered whether claims involving codebtors may be classified separately from other claims. Thus far, the majority of cases have refused to permit such classification on the ground that codebtor claims are not different than other claims. See, for example, *In re Utter*, 3 B.R. 369 (Bk. W.D.N.Y. 1980); *In re Montano*, 4 B.R. 535 (Bk. D.D.C. 1980).
>
> Although there may be no theoretical differences between codebtor claims and others, there are important practical differences. Often, the codebtor will be a relative or friend, and the debtor feels compelled to pay the claim. If the debtor is going to pay the debt anyway, it is important that this fact be considered in determining the feasibility of the plan. Sometimes, the codebtor will have posted collateral, and the debtor will feel obligated to make the payment to avoid repossession of the collateral. In still other cases, the codebtor cannot make the payment, and the effect of nonpayment will be to trigger a chapter 7 or chapter 13 petition by the codebtor,

> which may have a ripple effect on other parties as well. For these reasons, separate classification is often practically necessary.
>
> Courts under both the present Act and the former law have emphasized that plans must be realistic. For example, courts have refused to confirm plans which the debtor could not possibly perform; have insisted on realistic estimates of expenditures; and have considered debts which the debtor proposes to pay outside the plan in determining feasibility. *In re Washington*, 6 B.R. 226, 6 BCD 1094 (Bk. E.D. Va. 1980). This approach is eminently sensible. No purpose is served by confirming a plan which the debtor cannot perform. If, as a practical matter, the debtor is going to pay the codebtor claim, he should be permitted to separately classify it in a chapter 13. A result which emphasizes purity in classifying claims does so at the price of a realistic plan. Neither debtors nor creditors benefit from such a rigid approach, and the Committee has determined that statutory authority to separately schedule such debts will contribute to the success of plans contemplating repayment of same. Accordingly, this authority is provided for in the proposed bill by amendment to section 1322(b)(1).

S. Rep. No. 98-65 (1983). Then, discussing the cases of *In re Utter*, 3 B.R. 369 (Bk. W.D.N.Y. 1980); *In re Montano*, 4 B.R. 535 (Bk. D.D.C. 1980), the B.A.P. stated:

> In *Utter*, the joint debtors filed a chapter 13 plan separately classifying one unsecured claim, and proposing to pay that claim a 100% dividend, whereas all other unsecured creditors would receive little or nothing. *In re Utter*, 3 B.R. at 369. There was only one distinction between the preferred claim and the other unsecured claims: the sister of one of the joint debtors also was liable on that debt. *Id. Utter* denied confirmation of the debtors' plan for two reasons. First of all, according to the court, § 1122(a) (which § 1322(b)(1) incorporates by reference) did not permit the separate classification of substantially similar claims, and there was no legal distinction from the estate's perspective between the preferred claim and the other unsecured claims. *Id.* at 369-70. But the *Utter* court's second ground for denying confirmation is more important for our purposes; the *Utter* court held that the proposed preferential treatment of the codebtor claim "discriminates unfairly against the unsecured creditors who are classified in the class that does not contain co-signed debts." *Id.*
>
> *Montano* is quite similar to *Utter*. In *Montano*, the debtor had unsecured debt in the aggregate amount of roughly $30,000. *In re Montano*, 4 B.R. at 536. Of that $30,000, roughly $7,000 was owed on 'claims guaranteed by co-signors.' *Id.* The debtor's chapter 13 plan proposed a 100% dividend on the codebtor claims, and a 1% dividend on all other unsecured claims. *Id.* In denying confirmation of the debtor's plan, the *Montano* court articulated virtually identical grounds for denial as those articulated in *Utter*. *Id.* at 537. In relevant part, *Montano* held that "such classification, where cosigned debts are to be paid in full and other general unsecured debts are to be paid much less, unfairly discriminates against the latter class, and thus is [impermissible] under § 1322(b)(1)." *Id.*

Meyer, 470 B.R. at 845-46. The B.A.P. finally held that "[i]n light of the facts and holdings of *Utter* and *Montano*, and in light of Congress's citation of these two cases as exemplifying the case law it sought to

address by amending § 1322(b)(1), we hold that Congress sought to permit a chapter 13 debtor to separately classify *and* to prefer a codebtor consumer claim when the facts are similar to those presented in *Utter* and *Montano*." *Meyer*, 470 B.R. at 846 (holding also that "[w]e acknowledge that our decision leaves open the issue of the precise relationship between the 'however clause' and the unfair discrimination rule. We intentionally have left unanswered the question of when (if ever) does the preferential treatment of a codebtor consumer claim violate the unfair discrimination rule.").

Not all Circuits have come to this conclusion regarding the "however clause." *See, e.g.*, *Ramirez v. Bracher* (*In re Ramirez*), 204 F.3d 595, 596 (5th Cir. 2000) (holding where debtors had failed to meet their burden of showing that the separate classification of co-signed debt did not unfairly discriminate against other unsecured creditors, the plan could not be confirmed).

The court is also aware of at least one case where, when there is evidence present to show paying a codebtor's debt in full would help the household's overall burden, a plan with different treatment of debtor's claimants and codebtor's claimants is confirmable. *See In re Linton*, Case No. 11-12258-SSM, 2011 LEXIS 2939 (Bankr. E.D. Va. 2011).

DISCUSSION

Here, no information is given as to what the NF-Spouse obtained for her debts. No Declaration is provided by the NF-Spouse as to these sole obligations of the NF-Spouse for which special treatment is sought to the disadvantage of other creditors in this bankruptcy case. Debtor submits his Declaration at Docket 17, but Debtor offers no explanation as to the discrepancy in payments respective creditors will receive during the pendency of this case.

While the plain language of 11 U.S.C. § 1322(b)(1) now includes a however clause allowing a claim on which there is an individual co-debtor be treated differently, it does not allow for "unfair" discrimination. Possibly, the different bankruptcy plan treatment for a debt for which there is a co-debtor may mean that the plan provides for a lower payment by the debtor through the plan, with the co-debtor paying more from monies that are not property of the bankruptcy estate.

In this case, the Chapter 13 Plan does not provide for a different payment to creditors who have claims for which there is a co-debtor. See First Amended Plan, ¶ 3.14 providing that all general unsecured claims shall received a dividend of not less than 6%; Dckt. 18. There are no additional provisions to this Amended Plan.

Instead, what the Debtor has done is divert monies of the Bankruptcy Estate on Schedule J to pay "Non-filing spouse's separate debt and student loan payments." Sch. J, ¶ 21; Dckt. 1. Schedule J does not provide any explanation as to the amount of the student loan debt, the repayment terms, and whether that results in the student loan lenders getting a greater or lower dividend.

Neither the Motion nor Debtor's Declaration (Dckt. 17) provide any explanation for inclusion of the non-filing spouse debt from funding the Plan.

A review of Schedule I discloses that Debtor and his non-debtor spouse's gross monthly income is only $18,133 a month. Sch. I, ¶ 2; Dckt. 1. In reviewing the payroll deductions, in addition to the Debtor's federal Department of Defense pension, Debtor is also deducting:

(1) $191.94 a month for additional voluntary retirement plan contributions, and

(2) $298.34 a month to repay retirement fund loans.

Id., ¶ 5c, 5d.

After the payroll deductions, the monthly take home income is stated to be $11,233.21.

On Schedule J, Debtor has listed one dependent, a twenty (20) year old son. Sch. J, ¶ 2; Dckt. 1. It is not clear how the twenty (20) year old son is a dependent.

Debtor lists a ($600) a month payment for "alimony, maintenance, or support." *Id*., ¶ 18. The court could not identify on Schedule E/F a creditor to whom such an obligation would be owed. *Id*., p. 21-28. A review of the Claims Register for this Bankruptcy Case did not disclose any creditor who was asserting a claim for "alimony, maintenance, or support."

In addition to a ($3,812.70) expense shown for rental or home ownership expense on Schedule J, ¶ 4, there is ($1,010.00) mortgage expense on "other property" shown on ¶ 20a. Dckt. 1. On Schedule D, only one creditor is listed as having a secured claim for which the collateral is real property:

> Creditor.....Lakeview Loan Servicing
> Collateral.....3931 Watermist Way, Sacramento, CA
> Amt of Claim.....($645,528)
> Value of Prop.....($750,000).

Dckt. 1 at 19.

On Schedule A/B and Amended Schedule A/B, the Watermist Way property is the only real property in which the Debtor is stated to have any interest. Dckt. 1 at 11, Dckt. 23 at 2.

The Amended Chapter 13 Plan provides in Class 4 for only a direct payment monthly of $3,812.70 to Lakeview Loan Servicing, LLC for the debt secured by the Watermist Way Property. Amd Plan, ¶ 3.10; Dckt. 18. The Plan does not provide for making a $1,010.00 mortgage payment on property.

What the Debtor is doing with this diversion of monies on Schedule J is not providing all of the projected disposable income to fund the Plan which has a 6% dividend. *See* 11 U.S.C. § 1325(b)(1)(B).

If such debts incurred by and solely owned by the NF-Spouse are so overwhelming that having to pay them from future community property is not what Debtor thinks should occur, Congress has provided an avenue for relief – Debtor and the NF-Spouse actually file a joint bankruptcy case and both this Debtor and the NF-Spouse would have all the protection and benefits to protect future community property under the Federal Bankruptcy Code as written by Congress.

Lack of Financial Analysis

Proof of Claim 2-1 has been filed by the successor in interest to SoFi Bank for a loan made to Debtor. The documents attached to Proof of Claim 2-1 states that the loan in the amount of ($47,500) as made June 5, 2023, to be repaid over sixty months with interest of 18.86%. POC 2-1, p. 7, SOFI Personal

Loan Truth in Lending Act Disclosure. This is a creditor obtained during the past five years during when Debtor and NF-Spouse have been married. Proof of Claim 2-1 does not include a coy of the Note, nor does it identify the persons who are obligated on this debt. Proof of Claim 2-1, ¶ 8, identifies the basis for the claim being only "installment," and not monies loaned, goods, services, or other basis for the claim. This is the largest general unsecured claim.

It is not clear what this ($47,500) was used for in the year, during the marriage of Debtor and NF-Spouse, a year before this bankruptcy case was filed. On Schedule E/F Debtor lists this debt as being one for a 2023 "personal loan."

Three general unsecured claims have been filed by American Express National Bank: POC 4-1, ($5,086.02); POC 5-1, ($3,765.06); and POC 6-1 ($3,479.27). From the documentation, these appear to be credit card debts for obligations incurred during recent years when Debtor and NF-Spouse have been married.

Three general unsecured claims have been filed by Citibank, N.A.: POC 16-1, ($2,420.50); POC 17-1, ($5,866.74); and POC 18-1, ($424.18). These are debts identified as arising from a Wayfair Credit Card, Home Depot Credit Card, and My Best Buy Credit Card, respectively, all for charges made during the past five years.

Five general unsecured claims have been filed by Resurgent Receivables, LLC: POC 9-1, ($5,032.91); POC 10-1, ($1,182.29); POC 11-1, ($879.05); POC 12-1, ($2,550.80); POC 14-1, ($425.02); and POC 19-1, ($7,721.47). These debts are identified as arising from Venmo, Sams Club Mastercard, PayPal Smart Connect, and PayPal, respective, all for debts in the past five years.

The above debts appear to have been incurred in the Debtor's name, but not the NF-Spouse's name. These appear to be general family/household debts incurring during the past five years of Debtor and NF-Spouse's marriage.

At the hearing, **xxxxxxx**

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Eric Antonio Jenkins ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

21. 24-20837-E-13 JLL-2 | **TERRI COOK PALACIOS AND JOSE PALACIOS** | **MOTION TO CONFIRM PLAN**
Leo Spanos | **7-16-24 [46]**

Item 21 thru 22

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 22, 2024. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx.

The debtor, Terri Lashai Cook Palacios and Jose Camacho Palacios ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for Debtor to pay $3,125 per month for 4 months, then $3,590 for 46 months, then $4,496 for 10 months with general unsecured creditors receiving a 41% dividend. Amended Plan, Docket 49. 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 27, 2024. Docket 65. Trustee opposes confirmation of the Plan on the basis that:

A. Unsecured creditors may not be receiving what they would receive in the event of a hypothetical Chapter 7 liquidation, 11 U.S.C. §1325(a)(4). Debtors' First Amended Plan proposes to pay no less than 41% of $224,408.00 (or $92,007.28) to unsecured creditors and $68,896.00 to priority claims, for a total of $160,903.28. However, Trustee calculates

Debtor has $245,481 of non-exempt assets listed in ths Amended Schedule A/B. This liquidation analysis relies in part on Chapter 7 Trustee's Objection to Claimed Exemptions which is set for hearing on September 24, 2024. Obj. 1:23-2:11, Docket 65.

B. Debtors Plan relies on the Motion to Avoid Lien of Regions Bank/Enerbank USA, which is to be heard in conjunction with this Motion. *Id.* at 2:12-17.

C. Debtors failed to attach a statement for property or business income. *Id.* at 2:18-19.

DISCUSSION

Liquidation Analysis

Trustee argues that Debtor may potentially fail a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." Here, General unsecured creditors will receive a 41% distribution, Am. Plan, Docket 49 § 3.12.

The Trustee estimates Debtor has $245,481 in non-exempt equity in assets of the estate. Trustee's calculation hinges on whether the court sustains trustee's Objection to Claimed Exemptions, which is set for hearing on September 24, 2024.

The Objection to Exemptions arises from the two Debtors attempting to claim exemptions under Arizona law and also under California law. Dckt. 61. In substance the two Debtor are seeking to claim two separate homestead exemptions. Additionally, the two Debtors seek to claim double exemptions in all assets, stating exemptions under California law and Arizona law for each asset on Schedule C.

At the hearing, **xxxxxxx**

The court has granted by final ruling the related Motion to Avoid Lien, so this part of the opposition is rendered moot.

Failure to File Business Documents Required by Schedule I

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

The 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, Terri Lashai Cook Palacios and Jose Camacho Palacios ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

22. 24-20837-E-13 JLL-3 | **TERRI COOK PALACIOS AND JOSE PALACIOS** | **MOTION TO AVOID LIEN OF REGIONS BANK**
Leo Spanos | **7-29-24 [53]**

Final Ruling: No appearance at the September 10, 2024 Hearing is required.

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 creditor Regions Bank on July 29, 2024. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

While the Debtor served creditor, Debtor did not serve other interested parties, such as the Chapter 13 Trustee or the Office of the U.S. Trustee. However, under the newly adopted Local Rules, service of the Motion, Notice, and supporting pleadings electronically by the Clerk on these other parties in interest is documented on the Docket. See NEF Column Certificate for each pleading.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Regions Bank, successor by merger to Enerbank USA ("Creditor") against property of the debtor, Terri Lashai Cook Palacios and Jose Camacho Palacios ("Debtor") commonly known as 5273 Cumberland Dr., Roseville, CA 95747 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $32,826.75. Exhibit D, Dckt. 58; POC 4-1. An abstract of judgment was recorded with Placer County on October 13, 2023, that encumbers the Property. *Id*.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $464,500 as of the petition date. Am. Schedule C 6:1.6, Docket 50. The unavoidable consensual liens that total $436,403.89 as of the commencement of this case are stated on Debtor's Amended Schedule D. Am. Schedule D 16:2.2, Docket 50. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $189,900 on Amended Schedule C. Am. Schedule C 12, Docket 50.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The Chapter 13 Trustee filed a nonopposition on August 27, 2024. Docket 68.

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Terri Lashai Cook Palacios and Jose Camacho Palacios ("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 judgment lien of Regions Bank, successor by merger to Enerbank USA ("Creditor"), California Superior Court for Placer County Case No. M-CV-0084275, recorded on October 13, 2023, Document No. 2023-0054792-00, with the Placer County Recorder, against the real property commonly known as 5273 Cumberland Dr., Roseville, CA 95747 ("Property"), is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

23. 24-22743-E-13 EAT-1 | **LARRY HENDERSON** Carl Gustafson | **OBJECTION TO CONFIRMATION OF PLAN BY PENTAGON FEDERAL CREDIT UNION** 8-6-24 [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, other parties in interest, and Office of the United States Trustee on August 6, 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 ----------.

The Objection to Confirmation of Plan is sustained.

Pentagon federal Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Larry Delvecchio Henderson's ("Debtor") Amended Plan fails to cure the arrearage on Creditor's secured claim. Obj. 2:6-12, Docket 17.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $13,495.74 in pre-petition arrearage. POC 2-1. The Plan does not propose to cure that arrearage. Plan § 3.07, Docket 14. 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 Pentagon federal Credit Union ("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. 24-23545-E-13 PGM-1 | **KEVIN NORMAN** Peter Macaluso | **CONTINUED MOTION TO EXTEND AUTOMATIC STAY** 8-15-24 [11]

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)(3) 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 in interest, and Office of the United States Trustee on August 15, 2024. By the court's calculation, 7 days' notice was provided. The court set the hearing for August 20, 2024. Dckt. 20.

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. At the hearing ----------.

The Motion to Extend the Automatic Stay is xxxxxxx.

September 10, 2024 Hearing

After hearing the original Motion on shortened time, the court granted extending the automatic stay through September 20, 2024, with the final hearing on this Motion to be heard on September 10, 2024. Order, Docket 31. Written oppositions were to be filed on or before August 30, 2024, with replies to be stated at the hearing.

On August 19, 2024, Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees ("Creditor") filed an Opposition. Docket 25. Creditor states:

> 1. This is the third bankruptcy purporting to affect the Property pending within this year, including Debtor's prior bankruptcy case no. 20-22267 and the

bankruptcy filed by Debtor's spouse, Erika Norman, bankruptcy case no. 24-21440. Opp'n 2:9-11, Docket 25.

2. Debtor did not perform under his previous case, eventually being dismissed for failing to make plan payments. *Id.* at 2:21.

3. The current case was filed solely for the purpose of stalling Creditor's valid foreclosure. *Id.* at 2:25-26.

4. Debtor has not filed this case in good faith because he has not filed schedules or a plan, so the stay should not be extended. *Id.* at 3:1-6.

5. Given Debtor's repeated defaults in his own prior bankruptcy, Debtor has demonstrated an inability to maintain plan payments. Creditor asserts that Debtor's current bankruptcy filing is not a legitimate attempt at reorganization, but was merely filed to re-impose the stay as to the Property in an effort to stall a valid foreclosure. *Id.* at 7:11-14.

6. Through defaulting on plan payments, taking out a secret loan during the First Bankruptcy while not making plan payments, the Debtor's Wife's bankruptcy in which she claimed an interest in the Property, which is contradicted by the Quitclaim Deed and the Debtor's Schedules in the First Bankruptcy, and the filing of this bankruptcy while Creditor's motion for relief is pending in the Second Bankruptcy, it is apparent that the Debtor and his spouse are abusing the bankruptcy system and engaged in a scheme to hinder their creditors. *Id.* at 7:14-20.

Creditor submits no evidence in support of its Opposition.

DISCUSSION

Creditor identifies the following factors as reasons why the court should find this second case is not in good faith: "dueling bankruptcy cases" ongoing between husband and wife, three cases affecting the Property in the past year, poor performance under the previous Chapter 13 Case, and Debtor not having filed Schedules or a Plan in the instant case.

On August 19, 2024, Debtor filed all required Schedules and a proposed Chapter 13 Plan. Dockets 22-23.

Erika Norman's case, bankruptcy case no. 24-21440, has been transferred to Judge Sargis by Order issued on August 23, 2024. Case no. 24-21440, Order, Docket 78. The court is able to consolidate the cases and end any "duel" that may exits in hindering case prosecution.

The court does not find the previous performance under the prior dismissed Chapter 13 Case prejudice's Debtor's current case. Debtor is promptly working to prosecute the current case, having submitted a Plan and Schedules that seem feasible on their face. If debtors were not able to refile without being burdened by the poor performance of a previous case, then it is unlikely Congress would have allowed any subsequent bankruptcy filings after a prior case was dismissed. Creditor has merely identified the usual

reasons a debtor may refile, including defaulting on payments under a previous Plan and refiling to stop a pending foreclosure sale.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Kevin James Norman ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 20-22267) was dismissed on May 23, 2024, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 20-22267, Dckt. 249, May 23, 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. Debtor explains he became delinquent under the terms of the previous plan because his contracted construction jobs took longer to collect payment than anticipated. Decl. ¶ 1, Docket 15. Debtor explains his circumstances have changed prior to this filing as his son has gotten a job at Genentech and his daughter has gotten a job as a Medical Assistant, and both currently live at home with Debtor and will contribute to the Plan. *Id.* at ¶ 3. Moreover, Debtor explains he has gotten a small business license as a handyman and has begun working under a contractor who is a project manager at Construction Action Network. *Id.* Debtor's NF-Spouse is currently looking for work as well. All members of the family are contributing to make a Plan work. *Id.*

Debtor's Daughter, Anabelle Norman, also submitted her Declaration in support. Docket 17. She states she will contribute $1,000 per month toward the Plan to save the home. *Id.* at ¶ 2.

Debtor's son, Isaac Norma, submitted his Declaration in support as well. He testifies that he will also contribute $1,000 per month to the Plan. *Id.* at ¶ 3.

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS

2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has presented evidence of a change in his circumstances that will allow for the completion of a successful Chapter 13 Plan. Debtor has testified as to why the previous case failed, and how the present case will succeed, including submitting evidence that shows Debtor's children are going to help make a Plan work.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Kevin James Norman ("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.~~

25. 24-23553-E-13 MS-1 | **ALEKSANDR BRUYEV** **Mark Shmorgon** | **MOTION TO VALUE COLLATERAL OF SACRAMENTO CREDIT UNION 8-13-24 [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.

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, other parties in interest, and Office of the United States Trustee on August 13, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Sacramento Credit Union ("Creditor") is granted and it is determined that Creditor's secured claim of ($28,509.84) as stated in Proof of Claim 3-1 is oversecured.

The Motion filed by Aleksandr Bruyev ("Debtor") to value the secured claim of Sacramento Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 10. Debtor is the owner of a 2019 GMC Sierra 1500 Crew Cab SLE Pickup 4D 6 ½ ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $24,567 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a nonopposition on August 27, 2024. Docket 18.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on August 24, 2024. Docket 12. Creditor states:

1. Creditor contends that the Debtor has not sustained his burden of proof to establish that the value of the vehicle is $24,567. Opp'n 1:21-22, Docket 12.

2. The Court must determine the price which a willing seller under no compulsion to sell and a willing buyer under no compulsion to buy would agree upon after the property has been exposed to the market for a reasonable time. *Id.* at 2:6-8 (citing *In re Taffi*, 96 F.3d 1190, 1192 (9th Cir. 1996)).

3. Section 506(a)(2) provides in pertinent part as follows: "With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." No deduction is to be made for costs of sale or marketing. Opp'n 2:10-14, Docket 12.

4. There is nothing in the Debtor's declaration that establishes that he is an expert and knows what a retail dealer would charge. It is not clear upon what basis he makes the statement regarding the value of the vehicle. *Id.* at 2:16-18.

5. Debtor has not provided any information about the Vehicle, except that it is a 2019 GMC Sierra 1500 Crew Cab SLE Pickup 4D 6 ½ ft. He has not listed any damage or needed repairs to the vehicle. Creditor has used good condition, which allows for minor repairs since the Debtor has not provided any information regarding the condition of the vehicle, no deductions were made by the Credit Union from the adjusted retail value of $31,459 listed by the KBB Used Car Guide. *Id.* at 2:21-26.

Creditor files the Declaration of Valeria Hernandez in support. Decl., Docket 13. Ms. Hernandez authenticates the facts in the Opposition and authenticates the Kelley Blue Book Valuation Report, which is included in the pleadings as Exhibit 3, Docket 14. The Kelley Blue Book Valuation Report lists the Vehicle as having a retail price of $31,459, or a private party sale price of $27,484. Ex. 3 at 9, Docket 14.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on or around October of 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $28,742.68. Declaration ¶¶ 4, 7, Docket 8.

Here, Creditor has presented evidence that Debtor's valuation is not accurate. Debtor has not provided the court with any testimony to support his valuation, such as any specifics as to the condition of the truck. On the other hand, Creditor has shown that the Vehicle should be valued higher than Debtor's valuation, based on the Opposition and authenticated evidence.

The value of the vehicle for determination of the secured claim as provided in 11 U.S.C. § 506(a) is $31,459.00, which is greater than the ($28,509.84) secured claim as stated in Proof of Claim 3-1.

Creditor's claim is oversecured and allowed in the full amount claimed.

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 Aleksandr Bruyev ("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, with the court determining that:

(1) Creditor Sacramento Credit Union's Secured Claim as of the commencement of this case is ($28,509.84) as stated in Proof of Claim 3-1;

(2) The 2019 GMC Sierra 1500 Crew Cab SLE Pickup (the "Vehicle") has a value of $31,459.00; and

(3) Creditor's Secured Claim is oversecured up to the $31,459.00 value of the Vehicle.

26. 24-20654-E-13 PLC-2 | **MICHAEL BETTENCOURT** | **MOTION TO CONFIRM PLAN**
Peter Cianchetta | **8-4-24 [47]**

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

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, all creditors and parties in interest, and Office of the United States Trustee on August 4, 2024. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Michael Joseph Bettencourt ("Debtor") has provided evidence in support of confirmation. *See* Decls., Dockets 51, 52. Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on August 27, 2024. Docket 58.

Trustee states Debtor still listed the claim (POC 3-1) of creditor Schools First Federal Credit Union, but the record indicates that claim will be paid by a third party, Daniel Bettencourt. *See* Decl., Docket 52.

As noted by the Trustee, the Debtor lists the claim of Schools First Federal Credit Union ("Creditor") in Class 4, which states that the Debtor will be making monthly payments of $430.00 to Creditor directly outside the Plan. As noted by the Trustee, to be a Class 4 Claim, it must be a secured debt that matures only after the term of the Plan expires.

In the Section 7 Non-Standard Provisions, there is alternative treatment listed for Creditor's Secured Claim. Modified Plan, § 7; Dckt. 49. This Non-Standard Provision states:

(1) Creditor's claim is not a "long-term debt."

(2) Debtor's son has purchased the Vehicle from Debtor.

(3) Debtor's son cannot obtain a loan, so is purchasing the Vehicle subject to the loan and the son will make the payments.

(4) Son will make the payment amount monthly to the Debtor, and the Debtor then will make the payment directly to Creditor.

In reading the above, it is clear that some legal issues arise. First, the court has not authorized the sale of the vehicle. Second, at what point does the sale occur? Is title to be transferred to the Son immediately, or only after the secured claim of Creditor has been paid in full?

Third, who is responsible to pay for the registration, insurance, repairs, and maintenance on the vehicle?

On Schedule A/B Debtor lists owing two vehicles. The first is a 2022 Ram 1500 Rebel and the second is the 2016 Chevrolet Colorado that is the subject of the "sale-payment" structure. Dckt. 1 at 11.

On Supplemental Schedule J filed, Debtor lists his 25 year old son as a dependent. Dckt. 50 at 5. However, the Son's Declaration has been filed in support of the Motion, in which he testifies that he is a construction worker and pays his own expenses. Dec., ¶ 1; Dckt. 51. He further testifies that he lives with his Father, the Debtor, while saving money to be able to move out on his own.

Thus, it does not appear that the Son is a "dependent," but rather is allowed to have lodging at the Debtor's home. In looking at the other expenses on Supplemental Schedule J, it does not appear that the Debtor is paying his son's expenses.

It appears that there is a missing part of this "plan" for the Modified Plan - a court authorized sale of the vehicle. One idea is that such a sale could be one in which the Son makes monthly payments to Debtor, who then pays creditor, and then only after the purchase price has been paid in full, title is transferred. Son will have to maintain the insurance on the vehicle, as well as pay the maintenance, fuel, repairs, and registration expense. If something were to happen to the vehicle and an insurance claim payout is made, then the Debtor and Son would have their respective interests in the proceeds based on how much of the purchase price had been paid.

At the hearing, **xxxxxxx**

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, Michael Joseph Bettencourt ("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 August 4, 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.~~

27. 24-21054-E-13 DPC-1 | **DAVID DURYEE AND FELICA TORTORICI** | **CONTINUED MOTION TO DISMISS CASE**
Bonnie Baker | **7-29-24 [61]**

Item 27 thru 28

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 29, 2024. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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.

The Motion to Dismiss is denied without prejudice, the case having been converted to one under Chapter 7 by the Debtor.

REVIEW OF THE MOTION

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

1. The debtor, David Andrew Duryee and Felica Joseph Tortorici ("Debtor"), is delinquent $10,500.00 in plan payments. Mot. 1:24-25, Docket 61.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 63.

DISCUSSION
Delinquent

Debtor is $10,500.00 delinquent in plan payments, which represents multiple months of the $6,000 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the August 6, 2024, hearing on the Motion to Confirm the Chapter 13 Plan, the court continued the hearing on the Motion to Confirm and this Motion to Dismiss to both be heard at 2:00 p.m. on September 10, 2024.

September 10, 2024 Hearing

The court continued the hearing on this Motion from August 14, 2024, Debtor having represented in the related Motion to confirm that there is additional income and Debtor can cure the delinquency. Trustee filed a Status Report on August 27, 2024, indicating there is still a delinquency of $12,700, and the case should be dismissed. Docket 78.

On September 5, 2024, the Debtor elected to convert this case to one under Chapter 7. Dckt. 82.

The case having been converted, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, the Case having been converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

28. 24-21054-E-13 BB-3 | **DAVID DURYEE AND FELICA TORTORICI** | **CONTINUED MOTION TO CONFIRM PLAN**
Bonnie Baker | **6-25-24 [53]**

Final Ruling: No appearance at the September 10, 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 June 25, 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Plan is denied, the case having been converted to one under Chapter 7 by the Debtor.

REVIEW OF THE MOTION

The debtor, David Andrew Duryee and Felica Joseph Tortorici ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for two payments of $3,000 for the month of April and May of 2024, and then payments of $6,000 commencing on June, 2024 for the remaining 58 months with 0% going to general unsecured creditors. Plan, Dckt. 33. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 23, 2024. Dckt. 58. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent $4,500.00 in plan payments and will need to have paid $10,500 to become current by the hearing date. *Id.* at 1:21-26.

DEBTOR'S REPLY

Debtor filed a Reply to the Trustee's Opposition on July 30 and July 31, 2024. Dockets 65, 67. Debtor states:

A. They have experienced significant financial challenges leading up to their Chapter 13 filing, including Debtor David Duryee suffering a brain aneurism four years ago, resulting in loss of income. Reply 2:2-4, Docket 65.

B. Debtor has come up with a plan to become current and show their dedication to making plan payments. Debtor has earned income from both of their jobs and are contributing $1,500 weekly to both save for the monthly payment and cure the delinquency. *Id.* at 2:22-3:18.

C. Debtor requests a continuance to allow receipt and payment of their earned employment wages, and to apply the wages to cure the delinquency. Reply 1:21-24, Docket 67.

DISCUSSION
Delinquency

The Chapter 13 Trustee asserts that Debtor is $4,500.00 delinquent in plan payments, which represents multiple months of the plan payment. Before the hearing, another plan payment will be due. Trustee has filed a Motion to Dismiss in this case for the delinquency to be heard on August 14, 2024. Docket 61. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, counsel for the Trustee reported that Debtor is delinquent $10,000.

Counsel for the Debtor addressed the delinquency, the source of the additional income (earned and waiting to be paid) from which the cure payments will be made. The Chapter 13 Trustee agreed to a continuance of the hearing.

By separate order the court continues the hearing on the Chapter 13 Trustee's Motion to Dismiss this case to 2:00 p.m. on September 10, 2024 (Specially Set Day and Time).

September 10, 2024 Hearing

The court continued the hearing on this Motion from August 6, 2024, Debtor having represented that there is additional income and Debtor can cure the delinquency. Trustee filed a Status Report on August 27, 2024, indicating there is still a delinquency of $12,700, and the case should be dismissed. Docket 78.

On September 5, 2024, the Debtor elected to convert this Case to one under Chapter 7. Dckt. 82.

The Motion to Confirm is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the debtor, David Andrew Duryee and Felica Joseph Tortorici ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Plan is denied.

29.	**22-20157-E-13 PGM-3**	**NELSON MADSEN AND SHARON BURNS** **Peter Macaluso**	**CONTINUED MOTION TO MODIFY PLAN** **7-2-24 [107]**

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 2, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx.

September 10, 2024 Hearing

The court continued the hearing on this Motion from August 6, 2024, affording Debtor the opportunity to serve Supplemental Schedules with this Motion and amend the record. The court set the deadline of August 20, 2024 for supplemental pleadings. Order, Docket 120. On August 27, 2024, seven days late, Debtor filed a Reply. Docket 122. Debtor states:

1. The proposed Modified Plan is feasible. Reply 1:23, Docket 122.

2. Debtor believes Supplemental Schedules have now been properly served. *Id.* at 2:1-2.

3. The Modified Plan should be confirmed based on the previously confirmed plan providing 0% to general unsecured creditors. *Id.* at 2:4-5.

Debtor does nothing to supplement the pleading so it conforms with the pleading with particularity requirement of FED. R. BANKR. P. 9013. The record still does not show supporting citations to applicable law. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The debtor, Nelson A Madsen and Sharon L Burns ("Debtor") seeks confirmation of the Modified Plan because Debtor was late with plan payments. Declaration ¶ 2, Docket 109. The Modified Plan provides for Debtor having paid a total of $151,299.63 through June 2024, and plan payments of $6,130.00 per month to commence July 25, 2024 for 31 months to completion. Modified Plan § 7, Docket 110. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 23, 2024. Docket 115. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan appears to fail the Chapter 7 liquidation test. The Debtor's non-exempt equity totals $11,048.99 and the Debtor proposes to pay the unsecured creditors a zero percent (0%) dividend. Opp'n 1:25-27, Docket 115.

B. Supplemental Schedules I and J do not appear to have been served with this Motion, not being listed on the Certificate of Service. *Id.* at 2:15-19.

C. In violation of Local Bankruptcy Rule 9014-1(d) and Fed. R. Bankr. P. 9013, Debtor cites to no applicable law in support of the Motion. *Id.* at 3:3-7.

DISCUSSION
Liquidation Analysis

Trustee argues that Debtor fails a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such

claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." Here, General unsecured creditors will receive a 0% distribution, Plan, Docket 110 § 3.12, but Trustee estimates Debtor has $11,048.99 in non-exempt equity in assets of the estate.

Service of Supplemental Schedules

Local Bankruptcy Rule 3015-1(d)(3) states, in the event of a default in plan payments:

> Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, **amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.**

(Emphasis added). Debtor's Certificate of Service at Docket 111 does not show that the Schedules were served with this Motion.

Review of Minimum Pleading Requirements for a Motion

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

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

In this case, Debtor cited to no sections of the Code whatsoever in support of the Motion, in violation of Rule 9013, failing to state with particularity grounds to confirm the Modified Plan. It is true that Debtor mentions some of the elements of 11 U.S.C. § 1325(a) in the Motion, such as stating the Modified Plan has been proposed in good faith. However, the lack of citation to specific sections in support of confirmation falls short of Rule 9013 pleading.

At the hearing, counsel for the Debtor requested a short continuance, with supplemental pleadings or statement of non-opposition on or before August 20, 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 Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Nelson A Madsen and Sharon L Burns ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Modified Plan is **xxxxxxx**.

30. 20-21558-E-13 MWB-4 | **DANIEL CRAIN** **Mark Briden** | **CONTINUED MOTION TO SELL 7-18-24 [129]**

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, counsel for Debtor requested a continuance to address the service issue.

The Motion to Sell Property is granted.

September 10, 2024 Hearing

At the previous hearing held on August 20, 2024, the court expressed concerns over the terms of the sale, including why Debtor does not propose to pay off the Chapter 13 Plan, and how Debtor arrived at the Property's valuation. The court continued the hearing and ordered supplemental pleadings to be filed by September 3, 2024. Oder, Docket 152.

On August 23, 2024, Debtor refiled the original Motion. Docket 144. Debtor filed three new Declarations in support at Dockets 146, 147, and 149. Debtor testifies he will now use the proceeds of the sale of the Property to cure his delinquency and also complete the Chapter 13 Plan entirely. Decl. 2:10-13, Docket 147. Debtor also testifies the sale is to disinterested persons. Decl. 2:16-17, Docket 146. Debtor testifies the sale will complete the Plan and also provide him with funds to relocate to an area with more jobs. Decl. 3:4-7, Docket 149.

The Chapter 13 Trustee filed a Reply on August 27, 2024, stating the sale should be approved so long as Debtor intends to pay off the Chapter 13 Plan with the sale proceeds, which appears to be the case. Docket 153.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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, counsel for the Debtor requested that the hearing be continued and Debtor be allowed to file supplemental pleadings to address the above issues.

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 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 1-4, Dckt. 148, 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.

31. 23-21670-E-13 LBM-5 | **LESLIE MACHADO** | **Richard Baum** | **MOTION TO MODIFY PLAN AND/OR MOTION TO SUSPEND CHAPTER 13 PLAN PAYMENTS** **8-8-24 [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 not Provided. There has been no Proof of Service filed with this Motion, so the court is unable to determine when and which parties were served. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition). At the hearing, **xxxxxxx**

Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

The debtor, Leslie Machado ("Debtor") seeks to modify her Plan by suspending Plan payments for 11 months while she goes to school learning how to assist deaf individuals. Mot., 1:24-2:7. However,

Debtor requests suspending plan payments for 6 months in her Declaration in support, not 11. Decl. ¶ 6, Docket 78. No Modified Plan is actually submitted in conjunction with this Motion, in violation of Local Bankruptcy Rule 3015-1(d)(2). No supporting law, not even a single legal citation to code or case law, is provided in these pleadings that would purportedly authorize this court to permit a Chapter 13 debtor to sit in bankruptcy for free for 11 months. Nothing is mentioned in the Motion of the fact that a Plan may not be extended beyond 60 months, instead offering two conflicting completion dates of 66 months or 71 months. 11 U.S.C. § 1322(d)(1) & (2).

At the hearing, **xxxxxxx**

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), August 27, 2024. Docket 79. Trustee opposes confirmation of the Plan, reiterating many of the court's concerns, stating:

A. No Modified Plan has been submitted with this Motion. Opp'n 1:24-27, Docket 79.

B. No supplemental Schedule I & J have been filed to support this motion, despite there being evidence that Debtor's circumstances have materially changed. *Id.* at 2:12-18.

C. The Modified Plan is overextended as proposed. *Id.* at 2:19-24.

D. No Proof of Service has been filed. *Id.* at 3:1-5.

DEBTOR'S RESPONSE

On September 5, 2024, the Debtor filed a Response to the Trustee's Opposition. Response; Dckt 82. In the Response, the Debtor argues:

1. The Opposition does not suggest why the Debtor should not be allowed to suspend payments for 11 months so Debtor can fund schooling so she can increase her earning potential.

2. Debtor seeks to increase her Plan term to 71 months (adding 11 months to the end of her 60 month plan).

3. Debtor may provide for a balloon payment at the end of 60 months rather than extending the Plan term to 71 months.

4. No supplemental schedules are required since for Plan modification in this case because it is argued that they have not changed. It is asserted that Debtor addresses this in her Declaration.

In her Declaration, Debtor testifies that there will be a $700.00 a month tuition fee, as well as an additional $500.00 a month travel expense. Dec., ¶ 3; Dckt. 78. Debtor's testimony continues, stating that her income will reduce from $200 to $600 a month, "or as much as $2,400 a month." *Id.*; ¶ 4.

Debtor testifies that she "hopes" to begin making Plan payments in July 2025. *Id*., ¶ 4.

This testimony by Debtor clearly demonstrates that Supplemental Schedules I and J are necessary to show the dramatic changes in what the Debtor previously stated under penalty of perjury in the Original Schedules I and J.

5. The Trustee's Opposition are strictly procedural.

6. Debtor concludes that modifying the Plan as required by Federal Law (the Bankruptcy Code) would be nothing more than a waste of Debtor's time and money.

7. The court just needs to enter an order suspending plan payments and all will be good for the Debtor.

The court notes that the Motion is devoid of any legal authority for the court to enter an order suspending payments required under a confirmed Chapter 13 Plan.

8. "The Debtor should be free to improve her life in the future and not be entangled in procedural nullities that do nothing more than trap her in her past. By this motion, she seeks to improve her future and continue her obligation to honor her past." Response, p. 2:17-19.

DISCUSSION

Review of Minimum Pleading Requirements for a Motion

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

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

In this case, Debtor cited to no sections of the Code whatsoever in support of the Motion, in violation of Rule 9013, failing to state with particularity grounds to confirm the Modified Plan. The lack of citation to specific sections in support of confirmation falls short of Rule 9013 pleading.

Filing and Serving a Modified Plan

Local Bankruptcy Rule 3015-1(d)(2) states:

> Modified Plans Proposed After Confirmation. If the debtor, trustee, or the holder of an allowed unsecured claim modifies the chapter 13 plan after confirmation pursuant to 11 U.S.C. § 1329, the plan proponent shall file and serve the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 3015(h), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014- 1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 3015 (h) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

Debtor has not filed a Modified Plan. This is cause for denial of the Motion.

Overextended Plan

The Plan would take either 71 or 66 months to complete as proposed. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Leslie Machado ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

32. 24-22876-E-13 DPC-1 | **JARED/ERIN CULLOP** **Catherine King** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-14-24 [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, parties requesting special notice, and Office of the United States Trustee on August 14, 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 Jared Allen Cullop and Erin Eddings Cullop ("Debtor") did not appear at the initial 341 Meeting held on August 8, 2024. Obj. 1:25-26, Docket 14.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 16.

DEBTOR'S RESPONSE

On August 28, 2024, Debtor submitted a Response. Docket 18. Debtor states they were unable to attend the 341 Meeting due to a medical emergency. However, Debtor states they anticipate no problem in attending the continued hearing scheduled for September 19, 2024. Resp. 1:22-26, Docket 18.

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).

The continued Meeting is set for September 19, 2024. 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**.

33. 24-22891-E-13 DPC-1 | **LAURA ENGLAND** Michael Benavides | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-14-24 [26]**

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 August 14, 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 sustained.

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

1. Debtor Laura Elizabeth England ("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 August 8, 2024, as required pursuant to FRBP 4002(b)(1)(A) and (B). Obj. 1:25-2:3, Docket 26.

2. Debtor failed to submit to Trustee 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing of the petition, and 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 2:4-19.

3. Debtor's Schedules and other documents filed in the case include missing and/or inaccurate information. Debtors' Petition is missing information regarding the Debtors' previous bankruptcies filed within the previous eight-year period. Debtor filed four additional bankruptcy cases in which she failed to provide information. *Id.* at 3:20-26.

4. Debtor has failed to provide information regarding her Non-Filing Spouse ("NF-Spouse"). The information provided on Debtor's Statement of Financial Affairs states that Debtor is married. Schedule H does not disclose any information regarding the Debtor's NFS and Schedule I does not include the NFS's income. *Id.* at 4:1-6.

5. The Plan fails to comply with 11 U.S.C. §1325(a)(1) and Local Bankruptcy Rule (LBR) 2016-1(c) where it proposes to pay Debtor' attorney $120.00 each month, but by the Trustee's calculation, that amount should be $108.33 per month. *Id.* at 3:3-11.

6. According to LBR 2016-4, the attorney for the debtor in a chapter 13 case must file the Disclosure of Compensation of Attorney for Debtor, Form B2030, with the petition, Fed. R. Bankr. P. 2016(b). Debtor's attorney has failed to file form B2030. *Id.* at 3:13-17.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 28.

DISCUSSION

Failure to Authenticate Identification
Prior to Meeting of Creditors

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

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

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

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

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

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

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

Failure to Provide Tax Returns

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

Inaccurate or Missing Information

Debtor's Petition contains inaccurate information. Debtor has not included her NF-Spouse's information in the Schedules, and Debtor has omitted to mention her previous bankruptcy cases. 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).

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 $120 per month, the Plan violates this rule because it will slightly front load plan payments, thereby not paying attorney's fees in equal monthly installments over the term of the most recently confirmed Plan.

Moreover, Local Bankruptcy Rule 2016-4 states:

> The attorney for the debtor in a chapter 7 or chapter 13 case must file the *Disclosure of Compensation of Attorney for Debtor*, Form B2030, with the petition, rather than 14 days thereafter, or when the attorney substitutes in as attorney for the debtor in such case. Fed. R. Bankr. P. 2016(b).

A review of the Docket on August 29, 2024 reveals Debtor has not filed Form B2030. This is cause to sustain the Objection.

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.

34. 24-22896-E-13 DPC-1 | **ROBERT BLANKENSHIP** **Patricia Wilson** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-14-24 [18]**

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

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 August 14, 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 sustained.

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

1. Debtor Robert A. Blankenship's ("Debtor") Schedules and other filing documents contain inaccurate information. Debtor is self employed as a Consultant and listed his net income from operating a business on Schedule I, Line #8a. However, the Debtor failed to attach a separate statement for the business showing gross income, expenses, and net monthly income as is required by the form. Obj. 2:1-5, Docket 18.

2. Debtor has failed to provide 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. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). Obj. 2:9-13, Docket 18.

3. Trustee is concerned that Form 122C-2 has inaccurate information and that the Debtor may actually have a positive monthly net disposable income. *Id.* at 2:15-24.

4. The Statement of Financial Affairs does not report that his non-filing spouse totaled a 2017 Ford Pickup and a 2013 BMW within the last year, as is required by Question 15 of the form. *Id.* at 2:25-3:3.

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

DISCUSSION

Failure to File Business Documents Required by Schedule I

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

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.

Inaccurate or Missing Information

Debtor's Statement of financial Affairs contains inaccurate information. Trustee learned that Debtor's non-filing spouse totaled their truck and BMW in the last year, but Debtor omitted this information. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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.

FINAL RULINGS

35. 24-22426-E-13 DPC-2 | **JAMALL ROBINSON** Kevin Tang | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** 8-7-24 [29]

Final Ruling: No appearance at the September 10, 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, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 7, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

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

Debtor filed a Chapter 7 bankruptcy case on November 8, 2023 in the Northern District of California. Case No. 23-10559. Debtor received a discharge on February 23, 2024.

The instant case was filed under Chapter 13 on May 31, 2024.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on February 23, 2024, which is less than four years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 24-22426), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 24-22426, the case shall be closed without the entry of a discharge.

36. 24-21531-E-13 TLA-1 | **NAITIAN/LAI SAECHAO Thomas Amberg** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG HARVEY FOR THOMAS L. AMBERG, DEBTORS ATTORNEY(S) 7-29-24 [31]**

Final Ruling: No appearance at the September 10, 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 July 29, 2024. By the court's calculation, 43 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 Interim Professional Fees is granted.

Thomas L. Amberg, Jr., the Attorney ("Applicant") for Naitian Saechao and Lai Wuang Saechao, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period of February 14, 2024 through July 29, 2024. Applicant requests fees in the amount of $3,965 and costs in the amount of $90. Mot. 2:5-7, Docket 31. Applicant was paid $1,000 prepetition for work done prepetition, so Applicant requests $2,965 of fees and the $90 of costs be paid through the Plan and the court authorize Debtor to apply the $1,000 prepetition retainer payment to the fees immediately. *Id.* at 2:8-12.

Applicant opted out of the no-look fee provisions of the Chapter 13 Plan. *See* Plan, Docket 3; Order Confirming Plan, Docket 16.

The Chapter 13 Trustee filed a nonopposition on August 27, 2024. Docket 38.

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 Estate include meeting with Client and analyzing her situation, creating and reviewing the Debtor's schedules, proposing a Chapter plan, attending Debtor's 341 hearing, confirming the Debtor's plan, communicating with Debtor, and reviewing claims filed in the Debtor's case. Mot. 2:14-18, Docket 31. Debtor submitted an authenticated Task Billing Summary into evidence, detailing these areas of work as Exhibit B, Docket 35. The court finds the services were beneficial to Client and the Estate and were reasonable.

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**
Thomas L. Amberg, Jr	12.2	$325.00	$3,965.00
Total Fees for Period of Application			$3,965.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $45 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Credit Reports	$45.00	$90.00
Total Costs Requested in Application		$90.00

FEES AND COSTS & EXPENSES ALLOWED

Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $3,965.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330. Fees in the amount of $2,965 are authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. Applicant is authorized to apply the $1,000 retainer for prepetition work toward the fee amount immediately.

Costs

First Interim Costs in the amount of $90 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution 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	$3,965.00
Costs and Expenses	$90

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case. Applicant is further authorized to apply the $1,000 retainer for prepetition work toward the fee amount immediately.

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 Thomas L. Amberg, Jr. ("Applicant"), Attorney for Naitian Saechao and Lai Wuang Saechao, 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 Thomas L. Amberg, Jr. is allowed the following fees and expenses as a professional of the Estate:
>
> Thomas L. Amberg, Jr., Professional employed by the Chapter 13 Debtor
>
> Fees in the amount of $3,965.00
> Expenses in the amount of $90,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that Applicant is authorized to apply the $1,000 retainer for prepetition work toward the fee amount immediately, and the Chapter 13 Trustee is authorized to pay the remainder from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

37.	**24-22035-E-13 DPC-2**	**WILLIE HYDE AND BRANDY NORMAN-HYDE Richard Jare**	**OBJECTION TO HOMESTEAD EXEMPTION 8-7-24 [32]**

Final Ruling: No appearance at the September 10, 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, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 7, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is dismissed without prejudice, this Bankruptcy Case having been dismissed (Order; Dckt. 44).

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Willie Kenneth Hyde and Brandy Tiani Norman-Hyde's ("Debtor") claimed homestead exemption under California law. Trustee argues that Debtor cannot claim a homestead exemption in two separate items of real property, even though both Debtors in this case reside at a different property. Debtor Willie Hyde resides at 5199 Duren Circle, Fairfield, Ca 94533 ("Willie Property") and Debtor Brandy Norman-Hyde resides at 2236 Cambria Drive, Stockton, Ca 95205 ("Brandy Property") (collectively, "Properties"). Debtor has claimed the Willie Property exempt in the amount of $400,000 pursuant to Cal. Code Civ. P. § 704.730. Schedule C at 22, Docket 1. Debtor has claimed the Brandy Property exempt in the amount of $189,050 also pursuant to Cal. Code Civ. P. § 704.730. *Id.*

Trustee states, pursuant to Cal. Code Civ. P. § 704.720(c), that Debtor may only claim one of the Properties as exempt. Cal. Code Civ. P. § 704.720(c) states, "[i]f the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt."

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Dismissal of Bankruptcy Case

On August 30, 2024, the court entered its order dismissing this Bankruptcy Case. Order; Dckt. 44.

The Bankruptcy Case having been dismissed, this Objection to Exemption is dismissed without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is dismissed without prejudice.

38. 24-22537-E-13 LBG-2 | **ROSETTA MCCOWAN GARNER**
Lucas Garcia | **MOTION FOR COMPENSATION FOR LUCAS GARCIA, DEBTORS ATTORNEY(S)**
8-6-24 [27]

DEBTOR DISMISSED: 07/10/24

Final Ruling: No appearance at the September 10, 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, Debtor's Attorney, Chapter 13 Trustee, attorneys of record who have appeared in the case, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2024. By the court's calculation, 35 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.

Lucas B. Garcia, the Attorney ("Applicant") for debtor Rosetta McCowan Garner ("Debtor"), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 10, 2024, through July 10, 2024. Applicant took this case on short notice due to Debtor having a pending foreclosure sale set for June 11, 2024, the day after this case was filed. After prosecuting the case and exploring all options, Applicant and Debtor agreed it would be best if the case were dismissed as there were options for Debtor outside of bankruptcy.

Applicant reports working 20.5 hours on the case at a rate of $300 per hour, which would be $6,150 in fees. Decl. 1:25-2:8, docket 29. However, Applicant requests the reduced amount of $2,000 be awarded as this was the amount of the retainer Debtor paid on the date of filing the petition. Mot. 6:7-18, Docket 27.

The Chapter 13 Trustee filed a nonopposition on August 27, 2024, but noted Applicant did not submit a task billing statement or fee agreement with this Motion. Docket 34.

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 Estate include stopping a last minute foreclosure sale, prosecuting a bankruptcy case in good faith and navigating various options going forward, and ultimately allowing the case to be dismissed due to finding viable solutions outside of bankruptcy. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General case administration: Applicant spent 8.5 hours in this category. Applicant coordinated with Debtor in getting her documents together for her case in time to stop the foreclosure sale. Applicant spent time meeting with Debtor and explaining her options and arriving at the correct strategy for the case.

Motion to extend deadline and time spent amending petition: Applicant spent 6.5 hours in this category. Applicant prepared a Motion to Extend in order to grant Debtor more time in engaging in negotiations for a loan modification.

Miscellaneous communications: Applicant spent 3.25 hours in this category discussing with Debtor her options.

Motion for fees: Applicant spent 4.5 hours in this category preparing this Application.

Communication with lender and real estate agent: Applicant spent 2.25 hours in this category speaking with lender and real estate agent to halt the foreclosure sale, notifying the parties of the pending bankruptcy.

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	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Lucas B. Garcia	20.5	$300.00	$6,150.00
Total Fees Earned for Period of Application			$6,150.00
Total Fees Requested			$2,000.00

Costs & Expenses

Applicant does not seek the reimbursement for any costs.

FEES AND COSTS & EXPENSES ALLOWED

Fees
Reduced Rate

Applicant seeks to be paid a single sum of $2,000 for its fees incurred for representing Debtor. First and Final Fees in the amount of $2,000 are approved pursuant to 11 U.S.C. § 330. Applicant is authorized to apply the retainer of $2,000 received on June 10, 2024 toward this fee award.

Applicant is allowed the following amounts as compensation to this professional in this case:

Fees $2,000

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 Lucas B. Garcia, the Attorney ("Applicant") for debtor Rosetta McCowan Garner ("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 Lucas B. Garcia is allowed the following fees and expenses as a professional of the Estate:
>
> Lucas B. Garcia, Professional employed by Chapter 13 Debtor
>
> Fees in the amount of $2,000,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.

IT IS FURTHER ORDERED that Applicant is authorized to apply the retainer of $2,000 received on June 10, 2024 toward this fee award.

39. 24-20442-E-13 MJG-1 — ROBERT/ROBBYN PEDERSEN — Matthew Gilbert — MOTION TO MODIFY PLAN — 7-8-24 [27]

Final Ruling: No appearance at the September 10, 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 holding allowed secured claims or holding allowed priority unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 8, 2024. By the court's calculation, 64 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Robert Martin Pedersen and Robbyn Ranee Pedersen ("Debtor"), have filed evidence in support of confirmation. *See* Decl., Docket 29. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 27, 2024. Docket 36. 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, Robert Martin Pedersen and Robbyn Ranee Pedersen ("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 8, 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.

40. 24-22765-E-13 AP-1 | **MARVIN COSPER** / **Arete Kostopoulos** | **OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, NATIONAL ASSOCIATION** / **8-8-24 [20]**

Item 40 thru 41

Final Ruling: No appearance at the September 10, 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, Chapter 13 Trustee, and Office of the United States Trustee on August 8, 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.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Objection to Confirmation of Plan is sustained.

JPMorgan Chase Bank, National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Marvin Lovell Cosper's ("Debtor") proposed Plan does not pay the arrearage on Creditor's secured claim. Obj. 3:10-23, Docket 20.

2. Debtor's Plan cannot be proposed because he did not use this District's standard Plan form, instead using the Northern District's Plan form. *Id.* at 4:4-24.

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $6,144.48 in pre-petition arrearage. POC 4-1. The Plan does not propose to cure that 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.

Incorrect Plan Form

Moreover, Debtor has not complied with this district's Local Rule 3015-1(c)(1), which requires a Chapter 13 Debtor to utilize plan form EDC 003-080. This is cause to sustain the Objection.

On September 6, 2024, the Debtor filed an Amended Chapter 13 Plan. Dckt. 30. The Debtor will need to proceed with a motion to confirm the Amended Plan.

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 JPMorgan Chase Bank, National Association ("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.

41. 24-22765-E-13 DPC-1 | **MARVIN COSPER** / **Arete Kostopoulos** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **8-7-24 [16]**

Final Ruling: No appearance at the September 10, 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 August 7, 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.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

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 Marvin Lovell Cosper ("Debtor") is delinquent under the terms of the proposed Plan. Obj. 1:28-2:4, Docket 16.

2. Debtor's 2023 federal tax returns show the Debtor was entitled to a refund in the amount of $3,509.00 from the Internal Revenue Service, and a refund in the amount of $1,899.00 from the Federal Tax Board, for a total refund amount of $5,408.00. The tax refunds are not listed in Schedule I as additional income, and the Trustee proposes that any tax refunds, starting with tax year 2024, greater than $2,000.00, should be added to the Plan as an additional payment. *Id.* at 2:8-14.

3. Debtor has not correctly utilized the Chapter 13 Plan standard form required in the Eastern District of California. *Id.* at 2:21-23.

4. Debtor's attorney's fees are too high where Debtor opted into the "no look" fee of LBR 2016-1(c) but the Plan proposes to front-load attorney's fees. *Id.* at 3:1-8.

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

DISCUSSION
Delinquency

Debtor is $842.07 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. The Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Not Best Effort

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.

Trustee asserts the Debtor should contribute a portion of his tax refunds to the Plan, any amount over $2,000. Debtor has received a sizeable tax refund for the year 2023 in the amount of $5,408. Failure to commit all disposable income is cause to sustain the Objection.

Incorrect Plan Form

Moreover, Debtor has not complied with this district's Local Rule 3015-1(c)(1), which requires a Chapter 13 Debtor to utilize plan form EDC 003-080. 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 $700.56 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.

Part of the issue arises where Debtor is not opting into our Local Rules for payment of attorney's fees, instead opting into the Northern District's scheme. This problem arises due to Debtor using the incorrect plan form in this case.

On September 6, 2024, the Debtor filed an Amended Chapter 13 Plan. Dckt. 30. The Debtor will need to proceed with a motion to confirm the Amended Plan.

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.

42. 24-21068-E-13 RMP-2 | **DESIREE LEWIS** **Sunita Kapoor** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS, INC.** **5-14-24 [68]**

Final Ruling: No appearance at the September 10, 2024 Hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing not 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, attorneys of record who have appeared in the Bankruptcy case, the Adversary Proceeding, or contested matter, and Office of the United States Trustee on May 14, 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.

The Objection to Confirmation of Plan is deemed to be an Opposition to Debtor's Motion to Confirm the First Amended Chapter 13 Plan, and will be heard in conjunction with the Motion to Confirm at 2:00 p.m. on September 24, 2024.

REVIEW OF OBJECTION

Real Time Resolutions, Inc. as agent for RRA CP Opportunity Trust 2 ("Creditor") holding a secured claim opposes confirmation of the second amended Plan on the basis that:

1. Creditor is not adequately protected. Obj. 1:27, Docket 68. Creditor has a security interest in Debtor's real property, commonly known as 4822 Mission Beach Ct., Elk Grove, CA 95758-5122 ("Property"), which Debtor has listed as her primary residence. Mem. 1:26-28, Docket 70; *see* Petition pt. 1, par. 5, Docket 1. Debtor's Schedule A lists the value of the residence as $326,000.00 on the date of filing, with Schedule D stating that the senior lienholder, Select Portfolio Servicing, was equally owned $326,000.00 on the date of filing. *Id.* at 1:28-2:2. *See* Docket 17, 18.

   Creditor obtained a Broker Price Opinion valuing the property at $560,000.00, which can be used to rebut the Debtor's valuation. *Id.* at 2:3-4. *see* Decl., Docket 44.

On the filing date, Creditor was owed a total claim of $203,473.33 on the matured loan. Mem. 1:26-28, Docket 70; *see* Decl. Docket 44. Around May 10, 2024, Debtor filed a Second Amended Chapter 13 Plan, which fails to provide for Creditor, stating Creditor's lien will be reduced to $0.00 based on the value of the collateral under Class 2(C). *Id.* at 2:21-24. *See* Plan, Docket 65. Debtor has not provided a proper valuation to support this reduction, and Creditor believes equity in the property exists above the amount owed to the senior lienholder. *Id.* at 2:24-26.

2. The Plan is not feasible and cannot be made feasible. The Creditor states that the Debtor needs a present and future ability to make payments under the Plan pursuant to 11 U.S.C. § 1325(a)(6), as mere hope of being able to make payments is not sufficient when the Plan is not feasible. *Id.* at 1:28-2:4.

3. Debtor appears to be incapable of reorganization. The Creditor alleges that the Debtor must demonstrate an ability to make all Plan payments in order for the court to confirm the plan. *Id.* at 2:1.

Real Time Resolutions, Inc., as agent for RRA CP Opportunity Trust 2,submits the Memorandum of Points and Authorities to authenticate the facts alleged in the Objection. Mem., Docket 70. Creditor also filed a Declaration in support of its Objection to Confirmation of Debtor's previous plan. Decl., Docket 44.

DISCUSSION

Creditor's objections are well-taken.

Lack of Adequate Protection Under the Plan

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See, e.g.*, *Diaz v. Davis (In re Digimarc Corp. Derivative Litigation)*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("[a]ccordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act."). Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325. Several bankruptcy courts that have considered the issue, however, have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral, here, the Property. *See, e.g.*, *In re Sanchez*, 384 B.R. 574, 576 (Bankr. D. Or. 2008); *Royals v. Massey (In re Denton)*, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

In re Trejos holds that "[w]ith respect to secured creditors, § 1325(a)(5) requires generally that a chapter 13 plan must provide one of three alternative treatments: (1) treatment to which the secured creditor consents; (2) retention of collateral by the debtor with a stream of payments to the secured creditor; or (3) surrender of the collateral to the secured creditor." 374 B.R. 210, 214 (B.A.P. 9th Cir. 2007).

Debtor's Plan proposes none of these options regarding Creditor's claim of $203,473.33 on the matured loan, instead arguing that the Motion to Value will reduce Creditor's secured claim to $0. Mem.

1:26-28, Docket 70; *see* Decl. Docket 44 . In regard to the Motion to Value, Creditor has submitted a Declaration and appraisal of a licensed real estate appraiser, Scott Burton, asserting the Property is valued at $545,000. Docket 89. This valuation leaves equity in the Property for Creditor's secured claim. In the absence of any countervailing evidence, the court accepts Creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II) and sustains the Objection on that basis.

Lack of Feasibility

Under 11 U.S.C. § 1325(a)(6) the Court shall confirm the Plan only if the Debtor demonstrates an ability to make all payments under the Plan and otherwise perform on the provisions of the Plan. Debtor's monthly disposable income is listed as $898.83. Am. Schedule J, Docket 56. Of this amount, the Debtor only proposes to pay $500.00 per month into the Plan for 36 months. Am. Plan § 2.01, Docket 65. In order to pay Creditor's fully-matured lien, if Debtor does not succeed on the Motion to Value, Debtor must pay an additional $5,652.04 into the Plan monthly (for a total of $203,473.33 in 36 months).

Here, the Creditor alleges that the Debtor uses the Plan solely as a vehicle to avoid payments to Creditor, which Creditor reasonably believes is partially or wholly secured by Debtor's primary residence. Mem. 3:21-23, Docket 70.

Debtor is Incapable of Reorganization

The burden is completely on Debtor to show reorganization is in prospect. 11 U.S.C. § 362(g); *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988). Under the standard set by the Supreme Court in *Timbers*, in order to establish that reorganization is in prospect, the Debtor has to demonstrate a "reasonable possibility of a successful reorganization within a reasonable time." *Id.* at 376. Debtor is required to do more than merely assert she can reorganize if only given the opportunity to meet the *Timbers* standard. *See e.g.*, *Am. State Bank v. Grand Sports, Inc.* (*In re Grand Sports, Inc.*), 86 B.R. 971, 975 (Bankr. N.D. Ill 1988).

Here, the Creditor alleges that the Debtor is unable to show that Creditor's lien can be avoided in the instant bankruptcy and is equally unable to pay Creditor's matured lien. Mem. 4:5-8, Docket 70. Debtor's Second Amended Chapter 13 Plan states Creditor's lien will be reduced to $0.00 based on the value of the collateral under Class 2(C). *Id.* at 2:21-24; *see* Plan, Docket 65. Debtor proposes no treatment for the Senior Lienholder in the event the Motion to Value is unsuccessful, and it is unclear if pre-petition arrears were owed to that creditor on the date of filing. *Id.*

There is a pending Motion to Value Creditor's Secured Claim. The court has continued the Motion to Confirm the First Amended Chapter 13 Plan to allow for the Motion to Value to be prosecuted.

The hearing on the Objection to Confirmation, which is deed to be an Opposition to Motion to Confirm the First Amended Chapter 13 Plan, is continued to 2:00 p.m. on September 10, 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 Real Time Resolutions, Inc. as agent for RRA CP Opportunity Trust 2 ("Creditor"), 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, which is deed to be an Opposition to Motion to Confirm the First Amended Chapter 13 Plan, is continued to **2:00 p.m. on September 24, 2024**, to be heard with the Motion to Confirm.

43. 24-21869-E-13 TLA-1 | **CHYRENA BROWN** **Thomas Amberg** | **MOTION TO MODIFY PLAN** **8-6-24 [17]**

Final Ruling: No appearance at the September 10, 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 August 6, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Chyrena Brown ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 19; Ex., Docket 20. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. Trustee filed a nonopposition on August 27, 2024. Docket 24. 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, Chyrena Brown ("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 August 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 Trustee will submit the proposed order to the court.

44. 24-21075-E-13 TLA-2 | **RUDY/ROBERTA GONZALEZ** Thomas Amberg | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBER HARVEY DEBTORS ATTORNEY(S)** **8-6-24 [62]**

Final Ruling: No appearance at the September 10, 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 August 6, 2024. By the court's calculation, 35 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 Interim Professional Fees is granted.

Thomas L. Amberg, Jr., the Attorney ("Applicant") for Rudy Guillermo Gonzalez and Roberta Leaa Gonzalez, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period of October 10, 2023 through July 29, 2024. Applicant requests fees in the amount of $9,100.00 and no costs. Mot. 2:5-7, Docket 62. Applicant was paid $1,000 prepetition for work done prepetition, so Applicant requests $8,100 of fees be paid through the Plan and the court authorize Debtor to apply the $1,000 prepetition retainer payment to the fees immediately. *Id.* at 2:7-12.

Applicant opted out of the no-look fee provisions of the Chapter 13 Plan. *See* Plan, Docket 3; Order Confirming Plan as Amended, Docket 58.

The Chapter 13 Trustee filed a nonopposition on August 27, 2024. Docket 68.

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 Estate include meeting with Client and analyzing her situation, creating and reviewing the Debtor's schedules, proposing a Chapter plan, attending Debtor's 341 hearing, responding to multiple Objections, conferring with creditors' counsel, confirming the Debtor's plan, communicating with Debtor, and reviewing claims filed in the Debtor's case. Mot. 2:12-18, Docket 62. Debtor submitted an authenticated Task Billing Summary into evidence, detailing these areas of work as Exhibit B, Docket 66. The court finds the services were beneficial to Client and the Estate and were reasonable.

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**
Thomas L. Amberg, Jr	28	$325.00	$9,100.00
Total Fees for Period of Application			$9,100.00

Costs & Expenses

Applicant is not requesting costs as part of this Application.

FEES AND COSTS & EXPENSES ALLOWED

Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $9,100.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330. Fees in the amount of $8,100 are authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner

consistent with the order of distribution under the confirmed Plan. Applicant is authorized to apply the $1,000 retainer for prepetition work toward the fee amount immediately.

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

Fees $9,100

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case. Applicant is further authorized to apply the $1,000 retainer for prepetition work toward the fee amount immediately.

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 Thomas L. Amberg, Jr. ("Applicant"), Rudy Guillermo Gonzalez and Roberta Leaa Gonzalez, 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 Thomas L. Amberg, Jr. is allowed the following fees and expenses as a professional of the Estate:
>
> Thomas L. Amberg, Jr., Professional employed by the Chapter 13 Debtor
>
> Fees in the amount of $9,100,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that Applicant is authorized to apply the $1,000 retainer for prepetition work toward the fee amount immediately, and the Chapter 13 Trustee is authorized to pay the remainder from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

45. 24-22779-E-13 DPC-1 | **TERESA WAGNER** / **Julius Cherry** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-7-24 [15]**

DEBTOR DISMISSED: 08/12/24

Final Ruling: No appearance at the September 10, 2024 Hearing is required.

The case having previously been dismissed, the Objection to Confirmation is overruled as moot without prejudice. Order, Docket19.

The Objection to Confirmation is overruled as moot without prejudice, the case having been dismissed on August 12, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot without prejudice, the case having been dismissed.