

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 13, 2022 at 2:00 p.m.

1. [22-20106-E-13](#) **BARBAREE JERNIGAN AND** **MOTION FOR STATUS CONFERENCE**
[DPC-1](#) **LANCE LIGHTHALL** **8-23-22 [61]**
 David Foyil

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, and Office of the United States Trustee on August 23, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion for a Status Conference is granted, and a status conference is to be held on **XXXXXX .**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks a Status Conference regarding the Court’s order entered May 31, 2022, Dckt. 57, with respect to a Motion to Sell Real Property at 6470 Ridgeway Drive (“Property”) for \$350,000.00.

Trustee seeks a Status Conference as no plan has been confirmed so Trustee is not able to disburse funds received from the sale of the Property.

Additionally, Navigate Realty was representing the buyer and seller, and Trustee is not certain whether the funds held for buyer and seller were intended by the court to both be paid to Navigate Realty. Additionally, Debtor has not yet sought authority to employ and pay Navigate Realty.

Pursuant to 11 U.S.C. § 105(d), the court finds a status conference is necessary to further the expeditious and economical resolution of the 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 a Status Conference filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion for a Status Conference is granted, and a Status Conference is to be held on **xxxxxxxxxx** to discuss the outstanding issues relating to administration of this case.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 12, 2022. By the court’s calculation, 63 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 -----

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The Objection to Confirmation of Plan is overruled.

Creditor, Credit Acceptance Corporation (“Creditor”), holding a secured claim, opposes confirmation of the Plan on the basis that:

- A. The Plan proposed by Debtor does not include an adjusted national prime interest rate of 6.75% with respect to Creditor’s claim.
- B. The vehicle is a depreciating asset due to Debtor’s use of the vehicle,
- C. Debtor took out the loan for the vehicle one month before filing the bankruptcy case.

DEBTOR’S RESPONSE

On September 6, 2022, debtor, Jason Hayes Butterfield (“Debtor”) filed a response to Creditor’s objection to confirmation of the proposed plan, via counsel. Dckt. 24. The response stated that a stipulation had been negotiated with counsel for the objecting creditor, which was forwarded to Kristen Koo, on or about August 18, 2022.

DEBTOR AND CREDITOR’S STIPULATION

On September 6, 2022, Debtor’s counsel filed Stipulation Regarding Objection to Confirmation of Proposed Chapter 13 Plan By Credit Acceptance Corporation. Dckt. 25. The stipulation states that the secured claim of Credit Acceptance Corporation for the Debtor’s 2018 GMC Sierra 1500 truck for \$39,051.22 shall be paid interest of 5.75% and a monthly dividend of \$750.44 for the duration of the Debtor’s 60 month plan, instead of a 4.0% interest rate with \$709.00 in monthly dividends as proposed in the Plan. Further, Debtor’s monthly plan payment shall be increased to \$1,090.00 for the duration of the Plan, instead of \$1,039.00 as originally proposed.

Debtor and Creditor’s filed stipulation appears to resolve Creditor’s objection. At the hearing, Debtor amended the Plan to provide that the secured claim in the amount of \$39,051.22 of Credit Acceptance Corporation, for which the collateral is 2018 GMC Sierra 1500 truck, shall be paid with an annual interest rate of 5.75% and a monthly dividend of \$750.44 for the duration of the Debtor’s 60 month plan. Additionally, the monthly plan payment increases to \$1,090.00, commencing with the **XXXXXXX**, 2022 Plan payment.

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

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled and the Plan as amended pursuant to the Stipulation, Dckt. 25, of the Debtor and Creditor, as follows:

- (1) Creditor’s secured claim in the amount of \$39,051.22, which is secured by Debtor’s 2018 GMC Sierra Truck, shall be paid interest of 5.75% and a monthly dividend of \$750.44 for the duration of Debtor’s Plan, and
- (2) The monthly plan payment increases to \$1,090.00, commencing with the **XXXXXXX**, 2022 Plan payment

is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the forgoing amendment to said 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. [20-25255-E-13](#) **MICHAEL/RENEE RUSSELL** **MOTION TO MODIFY PLAN**
[DBL-1](#) **Bruce Dwiggin** **7-23-22 [27]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee, on July 23, 2022. By the court’s calculation, 52 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 First Modified Plan is XXXXXXXXXX.

The debtor, Michael Dale Russell and Renee Sue Russell (“Debtor”), seeks confirmation of the First Modified Plan due to unforeseeable financial events which occurred after confirmation of Debtor’s original plan. These events include changes in Debtor’s employment, resulting in pay-cuts, and vehicle repair costs. Declaration, Dckt. 31. The Modified Plan provides for unsecured claims to be paid through monthly payments of \$1,030.00 for 60 months, and a 100% percent dividend to unsecured claims totaling \$38,938.52. Modified Plan, Dckt. 29. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 30, 2022. Dckt. 35. Trustee opposes confirmation of the First Modified Plan (the “Plan”) on the basis that:

- A. The Plan is not feasible because:
1. Debtor filed two plans (Dckts. 29, 32), making it difficult to determine which plan Debtor intends to be confirmed. Procedural issues must be addressed before Trustee can confirm.
 2. The Plan omits payments for several unsecured, nonpriority claims.

DISCUSSION

Feasibility of Plan

Trustee alleges that the proposed First Modified Plan is not feasible, and the Trustee cannot recommend confirmation until the existing procedural issues have been addressed. 11 U.S.C. § 1325(a)(1).

Two Plans Filed

Trustee objects to confirmation of the Plan on a procedural basis. Debtor filed two plans, which appear to be identical, on July 23, 2022. Dckts. 29, 32. The Plan filed under Docket No. 29 includes only the Plan, itself, while the Plan filed under Docket No. 32 includes the Plan and Exhibits, including Supplemental Schedules I and J, with the omission of the cover sheet. Trustee notes that Supplemental Schedules I and J, along with the required cover sheet, were filed separately, July 22, 2022. Dckt. 25. Clarification is needed regarding which Plan is to be confirmed.

At the hearing, ~~XXXXXXXXXX~~

Section 7.02 Typographical Error

Section 7.02 of the Plan lists payments which have been made thus far to Creditors. Section 7.02 omits payments to unsecured creditor CEP America California and the unsecured portions of Franchise Tax Board and Internal Revenue Services claims. Section 7.02 should be amended to include:

1. CEP America California, unsecured claim, \$154.19
2. Franchise Tax Board, unsecured portion, \$185.43
3. Internal Revenue Service, unsecured portion, \$143.99.

At the hearing, ~~XXXXXXXXXX~~

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

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

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

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Michael Dale Russell and Renee Sue Russell ("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 granted and the Plan as amended at the hearing, provides:~~

~~Trustee has Paid during months 1-20, in addition to those listed under 7.02:~~

~~1. CEP America California, unsecured claim, \$154.19~~

~~2. Franchise Tax Board, unsecured portion, \$185.43~~

~~3. Internal Revenue Service, unsecured portion, \$143.99.~~

~~is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the forgoing amendment to said Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 9, 2022. 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 -----

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The Objection to Confirmation of Plan is sustained.

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

- A. The Plan may not be feasible due to insufficient payment amount to complete within the allotted statutory period,
- B. Debtor’s expenses are unclear and Debtor has offered no explanation for the reductions reflected in Amended Schedule J.

DISCUSSION

Trustee’s objections are well-taken.

Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Trustee alleges:

1. The Plan calls for \$250.00 for forty (40) months, when, Trustee calculates it will take fifty (50) months to complete the Plan. This is due to Debtor owing more for her car than estimated.
2. Debtor has not filed a declaration explaining the changes in expenses reflected in her Amended Schedule J. Therefore, the Trustee is not certain Schedule J accurately reflects Debtor's expenses.

Thus, the Plan may not be confirmed.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2022. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtors, Patrick Blue Wong Jocson & Celeste Maria Gil Jocson (“Debtor”) seek confirmation of the Chapter 13 Plan. The Plan provides for \$310 the first month, then \$815 for the next 59 months with all priority claims paid in full and a 14% dividend to unsecured claims. Plan, Dckt. 15. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR’S OPPOSITION AND WITHDRAWAL

On July 25, 2022, Creditor Broker Solutions Inc. dba New American Funding (“Creditor”), holding a secured claim on Debtor’s real property, objected to the Plan on the ground that the Plan does not account for pre-petition arrears. Dckt. 21. However, on August 16, 2022, Creditor withdrew their opposition. Dckt. 26.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) holding a secured claim filed an Opposition on August 15, 2022. Dckt. 23. Trustee opposes confirmation of the Plan on the basis that:

- A. Creditor's claim is misclassified a Class 4, when there are arrears of \$3,080.81.
- B. Plan does no comply with Section 2.01 of the Plan.
- C. Debtor cannot make the payments Plan.

DISCUSSION

Misclassified Claim

Creditor Broker Solutions Inc. dba New American Funding ("Creditor") filed a Proof of Claim on July 22, 2022, indicating arrears in the amount of \$3,080.81. Proof of Claim 10-1. The Plan, however, classifies Creditor's claim as Class 4. Class 4 claims are those maturing after the completion of the Plan, which are not in default. Amended Plan, Section 3.10. Since there is a default, Creditor's claim appears to be misclassified.

However, Creditor did withdraw their opposition to this Motion to Confirm. Dckt. 26. Therefore, Creditor may have resolved the amount of arrears with Debtor. No supplemental filings have been filed to support a cure of default. At the hearing, ~~XXXXXXXXXXXX~~

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Section 2.01 of the Plan states, "Debtor shall submit to the supervision and control of Trustee on a monthly basis the sum of \$320 x 1; \$815 x 59 from future earnings." These are not consistent monthly sums, and as such, are "Nonstandard provisions" under Section 1.02 which should be appended to the end of the Plan as Section 7. The Amended Plan, therefore, needs to be amended a second time for Debtor to be able to comply with the provisions.

Cannot Afford Plan Payments

On August 17, 2022, Debtor filed second amended Schedules I and J listing their net income as now \$818.00 per month. Debtors' first amended plain proposes plan payments of \$320.00 the first month, then \$815.00 for 59 months.

Therefore, it appears Debtor can now afford Plan payments and Trustee's objection regarding affording Plan payments is resolved.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Patrick Blue Wong Jocson & Celeste Maria Gil Jocson (“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.

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

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 Debtors, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 23, 2022. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Joseph Espana & Martha Espana, Chapter 13 Debtor, (“Movant”) to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 3079 E. Weldon Ave, Fresno, CA (“Property”).

The proposed purchaser of the Property is JC Home Restorations, LLC and KO Development, Inc, and the terms of the sale are:

- A. Purchase Price: \$400,000.00
- B. Property is being sold “As Is.”
- C. Deposit: Buyer to provide a deposit of \$1,000.

- D. Fees: Buyer agrees to pay all closing cost/escrow fees associated with this agreement.

CREDITOR'S CONDITIONAL NON-OPPOSITION

On August 29, 2022, Creditor Wilmington Trust, National Association, as Trustee for MFRA Trust 2014-1, filed a Conditional Non-opposition. Dckt. 118. Creditor holds a Note on the Property, evidenced by Proof of Claim 5-1. Creditor does not oppose the Motion to Sell so long as they are paid in full and the following language is included in the order:

Upon sale of the Property, either Secured Creditor will be paid in full through escrow subject to a proper payoff quote, or any sale less than payment in full is subject to Secured Creditor's final written approval.

Denial of Requested Mandatory Injunction

The court is not inclined to enter a "mandatory injunction judgment" which pre-enforces a due on sales clause in a deed of trust. The court is authorizing a sale of property. The sale is not free and clear of Creditors' lien. While not free and clear of Creditor's lien, Creditor is Clearly Free and Clear to enforce its rights against any purchaser if the buyer, and buyer's financing elect to do a sale subject to Creditor's lien.

Creditor can exercise its right to make a demand for payment in full in the escrow for the sale of the Property.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because there are an estimated net proceeds of \$139,004.80 for the benefit of creditors.

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 Joseph Espana & Martha Espana, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Joseph Espana & Martha Espana, 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to JC Home Restorations, LLC

and KO Development, Inc (“Buyer”), the Property commonly known as 3079 E. Weldon Ave, Fresno, CA (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$400,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dekt. 105, 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, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. 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.

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 Debtors, Debtors’ Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August, 23, 2022. By the court’s calculation, 22 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Joseph Humberto Espana & Martha Eugenia Espana, Chapter 13 Debtor, (“Movant”) to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1856 E. Flora St., Stockton, CA 95205 (“Property”).

The proposed purchaser of the Property is JC Home Restorations, LLC & KO Development, Inc., and the terms of the sale are:

- A. Purchase Price: \$400,000.00.
- B. Deposit: Buyer to provide a deposit of \$1,000.00.

- C. The balance of \$399,000.00 to be deposited to an escrow holder within thirty (30) days of the filing of an application to transfer ownership of the liquor license.
- D. Buyer shall pay any and all escrow and transfer fees.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because there are an estimated net proceeds of \$163,093.70 for the benefit of creditors.

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 Joseph Humberto Espana & Martha Eugenia Espana, Chapter 13 Debtors, (“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 Joseph Humberto Espana & Martha Eugenia Espana, Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to JC Home Restorations, LLC & KO Development, Inc., (“Buyer”), the Property commonly known as 1856 E. Flora St., Stockton, CA 95205 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$400,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 109, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, 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.

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 Debtors, Debtors’ Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 23, 2022. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Joseph Humberto Espana & Martha Eugenia Espana, Chapter 13 Debtor, (“Movant”) to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1107 North Commerce Street, Stockton, CA 95202 (“Property”).

The proposed purchaser of the Property is JC Home Restorations, LLC & KO Development, Inc, and the terms of the sale are:

- A. Purchase Price: \$550,000.00.
- B. Deposit: Buyer to provide a deposit of \$1,000.00
- C. The balance of \$549,000.00 to be deposited to an escrow holder within thirty (30) days of the filing of an application to transfer ownership of property.

D. Buyer shall pay any and all escrow and transfer fees.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because there are an estimated net proceeds of \$437,625.00 for the benefit of creditors. .

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 Joseph Humberto Espana & Martha Eugenia Espana, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Joseph Humberto Espana & Martha Eugenia Espana, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to JC Home Restorations, LLC & KO Development, Inc (“Buyer”), the Property commonly known as 1107 North Commerce Street, Stockton, CA 95202 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$550,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 113, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Chapter 13 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 26, 2022. By the court’s calculation, 49 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 debtor, Lorrie Blevins (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides \$1,046.00 per month for the first four (4) months and then \$1,500.00 per month for the next thirty-six (36) months with 100% of general unsecured claims paid. Plan, Dckt. 44. 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 15, 2022. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor owes \$25,000.00 in unpaid taxes which are not provided for in the Plan and are unlikely to be paid unless under the supervision of Trustee.
- B. Debtor’s rent expense is unclear.

- C. Debtor's tax expense is listed in Debtor's Schedule J but is not provided for in the plan nor is it clear whether creditor and Debtor have come to an agreement regarding payment of tax claims.
- D. Debtor's declaration is insufficient in support of confirmation.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

- A. Debtor owes \$25,000.00 in taxes to the Internal Revenue Service ("IRS"). Although 11 U.S.C. § 1322 does not require Debtor to provide for secured claims, Trustee is concerned Debtor's failure to pay taxes over nine (9) years indicates they are not likely to pay them unless under the supervision of the Trustee. The court shares Trustee's concerns, and if the IRS is to proceed with enforcing its claim, it may prevent Debtor from making Plan payments.
- B. Debtor states they will live in their cabin part of the year and then will likely be renting alternative living space. Debtor's Supplemental Schedule J, Dckt. 43, indicates rent and home ownership expense is \$0.00. Additionally, Debtor notes no required maintenance, repair, or upkeep expenses. The court shares Trustee's concerns as it seems infeasible for Debtor to live with such low expenses as Debtor's Amended Schedule A/B (Dckt. 41) indicates the cabin is a "Summer Residence" and Debtor pays insurance on cabin and taxes on land even though Debtor does not own the land. Additionally, Debtor's Amended Schedule A/B indicates the water tank and nearby roads recently burned down so the court is not clear whether there will be additional expenses to fix these. Also, Debtor admits that they may need to rent during winter months, indicating there will be winter rental expenses which may indicate Debtor's future inability to comply with the Plan. Supplemental Schedules I & J, Dckt. 43.
- C. Debtor's tax expense is listed in Debtor's Supplemental Schedule J (Dckt. 43), with payments to commence September 2022, but is not provided for in the Plan nor is it clear whether creditor and Debtor have come to an agreement regarding payment of tax claims.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure To Provide Evidence

Debtor's Declaration in support of the Motion merely states the components of 11 U.S.C. § 1325(a), however, fails to provide factual evidence as to whether each of the components of § 1325(a) are met.

Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Lorrie Blevins ("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, and the proposed Chapter 13 Plan is not confirmed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 4, 2022. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

Clinton Howard Baier ("Debtor") seeks confirmation of the Modified Plan because Debtor wants to increase payments to make up for the payments that did not go through. Declaration, Dckt. 38. The Modified Plan provides \$28,228.00 to be paid through payments of \$431.00 for the first 23 months and payments of \$495.00 for 37 months. Modified Plan, Dckt. 36. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on August 30, 2022. Dckt. 40. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.
- B. Debtor's Plan has not checked the Nonstandard Provisions for them to be given effect.

- C. The Motion does not comply with Federal Rules of Bankruptcy Procedure 9013.
- D. No current Schedule I & J have been filed to support the Motion so it is unclear if Debtor can afford the Plan.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$2,353.00 delinquent in plan payments, which represents multiple months of the \$490.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Nonstandard Provisions

Under Section 1.02 of the Amended Plan, if Debtor wishes to include any nonstandard provisions, Debtor must check the box in § 1.02. The box has not been checked. Therefore, although Debtor may have intended to add provisions under Section 7, the Plan as it is requires Debtor to have a monthly payment of \$495 for the life of the Plan. This indicates not being able to comply with the Plan if Debtor intended a different amount of Plan payments. 11 U.S.C. § 1325(a)(6).

Review of Minimum Pleading Requirements for a Motion

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

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* 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.

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

- A. The Motion and proposed plan complies with 11 U.S.C. § 1325(a), 1329(a), 1322(b), 1323(c), and all other applicable provisions of the code.
- B. The Plan has been proposed in good faith, and not by any means forbidden by law, as evidenced in the Declaration of the Debtor.

Those “grounds” are merely a conclusion of law by Movant. Presumably, Movant believed that the court would make those conclusions, but the “grounds” cannot merely state the anticipated conclusions.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not filed a current Schedules I & J in almost two years to prove that they can afford the payments. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by Clinton Howard Baier (“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.

FINAL RULINGS

11. [22-21401-E-13](#) **JULIANNE KELLEY** **OBJECTION TO DEBTOR'S CLAIM OF**
[DPC-2](#) **Pro Se** **EXEMPTIONS**
8-8-22 [27]

DEBTOR DISMISSED: 08/25/22

Final Ruling: No appearance at the September 13, 2022 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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 Debtor's Claim of Exemptions 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, the case having been dismissed.

Final Ruling: No appearance at the September 13, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 16, 2022. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

The 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:

- A. Deceased Debtor, Andres Jose Cerevantes (“deceased Debtor”), failed to appear at the 341 Meeting of Creditors held August 11, 2022,
- B. Trustee cannot determine whether the Plan is feasible.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Appear at 341 Meeting

Deceased 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. Rather, deceased Debtor’s daughter appeared and

advised that her father passed away on July 22, 2022. Deceased Debtor's daughter informed Trustee she is determining whether she wants to proceed with the case.

As deceased Debtor passed away, Trustee does not have sufficient information to determine if the Plan is feasible under 11 U.S.C. § 1325(a)(6). Without an accurate picture of deceased Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

Debtor having passed away, a successor to the Debtor must be appointed, and that person may then seek to prosecute 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 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 Ruling: No appearance at the September 13, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on August 8, 2022. By the court’s calculation, 36 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 Larry Errol Miller’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 May 6, 2019. Case No. 19-22902. Debtor received a discharge on August 21, 2019. Case No. 19-22902, Dckt. 22.

Debtor has filed two prior bankruptcy cases in this court:

1. **2019 Chapter 7 Case**
Case No. 19-22902
Date filed: May 6, 2019
Date Discharge Received: August 21, 2019,
Order, Dckt. 22

2. **2021 Chapter 13 Case**
Case No. 21-23871
Date filed: November 12, 2021
Date dismissed: April 5, 2022,
Order, Dckt. 31.
Reason for Dismissal: Delinquency and Failure to Confirm Plan,
Civil Minutes, Dckt. 30.

The instant case was filed under Chapter 13 on May 14, 2022.

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 August 21, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 19-22902, Dckt. 22. 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. 22-21231), 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 the Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 22-21231, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the September 13, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 17, 2022. 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.

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 dismissed without prejudice, this Bankruptcy Case having been dismissed by prior Order (Dckt. 32) of the court..

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

- A. Debtor failed to appear at the First Meeting of Creditors held August 11, 2022,
- B. Debtor failed to file tax returns for 2021.

DISCUSSION

Trustee’s / Creditor’s objections are well-taken.

Failure to Appear at 341 Meeting

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

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

The Continued Meeting of Creditors is set for September 22, 2022.

Failure to File Tax Returns

Trustee's review of Internal Revenue Service's filings indicates that no federal income tax return was filed for 2021. 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, this Bankruptcy Case having been dismissed by prior Order of the court (Dckt. 32), and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is dismissed without prejudice.

Final Ruling: No appearance at the September 13, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2022. By the court’s calculation, 56 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Gail Jean Fay (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on August 25, 2022. Dckt. 40. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

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

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

17. [19-25355-E-13](#) **STEPHEN/MARCELLA** **MOTION TO MODIFY PLAN**
[PSB-2](#) **AZZOPARDI** **8-1-22 [59]**
 Paul Bains

Final Ruling: No appearance at the September 13, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2022. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

Scheer Law Group, LLP, has requested special notice (Dckt. 40). However, it was served at an address other than the service address listed in the request for special notice. **Counsel for Debtor can address documentation of service for the continued hearing.**

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 continued to September 27, 2022 at 2:00 p.m. in Courtroom 33.

Continuance of September 13, 2022 Hearing

The court continues the hearing to afford Debtor to address any remaining issues with the Chapter 13 Trustee, as well as complete the authorized refinance.

The debtor, Stephen Paul Azzopardi and Marcella Lucille Azzopardi (“Debtor”) seeks confirmation of the Modified Plan to remove and replace Debtor’s former mortgage lender, Gregory Funding, due to a refinance. Declaration, Dckt. 63. The Modified Plan proposes to remove Gregory Funding (“Original Creditor”) as a Class 1 creditor who, on the current Plan receives a \$1,785.20 post-petition monthly payment and \$467.00 arrearage dividend, and add Guaranteed Rate Affinity, LLC (“Refinancing Creditor”), as a Class 4 creditor, with \$1,320.00 to be paid monthly for the remaining 26 months of the 60 month plan, and a 100% dividend to unsecured claims totaling \$17,055.79. Modified Plan, Dckt. 62. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 16, 2022. Dckt. 66. Trustee opposes confirmation of the Plan on the basis that:

- A. Under the proposed plan, Debtor has overpaid by \$1,663.41, if the currently pending TFS payment is posted.
- B. Trustee had made July 2022 disbursement to Original Creditor by the time Debtor filed the modified plan, and the Modified Plan only provides payment to Original creditor through June 2022. Therefore, Debtor would not be able to comply with the plan.

DEBTOR’S MOTION TO CONTINUE CONFIRMATION OF PLAN HEARING

On August 24, 2022, Debtor filed a motion to continue hearing to September 27, 2022 at 2:00 pm. Dckt. 69. Debtor’s filing stated the reason for the requested continuance was that the refinancing which is the basis of the modification, was not closed until September 2, 2022.

Debtor has not submitted a proposed order to continue the matter.

ORIGINAL CREDITOR’S OPPOSITION

Original Creditor opposes confirmation of the Plan (Dckt. 70) on the basis that Original Creditor has not been paid in full yet because the refinance is still in escrow and has not closed.

Original Creditor:

1. Opposes treatment that would not pay its claim in full concurrently upon close and directly out of escrow;
2. Reserves the right to submit an updated payoff demand prior to any close of escrow to ensure it is paid in full; and
3. Claims Debtor must timely submit a demand for payoff to ensure Original Creditor is paid in full out of escrow.

DISCUSSION

Trustee's and Creditor's objections are well-taken.

Debtor Paid Ahead

The Trustee's opposition states that Section 7 of the modified Plan proposes payments of \$100,930.71 total paid into the Plan through month 34 of the 60 month plan, and continue to pay \$1,320.00 for the remaining months, numbers 35-60. August 2022 is month number 36, so, Debtor would have needed to pay into the Plan through month 35 (July 2022) a total of only \$102,250.71. Debtor has actually paid a total of \$103,914.12. The difference is \$1,663.41. Debtor would not be able to comply with Plan if this discrepancy is not resolved. 11 U.S.C. § 1325(a)(6).

Disbursement Already Made for July 2022 to Gregory Funding

The Trustee's opposition states that a Class 1 disbursement had already been made to the Original Creditor by the time Debtor filed their motion to amend the Plan. The Modified Plan was not filed until August 1, 2022, so, Trustee disbursed Original Creditor's July payment when the Modified Plan only reflects payment to Original Creditor through June 2022. Trustee notes that there would be no opposition if Debtor included language in the order confirming authorizing ongoing mortgage payments through July 2022 of \$65,995.41 and prepetition mortgage arrears in the amount of \$29,343.99 so that the language of the amended plan matches Trustee's records.

The hearing on the Motion to Confirm the Modified Plan is continued to continued to September 27, 2022 at 2:00 p.m. in Courtroom 33 to allow adequate time for escrow to close on the refinancing.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Stephen Paul Azzopardi and Marcella Lucille Azzopardi ("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 hearing on the Motion to Confirm the Modified Plan is continued to continued to September 27, 2022 at 2:00 p.m. in Courtroom 33.

18. [22-21670-E-13](#) **RENE/ROBERT GRECARD**
[APN-1](#) **Michael Hays**

**OBJECTION TO CONFIRMATION OF
PLAN BY HARLEY DAVIDSON CREDIT
CORP.**
8-16-22 [\[25\]](#)

18 thru 19

Final Ruling: No appearance at the September 13, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 16, 2022. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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 overruled.

Harley-Davidson Credit Corp. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Pursuant to 11 U.S.C. §1325(a)(5)(B), the Plan proposes to pay less than the allowed amount of Secured Creditor's claim and the interest rate is less than the *Till* rate.

DEBTOR'S RESPONSE

On September 6, 2022, Debtor filed a response stating Creditor and Debtor stipulated to an interest rate and monthly dividend. Dckt. 36.

FILED STIPULATION

On September 9, 2022, Debtor, Creditor, and Trustee filed a signed stipulation (Dckt. 37) stating:

1. The claim of Creditor for \$16,520.98 secured by the asset described as 2020 HARLEY-DAVIDSON FXST SOFTAIL STANDARD shall be paid at an interest rate of six (6) percent and a monthly dividend of \$319.40 for the duration of the sixty (60) month plan.
2. The claim of Creditor for \$23,079.72 23,079.72 secured by the asset described as 2019 Harley Davidson FLTRX Road Glide shall be paid at an interest rate of six (6) percent and a monthly dividend of \$446.20 for the duration of the sixty (60) month plan.
3. Debtor's monthly plan payment will be \$991.00 monthly for the duration of the Plan.

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

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

The Objection to the Chapter 13 Plan filed by Harley-Davidson Credit Corp. ("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 overruled and the Plan as amended pursuant to the Stipulation, Dckt. 37, of the Debtor, Creditor, and Trustee, as follows:

(1) Creditor's secured claim in the amount of \$16,520.98, which is secured by Debtor's 2020 Harley-Davidson FXST Softail Standard, shall be paid at an interest of six (6) percent and a monthly dividend of \$319.40 for the duration of Debtor's Plan;

(2) Creditor's secured claim in the amount of \$23,079.72 23,079.72 which is secured by Debtor's 2019 Harley Davidson FLTRX Road Glide, shall be paid at an interest rate of six (6) percent and a monthly dividend of \$446.20 for the duration of Debtor's Plan;

(3) Debtor's Plan payment shall be \$991.00 monthly for the duration of the Plan

is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the forgoing amendment to said Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the September 13, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 16, 2022. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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 overruled .

Harley-Davidson ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Pursuant to 11 U.S.C. §1325(a)(5)(B), the Plan proposes to pay less than the allowed amount of Secured Creditor's claim and the interest rate is less than the *Till* rate.

FILED STIPULATION

On September 9, 2022, Debtor, Creditor, and Trustee filed a signed stipulation (Dckt. 37) stating:

1. The claim of Creditor for \$16,520.98 secured by the asset described as 2020 HARLEY-DAVIDSON FXST SOFTAIL STANDARD shall be paid at an interest rate of six (6) percent and a monthly dividend of \$319.40 for the duration of the sixty (60) month plan.

2. The claim of Creditor for \$23,079.72 23,079.72 secured by the asset described as 2019 Harley Davidson FLTRX Road Glide shall be paid at an interest rate of six (6) percent and a monthly dividend of \$446.20 for the duration of the sixty (60) month plan.
3. Debtor's monthly plan payment will be \$991.00 monthly for the duration of the Plan.

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

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

The Objection to the Chapter 13 Plan filed by Harley-Davidson Credit Corp. ("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 overruled and the Plan as amended pursuant to the Stipulation, Dckt. 37, of the Debtor, Creditor, and Trustee, as follows:

(1) Creditor's secured claim in the amount of \$16,520.98, which is secured by Debtor's 2020 Harley-Davidson FXST Softail Standard, shall be paid at an interest of six (6) percent and a monthly dividend of \$319.40 for the duration of Debtor's Plan;

(2) Creditor's secured claim in the amount of \$23,079.72 23,079.72 which is secured by Debtor's 2019 Harley Davidson FLTRX Road Glide, shall be paid at an interest rate of six (6) percent and a monthly dividend of \$446.20 for the duration of Debtor's Plan;

(3) Debtor's Plan payment shall be \$991.00 monthly for the duration of the Plan

is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the forgoing amendment to said Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20 and 21

Final Ruling: No appearance at the September 13, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor’s Attorney on August 16, 2022. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

The 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:

- A. Debtor has failed to file a Motion to Confirm Amended Plan.
- B. Debtor has not made any plan payments.
- C. Debtor’s Plan fails to cure arrearage of creditor.
- D. Debtor cannot comply with Plan as:
 1. A Class 1 Creditor is Unnamed;
 2. Class 7 is silent regarding dividend to be paid to the unsecured creditors; and

3. Debtor's net income is less than Plan payment
- E. Debtor fails to provide disposable income.

DISCUSSION

Trustee's objections are well taken in part.

No Motion to Confirm Plan

Trustee correctly indicates Debtor has not filed a Motion to Confirm the Amended Plan as required by Local Bankruptcy Rule 1305-1(d)(1). Trustee has not, however, provided the court the legal grounds for why Debtor's failure to comply with the procedural requirements is grounds to deny confirmation.

Delinquency

Debtor is \$5,620.00 delinquent in plan payments, which represents one month of the \$5,620.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Cure Arrearage of Creditor

U. S. Bank National Association c/o Cenlar FSB holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$85,300.02 in pre-petition arrearages. Proof of Claim 2-1. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Cannot Comply with Plan / Cannot Afford Plan Payments

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6) as:

- A. There is an unnamed creditor in Class 1 to be paid \$320.00 per month. The Trustee will be unable to pay an unnamed Creditor and as such, the Debtor will be unable to comply with the Plan.
- B. Class 7 is silent as to whether Debtor has any unsecured claims or if they will receive a dividend. The court notes, however, Debtor's Schedule E/F indicates no nonpriority unsecured claims. Dckt. 15. Therefore, this section appears proper.

- C. Debtor's net income of \$3,243.00 (Schedule J, Dckt. 15) is insufficient to pay the \$5,620.00 Plan payment.

Failure to Provide Disposable Income

Trustee alleges Debtor may be receiving additional disposable income or Venmo accounts which is not reflected in Debtor's Schedule I and B. This would violate 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 indicates Debtor admitting in their Schedule I that they expect to receive an additional \$1,000.00 in the next year from their rental units. Additionally, Debtor admitted at the First Meeting of Creditors they are now collecting \$2,500.00 per month in rent for two units. The \$2,500.00 is reflected in Debtor's Statement of Current Monthly Income, Dckt. 16, which appears included in the \$9,615.00 figure listed as Debtor's "Net Income from rental property and from operating a business, profession, or farm" on Debtor's Schedule I. However, the additional \$1,000.00 in income anticipated to be received within the next year is not included in Debtor's Plan. If this additional income is not provided in the Plan, Debtor may not be using all of Debtor's projected disposable income.

Additionally, Schedule B does not show Debtor's Venmo account. This could indicate further disposable income to fund the Plan.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

Amended Plan and Motion to Confirm

An Amended Plan and Motion to Confirm were filed on September 9, 2022. Dckts. 40,38.

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.

21. [22-21590-E-13](#) **WILLIAM DOTY** **OBJECTION TO CONFIRMATION OF**
[JCW-1](#) **Kenneth Bauer** **PLAN BY U.S. BANK NATIONAL**
 ASSOCIATION
 8-18-22 [33]

Final Ruling: No appearance at the September 13, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Chapter 13 Trustee on August 18, 2022. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

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.

U.S. Bank National Association as trustee for CMALT REMIC 2006-A7 - REMIC Pass-Through Certificates (“Creditor”) opposes confirmation of the Plan on the basis that:

- A. Plan is ambiguous regarding Debtor’s intentions regarding payment of Creditor’s secured claim and the pre-petition arrearages.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$85,300.02 in pre-petition arrearages. The Plan does not propose to cure those arrearages. Rather, the Plan proposes a monthly post-petition payment of \$1,492.15 with no arrearage dividend. Upon review of the Plan, the court notes a few concerns in Debtor's treatment of Class 1 Claims. Debtor's table addressing Class 1's claims is transcribed below:

Class 1 Creditor's Name/Collateral Description	Amount of Arrears	Interest Rate on Arrears	Arrearage Dividend	Post-Petition Monthly Payment
1. Cenlar, single family residence	\$89,529.09			1,492.15
2.				320.00
3.				
4.				
		Totals:	\$	\$1,492.15

As seen, there is an unnamed Class 1 Creditor receiving \$320.00 per month. It may have been Debtor's intention that the \$320.00 amount was intended to be the arrearage dividend for Cenlar. If so, Debtor should amend the Plan to reflect the dividend in the proper cell. However, as noted by Creditor, Creditor asserts \$85,300.02 in pre-petition arrearages. For these arrearages to be cured through the life of the Plan, a monthly dividend of roughly \$1,421.67 ($\$89,529.09 / 60 \text{ m}$) is required.

The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

Amended Plan and Motion to Confirm

An Amended Plan and Motion to Confirm were filed on September 9, 2022. Dckts. 40,38.

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 U.S. Bank National Association as trustee for CMALT REMIC 2006-A7 - REMIC Pass-Through Certificates, U.S. Bank National Association ("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.