UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 24, 2024 at 2:00 p.m.

1.	**21-21203-E-13** **MOH-1**	**AMY WOODS** **Michael Hays**	**MOTION TO AVOID LIEN OF DEPARTMENT STORES NATIONAL BANK/CITIBANK, NA** **8-2-24 [38]**

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 Chapter 13 Trustee, other parties in interest, parties requesting special notice, and Office of the United States Trustee on August 28, 2024. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

By the court's calculation, Movant is one day short of the required notice period for a Local Bankruptcy Rule 9014-1(f)(1) Motion. Moreover, the Motion and Notice were filed on August 2, 2024, 26 days before service was effectuated. The Declaration and other evidence in support was also filed on August 28, 2024, 26 days after the Motion and Notice were initially filed. At the hearing, **XXXXXXX**

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

This Motion requests an order avoiding the judicial lien of Department Stores National Bank, now Citibank, N.A. ("Creditor") against property of the debtor, Amy Ranae Woods ("Debtor") commonly known as 1395 Donita Drive, Red Bluff, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,585.88. Exhibit 1, Dckt. 41. An abstract of judgment was recorded with Tehama County on February 4, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $260,000 as of the petition date. Schedule A at 4, Docket 11. The unavoidable consensual liens that total $0 as of the

commencement of this case are stated on Debtor's Schedule D. Schedule D at 24, Docket 11. However, Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $300,000 on Schedule C. Schedule C at 22, Docket 11.

Identification of Judgment Lien Creditor

This Motion identifies the person whose property rights will be terminated - the lien avoided - through this Contested Matter to be "Department Stores National Bank and now Citibank, NA." This appears to indicate that Department Stores National Bank was the original judgment creditor and now Citibank, N.A. is, whether by assignment, purchase, or otherwise. However, the title to the Motion is:

> Motion to Avoid
> Judicial Lien of
> Department Store National Bank

Motion, p. 11-13; Dckt. 38. The prayer to the Motion states that it is the judicial lien of Department Stores National Bank that is to be avoided. *Id*.; p. 3:10-11.

On Schedule D the Debtor does not list either Department Stores National Bank nor Citibank, NA, individually or combined, as a creditor having a secured claim. Dckt. 11 at 24. There is a "DSNB/MACY'S" listed on Schedule E/F as having a ($3,278.00) general unsecured claim. *Id*.; ¶ 4.7. There is also Hunt & Henriques, Attorneys, listed as having an unsecured claim of ($3,585.88), with the debt being "Collecting for pending default judgment for Department Stores National Bank in Case 20LC327 in Tehama County Superior Court." *Id*.; ¶ 4.8. On the Statement of Financial Affairs, Debtor discloses that a judgment was entered in the Department Stores National Bank v. Woods, Case No. 20LC327. Stmt Fin. Affairs, ¶ 9; Dckt. 1 at 41.

No Proof of Claim has been filed by Department Stores National Bank nor for Citibank, NA.

Debtor has provided a copy of the Abstract of Judgment upon which the judicial lien is based as Exhibit 1. Dckt. 41. This exhibit is not authenticated by the Debtor in her Declaration (Dckt. 40), is not a certified copy to be self-authenticating as provided in Federal Rule of Evidence 902(2) or otherwise authenticated.

The Abstract of Judgment clearly states that the Judgment Creditor asserting the judgment lien is "Department Store National Bank." Exhibit 1; Abstract, ¶ 3.

Two Certificates of Service have been filed for this Motion. The first, filed on August 29, 2024, is titled "Proof of Certified Mailing and Other Service Issues." Dckt. 42. This is not the Certificate of Service form required in this District.

This first Certificate goes beyond merely documenting how pleadings were served, but contains substantive grounds which are to be found in a Motion. First, it is stated that Department Stores National Bank was merged or acquired on July 1, 2022, by Citibank National Association. *Id*.; p. 1:27-29. Attached to the Certificate of Service is an unauthenticated copy of a screen shot of what appears to be from the FDIC website, stating that Department Stores National Bank was merged or acquired on July 1, 2022. Citibank, National Association is identified as the "Succeeding Institution." *Id*., p. 4-5.

The first Certificate documents service on Citibank National Association and the Hunt & Henriques Law Firm, the lawyers for Department Stores National Bank shown on the Abstract of Judgment.

The second Certificate of Service was also filed on August 29, 2024, and is the required Certificate of Service form. Dckt. 43. It documents service on Citibank National Association and Hunt & Henriques as well.

Unfortunately, the information about the possible successor to Department Stores National Bank is not stated in the Motion and is not provided as evidence with the Motion. The Motion seeks relief against an entity identified as:

"Department Stores National Bank and now Citibank, NA."

No information of any assignment of judgment or assignment of the Abstract of Judgment from the State Court file has been provided.

While it could be inferred that the Motion seeks to avoid the judicial lien of Citibank, National Association as the successor in interest of Department Stores National Bank by merger, it is not clear whether such inference can deliver the relief sought by Debtor - that title to her property will be free and clear of such judgment lien forever.

At the hearing, **xxxxxxx**

~~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).~~

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 Amy Ranae Woods ("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 ~~Department Stores National Bank, now Citibank, N.A., California Superior Court for Tehama County Case No. 20LC327, recorded on February 4, 2021, Document No. 2021001441, with the Tehama County Recorder, against the real property commonly known as 1395 Donita Drive, Red Bluff, California, 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.~~

2. 20-24311-E-13 JASON DIVEN MOTION TO MODIFY PLAN
BB-1 Bonnie Baker 8-5-24 [158]

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 August 5, 2024. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx.

The debtor, Jason Diven ("Debtor") seeks confirmation of the Modified Plan based on Debtor inadvertently overlooking the required step up in plan payments on month 37 of the Plan, thereby becoming delinquent. Mot. 2:17-21, Docket 158. The Modified Plan provides for payments of $1,000 per month for the first 36 months, then a step up of $1,773.30 per month for 24 months starting on month 37. Modified Plan, Docket 162. Debtor also will pay into the Plan his Federal Tax Refund, including a refund of $7,700 for 2023. *Id.* Debtor's Modified Plan further proposes a second step-up payment beginning on month 47 [sic] in the amount of $2,995 for the final 13 months of the Plan. *Id.* It is not clear if this second proposed step up is in addition to or replaces the step up provision provided for in paragraph 2 of Section 7 of the Plan. 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 September 10, 2024. Docket 166. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may not be committing all disposable income to the Plan. Schedule I shows that the Debtor has a monthly income of $12,126.00 and Schedule J shows the Debtors monthly expenses are $6,154.00, leaving $5,982.00 in monthly net income. Yet, the plan is proposing plan payments of $2,995.00 (or potentially $4,768.30) for the remaining 13 months of the plan, this is a total of at least $2,987.00 that the Debtor is not contributing into the Plan. Opp'n 2:3-8, Docket 166.

B. Furthermore, it appears Debtor has made an agreement with a cattle owner to purchase 1/3 of his cows for $2,600.00 per pair and Debtor will receive 4 payments of $16,250.00 each. It does not appear that this income will be contributed to the plan. *Id.* at 2:9-12.

C. The Modified Plan is changing the interest rate for secured creditor Siskiyou County Farm Service Agency from 2.625% to 2.20%. The claim has already been paid in full and the interest was paid at 2.625% per the Order Confirming Plan. *Id.* at 2:19-21.

D. Debtor is slightly paid ahead, although the terms of the Plan require clarification to determine how much has been paid ahead. *Id.* at 2:26-27.

E. Debtor cites to no legal authority in support of the Motion to Confirm Modified Plan. *Id.* at 3:11-14.

F. Debtor has not submitted to the Trustee his 2023 tax returns or any refund that was received for that tax year which is estimated at $7,700.00 in the plan. *Id.* at 3:16-19.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration on September 17, 2024. Dockets 171, 172. Debtor states:

A. Debtor requests in the order confirming that the interest rate for secured creditor Siskiyou County Farm Service Agency be 2.625%, not 2.20%.

B. Debtor's second proposed step up in paragraph 4 of Section 7 of the Plan is to start on month 47, not 37 as mistakenly submitted. *Id.* at 1:27-28.

C. Debtor has filed a Declaration that has clarified fluctuations on income, and he will file amended profit and loss statements showing certain fluctuations not reflected on an annual profit and loss statement, which is equally divided into monthly allotments. *Id.* at 2:2-5.

D. Debtor requests the Plan be confirmed pursuant to 11 U.S.C. § 1329 and inadvertently left out the applicable code section in the Motion. *Id.* at 2:9-11.

Debtor states in his Declaration in support:

A. Debtor is in the construction business, and payments do not come in on a regular basis. Decl. 1:25-2:1, Docket 172.

B. As such, Debtor cannot say for sure that he will always keep the same level of income as indicated by the average profit and loss provided. *Id.* at 2:2-6.

C. Debtor also needs a certain amount of cash on hand at all times to finance and pay advances on job material, pay subcontractors, and keep up with normal bills. *Id.* at 2:7-9.

D. Debtor's ranching business is seasonal. He has provided a yearly profit and loss statement, but he only receives pasture rent for the months of June to November. Furthermore, weather conditions may limit this income, such as droughts. *Id.* at 3:1-12.

E. Debtor testifies he cannot allocate the full amount of the average profit and loss provided, considering these contingencies in his line of work. *Id.* at 3:13-23.

F. Debtor has no problem submitted his 2023 tax refunds to the Trustee as a plan contribution. *Id.* at 3:25-4:2.

DISCUSSION
Providing Disposable Income

The Chapter 13 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.

This is an interesting case where the most recently Amended Schedules submitted show Debtor may have up to $5,982 in net income, but Debtor is proposing plan payments of either $4,768.30, or $2,995, depending on how the Plan's terms are to be understood. Am. Schedule J at 2:23c, Docket 157. Debtor explains that the figures provided are averages, subject to change month to month. Debtor further explains he must have a certain amount of cash on hand to fund his construction jobs. As such, Debtor argues the proposed payments are his best efforts. At the hearing, **xxxxxxx**

In explaining the step up provisions clearly to the court, at the hearing, **xxxxxxx**

It appears Debtor has worked with Trustee to resolve the remainder of the issues in trustee's Opposition. Debtor has submitted to the correct interest rate for the secured claim of Siskiyou County Farm Service Agency, Debtor will submit the tax refunds for the year 2023, and Debtor can correct the amount paid ahead in the order confirming. Debtor has further corrected the issue of failing to cite to legal authority, proposing confirmation pursuant to 11 U.S.C. § 1329.

At the hearing, **xxxxxxx**

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

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

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

3. 24-23115-E-13 DPC-1 — SEAN/STACY MCGLONE — Mikalah Liviakis — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 8-28-24 [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 28, 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 overruled.

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

1. Debtor Sean James McGlone and Stacy Lynn McGlone's proposed plan is overextended. Debtor proposes payments of $1,197.00 per month for 36 months, with 0% to unsecured creditors. Debtor's Plan provides for Wheels Financial/Loan Mart, which is secured by a 2017 Hyundai Santa Fe Sport, as a Class 2(A) creditor with a secured claim amount of $9,500.00 and a monthly dividend payment of $322.20. Capital Community Bank c/o Wheels Financial Group has filed a claim in the amount of $17,798.88. Obj. 2:2:3-8, Docket 15.

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

DEBTOR's RESPONSE

Debtor field a Response on September 7 , 2024. Docket 20. Debtor states that the Plan is now feasible due to the fact that Capital Community Bank c/o Wheels Financial Group ('Creditor") amended its proof of claim and changed the secured value of its claim to $9,500, not $17,798.88.

DISCUSSION

Overextended Plan

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 overextension in this case stems from Trustee operating under Creditor's original Claim, 6-1, which asserted a secured claim in the amount of $17,798.88. POC 6-1. However, Creditor amended the claim on August 27, 2024, asserting the same amount of a secured claim, but valuing the collateral securing the claim at $9,500. Am. POC 6-2. Debtor argues the Plan is feasible with a secured claim of $9,500.

However, the court notes the amended proof of claim does not assert a lower amount of secured claim, but only asserted that the collateral securing the claim is valued at $9,500. When the value of the collateral securing a claim is a lesser amount than the total outstanding debt, the claim is bifurcated into a secured portion (the value of the collateral) and an unsecured portion (the remaining amount of the outstanding debt). 11 U.S.C. § 506(a).

On September 18, 2024, Creditor amended Claim 6-3. Creditor now properly bifurcates the claim into a secured claim in the amount of $9,500, the value of the Vehicle, and the remainder being a general unsecured claim.

The Objection is overruled, the court finding that the Plan is not overextended as Creditor's secured claim is in the amount of $9,500.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Sean James McGlone and Stacy Lynn McGlone's ("Debtor") Chapter 13 Plan filed on July 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.

4. 24-23116-E-13 DPC-1 | **KELLY/SHELLI HERBERT** | **Mo Mokarram** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **8-28-24 [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 28, 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 Kelly Carter Herbert and Shelli Renee Herbert are delinquent $2,600 in plan payments. Obj. 1:28-2:2, Docket 18.

2. The Plan is extremely overextended as proposed, the IRS' secured and priority unsecured claim coming in much higher than Debtor originally anticipated. *Id.* at 2:7-21.

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

DISCUSSION

Delinquency

Debtor is $2,600 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Overextended Plan

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.

Here, Debtor provided for the IRS' claim in the Plan in Class 2(A) at $1. The IRS filed an Amended Proof of Claim on September 18, 2024, asserting a secured amount of $160,417.36 and a priority unsecured amount of $206,858.40. POC 4-3. The Plan is overextended as it does not account for this claim.

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.

5.	**24-22622-E-13** **DPC-1** **5 thru 6**	**WILLIAM/CHARLENE BARTHOLOME** **Seth Hanson**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-30-24 [22]**

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

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

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

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

The Objection to Confirmation of Plan is sustained.

September 24, 2024 Hearing

The court continued the hearing on the Objection to be heard in conjunction with the hearing on the second Motion to Value, Docket Control Number SLH-2. As of the court's review on September 17, 2024, nothing new has been filed with the court under Docket Control number DPC-1, this Objection. However, on September 19, 2024, Debtor filed an *ex parte* Request to Withdraw their pending Motion to Value. Docket 51.

The court has dismissed the Motion to Value, Debtor stating that Debtor now agrees with Creditor's valuation of the Vehicle. Creditor's valuation renders its claim oversecured.

At the hearing, **xxxxxxx**

REVIEW OF THE OBJECTION

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

1. 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.

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 one of the two related Motions to value. The hearing on the second Motion has been continued to 2:00 p.m. on September 24, 2024.

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

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

6.	**24-22622-E-13 SLH-2**	**WILLIAM/CHARLENE BARTHOLOME Seth Hanson**	**CONTINUED MOTION TO VALUE COLLATERAL OF SCHOOL'S FIRST CREDIT UNION 7-30-24 [26]**

Final Ruling: No appearance at the September 24, 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). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of SchoolsFirst Federal Credit Union ("Creditor") is dismissed without prejudice, Movant having filed a Motion to Dismiss this matter (Dckt. 51).

REVIEW OF THE MOTION

The Motion filed by William Douglas Bartholome and Charlene Denise Bartholome ("Debtor") to value the secured claim of Schools 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 $14,493.86. Proof of Claim, No. 8-1.

Opposition by Schools First Credit Union

On September 4, 2024, Schools First Credit Union filed an Opposition. Dckt. 41. This Opposition was filed untimely. See L.B.R. 9014-1(f)(2), written opposition due fourteen days prior to the September 10, 2024 hearing date. It would be an abuse of discretion to disallow the late filing of the opposition, there being no apparent prejudice to the Movant Debtor. As is well established in the Ninth Circuit, adjudication on the merits is the preferred course of action. The court allows the late filing of the Opposition.

Additionally, the pleadings filed by Debtor and the Opposition and Proof of Claim 8-1 filed by Creditor identify different vehicles that are asserted to be the collateral securing Creditor's Claim. These differences are shown in the chart below:

Debtor's Kelly Blue Book Valuation Report Exhibit A; Dckt. 28		Creditor's Kelly Blue Book Valuation Report Exhibit 4; Dckt. 42
2017 Chevrolet Silverado **1500 Regular Cab**	Vehicle	2017 Chevrolet Silverado **2500 HD Crew Cab**
Work Truck Pickup 2D 8 Ft	Style	**LT Pickup 4 D 61/2 Ft**
130000	Mileage	130000

It appears that the Debtor and the Creditor are valuing different vehicles. Creditor's Loan and Security Agreement (Exhibit 1; Dckt. 42) identifies the vehicle being provided as collateral as "Chevrolet Silverado 2500 HD Cr 2017." On Schedule A/B (Dckt. 1 at 12) Debtor describes the Vehicle as a "Chevy Silverado, 2017."

The hearing on the Motion is continued to 2:00 p.m. on September 24, 2024.

September 24, 2024 Hearing

The court continued the hearing on this Motion after Creditor submitted a late Opposition arguing that the Vehicle in question has a higher market value than Debtor proposed. However, the court noted Creditor and Debtor actually filed valuation for different Vehicles. The court continued the hearing to allow the parties to submit valuations to the court for the correct vehicle. Order, Docket 50. As of the court's review on September 17, 2024, nothing new has been filed with the court.

On September 19, 2024, Debtor filed an *ex parte* Request to "Withdraw" their pending Motion to Value. Docket 51. Debtor having filed an *Ex Parte* Motion to Dismiss the pending Motion to Value; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by SchoolsFirst Federal Credit Union; the *Ex Parte* Motion is granted, Debtor's Motion to Value is dismissed without prejudice, and the court removes this Motion from the calendar. The "Withdrawal" expressly states that Debtor agrees with Creditor's valuation of the Vehicle.

The Motion 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 Motion to Value Collateral and Secured Claim filed by William Douglas Bartholome and Charlene Denise Bartholome ("Debtor") having been presented to the court, Debtor filing an ex parte Motion to dismiss this Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041, 9014(c) which states that Debtor now agrees with Creditor's valuation of the Vehicle, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value is dismissed without prejudice.

7. 24-20837-E-13 DPC-3

TERRI COOK PALACIOS AND JOSE PALACIOS
Leo Spanos

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-20-24 [61]

7 thru 8

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

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 20, 2024. By the court's calculation, 35 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 xxxxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Terri Lashai Cook Palacios and Jose Camacho Palacios' ("Debtors") claimed exemptions under both California and Arizona state laws. Trustee states:

A. Debtors are claiming different state exemptions under Arizona and California law, Ariz. Rev. State § 33 and C.C.P. § 704. Obj. 2:1-3, Docket 61.

B. Schedule C shows that 6255 N. Camino Pimeria Alta property as exempt, for "(Jose Camacho Palacios only)", under Arizona Rev. Stat. §33-1101(A) in the amount of $400,000.00, and the 5273 Cumberland Drive property is exempt, for "(Terri Lashai Cook Palacios only)", under C.C.P. § 704.730(A)(2) for $189,900.00. Obj. 2:4-7, Docket 61.

C. If Debtors reside in separate homesteads, they are only entitled to claim one of the spouses' homesteads as exempt. *Id.* at 2:8-9.

D. Debtors have not stated any authority that they can claim both properties exempt under Arizona Rev. Stat. § 33-1101(A) and C.C.P. § 704.730, or if they are allowed to stack the homestead exemption by claiming both properties exempt with different state statutes. Obj. 2:10-13, Docket 61.

E. In addition to the above claimed exemptions, the Debtors have also duplicated all their community assets, and amounts, on Amended Schedule C, citing all assets are exempt under both Ariz. Rev. Stat. § 33 and C.C.P § 704 exemptions. With the Court's previous ruling, the Debtors' Amended Schedule C does not appear proper and it does not appear that the Debtors are allowed Debtors to stack different state exemption codes for the same community assets using two different states simultaneously. Obj. 2:14-20, Docket 61.

DEBTORS' RESPONSE

Debtors filed a Response to Trustee's Objection on September 8, 2024. Docket 70. Debtors state:

A. Debtors lived at 5228 Whitetail Run Court, Antelope, CA 95843 ("Whitetail property") from July 2007 through December 2021. *Id.* at ¶ 1.

B. In July 2020, the Debtors purchased real property at 6255 N. Camino Pimeria Alta, #114, Tucson, AZ 85718 ("Camino property"). *Id.* at ¶ 5.

C. Debtor Mr. Palacios lives at the Camino Property for work and to be close to their children. *Id.*

D. In February 2022, Debtors purchased real property at 5273 Cumberland Drive, Roseville, CA 95747 ("Cumberland property").

E. Since purchasing it, Debtor Mrs. Palacios lives in the Cumberland Property, visiting the Camino Property occasionally for holidays, weekends, and to see the children. *Id.* at ¶ 10.

F. Debtor Mrs. Palacios satisfies the statutory requirements of 11 U.S.C. § 522 to claim the California homestead exemption in the Cumberland Property. *Id.* at 4:11-5:10.

G. The language of 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."

Because Mrs. Palacios is not seeking a separate homestead exemption, the prohibition under § 704.720(c) does not apply. *Id.* a 5:1-4.

H. Debtor Mr. Palacios satisfies the statutory requirements of 11 U.S.C. § 522 to claim the Arizona homestead exemption in the Camino Property.

I. Under Arizona Rev. Statute § 33-1101(A), Mr. Palacios is entitled to a homestead exemption of $400,000. Arizona Rev. Statute § 33-1101(B) states: "Only one homestead exemption may be held by a married couple or a single person under this section. . ." Because neither Mr. and Mrs. Palacios are seeking another homestead exemption under this section, the homestead exemption is properly claimed here. *Id.* at 5:13-6:5.

DISCUSSION

Federal law allows states to opt out of the federal exemption scheme. 11 U.S.C. § 522(b). 11 U.S.C. § 522(b)(2) and (3)(A) state:

> (b)
>
> > (2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize. . .
> >
> > (3) Property listed in this paragraph is—
> >
> > > (A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place. . .

These two sections read together show the law allows a state to opt out of the federal exemption scheme entirely.

California has made such an election. *See* Cal. Code Civ. P. § 703.130. Therefore, a debtor filing bankruptcy who is domiciled in California must use the California exemptions, including the homestead exemption.

However, this is a unique case where it is asserted that these two debtors, a husband and wife, live in and are domiciled in two separate states, but they are filing jointly in California, which is their right. The venue statute for bankruptcy is broad, providing a potential debtor with various venues. *See* 28 U.S.C. § 1408 (stating venue is proper for a debtor where that debtor is domiciled, resides, or has a principal place of business).

Legal Basis, Analysis, and
Arguments Presented by the Parties

The court is presented with a very interesting and unique argument – two married Debtors who seek to assert that they are each domiciled in different States and can claim double exemptions, one under California Law and the other under Arizona Law.

The legal analysis for each sides position is thin and no evidence has been provided by Debtors for the Opposition.

Determination of Domicile

In this Bankruptcy Case what has been presented to this court is that the two Debtors and their children lived in California from July 2007 through December 2021, except as explained in the following. Opposition, ¶ 1; Dckt 70. In 2019, the Debtors rented property in Arizona and Jose Palacios and their two children moved to Arizona. *Id*.; ¶ 2. Debtors' two children began attending Arizona schools and Debtor Jose Palacios began looking for work in Arizona. *Id*.; ¶ 3.

However, Debtor Terri Palacios continued to work and live in California. *Id*.; ¶ 2.

In July 2020, the two Debtors purchased the 6255 N. Camino Pimeria Alta, #114, Tucson Arizona Property. Debtor Jose Palacios and the two children live in the Arizona Property. *Id*. ¶¶ 5,6.

Debtor Terri Palacios visits the Arizona Property on weekends and other occasions, but "continues to work and reside" in California. *Id*., ¶ 7.

In February 2022, the Debtors purchases the 5273 Cumberland Drive, Roseville California Property, and Debtor Terri Palacios lives there - splitting her time between the Roseville Property and the Arizona Property. *Id*., ¶ 10, 11.

For income taxes, the Debtors have in:

1. 2023 filed taxes in California as Nonresident or Part-Year Residents

2. 2022

    a. filed taxes in California as Nonresident or Part-Year Residents

    b. filed taxes in Arizona as Nonresidents.

What neither the Trustee nor Debtors provide the court is an analysis of the applicable law on several points. The first is how a person's domicile is determined. In *Lew v. Moss*, 797 F.2d 747, 749-750 (9th Cir. 1986), the Ninth Circuit Court of Appeals provides the following discussion on determination of domicile in connection with determining whether there was federal diversity jurisdiction (emphasis added and this court restructuring, shown in the *indented italic text*, the third paragraph to put the nonexclusive list of factors on separate lines for ease of review by the Parties):

> Second, a person is "domiciled" in a location where he or she has established a **"fixed habitation** or abode in a particular place, and **[intends] to remain there permanently or indefinitely**.'" *Owens v. Huntling*, 115 F.2d 160, 162 (9th Cir. 1940) (quoting *Pickering v. Winch*, 48 Ore. 500, 87 P. 763, 765 (1906)); 1 J. Moore,

Moore's Federal Practice para. 0.74(3.-3), at 707.58-60 (1985) [hereinafter Moore's]. . .

Finally, a person's old domicile is not lost until a new one is acquired. *Barber v. Varleta*, 199 F.2d 419, 423 (9th Cir. 1952); see also Restatement (Second) of Conflicts §§ 18-20 (1971) (and examples provided). A change in domicile requires the confluence of (a) **physical presence at the new location** with (b) **an intention to remain there indefinitely**. *See Owens*, 115 F.2d at 162; 13B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3613, at 544-45 (1984 & Supp. 1986) [hereinafter Wright & Miller].

Courts in other jurisdictions have recognized additional principles relevant to our present analysis. The courts have held that the determination of an individual's domicile involves a number of factors (no single factor controlling), including:

> *current residence,*
> *voting registration and voting practices,*
> *location of personal and real property,*
> *location of brokerage and bank accounts,*
> *location of spouse and family,*
> *membership in unions and other organizations,*
> *place of employment or business,*
> *driver's license and automobile registration, and*
> *payment of taxes.*

Wright & Miller, *supra* § 3612, at 529-31 (citing [**8] authorities). *See also Bruton v. Shank*, 349 F.2d 630, 631 n.2 (8th Cir. 1965); *S.S. Dadzie v. Leslie*, 550 F. Supp. 77, 79 n.3 (E.D. Pa. 1982); *Mizell v. Eli Lilly & Co.*, 526 F. Supp. 589, 592-93 (D. S.C. 1981); *Griffin v. Matthews*, 310 F. Supp. 341, 342-43 (M.D. N.C. 1969), aff'd, 423 F.2d 272 (4th Cir. 1970). The courts have also stated that domicile is evaluated in terms of "objective facts," and that "'statements of intent are entitled to little weight when in conflict with facts.'" *Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553, 556 (5th Cir. 1985) (quoting, *Hendry v. Masonite Corp.*, 455 F.2d 955, 956 (5th Cir.), cert. denied, 409 U.S. 1023, 93 S. Ct. 464, 34 L. Ed. 2d 315 (1972)); Korn v. Korn, 398 F.2d 689, 691-92 n.4 (3rd Cir. 1968).

In 2024, the Ninth Circuit reviewed the concept of domicile, again noting that it has both a physical and subjective intent requirement, stating:

> "'Domicile' is, of course, a concept widely used in both federal and state courts for jurisdiction and conflict-of-law purposes, and its meaning is generally uncontroverted." *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 104 L. Ed. 2d 29, 109 S. Ct. 1597 (1989). "A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return." *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citing Lew v. Moss, 797 F.2d 747, 749 (9th Cir. 1986)). "A person residing in a given state is not necessarily domiciled there . . . ." *Id*. A person generally assumes the domicile of his or her parents, and she may have only one domicile at a time. *See Lew*, 797 F.2d at

750-51. Domicile may be changed by being physically present in the new jurisdiction with the intent to remain there. *See Mississippi Band*, 490 U.S. at 48; Kanter, 265 F.3d at 857. Thus, domicile includes a subjective as well as an objective component, although the subjective component may be established by objective factors.

Von Kennel Gaudin v. Remis, 379 F.3d 631, 636-637 (9th Cir. 2004).

The distinction between "residence" and "domicile" for purposes of 11 U.S.C. § 522 is discussed in 4 Collier on Bankruptcy (16th Edition) ¶ 522.06, which includes:

> "Domicile" as used in section 522 means more than mere residence.[16] Although domicile and residence are often loosely used as synonymous terms, the specified reference to each in the Code[17] indicates an intention to maintain a legal distinction between them. The residence of a debtor may be nothing more than a place of sojourn. While ordinarily used in a sense of fixed and permanent abode, as distinguished from a place of temporary occupation, the term "residence" does not include the intention required for domicile. Domicile means actual residence coupled with a present intention to remain there.[18] It is the place where one intends to return when one is absent and where one's political rights are exercised. Mere physical removal to another jurisdiction without the requisite intent is insufficient to effect a change of domicile. The fact that the debtor, therefore, has resided elsewhere during the 730-day period will not defeat the applicability of the law of the state where the debtor keeps the principal home.[19] It may be, however, that under the laws of the state of the debtor's domicile that the debtor must also reside within the state to obtain its exemption privileges.[20]
>
> . . .
>
> The facts on which the question of domicile will be decided are those existing at the time of the filing of the petition and a subsequent change by the debtor will have no effect upon this determination.[26]

[16] The determination of the debtor's domicile is governed by federal common law. *See Farm Credit Bank of Wichita v. Hodgson (In re Hodgson)*, 167 B.R. 945 (D. Kan. 1994) (federal law applies in order to insure uniform nationwide application of bankruptcy laws); *In re Mendoza*, 597 B.R. 686, 688 (Bankr. S.D. Fla. 2019) (citing Treatise); *see also Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989) (term "domicile" in federal statute shall be interpreted under federal law absent clear expression by Congress that state law definition is applicable).

[17] See 11 U.S.C. § 101.

[18] *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); *see also Lowenschuss v. Selnick (In re Lowenschuss)*, 171 F.3d 673, 684, 41 C.B.C.2d 1049 (9th Cir. 1999) (debtor satisfied both physical presence and intent requirements for establishing domicile), *cert. denied*, 528 U.S.

877, 120 S. Ct. 185, 145 L. Ed. 2d 156 (1999); *In re Mendoza*, 597 B.R. 686 (Bankr. S.D. Fla. 2019) (noncitizen debtors who were lawfully residing in Florida and intended to permanently reside there if their asylum application was granted were domiciled in Florida).

[19] *In re Porvaznik*, 456 B.R. 738 (Bankr. M.D. Pa. 2011) (debtor's domicile remained unchanged even though she resided during the 730-day period in another state where her husband was stationed as a member of the military); *Smith v. Wellberg (In re Wellberg*), 4 C.B.C.2d 1007, 12 B.R. 48 (Bankr. E.D. Va. 1981) (domicile is not affected or changed by entry into the armed forces).

[20] *See In re Chandler*, 362 B.R. 723 (Bankr. N.D. W. Va. 2007) (debtor may claim federal exemptions because Georgia opt-out statute is not applicable to nonresidents); *In re Volk*, 7 C.B.C.2d 1096, 26 B.R. 457 (Bankr. D. S.D. 1983). (debtors who were nonresidents of South Dakota were not prohibited from claiming exemptions under the federal exemption system because the South Dakota opt-out provision provided only that residents of South Dakota were barred from claiming exemptions under section 522(d)); *see also In re Calhoun*, 47 B.R. 119 (Bankr. E.D. Va. 1985) (debtors' interest in real estate in Kansas under installment purchase agreement was a real property interest under Kansas law, and to claim that interest as exempt, they must comply with Virginia exemption statute, which required recording of homestead deed in county where the property was located).

. . .

[26] *White v. Stump*, 266 U.S. 310, 45 S. Ct. 103, 69 L. Ed. 301 (1924).

4 Collier on Bankruptcy P 522.06

While presented with arguments, the court has not been presented with objective evidence, buy either party, to make the determination of the domicile of each of the two Debtors.

Both California and Arizona Law provide that if a judgment debtor is married, one homestead exemption may be claimed.

Arizona Revised Statute 33-1101. Homestead exemptions; persons entitled to hold homesteads; annual adjustment [emphasis added]

A. Any person the age of eighteen or over, married or single, who resides within the state may hold as a homestead exempt from attachment, execution and forced sale, not exceeding $400,000 in value, any one of the following:

1. The person's interest in real property in one compact body upon which exists a dwelling house in which the person resides.

2. The person's interest in one condominium or cooperative in which the person resides.

3. A mobile home in which the person resides.

> 4. A mobile home in which the person resides plus the land upon which that mobile home is located.
>
> B. **Only one homestead exemption may be held by a married couple or a single person under this section.** The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed $400,000 in value.

Debtors read this statute to say that one homestead exemption may be claimed under this Code section (Statute) and a second homestead exemption may be claimed under another statute or law. No case law, legislative history, or statutory analysis is provided for this interpretation. Alternatively, this statute could possibly be read to say that under this statute, a married couple may claim one homestead exemption if they seek to claim it under this Arizona statute.

> California Code of Civil Procedure § 704.720. Exemption from sale; Exemption of sale proceeds or indemnification [**emphasis** added]
>
> (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.
>
> . . .
>
> (c) **If 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.

California Code of Civil Procedure § 703.140, which provides for the California exemptions to apply in bankruptcy cases, provides [**emphasis** added]

> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision
>
> (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:
>
> > (1) **If spouses are joined in the petition**, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

In *Talmadge v. Duck*, 832 F.2d 1120 (9th Cir. 1987), the Ninth Circuit Court of Appeals reviewed the California statutes which provide that for joint debtors there can be only one set of exemptions, and the joint debtors cannot "double up" on the exemptions. The Ninth Circuit's decision includes:

Section 703.140 is modeled on 11 U.S.C. § 522. However, unlike the guarantee in subsection 522(m), section 703.140 does not provide that joint debtors may each claim their own exemptions; it is silent as to whether a married couple is limited to a single set of exemptions. The only affirmative limitation of this kind is found in section 703.110, enacted prior to both sections 703.130 and 703.140, which provides:

> Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount . . . .

The primary issues in this case are whether California has in fact, via section 703.110, limited married debtors to a single set of exemptions, and if it has, whether the scheme adopted is constitutionally valid. We review the district court's conclusions of law *de novo*. *See Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986).

. . .

The relevant provisions are reproduced below, and the allegedly contradictory language is underscored. Section 703.110 provides in pertinent part:

> Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.

Section 703.140(a)(1) provides:

> If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

. . .

The ordinary meaning of "jointly may elect" seems to be simply that husband and wife must come to an agreement on whether or not to choose the exemptions listed in subsection 703.140(b). There would have to be agreement between the husband and [**10] wife because section 703.110 specifically limits the two spouses to one set of exemptions. Any other reading would make section 703.110 a nullity. Moreover, the Senate Legislative Committee Comment to the underscored language in section 703.110 explains that "this new sentence makes clear how the exemption scheme works with respect to married persons." (Emphasis added). The general language in section 703.110, therefore, was intended to modify all of California's exemption statutes which do not specifically express a contrary intent.

In re Talmadge, 832 F.2d at 1123-1124.

On this statutory language, the court is presented with the question that in light of the married Debtors electing to file bankruptcy in California, for Debtor Terri Palacios desiring to claim a homestead exemption pursuant to California Code of Civil Procedure § 703.140, then joint Debtor Jose Palacios must "jointly may elect to utilize the applicable exemption provisions of [Chapter 7 of the California Code of Civil Procedure]."

This separate residing of spouses is discussed in 8 WITKIN CALIFORNIA PROCEDURE 6TH ENFORCEMENT OF JUDGMENTS § 248 (2024), stating:

> (3) Effect of Spouses Residing Separately. If a judgment debtor and the debtor's spouse reside in separate homesteads, only one homestead is exempt and only the proceeds of the exempt homestead are exempt. (C.C.P. 704.720(c).) (On application of exemptions to marital property, see C.C.P. 703.110, supra, § 199.)

SEPTEMBER 24, 2024 HEARING

Based on the pleadings filed to date, the court has not been presented with the legal authorities and analysis for the legal conclusions, and the evidence for the court to make necessary factual objective and subjective (which must be based on objective evidence) factual findings to determine where the Debtors are domiciled and whether there may be two different sets of statutory exemptions claimed in this Bankruptcy Case.

At the Hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to 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 **xxxxxxx**

8.	**24-20837-E-13 JLL-2**	**TERRI COOK PALACIOS AND JOSE PALACIOS** **Leo Spanos**	**CONTINUED MOTION TO CONFIRM PLAN** **7-16-24 [46]**

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 denied.

September 24, 2024 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the Trustee's Objection to Claimed Exemptions.

At the hearing, **xxxxxxx**

The court having sustained the Objection to Exemptions, the Motion to Confirm is denied.

REVIEW OF THE MOTION

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.

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.

At the hearing, counsel for the Trustee reported that the hearing on the Objection to Exemptions is set for 2:00 p.m. on September 24, 2024.

The hearing on the Motion to Confirm is continued to 2:00 p.m. on September 24, 2024, to be conducted in conjunction with the hearing on the Objection to Exemptions.

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 denied.

9. 24-22941-E-13 DPC-1 — CYNTHIA MILLER, Gabriel Liberman — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 8-21-24 [24]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 21, 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 Cynthia Denise Miller did not appear at the 341 Meeting held on August 15, 2024. Trustee mistakenly stated the original Meeting was held on January 4, 2024. Obj. 1:25-28, Docket 24. The 341 Meeting has been continued to October 3, 2024.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 26.

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).

However, the Trustee's September 20, 2024 Docket Entry Report states that the Debtor and Debtor's counsel did attend the continued 341 Meeting on September 19, 2024, and that the Meeting has been concluded.

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.~~

10. 23-22845-E-13 PGM-3 | **GEORGENE HICKS AND RICARDO ESPARZA** | **CONTINUED MOTION TO MODIFY PLAN**
Peter Macaluso | **7-4-24 [137]**

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

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

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

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

The Motion to Confirm the Modified Plan is xxxxxxx.

September 24, 2024 Hearing

The court continued the hearing to allow Debtor to make a lump sum $30,000 payment that can go toward sufficiently curing the post-petition arrearage. The parties agreed to a continuance to afford Debtor the opportunity to get the cure payment made, and the order granting the Motion and order confirming the Chapter 13 Plan. Order, Docket 155.

A review of the Docket on September 20, 2024 show that nothing further has been filed with the court concerning the required $30,000 payment.

At the hearing, xxxxxxx

REVIEW OF THE MOTION

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

The Modified Plan provides for having paid a of total of $54,000.00 through June 2024, and commencing plan payments of $6,000 per month for 50 months beginning July 25, 2024. Modified Plan § 7, Docket 141. The Modified Plan also calls for a lump sum payment of $30,000.00 to be made on or before August 25, 2024. *Id.* 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 6, 2024. Docket 147. Trustee opposes confirmation of the Plan on the basis that:

A. It appears Debtor is paid ahead by $3,000, so Trustee requests the amount paid be clarified in the order confirming. Opp'n 1:25-2:2, Docket 147.

B. The trustee is unable to fully assess the feasibility of the plan or effectively administer the Plan, the Modified Plan failing to specify the correct post-petition arrearage amount. *Id.* at 2:3-13.

C. Debtor does not clearly explain the need for the modification or what led to the delinquency. *Id.* at 2:14-22.

D. The Certificate of Service (Docket 142) shows service was accomplished on 07-04-2024 but does not list supplemental Schedules I & J as a document that was served on interested parties. *Id.* at 2:23-3:2.

DEBTOR'S RESPONSE

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

1. Debtor is current through August of 2024. *Id.* at ¶ 1.

2. Debtor believes the lump sum payment of $30,000 is sufficient to cover any post-petition arrearage and can be clarified in the Order confirming. *Id.* at ¶ 2.

3. Debtor was unsure that they would be successful reversing the foreclosure, and saved the funds for reconciliation with the Trustee's payments when due. *Id.* at ¶ 3.

4. Debtor served the Supplemental Schedules I & J, but counsel inadvertently failed to list service of these documents on the Proof of Service. Counsel

will file a Certificate of service to show they were served on July 4, 2024. *Id.* at ¶ 4.

DISCUSSION

Debtor has addressed much of Trustee's concerns. In confirming the amount paid through the Plan to date, at the hearing, counsel for the Trustee reported that the Debtor is current through July 2024, however, the $30.000.00 cure payment has not yet been made by Debtor.

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

The court's calculation shows that, under the terms of the original Plan, Debtor would have paid $91,200 through August of 2024 (including $33,000.00 paid through November 2023, $3,000 paid in December 2023, then eight monthly payments of $6,900 through August of 2024). Plan § 7, Docket 81. The proposed Modified Plan shows Debtor having paid $96,000 through August of 2024, with subsequent monthly payments dropping to $6,000 (including $54,000.00 being paid through June 2024, payments of $6,000 commencing in July of 2024 and continuing for 50 months, and a lump sum payment of $30,000 in August of 2024). Modified Plan § 7, Docket 141.

In confirming the $30,000 lump sum payment can go toward sufficiently curing the post-petition arrearage, at the hearing, the Debtor and Trustee agreed to continue the hearing to 2:00 p.m. on September 24, 2024, to afford Debtor the opportunity to get the cure payment made, and the order granting the Motion and order confirming the Chapter 13 Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Georgene Francis Hicks and Ricardo Esparza, Jr. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **XXXXXXX**.

11. 24-23945-E-13 MET-1 | **MASARU JACKSON** **Mary Ellen Terranella** | **MOTION TO EXTEND AUTOMATIC STAY** **9-9-24 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on September 9, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Masaru Jackson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 23-22603) was dismissed on August 14, 2024, after Debtor became delinquent under the terms of the Plan in that case. *See* Order, Bankr. E.D. Cal. No. 23-22603, Dckt. 54, August 13, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed as Debtor was struggling financially while caring for her granddaughter after her daughter passed away in 2020. Decl. 2:6-9, Docket 10. Furthermore, Debtor's wife passed away three years ago, and she used to handle all the financial books for the family. *Id.* at 2:10-11. Since the previous dismissal, Debtor has enlisted his adult son for help, who has helped him tremendously. *Id.* at 2:17-23. Debtor's son is helping him straighten out bank accounts, organize filings of bills, and provide other assistance. *Id.* at 2:17-22. Debtor is now in a position to successfully prosecute a Chapter 13 case.

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 was struggling with grief and learning to balance his finances during the prior case, and now, Debtor has the help of his son to meaningfully prosecute this case. Debtor has a Plan on file that appears feasible on its face. Docket 3.

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 Masaru Jackson ("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.

12. 24-22957-E-13 DPC-1 | **PAUL MARTIN** / **Mary Ellen Terranella** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK** **8-22-24 [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 22, 2024. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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 Paul Scott Martin has failed to attach a statement for property or business income in response to Schedule I, Line #8a. Obj. 2:1-4, Docket 14.

2. Debtor has also failed to provide business documents requests by the Trustee, including a business questionnaire, six months of financial statements, six months of profit and loss statements, and two years of most recent tax returns for Debtor personally and for all corporations and LLCs/LLPs. *Id.* at 2:5-17.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 16.

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. Questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements, and
D. Six months of bank account statements.

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.

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).

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. 22-21966-E-13 TBG-3 | **JUDITH MOSHER** | **MOTION FOR HARDSHIP DISCHARGE**
Stephan Brown | **8-29-24 [55]**

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 29, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion for Entry of Hardship Discharge 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 Entry of Hardship Discharge is granted.

Judith Ann Mosher ("Debtor") moves for entry of a hardship discharge on the grounds that she has stage 4 (metastic) cancer and has been transitioned into hospice care. Mot. 2:4-5, Docket 55. Debtor most likely will not live for the full duration of the Chapter 13 plan term. *Id.* at 2:6-7. As such, Debtor is unable to complete payments on her confirmed Chapter 13 Plan.

Debtor further explains that the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the Debtor had been liquidated under Chapter 7. *Id.* at 2:21-4:2. Finally, Debtor certifies that 11 U.S.C. § 521(q)(1) is not applicable here, and there is no pending proceeding in which the Debtor may be found guilty of a felony of the kind described in § 521(q)(1)(A) or liable for a debt of the kind described in § 521(q)(1)(B). Mot. 4:20-23, Docket 55.

Debtor further states in the Motion that on August 19, 2024, Debtor's daughter Karly McCrory transferred $2,407.99 to Debtor's account so she could pay off the remaining balance due to her Chapter 13 plan, plus the $7.99 TFS processing fee. *Id.* at 2:8-10.

Debtor submits her Declaration in support. Docket 59. She testifies to the facts alleged in the Motion.

Debtor's daughter, Ms. McCrory, submits a Declaration as well, testifying she has made the payment sufficient to complete the Plan. Docket 57.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a Response on September 10, 2024. Docket 61. Trustee states he does not oppose the Motion, but an additional $46.71 is needed to pay attorney fees where unsecured creditors received their payment.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

> Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if–
>
> > (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
> >
> > (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
> >
> > (3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g.*, *In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden or proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). "Unsubstantiated and conclusory statements" about a debtor's inability to afford plan

payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g.*, *In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a "debtor is justly accountable for the plan's failure." *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;

B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;

C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;

D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;

E. Whether the debtor had control, direct or indirect, of the intervening event or events; and

F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id.

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event "such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments." *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) "requires that the circumstances leading to the debtor's failure to make payments be beyond the debtor's control." *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be "truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability." *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the "best interests" test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan "is not 'practicable' if there is no source of income to fund the modified plan." *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that "[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan." *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, "the availability of case closure does not eliminate a bankruptcy court's duty to ensure that a debtor complies with the Bankruptcy Code's 'best interests of creditors' test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan." *Id.* The Ninth Circuit found explicitly that a "bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter." *Id.*

DISCUSSION

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a clear catastrophe in Debtor's life that prevents Debtor from complying with and completing the Plan. The evidence before the court shows that Debtor's cancer has spread throughout her body, being transitioned to hospice, and Debtor cannot be expected to continue making payments or modify her Plan. Moreover, Debtor's daughter has submitted a payment sufficient to complete the Plan. The Motion 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 for Entry of a Hardship Discharge 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 for Entry of Hardship Discharge is granted, and the court shall enter a "hardship" discharge pursuant to 11 U.S.C. § 1328(b) for Judith Ann Mosher in this case based on the Plan as performed as of the September 24, 2024 hearing date on this Motion.

14. 24-21068-E-13 SK-1 | **DESIREE LEWIS** **Sunita Kapoor** | **CONTINUED MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS INC.**

14 thru 16 | **4-19-24 [36]**

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 Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on April 19, 2024. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

At the prior hearings, the court waived the requirement to use the Certificate of Service for this Motion.

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 Real Time Resolutions, Inc. ("Creditor") is xxxxxxx.

September 24, 2024 Hearing

The court continued the hearing on this Motion from the hearing held on May 21, 2024. Order, Docket 97. The court continued the hearing to allow Debtor to put together an appraisal report of her residence, the Property. Debtor was to transmit a copy of the appraisal report to Creditor on or before July 25, 2024. *Id.* Debtor was then to file and serve supplemental pleadings on or before August 8, 2024. *Id.* Creditor was to file and serve any supplemental reply pleadings on or before August 30, 2024. *Id.*

On August 17, 2024, Creditor filed an *ex parte* Motion seeking a continuance of the hearing on this Motion from the originally scheduled September 10, 2024 date. Docket 114. On August 23, 2024, the court issued an Order setting the hearing on this Motion for September 24, 2024, granting that *ex parte* Motion. Docket 119.

DEBTOR'S APPRAISAL

On August 8, 2024, Debtor complied with her court-ordered time line and submitted her valuation report with the court in the form of a Declaration. Docket 112. Bernard Burks is the appraiser, testifying that he is a licensed real estate broker and state certified general appraiser with over 40 years of experience. *Id.* at ¶ 1. He continues to testify about some of the work he has done over the years in the industry, authenticating his status as an expert. Mr. Burks further testifies he has personally inspected the Property and arrived at his valuation in accounting for obvious repairs that the Property requires. *Id.* at ¶ 4. Mr. Burks gives his ultimate conclusion that the Property has a true fair market value of $334,000. *Id.* at ¶ 8.

The court has read the attached appraisal report ("Report") and examined the comparables provided. The comparable properties are :

1. 4400 Cornfield Way Elk Grove, CA 95758 ("Comparable 1");

2. 4413 Cornfield Way Elk Grove, CA 95758 ("Comparable 2");

3. 5018 Gopherglen Ct Elk Grove, CA 95758 ("Comparable 3");

4. 5813 Laguna Quail Way Elk Grove, CA 95758 ("Comparable 4"); and

5. 4817 Laguna West Way Elk Grove, CA 95758 ("Comparable 5").

Report13-14, Docket 112. All of the comparables have a fair market value ranging from $550,000 to $598,000. The condition provided for the comparables is designated as "C3." According to the Report, C3 indicates: "[t]he improvements are well maintained and feature limited physical depreciation due to normal wear and tear. Some components, but not every major building component, may be updated or recently rehabilitated. The structure has been well maintained." Report at 9, Docket 112.

However, Debtor's Property is given a C5 designation. C5 indicates: "[t]he improvements feature obvious deferred maintenance and are in need of some significant repairs. Some building components need repairs, rehabilitation, or updating. The functional utility and overall livability is somewhat diminished due to condition, but the dwelling remains useable and functional as a residence." *Id.* This C5 designation is where Mr. Burks makes a major deviation in the valuation from the comparables. Mr. Burks adjusts the value of the Property by ($224,000) due to the C5 condition.

Photographs of the Property are included. *Id.* at 27-28. There appear to be no major discernible defects in the Property apparent from the photographs. The court addressed below the photographs which are identified as those showing damage or necessary repairs.

Finally, attached to the Report is an "Estimate of Repair Costs" that the court has already seen. *Id.* at 31-32. The estimate is in the amount of $224,740, which closely mirrors the adjustments Mr. Burk made in his valuation. The "detailed" information about the necessary repairs and maintenance is stated as:

> May 10, 2024 INDOOR AND OUTDOOR REMODEL, CORRECTIONS AND UPGRADES. Scope: Interior paint, electrical, flooring, stucco, landscaping, roof, windows, both bathrooms Six year warranty on all workmanship and installation throughout. All projects to be permitted and documented to history of home. This work will be complete

Appraisal Report, Attached titled Estimate of Repair Cost; Dckt. 112 at 31.

No declaration of the person who has computed the $224,740.00 in the Remodel, Corrections, and Upgrades costs is provided.

As clearly stated in the above, this $224,740 is not only to make some unspecified necessary repairs, but to Remodel the House and make Upgrades. In his Declaration, Bernard Burks states that he has determine that there are "[s]everal defects, damages and serious deferred maintenance issues which must be disclosed and considered in determining a proper fair market value of the subject property." Dec., ¶ 7; Dckt. 112. However, Mr. Burks does not provide a description of those several defects, damages and deferred maintenance issues in his Declaration.

In the Appraisal Report, Mr. Burks states that he has adjusted the value of the comparables by ($224,000) based on the contractor's estimate. Appraisal Report, pg. 8 of 32; Dckt. 112 at 14. But as noted above, that estimate is not "merely" for the necessary repairs and deferred maintenance, but for Remodeling the house and making Upgrades to the house.

Mr. Burks has provided pictures of the Property as part of his Appraisal Report. Most are titled the portion of the Property being shown in the picture. There are thirty-six (36) pictures of the Property. Appraisal, pp. 19-22; Dckt. 112.

Most of the pictures provided are small and of low resolution quality. So, to view them for the "damage" identified, the court has to enlarge them, which impacts the quality of the pictures. Of these thirty-six pictures, the follow are identified with working indicating a correction or repair is required:

A. Picture titled "Exposed Wiring," p. 22 of 32; Dckt. 112.

   1. This picture appears to show a portion of the ceiling where there is an access to the attic. On the ceiling there appear to be a light fixture and a fire/smoke/carbon monoxide alarm that have their covers removed and need to be replaced. There does not appear to be any "exposed wiring."

B. Second picture titled" Exposed Wiring," *Id*.

   1. There appears to have been a ceiling light fixture that had been removed and the wiring for it left dangling from the wiring box.

C. Picture titled "Damaged Counter Tops," *Id*., p. 22 of 32.

1. This picture shows the kitchen counter top that is damaged and the decorative cover layer (it appearing to be a vinyl counter top and not a granite or slate like material) is pealing away. Clearly the counter top needs to be replaced. There is only one section of the kitchen counter tops shown, so it may be that only one part needs to be replaced, but more likely the entire kitchen counter tops.

D. Picture titled "Mole and Water," *Id*.

1. This picture shows the cabinet area under the sink. There appears to be a wet towel covering most of the bottom of the cabinet. The area looks "messy," but the photograph does not clearly shown damaged areas. There are some darkened areas at the bottom of the cabinet.

E. Picture titled "Ceiling Repair Needed," *Id*.

1. This picture shows a portion of the ceiling, a ceiling fan, the wall of the room, and some items in the room. However, there are no identifiable damages appearing or marked in the picture.

CREDITOR'S RESPONSE AND STATUS REPORT

Creditor complied with its respective time line and submitted a Declaration in response on August 22, 2024. Docket 117. The Declaration is from Mr. Scott Burton, Creditor's licensed real estate appraiser. Mr. Burton Testifies he has personally inspected the Property, compared the Property with comparable units in the area, and arrived at an ultimate valuation of $545,000. *Id.* at ¶¶ 3-4.

Mr. Burton further responds to Debtor's valuation report. He clarifies that his response in this Declaration is not a formal appraisal review, but is only a discussion of differences of methodology and to provide support for the opinion of Mr. Burton's original appraisal. He states that Debtor's appraisal relies on the remodel bid, but the Property does not need to be remodeled to be habitable and acceptable on the market. Debtor's appraiser has not provided any market support for the blanket adjustment he made, not showing that the comparables are in a similar condition. Mr. Burton states his original valuation of $545,000 is therefore the better valuation.

On September 22, 2024, Creditor submitted a Status Report with the court. Docket 122. Creditor states live testimony will be necessary in this matter, and provides dates its appraiser can be valuable to testify. Although the parties met to try and resolve the Valuation Motion and Objection to Confirmation, it does not appear that a resolution is in prospect, so Creditor asks that the hearing on the Motion to Confirm be continued until the Motion to Value is resolved. *Id.* at 2:21-25. Creditor requests the court set a date for live testimony at the September 24, 2024 hearing.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The Motion to Value filed by Desiree Rebecca Lewis ("Debtor") to value the secured claim of Real Time Resolutions, Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 39.

Creditor's Claim, Proof of Claim 2-1, is asserted to be secured in the amount of $203,473.33, and in second position.

Debtor is the owner of the subject real property commonly known as 4822 Mission Beach Court, Elk Grove, Ca 95758 ("Property"). Debtor seeks to value the Property at a fair market value of $320,000 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).

Debtor testifies that the valuation is proper because there are extensive repairs necessary to fix the Property. Declaration, Docket 39 ¶ 5. Debtor also attaches 14 Exhibits to her Declaration, each being an estimate obtained for the repairs and renovations, totaling $224,740.

The Chapter 13 Trustee, David Cusick, filed a nonopposition on May 7, 2024, also noting the Certificate of Service form issue. Docket 48.

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

OPPOSITION

Creditor filed an Opposition on May 1, 2024. Docket 48. Creditor disputes the valuation and asks this court for a continuance so it can obtain its own valuation. *Id.* at p. 3:3-7. Creditor states the websites Trulia and Zillow list a value of $597,600, and Redfin lists a value of $604,851 in the Property. *Id.* at p. 3:15-16. If these valuations are correct, there would be equity in the Property to secure Creditor's claim.

Creditor also disputes some of the invoices for repairs, arguing that some of the invoices actually constitute upgrades, not mere repairs. *Id.* at n. 2.

REPLY

Debtor filed a Reply on May 15, 2024. Docket 81. Debtor states there should not be a continuance as Creditor performed the appraisal on May 10, 2024. *Id.* at p. 5:22-28. Debtor again affirms her position that the Property is properly valued at $320,000 due to extensive repairs.

Debtor also appears to allege that Creditor's loan was part of a predatory lending practice that resulted in Countrywide Home Loans ("Countrywide") being sued for billions of dollars in 2008. According to this argument, Bank of America bought Countrywide, but Debtor's loan was modified in 2008 during the time of the lawsuit. Bank of America sent Debtor a letter in 2012 stating they had transferred Creditor's claim to Creditor. Creditor appears to be representing itself as an agent for Countrywide's RRA CP TRUST 2.

DISCUSSION

As an initial matter, if Debtor wishes to object to Creditor's Claim for being part of a predatory lending scheme, then Debtor must serve and set for hearing an Objection to Claim. Such allegations are not helpful or relevant in determining the amount of the secured claim for purposes of this Motion to Value. The Motion to Value and determination of Creditor's secured claim is based entirely on the valuation of the Property, not on any alleged predatory lending practices.

The senior in priority first deed of trust held by SPS Mortgage (Select Portfolio Services) secures a claim with a balance of approximately $325,999.22. Amended Schedule D, Docket 34. No Proof of Claim has yet been filed for SPS Mortgage's Claim. Creditor's second deed of trust secures a claim with a balance of approximately $203,473.33. *Id*. Therefore, Creditor's claim secured by a junior deed of trust would be completely under-collateralized if this Motion were granted.

With respect to Debtor's assertion that since creditor began the process on April 23, 2024 by contacting Debtor's Counsel, and does not have it done by May 15, 2024, the hearing should not be continued is without merit. The right to discovery exists in every contested matter. Fed. R. Bankr. P. 9014(c).

The court also notes that Debtor and Debtor's counsel appear to seek to blow a "simple" motion to value secured claim into nuclear litigation attacking the claim. All that is before the court is to determine the amount of the secured claim - i.e., the value that exists for Creditor's lien.

Setting Discovery and Supplemental Briefing Schedule

Creditor having conducted an appraisal, the Debtor requested that additional time be provided for discovery for Debtor to obtain an appraisal. The court sets the following Schedule for the additional discovery and filing of supplemental pleadings:

1. Debtor's appraisal to be completed and a copy sent to Creditor's counsel on or before July 25, 2024, to allow the Parties to address the valuation issue prior to having to file supplemental pleadings.

2. Debtor's supplemental pleadings, including the appraisal and supporting declaration, shall be filed and served on or before August 8, 2024.

3. Creditor's supplemental reply pleadings shall be filed on or before August 30, 2024.

4. The hearing on the Motion to Value is continued to 2:00 p.m. on September 10, 2024.

The court shall issue a separate order continuing the hearing on Debtor's Motion to Confirm Second Amended Plan to 2:00 p.m. on September 24, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value the Secured Claim of Real Time Resolutions, Inc. ("Creditor") filed by Debtor Desiree Lewis 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 Value the Claim of Creditor is **XXXXXXX**.

15. 24-21068-E-13 RMP-2 | **DESIREE LEWIS** **Sunita Kapoor** | **CONTINUED OPPOSITION /OBJECTION TO MOTION TO CONFIRM PLAN BY REAL TIME RESOLUTIONS, INC. 5-14-24 [68]**

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) 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, 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 x:xx p.m. on xxxx, 2024.

September 24, 2024 Hearing

The court continued the hearing on this Objection pending the resolution of the related Motion to Value. A review of the Docket on September 19, 2024 reveals that nothing new has been filed with the court under this Docket Control Number.

At the hearing, **xxxxxxx**

REVIEW OF THE 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 of Plan, which is deemed to be an Opposition to Debtor's Motion to Confirm the First Amended Chapter 13 Plan, will be heard in conjunction with the Motion to Confirm at x:xx p.m. on xxxx, 2024.

16. 24-21068-E-13 SK-2 | **DESIREE LEWIS** **Sunita Kapoor** | **CONTINUED MOTION TO CONFIRM PLAN AND/OR MOTION FOR COMPENSATION FOR SUNITA KAPOOR, DEBTORS ATTORNEY(S) 5-10-24 [63]**

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, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on June 10, 2024. However, the court assumed this to be a clerical error, where Movant meant to type in May 10, 2024, the date the pleadings were filed. By the court's calculation, 39 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). The defaults of the non-responding parties and other parties in interest are entered.

The Hearing on the Motion for Confirmation and Allowance of Professional Fees is continued to x:xx p.m. on xxxx, 2024.

September 24, 2024 Hearing

The court continued the hearing on this Motion pending the resolution of the related Motion to Value. A review of the Docket on September 19, 2024 reveals that nothing new has been filed with the court under this Docket Control Number.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Debtor Desiree Rebecca Lewis ("Debtor") seeks confirmation of the Amended Plan. The Amended Plan provides for 36 monthly payments of $500 each. Amended Plan, Docket 65. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 3, 2024. Docket 98. Trustee opposes confirmation of the Plan on the basis that:

A. There is a slight delinquency under the terms of the Amended Plan in the amount of $98, likely due to increasing the plan payment from $402 to $500. *Id.* at 2:5-14.

B. The Plan has not been signed by the Debtor in violation of Local Bankruptcy Rule 9004-1(c)(1)(B). *Id.* at 2:16-23.

C. Plan relies on the accompanying Motion to Value. *Id.* at 2:24-28.

D. Debtor states all assets are exempt, but the Trustee does not agree. *Id.* at 3:1-10.

E. There are issues with the attorney's fees where Debtor's attorney accepted $3,000 as a flat rate prior to filing, which may be in violation of Local Bankruptcy Rule 2016-1(c). *Id.* at 3:11-16.

CREDITOR'S OPPOSITION

Real Time Resolutions ("Creditor") holding a secured claim filed an Opposition on May 17, 2024. Docket 84. Creditor opposes confirmation of the Plan on the basis that:

1. Creditor is not adequately protected. Creditor has a second position deed of trust on 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. 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.

2. On the filing date, Creditor was owed a total claim of $203,473.33 on the matured loan. Around May 10, 2024, Debtor filed the 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). *See* Plan, Docket 65. Debtor's monthly disposable income is $898.83, of which Debtor only proposes to pay $500.00 per month into the Plan for 36 months. In order to pay Creditor's fully-matured lien, Debtor must pay an additional $5,652.04 into the Plan monthly ($203,473.33/36 months). Opp'n 3:25-28, Docket 84.

3. Debtor appears to be incapable of reorganization. Debtor must show it can avoid Creditor's lien to make this Plan feasible, but Debtor is unable to do so. *Id.* at 4:2-13.

At the hearing, **xxxxxxx**

DISCUSSION
Delinquency

The Chapter 13 Trustee asserts that Debtor is $98 delinquent in plan payments, which represents less than a month of the $500 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's Signature

Local Bankruptcy Rule 9004-1(c) provides:

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

Trustee alleges that Debtor has not signed the Plan, in violation of this rule. The Plan cannot be confirmed without Debtor's signature.

Debtor's Reliance on Motion to Value Secured Claim

The dark horse in Debtor's Plan is that it relies on the court valuing the secured claim of Creditor. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). At the hearing, **xxxxxxx**

PREVIOUS CONTINUANCE

The court by prior order has continued the hearing on this Motion to Confirm the First Amended Chapter 13 Plan to 2:00 p.m. on September 24, 2024. The Motion also requests that the court approve a $3,000 no-look (fixed) fee for Debtor's counsel, all of which has been paid in full prior to confirmation. The orders confirming Chapter 13 Plan include the documentation that no-look fees for a debtor's counsel as provided in Local Bankruptcy Rule 2016-1(c)(1) are authorized.

However, Local Bankruptcy Rule 2016(c)(3), (4) require that no more than 25% of the no-look fee may be paid to counsel up front, and that 75% of the fee is then amortized on the term of the Plan.

The Local Rules relating to Chapter 13 debtor attorney's fees were amended in 2023 and the current 25% and 75% requirements put into place. Additionally, the fixed fee agreed to by the attorney is the fee for performing all of the legal work in the case, and an attorney agreeing to a fixed fee cannot seek additional fees and costs for substantial and unanticipated legal services that were allowed in the prior version of Local Bankruptcy Rule 2016-1.

Debtor and Debtor's counsel may well want to readdress the no-look fee in this case and consider whether such fee is reasonable, or if there is possible substantial work that may be necessary in the case that counsel not have a set no-look fee, but proceed with the "traditional" route in seeking interim and final approval of fees pursuant to 11 U.S.C. §§ 330, 331. L.B.R. 2016-1(b).

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, Desiree Rebecca Lewis ("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 for Confirmation and Allowance of Professional Fees is continued to x:xx p.m. on xxxx, 2024.

17. 23-24174-E-13 THS-5 — MICHAEL/SUSAN MARASCO — MOTION TO CONFIRM PLAN
Timothy Stearns — 8-2-24 [79]

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, all creditors and parties in interest, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on August 2, 2024. By the court's calculation, 53 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 court notes that Movant has not stated which documents and pleadings were served to interested parties on the Certificate of Service. Docket 84, At the hearing, **xxxxxxx**

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Michael Joe Marasco and Susan Diane Marasco ("Debtor") seek confirmation of the Third Amended Plan. However, Movant has not filed a Motion seeking any Order of the court. Federal Rule of Bankruptcy Procedure 9013 expressly requires that when an order of the court is sought, the party must do so by motion unless the Rules provide to do so by application or otherwise (such as an objection to claim). Local Bankruptcy Rule 3015-1 requires a motion to confirm a Chapter 13 Plan when a plan filed within fourteen days of the filing of the bankruptcy case has not been confirmed.

A pleading titled Notice of Motion and Motion to Confirm Third Amended Chapter 13 Plan has been filed. Dckt. 79. That pleading is not a motion, but is merely a Notice of hearing, advising persons where to appear and when an opposition (if a motion had been filed) would have to be filed. No grounds with particularity, as required by Federal Rule of Bankruptcy Procedure 9013 (and consistent with Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 9007) are stated in this pleading. [Fn.1.]

FN. 1. The court notes that Debtor's counsel filed a similar Notice of Motion and Motion in this Case. Dckt. 67. In denying the confirmation of that prior proposed plan, while the court addressed a number of grounds, the pleading shortcomings were not discussed.

A Declaration is provided where Debtor Mr. Marasco states this Third Amended Plan will sell their residence commonly known as 14906 Windmill Dr., Weed, Ca ("Property"), pay off the existing mortgage, and proceeds from the sale will be used to pay all priority unsecured debts. Declaration ¶¶ 2, 3, Docket 83. Am. Plan § 7, Docket 80. Debtor proposes to sell the Property within 13 months of confirmation. *Id.* Debtor lists a number of creditors in Section 7 of the Amended Plan that they propose to pay outside the Plan. *Id.* 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 4, 2024. Docket 93. Trustee identifies a whole host of issues with this pleading and opposes confirmation of the Plan on the basis that:

A. Debtor's attorney has opted into the no-look fee scheme provided for in Local Bankruptcy Rule 2016-1(c), but Debtor's attorney has been paid $4,000 prior to filing and seeks $500 during the course of the Plan. This violates the no-look provisions. Opp'n 1:20-28, Docket 93.

B. Debtor must perform a 60 month Plan, not a 36 month Plan, due to their income. Debtor discloses business income of $16,251.00 prior to deducting claimed business expenses of $14,789.00, and while the Debtor can deduct business expenses when determining projected disposable income, they cannot when determining current monthly income, which determines the commitment period. *Id.* at 2:1-10.

C. Debtor cannot afford to make plan payments where the Third Amended Plan proposes payments of $1,795.00 per month, but Debtor's Amended Schedules I and J show a net monthly income of $157. *Id.* at 2:11-21.

D. Some priority debts are proposed to be paid outside the Plan, including the priority debt of the IRS and CA Dept of Tax and Fee Administration. It is not clear to the Trustee whether the Plan proposes to pay priority claims in full within the term of the Plan as required by 11 U.S.C. §1325(a)(1) & 1322(a)(2) and Debtors have not offered any evidence if claimants have agreed to another treatment to pay their claims. Moreover, Debtor scheduled $30,851.30 of priority claims, (Docket 1, Page 29, Line 6b), which $675 would pay in 46 months, ($400+$275), but the Plan estimates priority at $239,592.01. *Id.* at 2:23-3:6.

E. The Plan calls for selling the Property but does not provide a price for the sale. Moreover, Debtor states they will use Sandra Haugen as their realtor, but there is no Motion to Employ on the Docket. *Id.* at 3:7-12.

F. Trustee argues Debtor should not delay selling their residence, considering this case was filed on November 21, 2023, and converted on April 9, 2024, and that the Amended Plan was filed on August 8, 2024, but Debtor is waiting 60 days to put the house on the market. *Id.* at 3:13-16.

G. Debtor has failed to pay the post-petition 2024-2025 property taxes and Siskiyou County Tax Collector filed a secured priority Proof of Claim, for $8,482.06, (Claim 10-1), which has not been provided for in the Plan and it is not clear how these taxes will be paid.

H. There is no Motion for the court to grant, and Debtor's Declaration is further deficient. *Id.* at 3:20-4:8. There are also issues with the Notice as it fails to comply with Local Bankruptcy Rule 9014-1(D)(3)(B)(III). *Id.* at 4:11-16.

I. Finally, the Plan is blank where it indicates that it was to be dated and signed by Debtors' attorney and there is no /s/ with the attorney's name to indicate that the original document was signed. *Id.* at 5:7-10.

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 a 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.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant has not provided any grounds in their Motion as Movant has not filed a Motion. Movant has merely filed the Notice of Hearing as the Motion. Docket 79. This practice is insufficient in this court and is in violation of our Local Rules. Local Bankruptcy Rule 9014-1(1)(d).

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Notice is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a notice are separate documents, even though they may be filed as one document when the Notice also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion.. *See* Local Bankruptcy Rule 9014-(d)(3)(B)(iv). The court has not waived that Local Rule for Movant.

Attorney's Fees

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 subdivision (c)(1) for a non-business case is $8,500, but can be less if the debtor and attorney so choose.

Debtor's attorney here has opted into the no-look scheme, but Debtor has accepted a $4,000 retainer for an overall fee amount of $4,500. Such a retainer violates this Rule, and the court has the authority to disgorge such payments pursuant to 11 U.S.C. § 329(b).

At the hearing, **xxxxxxx**

Trustee's Other Grounds for Opposition

Trustee further opposes confirmation on the basis that as Debtor is over the median income, they should be in a 60 month Plan, not 36 months as proposed by the Debtor. Congress provides that if the Trustee or holder of an allowed unsecured claim objects to confirmation, then the amount distributed to creditors with unsecured claims must be either: (1) not less than the full amount of the claim, or (2) the debtor must provide for all of the projected disposable income to be paid into the plan during the applicable commitment period. 11 U.S.C. § 1325(b)(1).

The term "applicable commitment period" is statutorily defined by Congress in 11 U.S.C. § 1325(b)(4) as follows:

(4) For purposes of this subsection, the "applicable commitment period"—

(A) subject to subparagraph (B), shall be—

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $825 per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

When the "current monthly income" of the debtor and the debtor's spouse, when multiplied by 12 is greater than the annual median income for the debtor/debtor's household in the debtor's state, the plan term must be 60 months if not all unsecured claims are paid in full. This is different from the forward looking projected disposable income much must be used to fund the Chapter 13 plan as required by 11 U.S.C. § 1325(b)(1) if the plan does not provide for paying all unsecured claims in full.

The term "current monthly income" is defined in 11 U.S.C. § 101(10A) as a backward looking six month pre-bankruptcy average of income received by the debtor and co-debtor spouse if it is a joint bankruptcy case.

The Bankruptcy Appellate Panel for the Ninth Circuit considered the interpretation of these statutory provisions and Congress' choice of using the statutorily defined "current monthly income" in computing the applicable commitment period rather than projected disposable income in *Drummond v. Wiegand (In re Wiegand)*, 386 B.R. 238 (B.A.P. 9th Cir. 2008). There, as here, the Bankruptcy Appellate Panel was considering whether for a self-employed person the gross income generated from a business was used to compute the applicable commitment period, without deductions for business expenses.

The Bankruptcy Appellate Panel concluded that since Congress expressly provides for computation of business expenses being deducted from self-employed business income to compute disposable income as provided in 11 U.S.C. § 1325(b)(2), Congress not so providing for purposes of computing "current monthly income" as defined in 11 U.S.C. § 101(10A) and § 1325(b)(4) for determining the applicable commitment period, a self-employed persons "current monthly income" is the gross income. *Drummond v. Wiegand (In re Wiegand)*, 386 B.R. at 242-243. In finding that Congress has a gross income "current income" for the self-employed that is different than "take-home income" for employees, the Bankruptcy Appellate Panel noted:

> We also observe that our plain meaning interpretation is not absurd because the Code is replete with rules and requirements that impact sole proprietors differently than wage earners. For example, an individual chapter 13 debtor in business may be expected to have more debt associated with his or her operation than someone who works for wages. That the "profit" from the business does not exceed what another makes in salary does not relieve the sole proprietor from the debt limits for eligibility for chapter 13 relief. It may be that Congress simply did not want those persons generating significant revenues through a business to have access to three-year chapter 13-plans.

Id. at 243.

While presenting the court with an interesting question in dealing with the plain language of the statute and reality, the Debtor has chosen not to respond to the Trustee's Opposition.

Inability to Fund the Plan

Furthermore, Debtor proposes to make plan payments of $1,795 per month, but Debtor's Amended Schedule I and J show a disposable income of $157. Am. Schedule J at 4:23, Docket 81. The Plan is not feasible financially as proposed.

Another glaring issue is treatment of priority creditors. 11 U.S.C. § 1322(a)(2) requires the payment of priority creditors in full. The Plan calls for payment of certain priority creditors outside the Plan, and so the Trustee is unable to determine if the Plan is truly paying priority creditors in full. There is also the postpetition claim of Siskiyou County Tax Collector (POC 10-1) not provided for at all in the Plan.

Accordingly, the Motion to Confirm Amended Plan and the Third Amended Plan do not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and the third Amended Plan is not confirmed.

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

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

18. 24-23775-E-13 PGM-1 | **TOMAS GARCIA** Peter Macaluso | **MOTION TO EXTEND AUTOMATIC STAY** 9-9-24 [10]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, all creditor and parties in interest, and Office of the United States Trustee on September 9, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Tomas John Garcia ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 24-22292) was dismissed on June 11, 2024, after Debtor failed to timely file documents in the case. *See* Order, Bankr. E.D. Cal. No. 24-22292, Dckt. 12, June 11, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he "was not under consultation of an attorney and [he] didn't under the process either." Dec. ¶ 2, Docket 12. Debtor explains his circumstances have changed since the previous case was dismissed, now hiring Mr. Macaluso for representation. *Id.* at ¶ 3. Debtor has also has a job that will allow him to make payments. *Id.*

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 show he is making a good faith effort to reorganize, now obtaining competent counsel in representation.

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 Tomas John Garcia ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and 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.

19. 24-23181-E-13 RDZ-1 | **MICHAEL/ANGELIQUE VALERA** | **OBJECTION TO CONFIRMATION OF PLAN BY CALIFORNIA FRANCHISE TAX BOARD**
Peter Macaluso | **8-29-24 [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.

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 29, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

California Franchise Tax Board ("Creditor") holding a secured claim, a priority unsecured claim, and a general unsecured claim opposes confirmation of the Plan on the basis that:

1. Debtor Michael Anthony Valera and Angelique Marie Valera's ("Debtor") Plan is not confirmable as Debtor has failed to file their 2023 tax returns. Obj. 4:1-10, Docket 27.

2. Debtor is impermissibly trying to modify Creditor's secured claim in the Plan without filing a Motion to Value. *Id.* at 4:11-5:2.

3. Debtor has failed to show that the Plan is feasible. Debtor's projected future net income of $6,650 is not supported by the evidence. The record shows Debtor's demolition business is not making the figures Debtor has scheduled. *Id.* at 5:3-6:7.

Creditor submits the Declaration of Gloria Vaca to authenticate the facts alleged in the Objection. Decl., Docket 29.

DISCUSSION

Failure to File Tax Returns

Creditor has shown that the federal income tax return for the 2023 tax year has not been filed. 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).

Improper Treatment of Creditor's Secured Claim

Creditor has filed a Proof of Claim (POC 9-1) where it asserts a secured claim in the amount of $167,828.61. According to this District's standard Plan Form, EDC 003-080, "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Plan Form EDC 003-080, § 3.02. Debtor has not complied with this language, instead providing for Creditor's secured claim in the amount of $6,767.88. Plan § 3.08, Docket 10. Such treatment is impermissible without there being a Motion to Value or Objection to Claim granted by the court.

Infeasible Plan

Creditor alleges that the Plan is not feasible because Debtor's actual disposable income is lower than what is reported. 11 U.S.C. § 1325(a)(6). Specifically, Creditor asserts based on Debtor's Business and Income Expenses form, Debtor contends that the demolition business has generated $18,333 in gross monthly income over the past 12 months ($220,000 divided by 12), and future projected monthly gross income is $25,000. Obj. 5:11-14, Docket 27. However, in the Statement of Financial Affairs, Debtor states that the demolition business has generated only $91,000 since January 1, 2024 (or $13,000 a month), and only $10 over the entire 2023 calendar year. *Id.* at 5:14-16. These inconsistent numbers do not support a finding that Debtor has actual projected disposable income of $6,650. 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 California Franchise Tax Board ("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. 24-22984-E-13 CLB-1 | **LUIS/KARLA SANCHEZ** | **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. 8-22-24 [26]**

20 thru 21

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 22, 2024. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxx .

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

1. Debtor Luis A. Sanchez and Karla Mariela Sanchez ("Debtor") fail to properly provide for Creditor's secured claim. Specifically, Debtor's Plan fails to provide for a cure of the total debt owed to Creditor and Debtor's Plan attempts to cramdown the value of the claim below the replacement value of the Vehicle, a 2022 Chevrolet Corvette vin ending in 2018. Obj. 2:2-6, Docket 26. Creditor's total secured claim is in the amount of $56,376.38. The Plan only proposes to cure on $53,670.00. *Id.* at 4:23-25.

Creditor does not submit a Declaration in support of the Objection. In the prayer, Creditor makes reference to the plan possibly being amended to "provide for the total secured claim on Creditor's filed Proof

of Claim, ..." Objection, p. 5:6-7; Dckt. 26. However, Creditor's Objection does not identify any proof of claim having been filed.

Creditor also files as an exhibit a copy of a J.D. Power report for a 2022 Chevrolet Corvette. Exhibit A; Dckt. 28. While stating in Footnote 4 to the Motion that a hearsay exception could exist for such a report, no Declaration is filed authenticating Exhibit A.

In making this Objection, Bank of America, N.A. appears to have the desire to waive the provisions of ¶ 3.02 of the Plan which states that it is the amount of the claim as stated in the creditor's proof of claim which controls the amount of the claim paid, unless there is an order of the court determining the amount of the claim. Plan, ¶ 3.02; Dckt. 14.

Contrary to the Bank's Objection, the Plan requires payment of the full amount of the claim, ($56,736.38), as stated in Part 2, ¶ 9 of Proof of Claim 1-1. Though not identified by Creditor, the court located Proof of Claim 1-1 asserting a($56,376.38) secured claim, for which the collateral is identified in an attachment as being a 2022 Chevrolet Corvette. Proof of Claim 1-1, Retail Installment Sale Contract Attachment.

Review of Proof of Claim 1-1

Creditor provides a clearly drafted Proof of Claim and includes the necessary attachments relating to the Claim and the 2022 Chevrolet Corvette that secures the Claim. Proof of Claim 1-1, ¶ 9, states that as of the filing of this Bankruptcy Case Debtor was in default in the amount of ($1,319.83), which represents one month's payment under the Retail Installment Sale Contract.

For the $106,855.21 purchase price for the 2022 Chevrolet Corvette by the Debtor in November 2021, Debtor financed $98,496.11 of the purchase price, at a 2.84% interest rate. Retail Installment Sale Contract Attachment to POC 1-1.

The Retail Installment Sale Contract requires seventy-five (75) payments of $1,319.83 each.

Feasibility of Plan

Creditor is correct to raise this issue, as there is a question as to whether the Plan is adequately funded, i.e., whether the monthly Plan payment of $5,215.00 a month is sufficient to pay Creditor's ($56,376.38). claim, with 5% interest, over 60 months. On its face, the proposed Chapter 13 Plan states that the monthly payments to Creditor will be $1,215.00 a month for a secured claim of ($53,670.00), the Debtor misstating the amount of the secured claim.

In the Chapter 13 Plan, Debtor provides for Bank of America's secured claim as a Class 2B secured claim. Plan, ¶ 3.08; Dckt. 14. This is an incorrect classification in that the court has not entered an order reducing Creditor's secured claim from the ($56,376.38) stated in Proof of Claim 1-1 filed by Creditor.

Rather, the payment of the ($56,376.38) secured claim is properly a Class 2(A) secured claim, for which there is no reduction of the amount of the claim based on the value of collateral.

It appears that the Debtor's computation of Creditor's secured claim at the reduced amount of ($53,670), to be paid with interest of 5% per annum (substantially increasing the contract rate of interest that

is set at 2.84%), to be a monthly payment of $1,215.00 for sixty (60) months is incorrect. Using the Excel Simple Loan Calculator, the court computes that the monthly payment for that lower amount of debt would be only $1,012.82 a month.

Using the correct amount of the secured claim, the ($56,736.38) stated in Proof of Claim 1-1, and increasing the interest rate to the Plan provided 5% per annum, the monthly Plan disbursement to Creditor over sixty-months for payment through the Plan as a Class 2(A) claim would be $1,070.69.

The court accepts Bank of America's "Opposition" as a request for the record to reflect the amount of its secured claim as stated in Proof of Claim 1-1 and that using that claim amount and that the monthly payment on the ($56,736.38) secured claim, amortized over sixty (60) months at 5% per annum is $1,070.69.

The Plan as proposed providing for $1,215.00 to Creditor, it is clearly able to provide the lower payment of $1,076.69 to Creditor (even with almost doubling the interest rate for Creditor).

DISCUSSION

Improper Treatment of Creditor's Secured Claim

Creditor has filed a Proof of Claim (POC 1-1) where it asserts a secured claim in the amount of ($56,376.38). According to this District's standard Plan Form, EDC 003-080, "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Plan Form EDC 003-080, § 3.02.

Debtor has filed a Motion to Value on September 10, 2024, but the Motion seeks to Value a different Vehicle owned by the Debtor. Docket 30. There is no Motion to Value on file seeking to value the Vehicle subject of this Objection.

As stated above, the Claim of Bank of American, N.A. which is secured by the 2022 Chevy Corvette, is a ($56,376.38) Class 2(A) secured claim, Debtor not having obtained an order reducing the value of the secured claim, that it is amortized over the sixty (60) months of the Plan with interest at the rate of 5% per annum, for which Bank of America, N.A. will receive a monthly plan distribution of $1,070.69 on this secured claim.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a), and the Objection is overruled.

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

IT IS ORDERED that the Objection to Confirmation of the Plan ~~is overruled, the court determining that the Plan provides for the full amount of the Bank of America, N.A. secured claim as stated in Proof of Claim 1-1, the Debtor not having obtained an order reducing the value of the secured claim, that it is amortized over the sixty (60) months of the Plan with interest at the rate of 5% per annum, for which Bank of America, N.A. will receive a monthly plan distribution of $1,070.69 on this secured claim. and the proposed Chapter 13 Plan is confirmed.~~

21. 24-22984-E-13 DPC-1 | **LUIS/KARLA SANCHEZ** | **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-21-24 [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, parties requesting special notice, and Office of the United States Trustee on August 21, 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 Luis A. Sanchez and Karla Mariela Sanchez ("Debtor") has misclassified claims in the Plan. Debtor has placed Travis Credit

Union/2022 Ford Maverick in class 4 of the Plan, but as the loan matures during the course of the Plan, this creditor and claim should be placed in class 2(A). Obj. 2:1-7, Docket 22.

2. There may be inaccurate information on the Statement of Financial Affairs ("SOFA") where Debtor Luis Sanchez' Driver's License shows he lives at 10553 Fossil Way, Elk Grove, Ca 95757, but that is not the address stated in the SOFA. Furthermore, Trustee learned at the 341 Meeting that Debtor does have a contract or unexpired lease, but that lease is not listed on Schedule G and there has been no amendment. Finally, Debtor has not provided Trustee with required 11 U.S.C. § 521 business documents or payment advices. *Id.* at 2:8-3:9.

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

DISCUSSION

Misclassified Claims

Debtor has classified Creditor in Class 4 of her Plan, which Class only deals with claims that "mature after the completion of the plan, are not in default, and are not modified by this plan." Plan § 3.10, Docket 7. Travis Credit Union's claim matures during the life of the Plan, 2029, meaning it should be placed in class 2(A).

At the hearing, **xxxxxxx**

Inaccurate or Missing Information

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

Failure to Provide Pay Advices

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

Failure to File Documents Related to Business

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

A. Questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements,
D. Six months of bank account statements, and

E. 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.

Saving of Debtors' Assets,
Projected Disposable Income

In this Chapter 13 Plan Debtor is striving to save their necessary assets to continue in life. Here, the two debtors have monthly gross employment income of $14,467.33 a month, plus an additional $1,100.00 net income from a business. Debtor has a family unit of five persons, the two debtors and three minor children.

Through the Chapter 13 Plan, Debtor seeks to save their 2022 Dodge Ram 1500, their 2022 Chevy Corvette, and their 2021 Mercedes Benz, which by Debtor's calculations require aggregate monthly plan disbursements of $3,770.00 to creditors holding the claims secured by these vehicles.

These two adult debtors have car payments of $3,770 to maintain three newer vehicles for the two of them to drive. They have a fourth vehicle with a monthly payment of $535 in Class 4, which a third-party is paying.

Looking at Schedule J, Debtor pays $855 a month for vehicle insurance, which is $10,260 annually, for their three (and possibly four) vehicles. For transportation expenses, Debtor lists $450 for gas, maintenance, and repairs, and $80.77 for DMV "taxes" monthly. Sch. J, ¶ 145c, 12, 16. This is an additional $6,369 annually for these additional amounts.

While the two debtors enjoy having, and paying creditors for, a 2022 Dodge Ram 1500, a 2022 Chevy Corvette, and a 2021 Mercedes Benz GLE 350, the expenses associated with such three vehicles may well not be reasonable and overstated on Schedule J. Thus, Debtor's projected disposable income may be higher than computed on Schedule J.

<u>Business Income and Expenses</u>

For Debtor's business that generates $1,000 a month in net monthly income, the Business Income and Expenses Attachment to Schedule I provides interesting, and entrepreneurial troubling information. For gross income, Debtor states that it averages $85,000 monthly. However, to generate that $85,000 in gross income, the expenses incurred are ($83,999.83). Dckt. 13 at 40. This results in 1.1% profit generated for Debtor for taking on all of the risk, and expending all of the time, effort, and resources on this business.

The second largest expense is payroll (which does not include Debtor) of ($30,000) a month, plus an additional ($4,200) for payroll taxes. The largest expense is for inventory, of ($43,700) a month. *Id*.

On the Statement of Financial Affairs, in addition to wages, Debtor lists having additional gross income of $1,971.183 (which averages $164,265 a month) in 2022, $2,039.286 (which averages $169,940 a month) in 2023, and $480,000 for the six months in 2024 prior to filing bankruptcy (which averages

$80,000 a month). The business is identified on the Statement of Financial Affairs, ¶ 27 (Dckt. 13), as Taquenia Vallarta. [Fn.1.]

FN. 1. On Schedule I Debtor Luis Sanchez states that he is an employee of Taqueria Vallarta, employed as a Restaurant Manager. Dckt. 13 at 36. Debtor Karla Sanchez states that she is an employee of Taqueria Vallarta, employed in Customer Service. *Id*. From the $7,000+ monthly "wages," they have modest amounts withheld for taxes, Medicare, and Social Security.

However, on the Statement of Financial Affairs these two debtors state that they operate a sole proprietorship with the business name Taqueria Vallarta. Stmt Fin. Affairs, ¶ 27; Dckt. 13.

It appears that neither of these two debtors are "employees." but operate a partnership or combined sole proprietorships for this restaurant.

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.

22. 24-22985-E-13 DPC-1 | **ALLISON HINGST ELO** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-21-24 [14]**

22 thru 23

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

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 21, 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 Allison Marie Hingst Elo ("Debtor") failed to submit proof of her identification or social security number to the Trustee as required pursuant to FRBP 4002(b)(1)(B). Obj. 2:1-6, Docket 14.

2. Debtor failed to provide Trustee with 11 U.S.C. § 521 documents, including any employer payment advices received sixty (60) days prior to the filing of the petition, and a tax transcript or a copy of her 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. Obj. 2:12-15, Docket 14.

3. The following issues are also present in the Plan:

a. The Debtor failed to date and sign the Plan.

b. The Debtor failed to state the duration of the Plan.

c. The Debtor failed to state estimated priority claims.

d. The Debtor failed to state a percentage to be paid to the unsecured creditors or the approximate amount owed to unsecured claims.

e. The Debtor failed to check a box to advise when the estate will revest.

f. The Debtor's Plan is proposing payments of $4,000.00 per month. Class 1 post-petition claims payments total $4,000.00 and does not propose any arrearage dividend to creditors. It also does not appear that the Debtor has included the Trustee's administration fee (currently 7.2%). The Trustee is not clear if some of these claims are misclassified.

Obj. 2:17-28, Docket 14

4. Debtor has improperly claimed exemptions by failing to state a specific amount claimed. *Id.* at 3:4-14.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 16.

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 Advices

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). 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).

Remaining Issues with Plan and Schedules

Debtor is experiencing many of the problems individuals who file a Chapter 13 Case in *pro se* experience. The terms and requirements of a Plan may not be entirely straight forward to what the court calls "real people," meaning a person who is not enthralled in the bankruptcy world and lingo. There are many pitfalls that may confuse a Debtor along the way, including the requirements to properly and accurately fill out a Plan form. Failure to do so is cause for denial of confirmation, and a denial of confirmation may eventually lead to a dismissal if the case cannot result in a confirmed Plan.

At the hearing, **xxxxxxx**

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

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

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

23. 24-22985-E-13 EAT-1 | **ALLISON HINGST ELO** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC** **8-22-24 [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 (*pro se*), Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on August 22, 2024. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Allison Marie Hingst Elo ("Debtor") has not properly filled out the required information in her Plan, including failing to state a number of months that the Plan is to last. Obj. 2:12-14, Docket 18.

2. The Plan also fails to account for the full amount of Creditor's arrearage and maintain the ongoing mortgage payment. *Id.* at 3:7-16.

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 $30,537.82 in pre-petition arrearage. POC 6-1. 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.

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

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

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

24. 24-22891-E-13 DPC-1 | **LAURA ENGLAND** Michael Benavides | **CONTINUED 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.

The Objection to Confirmation is xxxxxxx.

September 24, 2024 Hearing

The court continued the hearing on this Objection to afford Debtor time to resolve the various objections Trustee raised. A review of the Docket on September 20, 2024 reveals nothing new has been filed in this case, no measures appearing to be made to ameliorate Trustee's concerns.

At the hearing, xxxxxxx

REVIEW OF THE OBJECTION

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

1. 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, the parties requested that the court continue the hearing to allow for these issues be addressed.

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

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

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

25. 24-23991-E-13 PGM-1 | **LARRY/LISA MCLAIN** Peter Macaluso | **MOTION TO EXTEND AUTOMATIC STAY** 9-10-24 [10]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, all creditors and parties in interest, and Office of the United States Trustee on September 10, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Larry Luke McLain and Lisa Nicole McLain ("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. 20-25403) was dismissed on August 1, 2024, after Debtor became delinquent and failed to provide the Chapter 13 Trustee with tax returns. *See* Order, Bankr. E.D. Cal. No. 20-25403, Dckt. 50, August 1, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed due to "poor communication between the attorney, trustee and [Debtor]. Payments were always made but [the] case was dismissed for failure to supply Trustee with tax return for year 2023 which had not yet been filed which was poorly communicated." Decl. ¶ 2, Docket 12. Debtor states their case will now succeed with a new attorney who has better communication, and there are better jobs to bring in more income. *Id.* at ¶ 3. The court notes that Debtor does not describe these "better jobs."

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good fait under the facts of this case and the prior case for the court to extend the automatic stay. Debtor's previous case was dismissed due to a misunderstanding on providing the Chapter 13 Trustee with the 2023 tax returns, and Debtor has demonstrated they will communicate with current counsel and diligently prosecute this case.

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 Larry Luke McLain and Lisa Nicole McLain ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

26. 23-23710-E-13 TLA-1 | **JOSEPHINE LEMUS** Thomas Amberg | **MOTION TO MODIFY PLAN** 8-12-24 [23]

Final Ruling: No appearance at the September 24, 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, parties in interest, and Office of the United States Trustee on August 12, 2024. By the court's calculation, 43 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, Josephine Lemus ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 26; Ex., Docket 27. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on September 10, 2024. Docket 30. 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, Josephine Lemus ("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 12, 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.

27. 24-22611-E-13 DPC-2 | **STEPHANIE POPE** **Steven Alpert** | **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **8-21-24 [14]**

Final Ruling: No appearance at the September 24, 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 21, 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 P. Cusick, the Chapter 13 Trustee, ("Objector") objects to Stephanie Ann Pope'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 13 bankruptcy case on February 24, 2023, that converted to a case under Chapter 7 on November 27, 2023. Case No. 23-20579. Debtor received a discharge on March 29, 2024. Case No. 23-20579, Docket 45.

The instant case was filed under Chapter 13 on June 14, 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 March 29, 2024, which is less than four years preceding the date of the filing of the instant case. Case No. 23-20579, Docket 45. 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. 24-22611), 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 P. 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. 24-22611, the case shall be closed without the entry of a discharge.

28. 24-22523-E-13 DPC-2 | **DANIEL MITTOW** **Mark Wolff** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **8-14-24 [24]**

Final Ruling: No appearance at the September 24, 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 14, 2024. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Daniel Opondo Mittow's ("Debtor") claimed exemptions under California law. Trustee states:

A. Debtor has claimed his interest in three (3) deposit accounts at Golden 1 Credit Union with a combined value of $189,900.00 as exempt under C.C.P § 704.225, which statute provide "monies in a judgment debtor's deposit account . . . is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor[.]" Obj. 1:24-28, Docket 24.

B. Since California has opted out of the federal exemptions, the burden of proof under California law is on the judgment debtor claiming the exemption. Therefore, the dollar amount exempted must be supported by declaration and documentary evidence to prove the amount is necessary for the maintenance and support of the debtor and their dependents. The debtor has failed to provide evidence that the exempt account is necessary for the support of himself or his dependents. *Id.* at 1:28-2:6.

DISCUSSION

Cal. Code Civ. P. ¶ 704.255 states:

> Money in a judgment debtor's deposit account that is not otherwise exempt under this chapter is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

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*.

Debtor has not shown any evidentiary basis to claim the amount of $189,900.00 as exempt under Cal. Code Civ. P. § 704.225. There is no declaration or other evidence to show why or how that sum is necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor. Debtor did not file any Response to this Objection, despite it being noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1). For these reasons, the Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by 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 sustained, and the claimed exemptions for the Golden 1 Credit Union checking account ending in 3462, the Golden 1 Credit Union money market ending in 8024-2, and the Golden 1 Credit Union savings ending in 8024-0 in the total amount of $189,900 under California Code of Civil Procedure § 704.225 are disallowed in their entirety. *See* Schedule C at 22, Docket 1.

29. 24-22765-E-13 DPC-2 | **MARVIN COSPER** / **Arete Kostopoulos** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** / **8-14-24 [24]**

Final Ruling: No appearance at the September 24, 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 14, 2024. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemptions claimed in the tax refunds and those pursuant to the Federal Exemptions are disallowed in their entirety, and the exemptions claimed in the vehicles are disallowed for the aggregate value of the vehicles in excess of $7,500.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Marvin Lovell Cosper's ("Debtor") claimed exemptions under California law. Trustee states:

A. Debtor has claimed his interest in 2024 State and Federal tax refunds with a value of $2,253.33 as exempt under C.C.P. § 704.070 in the full amount of $2.253.33. Pursuant to C.C.P. §704.070(b)(2), the Debtor may not claim the entire asset value as exempt as only 75% of the paid earnings that can be traced into deposit accounts are exempt. Additionally, State and Federal tax refunds are not paid earnings. Obj. 1:24-2:3, Docket 24.

B. Debtor has impermissibly exempted his interest in his three vehicles over the statutory limit. According to C.C.P. § 704.010, a Debtor can exempt an aggregate interest in a motor vehicles up to a maximum amount $7,500.00.

Debtor has exempted a total interest of $20,075.00, which is $12,575.00 over the allowed exemption amount under C.C.P. § 704.010. *Id.* at 2:11-13.

C. Debtor has attempted to claim a federal exemption when California has opted out of the federal exemption scheme. *Id.* at 2:14-23.

DISCUSSION

Tax Refunds Exemption

Cal. Code Civ. P. § 704.070 allows an exemption in paid earnings and states:

(b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are exempt in the following amounts:

(1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or an earnings assignment order for support.

(2) Disposable earnings that would otherwise not be subject to levy under Section 706.050 that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support.

"Paid earnings" are defined as "compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise." Cal. Code Civ. P. § 706.011.

Debtor has not submitted any evidence showing that the claimed exemption in tax refunds for 2024 pursuant to Cal. Code Civ. P. § 704.070 fit within this statutory definition. Tax refunds are not compensation payable by an employer to an employee. Therefore, the claimed exemption of state and federal tax refunds found in Debtor's Schedule C at 19, Docket 1, are disallowed in their entirety.

Vehicle Exemption

Debtor has attempted to claim as exempt his 1995 Ford Thunderbird, 2014 Ford Focus, and 2018 BMW X5 in the total amount of $20,075. Schedule C at 17, Docket 1. Cal. Code Civ. P. § 704.010 allows an exemption in vehicles and states:

(a) Any combination of the following is exempt in the amount of seven thousand five hundred dollars ($7,500):

(1) The aggregate equity in motor vehicles.

(2) The proceeds of an execution sale of a motor vehicle.

> (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

Debtor has exceeded this statutory limit by $12,575. The claimed exemption in his 1995 Ford Thunderbird, 2014 Ford Focus, and 2018 BMW X5 in the total amount of $20,075 is disallowed, Debtor only permitted to claim as exempt his equity in the total amount of $7,500.

Federal Exemption

Finally, Debtor has attempted to claim as exempt cash on hand in the amount of $100 as exempt pursuant to 11 U.S.C. § 541(b)(11). The court notes that 11 U.S.C. § 541 does not deal in exemptions, and that exact section of the code cited does not exist. However, Federal law allows states to opt out of the federal exemption scheme. 11 U.S.C. § 522(b). 11 U.S.C. § 522(b)(2) and (3)(A) state:

> (b)
>
> > (2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize. . .
> >
> > (3) Property listed in this paragraph is—
> >
> > > (A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place. . .

These two sections read together show the law allows a state to opt out of the federal exemption scheme entirely. California has made such an election. Cal. Code Civ. P. § 703.130 states:

> Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

Therefore, Debtor's attempt to claim as exempt his interest in any assets pursuant to the federal exemption scheme are disallowed, specifically, Debtor's attempted exemption in $100 cash on hand found on Schedule C at page 18, Docket 1.

Debtor did not file any Response to this Objection, despite it being noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions described above are disallowed.

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

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

The Objection to Claimed Exemptions filed by 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 sustained, and the claimed exemptions for the following assets:

1. The 1995 Ford Thunderbird, 2014 Ford Focus, and 2018 BMW X5 in the total amount of $20,075 found at Schedule C at page 17, Docket 1, claimed exempt pursuant to Cal. Code Civ. P. § 704.010,

are disallowed for all amount in excess of the combined value of the vehicles in excess of $7,500.00; and

that the claimed exemptions for the following assets:

2. Cash on hand in the amount of $100 found on Schedule C at page 18, Docket 1, claimed exempt pursuant to 11 U.S.C. § 541(b)(11); and

3. State and Federal tax refunds for the year 2024 found in Debtor's Schedule C at page 19, Docket 1, claimed exempt pursuant to Cal. Code Civ. P. § 704.070;

are disallowed in their entirety.

IT IS FURTHER ORDERED that the court sustaining Trustee's Objection is without prejudice to allow debtor leave to amend the Schedule C and properly claim assets as exempt as permitted by applicable law.

30. 24-22967-E-13 DPC-1 | **VANESSA FRANKLIN** **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-21-24 [31]**

Final Ruling: No appearance at the September 24, 2024 Hearing is required.

Local Rule 9014-1(f)(2) Objection.

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 21, 2024. By the court's calculation, 31 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.

The Objection to Confirmation is overruled without prejudice as moot, the Bankruptcy Case having been converted to one under Chapter 7.

The Chapter 13 Trustee, David Cusick (the "Trustee"), objects to confirmation of the debtor, Vanessa Lynn Franklin's ("Debtor") Chapter 13 plan. Debtor filed a Notice of Conversion on September 13, 2024, however, converting the case to a proceeding under Chapter 7. Dckt. 35. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984).

Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 13, 2024. *McFadden*, 37 B.R. at 521.

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 Confirmation filed by the Chapter 13 Trustee, David Cusick (the "Trustee"), having been presented to the court, this Bankruptcy 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 Objection is overruled without prejudice as moot.

31. 24-21185-E-13 OSCAR QUEZADA MOTION TO MODIFY PLAN
PGM-1 Peter Macaluso 8-12-24 [35]

Final Ruling: No appearance at the September 24, 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, parties requesting special notice, attorneys of record who have appeared in the case, and Office of the United States Trustee on August 12, 2024. By the court's calculation, 43 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, Oscar Quezada ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Dockets 39, 40; Ex., Docket 38. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on September 10, 2024. Docket 46. 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, Oscar Quezada ("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 12, 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.

32. 24-22488-E-13 JMF-1 | **STEVEN/DEBBIE NOMMSEN** | **MOTION TO CONFIRM PLAN**
Jacob Faircloth | **9-11-24 [31]**

Final Ruling: No appearance at the September 24, 2024 hearing is required.

The court issued an Order on September 13, 2024, vacating the hearing set for September 24, 2024, and continuing the hearing on the Motion to October 22, 2024 at 2:00 p.m. Docket 46.

No appearance of the parties is required for the September 24, 2024 hearing.