

Deutsche Bank National Trust Company (“Creditor”), holding a secured claim, opposes confirmation of the Plan in a second Objection to Confirmation. Second Objection; Dckt. 19.

However, Creditor filed a timely Objection to Confirmation, Dckt. 16, on August 11, 2023, for which this court has entered an Order overruling the Objection and confirming the Plan. Order; Dckt. 27. The Order expressly states the agreed term for payment of Creditor’s secured claim that was the subject of that Objection. While it appears that this second Objection relates to a different claim, it was not timely filed and has been rendered moot by the prior order of this court.

The Objection to Confirmation is overruled as moot, the court having already entered its order to confirm the Chapter 13 Plan. If Debtor’s Plan does not properly provide for Creditor’s claim as set forth in the Proof of Claim, Creditor and the Trustee make file appropriate motions. Additionally, Debtor may proactively address any deficiencies in the confirmation plan.

Review of Objection to Confirmation

Creditor asserts the following grounds for its untimely Objection to Confirmation:

- A. Keith and Hazel Miller’s (“Debtor”) Plan fails to comply with 11 U.S.C. § 1325(a)(1) and 11 U.S.C. § 1322(b)(5). Specifically, Debtor’s Plan fails to provide for any outstanding arrears on Creditor’s pre-petition claim.

Dckt. 19.

DEBTOR’S REPLY TO CREDITOR’S OBJECTION

- A. Creditor failed to timely file this Objection.
- B. Debtor maintains there was no pre-petition delinquency, and Debtor was pre-petition current when it filed its Chapter 13 case.

Dckt. 22.

DISCUSSION

Both Creditor and Debtor have asked this court to believe their respective pleadings without submitting evidence in support of their contentions. At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g). Without authenticated exhibits or supporting declarations to prove the Creditor or Debtor’s claims, this court cannot issue a ruling.

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

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

The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company (“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 without prejudice.

2. [23-22208-E-13](#) **JO ANN BRAZIL** **MOTION TO CONFIRM PLAN**
[WLG-1](#) **Nicholas Wajda** **8-10-23 [15]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on August 10, 2023. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Jo Ann Brazil (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for curing Debtor’s home mortgage arrears of \$36,403.97, remit plan payments of \$1,785.00 starting August 25, 2023 for 60 months. No less than 1% will be paid to nonpriority general unsecured claims. The Internal Revenue Service (“IRS”) will be paid a monthly dividend of \$1,553.11 for a total

secured claim of \$93,186.42. Amended Plan, Dckt. 19. 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 6, 2023. Dckt. 26. Trustee opposes confirmation of the Plan on the basis that:

1. The IRS is listed in Class 1 of the Amended Plan. There is a delinquency in the amount of \$93,186.42. The Amended Plan says the Trustee shall pay the arrears to the IRS, but authorizes \$0.00 per month to pay the arrears.
2. The IRS’ claim does not appear to mature after the completion of the Plan, which is a requirement for Class 1 treatment. The ongoing payments appears sufficient to pay the IRS’ secured claim where 0% interest is proposed.
3. Debtor states she applied for and was accepted into the California Mortgage Relief Program (“CMRP”), and Debtor asserts CMRP will cure the \$36,403.97 in mortgage arrears. Debtor has not provided any evidence that she was accepted into the CMRP.
4. The amended Plan proposes that Debtor will be paying the student loan directly and not through the Amended Plan. However, Schedule J does not identify any payments for student loans. If the proposed student loan payments are made outside the Amended Plan, Debtor should specifically identify which creditors will be affected.

Dckt. 26.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Although Debtor asserts CMRP will pay off her mortgage arrearages, without documentation or evidence showing Debtor’s acceptance into the program, the court cannot approve the Amended Plan. The Amended Plan should further clarify how Debtor plans to pay IRS arrearages. Finally, it would be helpful for Trustee if Debtor listed which creditors will be affected by Debtor’s payments to her student loan provider. Without tying up these loose ends and addressing Trustee’s concerns, the court is unable to confirm the Amended Plan.

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

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

1. The plan payment may not be the Debtors' best efforts under 11 U.S.C. § 1325(b). The Debtor may have additional income disposable to pay toward the plan as the year-to-date income will exceed average state income when annualized, meaning the Plan should last for 60 months.
2. The Debtor also has future net tax refunds that may exceed \$2,000 that may be paid into the Plan as an extra payment.
3. Since the Debtor has been married postpetition, the court cannot determine if the Debtor can make the payments without a budget showing current household income and expenses.

Dckt. 12.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

Debtor filed a Reply to Trustee's opposition on August 30, 2023. Dckt. 17. In its Reply, Debtor states:

1. Debtor agrees to increase the Plan to 60 months if necessary.
2. Debtor agrees to turn over any future net tax refunds exceeding \$2,000.00.
3. Debtor and wife maintain separate expenses. Debtor has provided Trustee with a document showing household income and expenses.
4. Debtor has filed all relevant monthly income reports necessary for Trustee to determine Debtor's income.

Dckt. 17.

DISCUSSION

Trustee's objections are well-taken.

Not Best Effort

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

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

Applicable Commitment Period

The Debtor shows he appears below median income on the Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period (“Statement of Current Income,” Form 122C-1), Dckt. 1 at 40-42. Debtor states that his gross wages/salary is \$5,854.17. Statement of Current Income, ¶ 2; Dckt. 1 at 40. Multiplied by twelve months in a year, that computes to be \$70,248 a year in income for purposes of computing the applicable commitment period. Based on the calculation on the Statement of Current Income, the applicable commitment period for the term of the Chapter 13 Plan is three years. *Id.*; ¶ 20.

In the Objection to Confirmation, the Trustee states that when reviewing Debtor’s pay advices, the Trustee concludes that Debtor’s pre-petition income for the applicable six month period under the Statement of Current Monthly Income is substantially greater. The Trustee cites to the pay advice for the period April 23, 2023 through June 24, 2023, which states that the Debtor had been paid \$38,205.19 for 2023. The Trustee computes this to represent through week 25 for 2023 (one week less than the six month look back computation in the Statement of Current Monthly Income).

Thus, the Trustee computes that Debtor’s annual income for the six months prior to the filing of this Bankruptcy Case averages \$76,410.38, which exceeds the \$75,235.00 median family income stated on the Statement of Current Monthly Income. *Id.*; ¶ 20(c).

The Trustee has requested that Debtor provide pay advices for the full six month period preceding the filing of this case.

Projected Disposable Income

While computation of the Applicable Commitment Period is pre-petition backwards looking, computation of the projected disposable income is forward looking based on the Debtor’s post-petition actual income. *See, Hamilton v. Lanning*, 560 U.S. 505, 524 (2010).

As the Trustee states, Debtor is now married, with his spouse not filing bankruptcy with him. In the Opposition Debtor states that Debtor and his wife maintain separate households. Opposition, ¶ 6; Dckt. 17. Debtor has filed as Exhibit C a computation of the non-filing spouse’s income, showing \$40,000 in income and expenses. Dckt. 18.

Additionally, tax refunds show the debtor received a total refund of \$5,848.00 (indicating over-withholding of \$487 a month) so the Trustee seeks that any future net tax refunds exceeding \$2,000 be paid into the Plan as an extra payment. If the Debtor exceeds the state median income, the plan is not the Debtor’s best effort unless committed for 60 months. 11 U.S.C. § 1325(b)(4). Thus, the court may not approve the Plan as written.

At the hearing, Debtor stated the following amendments to the Plan, which will be stated in the order confirming the Plan, as amended:

- A. Plan term extended to 60 months; and
- B. All annual tax refunds in excess of \$2,000.00 shall be paid into the Plan.

At the hearing, **XXXXXXX**

~~The Plan, as amended, does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan, as amended, 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled, and the proposed Chapter 13 Plan, as amended to provide:~~

~~A. Plan term extended to 60 months, and~~

~~B. All annual tax refunds in excess of \$2,000.00 shall be paid into the Plan,~~

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

4 thru 5

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice on August 21, 2023. By the court’s calculation, 36 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:

- A. Tax returns were not provided to the Trustee, the Debtor has not filed all tax returns required under 11 U.S.C. § 1308, and the priority claims by the Internal Revenue Service and the Franchise Tax Board will not allow the Plan to be completed in 36 months.
- B. The Debtor failed to provide documents as requested by the Plan. Debtor is self-employed, and owns two LLCs. The Debtor only provided the Trustee with a 6-month Profit and Loss Statement for one LLC.
- C. Debtor may be unable to make the payments called for by the Plan. Schedule I does not appear to contain accurate business income. The debtor

admitted at the Meeting of Creditors that his ex-wife resides with the debtor and helps with the expenses. The Debtor had failed to comply with the Plan as the non-standard provision calls for an adversary to be filed within 30 days of filing, and no adversary appears filed. Wells Fargo Bank, N.A., had filed a proof of claim identifying that the Debtor is delinquent, and it was misclassified in Class 4 and should be listed in Class 1 of the Plan.

- D. The Plan payment may not be the Debtor's best efforts under 11 U.S.C. § 1325(b). The Trustee believes 60 months is required and the Debtor may have a required payment to unsecured creditors other than 0%.

Dckt. 33.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Tax Returns

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

Failure to File Tax Returns

Claims by two different tax entities show tax returns have not been filed. The Internal Revenue Service shows years 2017, 2018, 2019, 2020, 2021 or 2022 returns have not been filed. Claims by the Franchise Tax Board show 2013, 2016, 2017, 2019, 2020, 2021, and 2022 tax returns have 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).

Failure to File Documents Related to Business

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

- A. The business questionnaire,
- B. Two years of tax returns from 2022 and 2021, and
- C. Six months of bank statements for all bank accounts

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 Afford Plan Payment / Cannot Comply with the Plan

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

- A. Schedule I does not appear to contain accurate business income as Line #8a lists debtors net business income as \$4,500 and the business income and expenses list the debtors average net monthly income as \$4,000. Dckt. 14. The Statement of Affairs does not list any year-to-date income. It is not clear to the Trustee if the Debtor is generating income from the real property in Naples, Texas, if any income is being produced from this property and if the debtor is receiving any income from the property, or if the Debtor actually intends to surrender the property.
- B. The Debtor admitted at the Meeting of Creditors that his ex-wife resides with him and helps with the expenses.
- C. The Debtor has failed to comply with the Plan. The non-standard provision calls for an adversary to be filed within 30 days of filing. Debtor's voluntary petition was filed July 5, 2023; no adversary appears filed.
- D. Wells Fargo Bank, N.A., has filed a proof of claim, identifying that the debtor is delinquent \$988.45 (Claim 3-1). It appears this creditor is misclassified in Class 4 and should be listed in Class 1 of the Plan.

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

Not Best Effort

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

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

The Debtor claims to be below median income and lists \$4,500 of calculated monthly disposable income on Form 122C-1. Dckt. 14. The Plan proposes to pay a 0% percent dividend to unsecured claims. The debtor failed to list his gross business income of approximately \$12,625.00 on Form 122C-1. The Trustee believes with this income, the Debtor is above median and a 60 month term may be required. Thus, the court may not approve the Plan.

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

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

- A. The Creditor has a claim secured by the property commonly known as 3704 Larkspur Lane, Cameron Park, California 95682 (“Property”). The Creditor will file its proof of claim by the deadline of September 13, 2023. In the mean time, Creditor will file a copy of the note, deed of trust, and assignment of deed of trust to evidence the claim.
- B. The Plan fails to provide for the curing of the default on the Creditor’s claim pursuant to 11 U.S.C. § 1322(b)(5).

Objection, Dckt. 23.

DEBTOR’S REPLY TO CREDITOR’S OPPOSITION

- A. Creditor has no standing as no proof of claim has been filed.

The court notes that while failing to file a proof of claim, which is prima facie evidence of the obligation, or a declaration providing testimony of the facts alleged (such as the amount of the debt and alleged defaults) may render the Objection evidentiary insufficient, it does not deprive Creditor of standing to object to how Debtor proposes to deal with the obligation owed to Creditor.

- B. Creditor’s note, deed of trust, and assignment have not been authenticated.
- C. Creditor’s alleged claim was forgiven in 2019.

Reply, Dckt. 37.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$221,115.67 in this case, including arrearages in the amount of \$113,401.60. Debtor’s Schedule D estimates the amount of Creditor’s claim as \$0.00 and indicates that he was released from this obligation on September 27, 2019. The Plan does not provide for this claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor’s matured obligation, which is secured by Debtor’s residence. *See* 11 U.S.C. § 1325(a)(6).

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C.

§ 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

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

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

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

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

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

Creditor's Failure to File a Proof of Claim

The Debtor claims that the Creditor has no standing to contest the plan in this case as no proof of claim has been filed. Debtor's argument here is rendered moot as the proof of claim was filed by the Creditor on September 13, 2023.

Additionally, filing a proof of claim is not detrimental to a party's objection to a plan. Under 11 U.S.C. 1324(a), a party in interest may object to confirmation of the plan, and there is no requirement that a party in interest file a proof of claim. *Johnston v. JEM Dev. Co. (In re Johnston)*, 149 B.R. 158, 161 (9th Cir. B.A.P. 1992) (noting that a creditor is a party in interest regardless of the status of its claim).

Alleged Claim was Allegedly Forgiven

The Debtor claims that the alleged claim was forgiven by the previous servicer, Bank of America, in 2019. The Debtor attached exhibits to this effect (Dckt. 38), but failed to file any declaration supporting its contention.

Unauthenticated Exhibits 2 and 3 are stated to be Bank of America's release of the obligation that is the basis of the claim and the Bank of America Tax Statement documenting the forgiveness of the obligation, respectively. Dckt. 38.

Exhibit 2 is dated September 16, 2019, states that the Bank “will release the obligation from your home equity line of credit.” Exhibit 3 is a 2019 Tax Statement from Bank of America stating that the obligation of Debtor in the amount of \$188,462.28 was discharged in 2019 by Bank of America.

While not authenticated, it is helpful information for Creditor in tracking down whether the obligation has previously been discharged and is no longer enforceable.

In its Reply, Movant states that it is obtaining declarations from Bank of America concerning the alleged forgiveness of the obligation and its claim in this case. Movant requests that the hearing on the Objection be continued.

~~————— 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 MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee as serviced by Specialized Loan Servicing LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on August 23, 2023. 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:

- A. The Trustee cannot assess the feasibility of the plan as the Debtor has failed to fully comply with the duty imposed by 11 U.S.C. § 521(a). Additionally the Debtor has failed to carry his burden of showing the Plan complies with 11 U.S.C. § 1325(a)(6).
- B. The unsecured claims may not be receiving what they would receive in a Chapter 7 liquidation 11 U.S.C. § 1325(a)(4).

Dckts. 13, 15.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Pay Stubs / Pay Advices

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

Failure to Provide Tax Returns

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

Inaccurate Schedule

Trustee also opposes confirmation due to Class 3 of the Plan showing creditors with security interests in vehicles, but they are not listed on Schedule D. The Debtor did list the creditors on Schedules E/F as unsecured, claiming to owe \$0.00 to each creditor for both vehicles.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that unsecured claims may not be receiving what they would receive in the event of a hypothetical Chapter 7 liquidation. The Debtor shows two vehicles listed in Class 3 of the Plan, but the Debtor advised the Trustee at the Meeting of Creditors that he may now want to keep one of the vehicles instead of surrendering it. The Debtor may have up to \$37,672.00 of non-exempt assets, based on the information listed in the Schedules. Without an accurate picture of Debtor's financial reality, the court is unable to confirm a plan.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice, on August 23, 2023. 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:

- A. David Karleskint (“Debtor”) does not appear to have the ability to make the Plan payments and the Debtor has failed to carry his burden of showing that the Plan complies with 11 U.S.C. § 1325(a)(6).
- B. The Debtor failed to file all applicable tax returns for the four years prior to filing.
- C. The Debtor has failed to provide documents requests by the Trustee as required by the Plan.

- D. The Debtor has not cooperated with the Trustee in the investigation of his business.
- E. The Debtor may have improperly used the C.C.P. § 704.070 exemption.

DISCUSSION

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

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Debtor's Plan does not appear to cure the arrears or provide for maintenance of ongoing payments, which is contrary to 11 U.S.C. § 1322(b)(5). The payment of \$1,700 to the mortgage creditor may not provide adequate protection to the creditor. The Plan fails to provide what happens in the event of default. Furthermore, the Plan fails to provide what happens in the event a loan modification is denied and the Debtor fails to modify the plan within 14 days. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Tax Returns

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

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2020 and 2021 tax year has not been filed still. The Franchise Tax Board has filed Proof of Claim reflecting no tax returns for 2020, 2021, and 2022. 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).

Failure to File Documents Related to Business

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

- A. Questionnaire,
- B. Copy of the Debtor's last filed tax return,
- C. Six months of profit and loss 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 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.

Improper Use of Exemptions

The Chapter 13 Debtor claimed the amounts of his interest in checking and savings account under C.C.P. § 704.070. The Trustee points out that C.C.P. § 704.070(a)(1) deals with paid earnings to an employee and under (b)(2), normally only 75% of the paid earnings that can be traced into deposit accounts are exempt. The Debtor fails to show a claim for these exemptions.

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.

8. [18-26031-E-13](#)
[GC-1](#)

JASON/SARAH NESBIT
Julius Cherry

MOTION FOR ORDER SETTING
SECURED CLAIM OF GOLDEN 1
CREDIT UNION
7-25-23 [49]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney], Chapter 13 Trustee, other parties in interest, parties requesting special notice, and Office of the United States Trustee on July 25, 2023. By the court’s calculation, 63 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Golden 1 Credit Union (“Creditor”) is ~~XXXXXX~~.

The Motion filed by Jason and Sarah Nesbit (“Debtor”) to value the secured claim of Golden 1 Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 54. Debtor is the owner of a 2014 Subaru Outback vin ending in 2159 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$11,500.00 as of the petition filing date.

CREDITOR’S OPPOSITION

Creditor filed its Opposition with the court on August 30, 2023. Dckt. 54 In its Opposition, Creditor states:

- A. The value of the Vehicle at the time when Debtor filed its bankruptcy petition was in the amount of \$18,052.00 based upon the Kelley Blue Book Quick Values as of September 24, 2018. Therefore, the claim should be valued at \$18,052.00. 11 U.S.C. § 522(a)(2).

Dckt. 54.

DEBTOR'S REPLY TO CREDITOR'S OPPOSITION

Debtor filed a Reply to Creditor's Opposition on September 14, 2023. Dckt. 65. In its Reply, Debtor states:

- A. Creditor's Opposition does not address the negative equity and gap insurance issue.
- B. Creditor made a mistake in its valuation of the Vehicle. Creditor improperly recorded the mileage at 62,052, when Debtor lists the mileage as 103,038 in their petition. This difference would have reduced Creditor's valuation by \$10,000.00.

Dckt. 61.

CH. 13 TRUSTEE'S OPPOSITION

David P. Cusick, Ch. 13 Trustee ("Trustee"), filed an Opposition on September 6, 2023. Dckt. 58. In his Opposition, Trustee states:

- A. Debtor's Declaration does not comply with 28 U.S.C. § 1746(2) where it relies on Debtor's personal knowledge.
- B. Trustee has already paid out 96.78% of Creditor's claim during the life of the plan. According to the Local Bankruptcy Rules, this motion should have been filed before or in conjunction with the plan. At this point, 60 months into a 60 month plan, this motion is untimely and prejudicial to the creditors.

Dckt. 58.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

Debtor filed a Reply to Trustee's Opposition on September 15, 2023. Dckt. 65. In its Reply, Debtor states:

- A. Debtor's lay opinion of the value of the collateral is admissible evidence under the Federal Rules of Evidence.
- B. Negative equity and gap insurance should be applied against the value of Creditor's claim.
- C. The Trustee is also to blame for not objecting earlier, thus excusing Debtor's lateness in filing its Motion.

September 26, 2023 Hearing

There appear to be several major issues confronting the court:

1. Debtor is bringing this Motion at the end of this Chapter 13 case after payments have been made on the claim as (a) set forth in the Proof of Claim and (b) as provided in the confirmed Chapter 13 Plan. While Debtor listed a lower amount the Class 2 treatment, there being no order valuing Creditor's claim. See Plan, ¶ 3.02, providing that the Proof of Claim controls unless there is an order of the court determining the amount of the claim.
2. When the vehicle was purchased there was \$2,645.00 in financing that was for other than the purchase of the vehicle. The Motion does not state why this is relevant for the present Motion. It is not alleged by Debtor that the valuation is subject to the prohibition on the 11 U.S.C. § 506(a) valuation because Creditor's claim is a purchase money security interest subject to the 11 U.S.C. § 1325(a) hanging paragraph. The hanging paragraph prohibits valuation of a secured claim if the secured obligation is a purchase money security interest for a vehicle purchased within 910 days of the filing of the bankruptcy case. The Ninth Circuit in the *Penrod* decision established the principle that the financing of negative equity for the trade-in, extended warranties, and the like are not part of the purchase money financing and can be reduced by the 11 U.S.C. § 506(a) valuation notwithstanding the hanging paragraph.

Debtor's Motion states that the vehicle was purchased in November 2015. Even if it was purchased on November 30, 2015, that is more than 910 days before the September 24, 2018 commencement of this case.

It is unclear the relevance of this being a purchase money security interest and additional financing.

3. The Vehicle had substantially more mileage on it when this case was filed than the mileage used in Creditor's computation of value. Debtor lists the vehicle as having the 103,038 miles on Schedule A/B. Dckt. 9 at 5.

At the hearing, **XXXXXXX**

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

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

The Motion to Value Collateral and Secured Claim filed by Jason and Sarah Nesbit ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) to value the secured claim of Golden 1 Credit Union (“Creditor”) is **XXXXXXX**.

9. [22-22733-E-13](#) **MATT/ESTHER SANCHEZ** **CONTINUED MOTION TO CONFIRM**
[PGM-4](#) **Peter Macaluso** **PLAN**
6-23-23 [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)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2023. By the court’s calculation, 46 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 XXXXXXXX.

The debtor, Matt Denny Sanchez and Esther Anna Maria Sanchez (“Debtor”), seek confirmation of the Amended Plan. The Amended Plan includes the same payment plan as in the First Amended Plan and maintains that 0% be paid to unsecured claims. Amended Plan, Dckt. 72. Debtor claims that their assets are fully exempt. Declaration, Dckt. 70. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on July 25, 2023. Dckt. 83. Trustee opposes confirmation of the Plan on the basis that:

1. Plan relies on Motion to Value Collateral.
2. There is reason to doubt both the feasibility of the plan and Debtors' best efforts
 - A. Plan still proposes zero percent to unsecured claims.
 - B. Debtor has failed to provide sufficient evidence of income.
 - C. Debtor has failed to provide sufficient evidence of expenses.
 - D. Debtor does not explain their Schedule I withholdings.
 - E. Debtor has failed to sufficiently reduce their expenses.

DEBTOR'S REPLY

Debtor filed a Reply on August 1, 2023, and on September 12, 2023. Dckts. 88, 95. Debtor addresses some of the Trustee's concerns, as explained further below.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Internal Revenue Service. Debtor filed a Motion to Value the Secured Claim of Internal Revenue Service, and this motion was granted on July 25, 2023. As such, Trustee's Objection on these grounds appears resolved.

Feasibility / Not Best Efforts

The Chapter 13 Trustee alleges that it is unclear if Debtor will be able to comply with the Plan, has the ability to make Plan payments, or is in Debtor's best efforts. 11 U.S.C. §§ 1325(a)(6), (b)(1). Trustee states:

A. ~~Percent to Unsecured Claims - Debtor's Plan was denied on the grounds that it might not be in the best interest of the creditors.~~ **Percent to Unsecured Claims - Debtor's Amended Plan** was denied on the grounds that it might not be in the best interest of the creditors. Trustee objects to the Second Amended Plan on the grounds that it still pays 0 percent dividend to unsecured creditors and relies on the same payment plan, thereby still failing to make best efforts. However, in its Reply filed on September 12, 2023, Debtor states it will pay no less than 20% to unsecured creditors. Debtor states it will begin payments of \$2,500.00 beginning on September 25, 2023, and will continue these payments for the remainder of the plan.

- B. **Insufficient Evidence of Income** - While Debtor states changes in employment in their declaration, Trustee notes that Debtor has not amended Form 122C-1 to provide evidence of their actual income.

It is not clear to the court why Debtor would be amending Form 122C-1, the Statement of Currently Monthly Income and Calculation of Commitment Period. Dckt. 1 at 47-49. The income information is the average monthly income for the six month period prior to the commencement of the bankruptcy case. See Form

122C-1 Part 1, ¶ 1. It is not a statement of Debtor's actual monthly income as of the commencement of the case or post-petition changes.

Debtor states they have \$8,301.96 is Gross Income. Debtor claims they are now working as a part-time employee with the Department of Corrections, and Debtor's Spouse was working in a Dental office from April to Mid-July 2022, then went on unemployment, and is now back working in the Dental Office.

- C. **Insufficient Evidence of Expenses** - Trustee objects that Debtor has not amended Form 122C-2 to provide evidence of their actual expenses. Without sufficient evidence, Trustee is unable to determine whether Debtor passes the means test.

Debtor still has not provided an updated Form 122C-1.

- D. **Withholding in Schedule I** - Based on the supplemental Schedule I, Trustee infers a combined income withholding of approximately 3 percent and questions the selection of this nominal amount.

Debtor claims they are withholding a total of \$1,654.45. Debtor states that they will provide Trustee with copies of all tax returns for the five (5) year commitment period.

- E. **Failure to Sufficiently Reduce Expenses** - Trustee states that Debtor has failed to sufficiently reduce expenses. Debtor has reduced some expenses, but fails to reduce high expenses for phone, cable, and internet services, and have allocated additional expenses to 'Social Security'. Declaration, Dckt. 84.

Debtor states they seek to have their budget last for the five-year commitment period. Debtor addresses the expenses for their vehicles, but does not address the other high expenses.

Debtor states the Social Security benefits began post-petition. These funds are intended to help stabilize Debtor's ability to pay, and not to incur further income tax claims.

Additionally, Trustee notes discrepancies between Debtor's Declaration and their Amended Schedule J. Trustee contends that these discrepancies are grounds for continued concern that the Amended Schedules J is a MAI (made as instructed) set of expenses created by Debtor and Debtor's counsel to avoid having any money in projected disposable income for the repayment of general unsecured claims.

At the request of the Debtor, and concurrence of the Trustee, the hearing is continued to afford Debtor the opportunity to provide additional and clarifying information to the Trustee.

September 26, 2023 Hearing

At the hearing, **XXXXXXXXXXXX**

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, Matt Denny Sanchez and Esther Anna Maria Sanchez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the hearing on the Motion to Confirm the Amended Plan is **xxxxxxx**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on August 30, 2023. 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 failed to appear and be examined at the 11 U.S.C. § 341 Meeting of Creditors held on August 22, 2023. Chapter 13 Trustee does not have sufficient information to determine if the Plan complies with 11 U.S.C. §1325.
2. Debtor has not provided the following 11 U.S.C. § 521 Documents: Pay Advices and Tax Return.
3. Debtor has not provided the Chapter 13 Trustee with any of the employer's payment advices received within 60 days prior to the filing of the petition, particularly, the pay advices from her employment at Kaiser.

4. Debtor has not provided Chapter 13 Trustee with a copy of her Federal Income Tax Return, with attachments, for the most recent pre-petition tax year. This document was required 7 days before the date first set for the meeting of creditors. 11 U.S.C. §521(e)(2)(A)(I).

Dckt. 16.

DEBTOR'S REPLY TO TRUSTEE'S OBJECTION

1. Debtor appeared at the continued 11 U.S.C. § 341 Meeting of Creditors held on September 14, 2023.
2. Debtor has provided the 11 U.S.C. § 521 documents on September 11, 2023, which is within the 7 day period before the continued 11 U.S.C. § 341 Meeting of Creditors held on September 14, 2023.

Dckt. 20.

DISCUSSION

Appearance at 341 Meeting

Debtor did not appear at the Meeting of Creditors held on August 22, 2023, 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, Debtor did appear at the continued Meeting of Creditors held on September 14, 2023, as reported in Debtor's Reply. Dckt. 20.

Debtor Provided Pay Advices

Debtor reports in its Reply that it 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). Dckt. 20.

Debtor Provided Tax Returns

Similarly resolving this concern, Debtor reports it provided 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). Dckt 20.

September 26, 2023 Hearing

At the hearing, ~~XXXXXXXXXX~~

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is ~~overruled, and the Plan 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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is ~~overruled, and the proposed Chapter 13 Plan is confirmed.~~

11. [19-25534-E-13](#) **BRIAN CARPENTER** **CONTINUED MOTION TO MODIFY
PLAN**
[WW-1](#) **Mark Wolff** **7-5-23 [33]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 5, 2023. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is ~~XXXXXX~~.

The debtor, Brian Michael Carpenter (“Debtor”) seeks confirmation of the Modified Plan to become current on Plan payments. Debtor states they misunderstood the process of increasing Plan payments and fell behind. Declaration, Dckt. 35. The Modified Plan provides \$180.89 for 45 months,

followed by \$314.00 per month for the remainder of the Plan. Modified Plan, Dckt. 36. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 27, 2023. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has overpaid.
- B. The Plan may not be in Debtor's best efforts.

Dckt. 41.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

Debtor filed a Reply on August 28, 2023. Dckt. 48. Debtor replies to Debtor's Opposition and states:

- A. Debtor will fix the payment discrepancy to reflect \$8,325 instead of \$8,140 as stated in the Modified Plan.
- B. Debtor does not oppose Trustee paying unsecured creditors more than the minimum 10% as provided in the Plan, as the Modified Plan may pay approximately 14.39%.
- C. The Modified Plan is in Debtor's best efforts. Debtor borrowed against his 401k retirement account to purchase a Toyota vehicle. Payments made to the 401k for the vehicle are cheaper than what Debtor was paying to lease his vehicle.

Dckt. 48.

TRUSTEE'S RESPONSE TO DEBTOR REPLY

Trustee filed a Response to Debtor's Reply on September 6, 2023. Dckt. 50. Trustee's concerns have mostly been resolved, but Trustee still opposes confirmation of the Plan on the basis that:

- A. Trustee agrees the vehicle purchase and borrowing against the 401k was a better deal for the Debtor and no longer opposes on this bases, but Trustee requests the listing for the Toyota in section 4.02 of the plan should be removed.
- B. Debtor has not filed a Supplemental Declaration in support of his Reply. As such, Trustee cannot confirm that the monthly payments toward Debtor's wife's credit card will not interrupt the Plan.

Dckt. 50.

DISCUSSION

Ability to Comply with the Plan

Debtor has resolved Trustee's concerns that he not be able to comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has paid \$8,325.00 through month 45, not \$8,140.00. Debtor's overpayment indicates a failure to comply with the Plan. However, in his Reply, Debtor admits to fixing that error, thereby resolving this concern of Trustee. Dckt. 48.

Failure to Provide Disposable Income / Not Best Effort Analysis

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

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

Trustee stated the Plan is not in Debtor's best efforts. Debtor borrowed from their 401K in the amount of \$14,000 to purchase a vehicle. Debtor is making payments on the vehicle in the amount of \$186.00. It does not appear Debtor obtained the court's permission to purchase a vehicle using their retirement funds. However, Debtor has similarly resolved these concerns of the Trustee. Trustee admits it is a better deal to make the \$186.00 monthly payments for the vehicle as opposed to the \$378.00 monthly payments. Trustee requests the listing for the Toyota in section 4.02 of the Plan should be removed.

September 26, 2023

At the hearing, xxxxxxxxx

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

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

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

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

12 thru 13

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on August 30, 2023. 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:

- A. Debtor has not paid all of the sums required by the Plan, and Debtor may not be willing to or is unable to make the payments due to Debtor's delinquency.
- B. Debtor admitted at the 341 Meeting of Creditors that he was unable to pay the first payment of the Plan.
- C. Debtor has failed to provide Chapter 13 Trustee with a copy of Federal Tax Return.

Dckt. 23.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$22,643.00 delinquent in plan payments. Before the hearing, another plan payment of \$195.00 will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. The Debtor has paid \$0.00 to the Plan to date. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide 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.

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 25, 2023. By the court’s calculation, 32 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

Wilmington Savings Fund Society, FSB (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor is entitled to receive payments pursuant to a Promissory Note secured by a Deed of Trust on the Subject Property. Creditor’s claim totals \$20,650.66 with \$8,437.97 in arrears.
- B. The Plan identifies the incorrect creditor (Quality Loan Service Corporation), which is the foreclosure trustee, not this Creditor.

- C. If Debtor will pay the lien in full in month one of the Plan, the amounts listed currently only represent the amounts at filing. Additional amounts have accrued since then and must be paid. Furthermore, it is unclear where Debtor will obtain the funds to pay the lien in full in the first month of the Plan. The Debtor's Schedules do not appear to indicate Debtor has sufficient funds.

Dckt. 19.

DISCUSSION

Creditor's objections are well-taken. Creditor asserts it is entitled to receive payments pursuant to a promissory note which matures on November 1, 2028, and the note is secured by a deed of trust on the subject property commonly known as 1651 Mistletoe, Redding, California 96002. All payments on the loan should be made to Creditor, not the party listed in the proposed Plan, Quality Loan Service Corporation ("QLSC"). QLSC is merely the foreclosure trustee, not the Creditor. The Proposed Plan purports to pay Creditor's claim in full in the first month of the Plan, to which Creditor does not object. However, Creditor argues it is entitled to the additional amounts that have accrued since the filing of this bankruptcy petition, and Creditor seeks clarity on where the funds will be coming from. The Schedules Debtor has filed do not indicate Debtor is able to afford paying the lien in full. Dckt. 12, p. 4.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The first month's proposed payment of \$22,643.00 appears sufficient to pay Creditor's claim in Class 2, notwithstanding amounts that have accrued since filing. However, Debtor has not provided the court with evidence that it can afford such a payment in the first month of the Plan. Debtor informs the court in its Schedule A/B that it has an interest of \$19,800.00 in a joint bank account shared with Debtor's father. Dckt. 13. Even if the court assumed Debtor could access this money in full, it still falls short of paying Creditor's claim, as well as paying Trustee's fees and the administrative fees. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Objection to the Chapter 13 Plan filed by Wilmington Savings Fund Society, FSB ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the 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 parties requesting special notice on September 6, 2023. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 Incur Debt is denied.

Mahagony Bonafide (“Debtor”) seeks permission to purchase a motor vehicle because she lost her vehicle in a car accident. Debtor seeks to incur debt to afford the vehicle with a total purchase price of \$25,720.00 with \$21,520.00 financed, and having monthly payments of \$676.51 to Consumer Portfolio Services over 75 months with an 18.55% fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor asserts she requires reliable transportation to travel to and from her employment, to bring her and her dependents to appointments, and for running typical errands. Declaration, Dckt. 49. T

While interest rates have increased, Debtor presents the court with financing at an 18.55% interest rate. This is extraordinarily high.

Debtor seeks to purchase a 2023 Nissan Sentra. The Motion states that Debtor believes that the terms of the purchase and financing are “reasonable,” including the 18.55% interest rate. Motion; Dckt. 47. The term of the financing is 75 months and 45 days.

It is not clear whether Debtor, who is facing such financial challenges that the extraordinary relief under Bankruptcy is necessary, is seeking to buy a new car or a 2023 with nominal mileage (such as a demo car).

Also, Debtor does not address how, if the prior owned vehicle was damaged and lost, why the insurance money just paid off the secured debt, as opposed to being used for a replacement vehicle.

Debtor and Debtor’s counsel do not provide the court with the efforts made to obtain financing and how an 18.55% rate is the best, consumer reasonable rate they could obtain.

The court finds that the proposed credit, based on the facts and circumstances of this case, is neither reasonable nor necessary. Debtor and Debtor’s counsel have not provided the court with grounds for granting the relief requested and authorizing Debtor to take on this burdensome financial obligation while having to perform her Chapter 13 Plan.

The Motion is denied.

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

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

The Motion to Incur Debt filed by Mahagony Bonafide (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice on August 30, 2023. 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:

- A. Debtor misclassified a Class 1 claim, AT&T, which is a telecommunication contract. Debtor also misclassified a Class 4 claim, Synchrony/Kawasaki, which should be listed as a Class 2 claim.
- B. The nonstandard provision 7.02 section 3.08 Class 2 payments states a dividend after six months in the Plan; however, no actual monthly dividend is mentioned.
- C. The Plan is not feasible because of a possible additional expense. Specifically, Debtor lists Aqua Finance Inc. On Schedule E/F, and that creditor filed a secured claim, but that debt is not provided for in the Plan.

Without reference to this debt in the Plan, it is unclear if this expense will affect the feasibility of the Plan.

Dckt. 14.

DISCUSSION

Trustee's objections are well-taken

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Chapter 13 Trustee asserts that while Debtor listed Aqua Finance Inc on Schedule E/F, the creditor is not provided for in the Plan. It is unclear if this potential added expense affects the feasibility of the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Furthermore, Trustee directs the court's attention to specific problems with classification of creditors in the Plan itself. Debtor should fix these deficiencies in the Plan and correctly classify creditors so that Trustee can recommend confirmation.

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

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

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

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

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 parties requesting special notice on September 11, 2023. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. Local Bankruptcy Rule 9014-1(f)(2).

The Motion for Allowance of Chapter 13 Attorney's Fees 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 Examine Attorney's Fees is granted and the court authorizes Debtor's counsel to have received a \$3,500.00 retainer in this case.

David P. Cusick ("Trustee") filed its Motion to Examine Attorney's Fees on September 11, 2023. September 21, 2023. Dckt. 8. In his Motion, Trustee asks this court for clarification in construing Local Bankruptcy Rule 2016-1(c). Specifically, Trustee is unsure whether costs are included as part of the initial retainer fee. Because costs are included in the retainer fee pursuant to Local Bankruptcy Rule 2016-1(c)(3), the statutory retainer amount of 25% is likely not exceeded in this case, dependent upon Debtor's attorney submitting an itemized lists of costs. This court has jurisdiction to examine attorney's fees pursuant to 11 U.S.C. § 329.

LOCAL BANKRUPTCY RULE 2016-1(c)

In 2023 the Court updated Local Bankruptcy Rule 2016-1 to address the issue of more properly providing reasonable compensation for Chapter 13 debtor counsel. The Trustee has identified a question concerning the proper application of Local Bankruptcy Rules 2016-1(c) relating to the pre-petition retainer

that Chapter 13 debtor counsel may receive when electing to be compensated based on the “No Look Fee” which does not require the submission of a normal fee application.

Local Bankruptcy Rule 2016-1(c)(3) provides that when the Chapter 13 debtor counsel elects the No Look Fee, the retainer is limited as follows:

3) Retainer.

Attorneys who claim fees under subdivision (c) 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). Absent compliance with California Rule of Professional Conduct 1.15(b), any retainer received shall be deposited in the attorney’s trust account.

In the present case, Debtor’s counsel has elected to be compensated in the amount of the maximum No Look Fee of \$12,500.00 in this case for which Debtor states that this is a business Chapter 13 case (Debtor has a business and a significant amount of the debts arise out of the business operation). Debtor’s counsel received a retainer of \$3,500.00 The \$3,500.00 retainer is 28% of the total fees of \$12,500.00, thus exceeding the 25% limitation imposed by Local Bankruptcy Rule 2016-1(c)(3).

The Trustee notes that the costs incurred or to be incurred during the Chapter 13 case up to \$500.00 may included with the No Look Fee, and if there are some costs, then the \$3,500.00 retainer maybe within the 25% cap.

The Trustee also states that:

1. Because no additional costs are stated, it appears that they are included in the \$12,500.00.
2. As written, Local Bankruptcy Rule 2016-1(c) states that the Flat Fee includes compensation for “services rendered and reimbursement for costs incurred” in representing the Chapter 13 debtor.
3. Local Bankruptcy Rule 2016-1(c)(2) states that the court “presumes” that for costs and expenses “counsel will incur not less than \$500 for actual, necessary expenses, i.e., filing fees, credit counseling, personal financial management course, postage and photocopying.”

The Trustee seeks clarification whether the \$12,500.00 includes costs, or whether additional costs can be added to the No Look Fee.

The language of Local Bankruptcy Rule 2016-1(c) states that:

Counsel electing compensation under this subdivision may be compensated by a flat fee for services rendered and reimbursed for costs incurred without seeking court approval. 11 U.S.C. § 330; Fed. R. Bankr. P. 2016.

The No Look Fee is stated in Local Bankruptcy Rule 2016-1(c)(1) that the “flat fees” for a nonbusiness case is \$8,500.00 and the flat fee for a business case is \$12,500.00.

The Local Rules then have a separate subparagraph titled “Costs,” which states:

2) Costs.

Prior to and during the case, the court presumes that debtor(s)’ counsel will incur not less than \$500 for actual, necessary expenses, i.e., filing fees, credit counseling, personal financial management course, postage and photocopying.

L.B.R. 2016-1(c)(2). Though the Local Bankruptcy Rules and Chapter 13 Plan make reference to just “fees” when addressing compensation for a Chapter 13 debtor’s counsel, the creation of a separate “Costs” paragraph demonstrates (though possibly not artfully stated) the intention to allow the Chapter 13 debtor counsel up to \$500.00 in costs as part of the No Look Fee. (This may need to be the topic of some post-enactment clerical cleanups to L.B.R. 2016-1 and some of the Local Forms.)

Thus, the actual total No Look Fees (including costs) would be up to a maximum of : \$9,000.00 for a non-business case (\$8,500.00 Fees + \$500.00 costs) and \$13,000.00 for a business case (\$12,500.00 fees + \$500.00 costs).

With Debtor’s counsel’s compensation for attorney’s fees and costs capped at the No Look Fee of \$12,500.00, the \$3,500.00 retainer (which the court presumes is a rounded up amount) is slightly higher than the 25% cap. With the \$12,500.00 No Look Fee Elected, 25% thereof is \$3,125.00.

For this case, the court authorizes counsel to retain the \$3,500.00 retainer. In the future, counsel will not round up retainer amounts.

The Trustee also notes that the Rights and Responsibilities form, Dckt. 5, used by counsel in this case is the old form which states that the No Look Fee is only \$4,000.00 for a nonbusiness case and only \$6,000.00 for a business case. This is a reminder to Debtor’s counsel to use the updated EDC 3-096 form.

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 Examine Attorney’s Fees filed by The Chapter 13 Trustee, David P. Cusick, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Catherine King, counsel for Chapter 13 Debtors David and Tammy Lee Mezquiriz is authorized to retain and apply to her fees and costs in this case the \$3,500.00 retainer she received (which retainer is slightly greater than the 25% authorized by Local Bankruptcy Rules 2016-1(c)(3)).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 29, 2023. 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.

The Objection to Confirmation of Plan is ~~XXXXXX~~.

MTGLQ Investors, L.P. (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The plan fails to cure the arrearages owed to Creditor.
- B. The plan is infeasible because Rene Maxon (“Debtor”) does not have sufficient income.

Dckt. 29.

DEBTOR’S RESPONSE

Debtor informed the court on September 13, 2023, that Debtor and Creditor have reached an agreement on a settlement. Dckt. 34. Debtor does not provide the court with any evidence of the terms of the settlement, which are essential for granting denial of this Objection.

September 26, 2023 Hearing

At the hearing, **XXXXXXXXXX**

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 of Plan filed by MTGLQ Investors, L.P., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2023. By the court's calculation, 32 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 shortens the notice period to the time given in light of the hearing being continued.

The court has continued the hearing, which resolves the notice period shortfall.

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). 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 XXXXXXX.

The debtor, Shawn Scott Dickinson and Monique Denee Dickinson ("Debtor") seeks confirmation of the Modified Plan because of present, unexplained delinquency. Declaration, Dckt. 80. The Modified Plan provides plan payments shall increase to \$2,081.63 per month for 23 months beginning July 25, 2023, and a 100 percent dividend to unsecured claims totaling \$12,237.62. Modified Plan, Dckt. 79. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 19, 2023. Dckt. 83. Trustee opposes confirmation of the Plan on the basis that:

- A. Sufficient notice has not been provided;

- B. Plan and pleadings were not served;
- C. Plan is overextended, possibly taking 74 months;
- D. Debtor is delinquent;
- E. The motion is not plead with particularity and includes no basis for modification request;
- F. Inclusion of additional attorney's fees to be paid through the plan not accounted for in the plan; and
- G. Debtor has not filed supplemental Schedules I & J to demonstrate feasibility of payments.

Dckt. 83.

CONTINUED HEARING

The court continued the August 8, 2023 hearing afford Debtor the opportunity to “file and serve Supplemental Pleadings on or before September 1, 2023,” and then for “Supplemental Opposition Pleadings, if any, shall be filed and served on or before September 8, 2023.”

DEBTOR'S AMENDED PLAN FILED

On August 30, 2023, Debtor filed a new Plan, not Supplemental Pleadings in support of the existing Motion to Confirm. Dckt. 97. Debtor asserts that the Amended Plan, Debtor corrects its previous errors and states:

- A. Sufficient notice has now been provided.
- B. Plan now completes timely as monthly payments for the final 21 months will be \$2,680.95 instead of the previously proposed \$2,081.63.
- C. Debtor is now current on plan payments.
- D. Debtor has now disclosed the basis for the modification of the previous plan, and also shown how Debtor can afford future payments.

Dckt. 97.

TRUSTEE'S NON-OPPOSITION

Trustee states that he no longer opposes the confirmation as Debtor has addressed his concerns in its Modified Plan. Dckt. 100.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation. Although Trustee had filed a previous Objection to Confirmation, Trustee's concerns have been subsequently alleviated.

However, Debtor has chosen to file a new plan, Dckt. 97, on August 30, 2023. This raises the issue of whether a new motion to confirm is required. The court cannot have a series of plans filed with rolling sets of amendments.

~~No opposition to the Motion has been filed by by creditors. Furthermore, Trustee, filed a Non-Opposition on September 6, 2023. Dckt. 100. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.~~

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

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

~~The Motion to Confirm the Chapter 13 Plan filed by the debtor, Shawn Scott Dickinson and Monique Denee Dickinson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Chapter 13 Modified Plan filed on August 30, 2023, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2023. 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 Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Plan is XXXXXXX.

The debtor, Renee Lane (“Debtor”) seeks confirmation of the Modified Plan because Debtor’s previous Plan failed to provide for the secured claim of creditor U.S. Bank Trust National Association (“Creditor”). Declaration, Dckt. 89. Creditor filed their proof of claim on May 18, 2023 in the amount of \$103,428.72. The loan was previously in Debtor’s husband’s name; however, Debtor’s husband has passed away, and Debtor is in the process of assuming that loan. The Modified Plan includes Creditor’s claim, as well as a small priority tax debt owed to the State Franchise Tax Board and the IRS for her 2022 taxes. Modified Plan, Dckt. 91. 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 1, 2023. Dckt. 95. Trustee opposes confirmation of the Plan on the basis that:

- A. All sums required by the Plan have not been paid. Debtor is \$7,314.16 delinquent in plan payments to the Trustee, having missed three payments for June, July, and August.

- B. The Modified Plan does not appear feasible. The Modified Plan calls for an increase in payments monthly of \$141.00, but Debtor is delinquent in the current Plan.

Dckt. 95.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

Debtor submitted a Reply to Trustee's Opposition on September 21, 2023. In her Reply, Debtor states:

- A. Trustee's objections are misplaced as he is objecting to a previous plan as part of a prior bankruptcy that was closed on February 28, 2023.
- B. Debtor has cured her delinquency by making a payment on September 5, 2023 for \$1,800, and another payment of \$2,600 on September 19, 2023. Debtor has added any additional delinquent amounts to be paid off at the end of the Modified Plan.

Dckt. 98.

DISCUSSION

Delinquency

In the Opposition the Trustee makes reference to the Bankruptcy case having been filed on March 14, 2023. That is the correct date for the filing of this Case. The Trustee does reference that Debtor had a prior case.

The Opposition clearly states that the default is being computed based on the first payment having come due in April 2023.

The Chapter 13 Trustee asserts that Debtor is \$7,314.16 delinquent in plan payments, which represents multiple months of the \$2,161.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13.

Debtor asserts she has cured her delinquency, alleging Trustee has received \$4,400.00 in payments toward that deficiency since Trustee's September 1 Objection. By the court's calculation, that leaves \$2,914.16 in unpaid plan payments with another \$2,161.00 due just before this hearing. Debtor proposes the \$2,914.16 is added to the end of the Modified Plan, thus being accounted for; however, adding this sum to the end of a Modified Plan does not cure the current delinquency. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor is already delinquent under the current Plan and proposes a monthly increase of \$141.00 in the Modified Plan. Debtor asserts she can afford this increase in Plan payments because she has acquired a new renter on her premises, and she has received a \$1 per hour pay raise. Declaration, Dckt. 99. However, Debtor has not yet submitted evidence of pay stubs or income from renting her premises. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 18, 2023. By the court’s calculation, 70 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Kevin C. Hayes (“Debtor”) seeks confirmation of the Modified Plan because the First Modified Chapter 13 Plan complies with the provisions of Chapter 13 and with other applicable provisions of the U.S. Bankruptcy Code, he has paid all fees required in the case, the Modified Plan is proposed in good faith without any intent to deceive or misrepresent, the amount of unexempt equity in the case is \$.00, and as the effective date of the Modified Plan, and the value of the property to be distributed is not less than the amount that would be paid under a Chapter 7 liquidation.

Additionally, the Debtor claims to be able to make all the payments under the terms of the Modified Plan, has no domestic support obligations, and has filed all tax returns required, and the Modified Plan was amended because of change in financial circumstances. Declaration, Dckt. 32. The Modified Plan provides payments of \$2,326 for 23 months, \$0.00 for 2 months, \$1, 326 for five months, and \$2,326 for 30 months. Further, a 100% percent dividend to unsecured claims totaling \$54,166.92. Modified Plan, Dckt. 33. 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 12, 2023. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

- A. The Trustee cannot assess the feasibility of the Modified Plan and the Modified Plan may not comply with 11 U.S.C. § 1325(a)(1) or (6). The debtor is delinquent under the terms of the proposed Modified Plan, where \$56,150.00 has come due through August 2023, the Debtor has paid to date total of \$55, 824.
- B. No current Schedule I & J have been filed to support the motion to confirm the modification of th Plan. The most recently filed Schedules I and J were filed May 13, 2021. The Declaration indicates Debtor's monthly income is \$6,100.09, expenses are \$2,490, leaving a disposable income of \$3,610.09 which is unchanged from Debtor's prior schedules. This does not allow the Trustee to adequately assess the feasibility of debtor's Modified Plan or whether the Modified Plan has been proposed in good faith.
- C. The Debtor does not clearly explain in the Motion why he is modifying the Modified Plan. Both the Motion and Declaration state the Modified Plan is being amended due to a change in financial circumstances, but the circumstances are not disclosed or how they changed. The motion does not cite 11 U.S.C. § 1329, which is required under LBR 9014-1(d) and Federal Rule of Bankruptcy Procedure 9013. The Motion to Confirm Debtor's Chapter 13 Modified Plan may not comply with the requirements of Federal Rule of Bankruptcy Procedure because it does not plead with particularity the grounds with the requested relief is based. It is unclear why the Modified Plan proposes a reduced payment for months 26 through 30 and the Debtor's Declaration appears to be based on expert knowledge that the Debtor may not have. Debtor may or may not have knowledge of § 1325 of the Bankruptcy Code.

Dckt. 38.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Debtor was delinquent \$326.00 under the terms of the proposed Modified Plan, where \$56,150.00 had come due through August 2023, and the Debtor had paid a total of \$55,824.00. However, Debtor asserts he is now up to date on all plan payments in a Declaration filed on September 21, 2023. Declaration, Dckt. 41. Debtor also asserts he is seeking help for issues related to his gambling addiction, which is why Debtor was recently delinquent. The court applauds Debtor's efforts but has concerns that the addiction may lead to another delinquency. Delinquency indicates that the Modified Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). If the Debtor can submit to this court proof of

his regular attendance at a gambler's anonymous group, perhaps Trustee's concerns over delinquency can be alleviated.

Failure to File Supplemental Schedule I & J

The Chapter 13 Trustee argues that Debtor has failed to file a supplemental Schedule I and J to support his motion. The most recently filed Schedules I and J were filed on May 13, 2021. The Declaration indicates monthly net income and expenses that are unchanged in the prior schedules. Without an accurate picture of Debtor's financial reality, the court is unable to determine if the Modified Plan is confirmable.

Failure to Provide Basis for Modification

The Debtor must plead with particularity the grounds for which he had standing to modify the plan. FRBP 9013. The Debtor's motion failed to appropriately cite to 11 U.S.C. § 1329 to provide standing for a modification of plan. The Debtor also failed to address the change in financial circumstances that may afford him a modification of the Plan.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Kevin C. Hayes ("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.

21. [23-22286-E-13](#)
[DPC-1](#)

RIZZALINA MIKAELA TODD
Mary Ellen Terranella

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
8-23-23 [\[30\]](#)

21 thru 22

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice on August 23, 2023. 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:

- A. The Plan exceeds 60 months with tax claims. The Internal Revenue Service filed a claim as priority for \$4,741.45, reflecting no tax return filed in 2022. The Plan estimated priority is at \$1,120.00. The Franchise Tax Board filed a claim as well, “To be Determined”, reflecting no 2022 tax return and a 2018 tax return. The Plan proposes a payment that leaves only \$2,962.86 for priority claims. Therefore, the Trustee objects pursuant to 11 U.S.C. § 1325(a)(1) & (2) & 1322(a)(1) & (d).
- B. The Debtor cannot make the Plan payments, U.S.C. § 1325(a)(6) and has not disclosed all the information required by law, contrary to U.S.C. § 1325(a)(1). The Debtor failed to provide business documents, failed to

attach business income and expenses, and the business income is overstated on Schedule I.

Dckt. 30.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide for a Priority Claim

The Chapter 13 Trustee asserts that the Internal Revenue Service has a claim for \$4,471.45 in priority unsecured debt. Proof of Claim 9-1, filed on August 7, 2023. Also, the Chapter 13 Trustee asserts that the Franchise Tax Board has a claim for a "To Be Determined" amount in priority unsecured debt. Proof of Claim 8-1, filed on August 2, 2023. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Failure to File Documents Related to Business

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Questionnaire,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, from all financial institutions, including but not limited to, Chase checking account identified on Schedule A/B.
- 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 the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Failure to File Business Documents Required by Schedule I

The Chapter 13 Trustee argues that 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 the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Debtor's net income listed on Schedule I of \$8,562.00 appears to be overstated, and is not accurate according to the Debtor's testimony. The Debtor admitted at the First Meeting of Creditors held on August 17, 2023 that the business income, listed on 8a as \$100.00, was for RAH Customs LLC and the

income is actually \$200.00 per month, while expenses are \$1,500 a month. This would leave a negative cash flow of \$1,300. The Debtor admitted that the wage income supports the business income shortfall. If the business support for the shortfall of \$1,300.00 is deducted, the Debtor's income would be negative. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 24, 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.

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

- A. The Creditor has a claim relating to the personal property. On August 24, 2023 the Creditor filed its proof of claim of \$19,761.14, with a secured value of \$17,400.00. The claim is secured by a 2017 Harley-Davidson FLHX Street Glide.
- B. Pursuant to 11 U.S.C. § 1325(a)(5)(B), the value of the property to be distributed to Creditor is less than the allowed amount of Creditor’s Claim. Under the Plan, Debtors provided for the Creditor as a Class 2(a) claim representing that the amount claimed by the claim is \$11,162.00 based on the value of the collateral. The amount secured is \$17,400.00.

Additionally, no motion or application to value the property has been filed, ruled on, or granted determining the allowed value of the Creditor's claim to be anything less than the amount on its proof of claim.

- C. The Debtor's Plan proposes to pay the Creditor 7.50% interest on its secured claim. Pursuant to *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 Sct 1951, 158 L.Ed. 2d 787 (2004), the Creditor argues that the Supreme Court found that the appropriate rate of interest when a debtor is modifying the rights of a secured creditor through the bankruptcy Plan is, pursuant to 11 U.S.C. § 1325 (a)(5)(B)(ii), the "prime-plus" or formula rate" which augments the national prime rate to account for the risk of nonpayment by the debtor. Additionally, the Supreme Court refused to determine the proper scale for risk adjustment, but noted that other courts have approved adjustments of 1.5% to 3%. The Creditor relies on JP Morgan Chase to state that the interest rate was 8.25% at the time the Debtor filed the case. Therefore, the Creditor contends that the interest rate of 11.25% is appropriate.

Dckt. 34.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$17,400.00 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as \$11,162.00 and indicates that it is secured by a 2017 Harley-Davidson FLHX Street Glide. The Plan provides for treatment of this as a Class 2 claim and proposes to pay a \$265.00 monthly dividend on account of the claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1325(a)(5)(B) because it contains no provision for payment of Creditor's allowed claim, which is secured by Debtor's 2017 Harley-Davidson FLHX Street Glide. *See* 11 U.S.C. § 1325(a)(5)-(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

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

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

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

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

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

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 7.50%. Creditor's claim is secured by a 2017 Harley-Davidson FLHX Street Glide. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.25%, plus a 1.25% risk adjustment, for a 9.50% interest rate. The Plan cannot be confirmed. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

The Objection to the Chapter 13 Plan filed by Harley-Davidson Credit Corporation (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

23 thru 24

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 29, 2023. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Citibank, N.A. as Owner Trustee for New Residential Mortgage Loan Trust 2020-RPL1, its successors and/or assignees ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Plan impermissibly modifies Creditor's rights under 11 U.S.C. § 1322(b)(2). The Plan fails to provide a reasonable schedule to pay arrearages, which are in the amount of \$6,014.21.

Dckt. 15.

Unauthenticated Exhibits have been filed in support of the Objection. However, Creditor has filed Proof of Claim 3-1 on August 29, 2023 (one day prior to filing the Objection to Confirmation), in which it states that there is a (\$6,014.21) pre-petition arrearage. POC 3-1, ¶ 9. *Wright v. Holm (In re Holm)*,

931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's property commonly known as 3701 Odd Fellows Road, Diamond Springs, California 95619. Creditor has filed a timely proof of claim in which it asserts \$6,014.21 in pre-petition arrearages.

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

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 Citibank, N.A. as Owner Trustee for New Residential Mortgage Loan Trust 2020-RPL1, its successors and/or assignees, holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

~~Sufficient Notice Provided.~~ The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 30, 2023. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required. Creditor did not comply with Local Bankruptcy Rule 7005-1 in filings its certificate of service because Creditor failed to use Official Certificate of Service Form EDC 007-005.

At the hearing, **XXXXXXX**

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.

U.S. Bank Trust National Association as trustee for MEB Loan Trust IV (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor has a claim evidenced by a Balloon Note executed by James Roehr (“Debtor”) in the amount of \$100,000, estimating its secured claim is approximately \$64,510.05.

- B. The note is secured by a deed of trust on the real property commonly known as 3701 Odd Fellows Road, Diamond Springs, California 95619 (“Property”).
- C. The beneficial interest in the deed of trust was assigned to creditor.
- D. The loan matured on January 1, 2020.
- E. Debtor’s Plan does not comply with 11 U.S.C. § 1325(a)(5)(B)(ii) because it does not distribute at least the allowed amount of Creditor’s secured claim.
- F. Debtor misclassified Creditor, placing Creditor in Class 1 when Creditor should be in Class 2(A).

Dckt. 19.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$ \$64,510.05 in this case. The Plan provides for treatment of this as a Class 1 claim and proposes to pay a \$615.72 monthly dividend on account of the claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains an insufficient provision for payment of Creditor’s matured obligation, which is secured by Debtor’s residence. *See* 11 U.S.C. § 1325(a)(6).

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

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

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

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

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

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

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

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

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

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

~~————— The Objection to the Chapter 13 Plan filed by U.S. Bank Trust National Association as trustee for MEB Loan Trust IV ("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.~~

FINAL RULINGS

25. [23-21501-E-13](#)
[DPC-2](#)

RICHARD CRUZ
Joseph Canning

**OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS**
8-28-23 [41]

Final Ruling: No appearance at the September 26, 2023 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, and parties requesting special notice on August 28, 2023. By the court's calculation, 28 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 overruled without prejudice.

David Cusick, the Chapter 13 Trustee having filed an *Ex Parte* Motion to Dismiss the pending Objection on September 18, 2023, Dckt. 48; no prejudice to the responding party appearing by the dismissal of the Objection]; [the Chapter 13 Trustee having the right to request dismissal of the objection] 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 Richard Cruz, the Debtor; the *Ex Parte* Motion is granted, the Chapter 13 Trustee's Objection] is dismissed without prejudice, and the court removes this Objection from the calendar.

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 Claim of Exemptions filed by David Cusick, the Chapter 13 Trustee having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 48, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Exemptions is dismissed without prejudice, Debtor having filed an Amended Schedule C (Dckt. 45).

26. [21-23163-E-13](#)
[DBJ-1](#)

JEFFERY PARKHOUSE
Douglas Jacobs

MOTION TO DISMISS CASE
8-28-23 [\[33\]](#)

Final Ruling: No appearance at the September 26, 2023 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, creditors, and Office of the United States Trustee on August 28, 2023. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Dismiss is granted, and the case is dismissed.

Jeffery Parkhouse’s (“Debtor”) surviving spouse, Pamela Parkhouse, seeks dismissal of the case on the basis that:

- A. Debtor is deceased.
- B. Ms. Parkhouse, as Debtor’s surviving spouse, has determined that this matter should be dismissed.

Dckt. 33.

CHAPTER 13 TRUSTEE'S RESPONSE

Chapter 13 Trustee, David P. Cusick, filed a Response on September 12, 2023. Dckt. 38. Chapter 13 Trustee filed a Non-Opposition to Chapter 13 Debtor's Motion to Dismiss, stating that Debtor has paid \$8,694.00 into the Plan, and Debtor is current in Plan payments to the Trustee. Trustee recommends the court grant the motion and the case be dismissed.

Dckt. 38.

DISCUSSION

Based on the agreement of Debtor's surviving spouse and Trustee, the court agrees the case should be dismissed. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Debtor's surviving wife, Pamela Parkhouse, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

27. 23-21488-E-13 BLG-1	SHARMAINE MORZO Chad Johnson	MOTION TO VALUE COLLATERAL OF QUANTUM3 GROUP LLC 8-29-23 [21]
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27 thru 28

Final Ruling: No appearance at the September 26, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, attorneys of record who have appeared, other parties in interest, and Office of the United States Trustee on August 29, 2023. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Quantum3 Group LLC as agent for Aqua Finance FBO (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$100.00.

The Motion filed by Sharmaine Angelee Morzo (“Debtor”) to value the secured claim of Quantum3 Group LLC as agent for Aqua Finance FBO (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 24. Debtor is the owner of an Aqua Pro 5000 SXT and Aqua Pure Advantage (“Property”). Debtor seeks to value the Property at a replacement value of \$100.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The lien on the Property secures a purchase-money loan incurred on September 26, 2017, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$3,124.41. Proof of Claim, No. 3.

Chapter 13 Trustee’s Opposition

The Trustee opposes the Debtor’s Motion to Value Collateral because the Debtor has no plan pending. The Debtor provides for the Creditor on amended Schedule D, but not in the proposed Plan. Where the Debtor does not provide for the Creditor, the Trustee would oppose as there is no purpose to the valuation. The Trustee contends that valuing collateral where the creditor is not provided for in the plan as secured is contrary to 11 U.S.C. § 506(a)(1).

Dckt. 31.

Chapter 13 Debtor’s Reply

The Debtor responds to the Trustee’s opposition by stating that on September 19, 2023, the Debtor filed her First Amended Plan with Motion to Confirm, and a confirmation hearing has been scheduled for November 7, 2023 at 2:00pm. The First Amended Plan provided for Quantum3 Group LLC as agent for Aqua Finance FBO as a Class 2 claim secured in the amount of \$100.00. The Debtor also notes that she was interviewing with potential employers and was expecting an offer for a higher paying job, which delayed the filing of her first amended plan. The Debtor has since received and accepted a new job.

Dckt. 45.

DISCUSSION

Debtor has alleviated Trustee's concerns as she has now filed a proposed Modified Plan. Dckt. 30. The lien on the Property secures a purchase-money loan incurred on September 26, 2017, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$3,124.41. Proof of Claim, No. 3. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of \$100.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Sharmaine Angelee Morzo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Quantum3 Group LLC as agent for Aqua Finance FBO ("Creditor") secured by an asset described as Aqua Pro 5000 SXT and Aqua Pure Advantage ("Property") is determined to be a secured claim in the amount of \$100.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$100.00 and is encumbered by a lien securing a claim that exceeds the value of the asset

Final Ruling: No appearance at the September 26, 2023 Hearing is required.

Local Rule 9014-1(f)(1) Motion—no Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on August 29, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Foundation Finance Company, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$500.00.

The Motion filed by Sharmaine Angelee Morzo (“Debtor”) to value the secured claim of Foundation Finance Company, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 29. Debtor is the owner of Countertops (“Property”). Debtor seeks to value the Property at a replacement value of \$500.00 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).

Chapter 13 Trustee’s Opposition

The Trustee opposes the Debtor’s Motion to Value Collateral because the Debtor has no plan pending. The Debtor provides for the Creditor on amended Schedule D, and in Class 2B of the proposed Plan. The Trustee notes that the Motion seeks to value the countertops at \$500.00, but the proposed Plan shows the value at \$1,000.00 in Class 2B. The Trustee opposes where the Motion and the Plan provide conflicting valuations.

Dckt. 34.

Chapter 13 Debtor’s Reply

The Debtor responds to the Trustee's opposition by stating that on September 19, 2023, the Debtor filed her First Amended Plan with Motion to Confirm, and a confirmation hearing has been scheduled for November 7, 2023 at 2:00pm. The First Amended Plan provided for Foundation Finance Company as a Class 2 claim secured in the amount of \$500.00, consistent with the motion to value. The Debtor also notes that she was interviewing with potential employers and was expecting an offer for a higher paying job, which delayed the filing of her first amended plan. The Debtor has since received and accepted a new job. The Debtor also notes that she explained in her declaration that reason for the change in the valuation, noting that she originally believed the collateral securing the contract also included the sink and faucet. However, after reviewing the contract, the collateral was only the countertops. Declaration, Dckt. 29.

Dckt. 47.

DISCUSSION

Debtor has alleviated Trustee's concerns as she has filed a proposed Modified Plan fixing the valuation differences. Dckt 30. The lien on the Property secures a purchase-money loan incurred on March 17, 2021, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$4,652.65. Proof of Claim, No. 9. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of \$500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Sharmaine Angelee Morzo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Foundation Finance Company, LLC ("Creditor") secured by an asset described as Countertops ("Property") is determined to be a secured claim in the amount of \$500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.