

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

**September 27, 2022 at 2:00 p.m.**

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1.	<a href="#"><u>19-21707-E-13</u></a> <a href="#"><u>DEF-6</u></a>	<b>TERRY DASNO</b> <b>David Foyil</b>	<b>MOTION TO MODIFY PLAN</b> <b>8-2-22 [88]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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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 2, 2022. By the court's calculation, 56 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).

<b>The Motion to Confirm the Modified Plan is denied.</b>
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The debtor, Terry Robert Dasno ("Debtor") seeks confirmation of the Modified Plan because Debtor sold real property located at 34 Westview Drive, Jackson, California ("Property"). Declaration, Dckt. 90. The Modified Plan provides \$500 per month for 40 months and \$10,445 to be paid on month

41. Modified Plan, Dckt. 91. The Modified Plan proposes a fourteen (14) percent dividend to unsecured creditors. *Id.* 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 29, 2022. Dckt. 94. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan does not indicate what Debtor intends to do with the proceeds from the sale of the Property.
- B. Debtor attempts to shorten the Plan to forty-one (41) months with no explanation why.
- C. No current Schedules I and J have been filed to support the Motion.
- D. No address change has been filed even though Debtor sold their Property.
- E. There is no indication on the source of the last two monthly payments and the lump sum payment on month forty-one (41).
- F. Interest payments, which were authorized on the original Plan, are not authorized on the Modified Plan.

## **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).

The Plan does not indicate what Debtor intends to do with the sale of the Property. If Debtor intends to use the \$132,742.78 in proceeds Trustee received from the sale, Debtor should list so on the Modified Plan.

Additionally, no Schedule I and J have been filed in support of the Motion. No Schedule I and J have been updated since the filing of the case. Petition, Dckt. 1.

There is no indication on what funds Debtor intends to use for the last three months of the Modified Plan.

Interest payments to OneMain Financial and Patelco Credit Union, which were disbursed in the amount of \$866.63 and \$1,464.16, are not accounted for in the Modified Plan. Additionally, the Modified Plan does not factor in current interest due in the amount of \$19.30 and \$36.64.

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

### **Plan is Fewer Than Sixty Months Without Paying All Unsecured Claims**

The Plan violates 11 U.S.C. § 1325(b)(4)(B) because the Plan will complete in less than the permitted sixty months without providing full payment of all allowed unsecured claims. Debtor has proposed a plan term of 41 months, but Debtor has proposed to pay less than the full amount of allowed unsecured claims.

### **Failure to Provide Address Change**

Debtor has failed to submit their Change in Address after selling their Property proof of their social security number to Trustee as required by Federal Rules of Bankruptcy Procedure 4002(a)(5). Attempting to confirm a plan while failing to provide a change in address represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by TERRY ROBERT DASNO ("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.

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on August 3, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. The debtor, Michael Allen Coffman and Susan Carol Coffman ("Debtor") failed to appear at 341 Meeting of Creditors.

## DISCUSSION

Trustee's objections are well-taken.

### Failure to Appear at 341 Meeting

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

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

Counsel for Debtor explained the issues facing Debtor and how Counsel and Debtor were moving forward in the prosecution of this case. Counsel for the Chapter 13 Trustee concurred with the Debtor's request to continued the hearing.

### **September 20, 2022 Status Report**

On September 20, 2022, Trustee filed a Status Report indicating Debtor did not appear at the continued meeting of creditors. Additionally, Debtor's Attorney informed Trustee that debtor Susan Carol Coffman has passed away.

### **September 27, 2022 Hearing**

The Debtor having passed away, the court sustains the Objection to Confirmation. Debtor's counsel can canvas heirs and other possible representative to be appointed in this case to continue in prosecution, or the case may be dismissed.

At the hearing, **xxxxxx**

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

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

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

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

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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 on August 22, 2022. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

**The Objection to Claimed Exemptions is sustained, and the exemptions over \$31,500.00 are disallowed.**

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Peggy Somkopulos' ("Debtor") claimed exemptions under California law because Debtor's claimed exception for her SPS Insurance Claim in the amount of \$250,000.00 is over the amount allowed by Code of Civil Procedure § 703.140(b). Debtor's Schedule C shows an asset identified as SPS Insurance Claim of \$250,000.00 as exempt under Code of Civil Procedure § 703.140(b)(5). Dckt. 13. Creditor asserts that the maximum allotment of funds under the exemption is \$33,650.00. Since Debtor exempts cash (\$150.00) and Patelco deposit accounts (\$2,000.00), only \$31,500 is left to be exempt. Dckt. 53. \$250,000.00 is significantly over this figure.

### **Debtor's Response**

Debtor filed a response on September 6, 2022. Dckt. 62. Debtor, while in *Pro Per*, attempted to use Code of Civil Procedure § 703.140(b)(5) for the SPS Insurance Claim of \$250,000.00. Dckt. 62. Debtor just retained counsel who believes that the funds are secured by SPS and exemption is not required. Debtor requests that the Objection be sustained.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has

the burden of proving that the exemptions are not properly claimed.” FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Debtor concurs in the Objection.

The Chapter 13 Trustee’s Objection is sustained, and the claimed exemptions over \$31,500.00 are disallowed.

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

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

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

**IT IS ORDERED** that Objection is sustained, and the claimed exemptions for SPS Insurance Claim (\$250,000.00) under California Code of Civil Procedure § 703.140(b)(5) over \$31,500.00 is disallowed.

**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.

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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 and creditors on July 29, 2022. By the court’s calculation, 60 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).

<b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXX</span>.</b>
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The debtors, Michael Anthony Carter and Torrie Gidget Conn (“Debtors”) seeks confirmation of the Chapter 13 Amended Plan, filed on July 25, 2022.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 17, 2022. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

- A. Creditors Select Portfolio Servicing, Inc. and Federal National Mortgage Association are improperly listed as Class 6.
- B. Creditor California Department of Tax and Fee Administration is improperly listed as Class 5, when it should be listed as Priority.



- C. Debtors is to provide \$200 per month to unsecured creditors, however, Debtors does not list the amount owed to each. Additionally, there is no minimum percentage listed for the general unsecured claims.
- D. Debtors has not provided pay advices or tax returns.
- E. Debtors' Petition Documents and Schedules are inaccurate.
- F. Debtors may be over the debt limit for Chapter 13 relief.

## **CREDITOR'S OPPOSITION**

Select Portfolio Servicing, Inc. as servicer for Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Trustee of CSMC 2021-RPL8 Trust ("Creditor") holding a secured claim filed an Opposition on September 13, 2022. Dckt. 44. Creditor opposes confirmation of the Plan on the basis that:

- A. Creditor is improperly listed as Class 6, when they should be Class 4.

## **DEBTORS' REQUEST FOR CONTINUANCE**

On September 16, 2022, Debtors requested a continuance to November 22, 2022 due to the case being more complex than anticipated and Debtors are seeking the assistance of counsel. Dckt. 54.

## **DISCUSSION**

On July 25, 2022, Debtors filed an Amended Chapter 13 Plan. Dckt. 26. The Plan provides for payments of \$200.00 a month. All of the provisions for Class 1, Class 2, Class 3, and Class 4 are marked "NA" (which the court interprets to be "Not Applicable." For Class 5 and Class 7, no provision is made for payment, citing the amounts as "Unknown."

The Amended Plan includes a number of Non-Standard Provisions addressing specific claims.

For Class 3 priority claims, it states that priority claims are unknown. Dckt. 26 at 9. While stating that there is no known Creditor with a priority claim, the "California Department of Tax and Fee Administration" is listed, stating that Tax Claim is disputed, but Debtors "Shall through the forced garnishment set-up continued payments until set-off is determined by the court." *Id.*, ¶ 7.03(c)(1).

Then, for Class 6 (special treatment unsecured claims), it states that though no creditor is known, "Select Portfolio Servicing, Inc." is listed. *Id.*, ¶ 7.04, 1. It states that this is a mortgage claim (indicating that it is a secured, not unsecured claim) and that it will be paid by Debtors monthly by phone installments/payments. *Id.*, ¶ 7.04, 2.

For Class 6, Debtors also lists "Federal National Mortgage Association" as having a mortgage claim. *Id.*, ¶ 7.05, 1. This indicates that it is a secured claim, not an unsecured claim. The treatment is that the claim is treated as disputed and Debtors will not make any payments on this claim until the court determines the set-off against this claim. *Id.*, ¶ 7.05, 2.

In Section 7.06 of the Amended Plan, Debtors identify Capital One having a claim of approximately \$3,400.00, for which Debtors will pay the Trustee \$100.00 a month, which will then be paid to Capital One.

In Section 7.07 of the Amended Plan, Debtors identify Oroville Hospital having a claim of approximately \$3,400.00, for which Debtors will pay the Trustee \$100.00 a month, which will then be paid to Oroville Hospital.

### **Review of Proofs of Claims**

Subsequent to the July 22, 2022 filing of the Amended Plan, proofs of claim were filed in this Bankruptcy Case. These claims are:

- A. Capital One Bank (USA), N.A., filing a general unsecured claims for (\$2,090.71). POC 1-1.
- B. Wilmington Savings Fund Society FSB (Select Portfolio Servicing, Inc. identified as the loan servicer) asserting a secured claim of (\$70,828.22). POC 2-1. There is no default asserted as to this claim.
- C. Torrie G. Carter (AKA Torrie Gidget Conn) asserts a claim for (\$1,191,864), including a “50% of Possessory Equitable Interest.” POC 3-1. The basis of this claim is asserted to be “Based on & Pursuant to Senate Resolution 62 Dated April 17, 1933 of 73rd Congress, 1st Session, Document 43.” An interest is claimed in property located in Butte County, California.
- D. Michael Carter asserts a secured claim for (\$562,392.50), including a 50% equitable interest. POC 4-1. The basis of this claim is asserted to be “Based on & Pursuant to Senate Resolution 62 Dated April 17, 1933 of 73rd Congress, 1st Session, Document 43.” An interest is claimed in property located in Butte County, California.
- E. Michael Carter asserts a secured claim for (\$1,191,846), including a 50% of Possessor Equitable Interest. POC 5-1. The basis of this claim is asserted to be “Based on & Pursuant to Senate Resolution 62 Dated April 17, 1933 of 73rd Congress, 1st Session, Document 43.” This appears to relate to the same property in Butte County as Proof of Claim 4-1.
- F. Torrie G. Carter (AKA Torrie Gidget Conn) asserts a secured claim for (\$562,392.50), including a 50% equitable interest. POC 6-1. The basis of this claim is asserted to be “Based on & Pursuant to Senate Resolution 62 Dated April 17, 1933 of 73rd Congress, 1st Session, Document 43.” This appears to relate to the same property in Butte County as Proof of Claim 4-1.
- G. The California Department of Tax and Fee Administration (as functional successor to Board of Equalization) asserts a secured claim for (\$144,291.73). POC 7-1. The basis of asserting a secured claim is stated to be “Tax Liens.” The Tax Liens are

stated to have been recorded in Butte County and with the California Secretary of State.

It appears that debtors Michael Carter and Torrie Conn are filing claims asserting that they are creditors of themselves.

### **Review of Schedules**

On Schedule A/B, Debtors lists owing two real properties in Butte County, California, in which each of the Debtors state that the value of their interest is \$0.00. It is stated that they have a “Secured Possessory Interest Recorded.” Dckt. 18 at 3-4. An interest is also listed in a Manufactured or Mobile Home, again with Debtors’ interest having a value of \$0.00. *Id.* at 4.

On Schedule A/B, ¶ 34, Debtors state having “2-Secured Possessory Interest, pursuant to Senate Resolution 62 Dated April 17, 1933 of 73rd Congress, 1st Session Document 43, All property are placed in a Public Trust in the State.” *Id.* at 10. The value of the 2-Secured Possessory Interest is stated to have a value of \$3,508,513. *Id.*

On Schedule C, it appears that Debtors have inadvertently claimed exemptions of \$0.00 in the assets that have become property of the Bankruptcy Estate. *Id.* at 13-14.

On Schedule D, for secured claims debtor Michael Carter and debtor Torrie G. Carter list themselves as being creditors of themselves. *Id.* at 15-16. No other creditors with secured claims are listed on Schedule D.

On Amended Schedule E/F, Debtors list California Department of Tax and Fee Administration, Capital One, Oroville Hospital, Select Portfolio Servicing, Inc. (Disputed), and Federal National Mortgage Association (Disputed) as having unsecured claims (with several, as noted above, being disputed). Dckt. 24 at 4-6.

On Schedule I, Debtors list having \$11,339.17 in gross monthly income, and from which there is a (\$2,602.00) garnishment. Dckt. 18 at 24-25. This appears to be a pre-petition garnishment on the tax obligation.

On Schedule J, Debtors list having monthly expenses for their household of two adults of (\$4,456.00). *Id.* at 26-28. Debtors list having \$567.00 a month in monthly net income. However, when the pre-petition garnishment is stopped post-petition, the monthly net income jumps to \$3,169.00.

At the end of Schedule J, Debtors include the following statement, “Totaled Fire Damaged House Paid Off with Insurance and Family Member Investment.” This does not appear to relate to the creditors who have filed secured claims in this case.

On the Statement of Financial Affairs, Debtors identify there being a Fannie Mae lawsuit for unlawful detainer against Debtors.

### **Scheduling of Status Conference on Motion to Confirm**

The court has reviewed the Request and the docket in this case and sets a Chapter 13 Plan Status Conference to be conducted at the September 27, 2022, at 2:00 p.m. hearing set by Debtor for their Motion to Confirm.

**September 27, 2022 Status Conference**

At the status conference, **XXXXXXXXXX**

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtors, Michael Anthony Carter and Torrie Gidget Conn (“Debtors”), 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 **XXXXXXX**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2022. By the court's calculation, 30 days' notice was provided. 14 days' notice is required.

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

**The Motion to Substitute a successor representative is granted.**

**The requested waiver of the 11 U.S.C. § 1328 Certifications is denied.**

Joint Debtor, Roxanne Louise-Barr Yonn, seeks an order substituting for Deceased Debtor Charles B. Yonn as successor-in-interest and waiving the 1328 requirement.

This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 7025 and 11 U.S.C. § 1328.

Debtor filed for relief under Chapter 13 on July 16, 2019. On November 18, 2021, Debtor's Modified Chapter 13 Plan was confirmed. Dckt. 36. On March 9, 2022, Debtor Charles Blair Yonn,

passed away. Notice of Death, Dckt. 37. Joint Debtor asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Civil Procedure 25(a) as incorporated into Federal Rules of Bankruptcy Procedure 7025 and Local Bankruptcy Rule 1016-1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on July 18, 2022. Dckt. 37. Joint Debtor is the wife of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

## **TRUSTEE FILED NON-OPPOSITION**

The Trustee filed a Non-Opposition to Debtor's Motion for Omnibus Relief Upon Death of the Debtor on September 13, 2022. Dckt. 46. Trustee states that Debtor's Plan has been completed and Debtor is awaiting the closing of the case and any applicable entry of discharge. Trustee requests that the Debtor's motion be granted.

## **DISCUSSION**

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

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

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

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion

of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

**The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads, supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Roxanne Louise-Barr Yonn has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 37. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Roxanne Louise-Barr Yonn, as the wife of the deceased party and as the successor’s heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Charles Blair Yonn. The court grants the Motion to Substitute Party.

The court does not waive the requirement that the 11 U.S.C. § 1328 Certifications for the late debtor Charles Yonn. Joint Debtor Roxanne Louise-Barr Yonn is capable of providing such certifications as the successor representative of the late debtor.

The Clerk of the Court will issue the discharge for the late Debtor Charles Yonn, for whom the successor representative been appointed, in the ordinary course of the prosecution of this case after the required Certifications have been filed by the successor representative.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Roxanne Louise-Barr Yonn is substituted as the successor-in-interest to Charles Blair Yonn and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.



**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.

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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 August 8, 2022. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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The debtor, Shaun Amanda Taylor ("Debtor") seeks confirmation of the Modified Plan because of a recent loan modification received earlier in the year. Declaration, Dckt. 79. The Modified Plan provides \$71,469.22 from January 2018 to August 2022 and payments of \$200 per month for the remainder of the Plan. Modified Plan, Dckt. 80. 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 9, 2022. Dckt. 87. Trustee opposes confirmation of the Plan on the basis that:

- A. Two minor procedural issues exist, although Trustee does not believe them sufficient to deny confirmation under 11 U.S.C. Section 1325(a)(1), including:

1. Section 7.01 should be corrected to reflect a total amount of \$71,662.99 paid through August 2022,
2. Debtor's Declaration references Supplemental Schedules I and J filed on October 1, 2018 (Dckt. 35), instead of Supplemental Schedules I and J filed on August 8, 2022 (Dckt. 81).

## **DEBTOR'S REPLY**

Debtor filed a Response on September 13, 2022. Dckt. 90. Debtor stated agreement that there were two scrivener's errors in Debtor's Plan and Motion, which she hopes can be corrected in the Order Confirming the Plan.

## **DISCUSSION**

Debtor's Response appearing to resolve Trustee's objections, the Modified Plan as amended complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on August 8, 2022, as amended at the hearing as follows:

Section 7.01 Plan Payments made by Debtor includes a total of \$71,662.99 from January 2018 through August 2022

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.

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

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

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

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

<b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXXXXXXXXXXXXXXX</span></b>
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Stephen Azzopardi and Marcella Azzopardi (“Debtor”) filed a Motion to Confirm the First Modified Plan on August 1, 2022. Dckt. 59.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

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

- A. Under the proposed plan, Debtor has overpaid by \$1,663.41, if the currently pending TFS payment is posted.

- B. Trustee had made July 2022 disbursement to Original Creditor by the time Debtor filed the modified plan, and the Modified Plan only provides payment to Original creditor through June 2022. Therefore, Debtor would not be able to comply with the plan.

## **DEBTOR'S MOTION TO CONTINUE CONFIRMATION OF PLAN HEARING**

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

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

## **ORIGINAL CREDITOR'S OPPOSITION**

Ajax Mortgage Loan Trust 2019-A ("Original Creditor") opposes confirmation of the Plan (Dckt. 70) on the basis that Original Creditor has not been paid in full yet because the refinance is still in escrow and has not closed.

Original Creditor:

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

## **DISCUSSION**

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

### **Debtor Paid Ahead**

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

## **Disbursement Already Made for July 2022 to Gregory Funding**

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

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

## **September 27, 2022 Hearing**

At the hearing, XXXXXXXXXXXX

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

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

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

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

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 28, 2022. By the court's calculation, 61 days' notice was provided. 14 days' notice is required.

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

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<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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GSR Mortgage Loan Trust 2005-AR3 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor's plan fails to provide for the curing of the default on Secured Creditor's Claim
- B. Plan fails to provide how Debtors will be able to make all payments under the Plan and to comply with the Plan

## DISCUSSION

Creditor's objections are well-taken.

### **Failure to Cure Arrearage of Creditor**

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$1,286.18 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.

### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtors propose in the plan to make monthly payments of \$1,317.00 for 60 months to Trustee for a base plan amount of \$79,020.00 but Debtor has a monthly net income of \$458.58. Dckt. 20. The court notes, however, Debtor's Schedule J takes into account car payments that will be paid through the Plan. Therefore, not including the car payment, the net income is about \$788.58. Still, this will fall short of the \$1,317.00 Plan payment. 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 GSR Mortgage Loan Trust 2005-AR3 ("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 Chapter 13 Trustee on August 24, 2022. 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 -----

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<b>The Objection to Confirmation of Plan is sustained.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”) opposes confirmation of the Plan on the basis that:

- A. Debtor cannot afford to make the payments;
- B. Debtor’s attorney failed to appear at the First Meeting of Creditors on August 18, 2022;
- C. The following 521 Documents have not been provided:
  - I. Pay Advices, and
  - II. Pre-Petition Tax Return;
- D. The Plan may not be complete because:



- I. Nonstandard provisions were not attached;
- II. Class 4 Creditor is misclassified;
- E. Disposable Income not listed on Form 122C-1; and
- F. The Statement of Financial Affairs is incomplete.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtors propose in the plan to make monthly payments of \$1,317.00 for 60 months to Trustee for a base plan amount of \$79,020.00 but Debtors have a monthly net income of \$458.58. Dckt. 29.

The court notes, however, Debtor's Schedule J takes into account car payments that will be paid through the Plan. Therefore, not including the car payment, the net income is about \$788.58. Still, this will fall short of the \$1,317.00 Plan payment. Additionally, no wages are listed on Form 122C-1 and the Statement of Financial Affairs is incomplete. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Failure to Appear at 341 Meeting**

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

The Continued Meeting of Creditors will be held on September 22, 2022.

### **Failure to Provide Pay Advices**

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

## **Nonstandard Provision Not Attached**

Nonstandard provisions are given no effect if the box is not checked and if there are no separate piece of paper appended after Section 7. Here, although the box under § 1.02 is checked, there is no separate piece of paper after Section 7 indicating any nonstandard provision. Plan, Dckt. 13. Therefore, the nonstandard provision is give no effect and it is unclear if Debtor will comply with the Plan. 11 U.S.C. § 1325(a)(6).

## **Class 4 Mortgage Arrears Misclassified**

Creditor C/O Specialized Loan Servicing LLC (“Creditor”) filed a Proof of Claim on July, 28, 2022 indicating arrears in the amount of \$1,286.18. Proof of Claim 1-1. The Plan, however, classifies Creditor’s claim as Class 4. Plan, Dckt. 13. Class 4 claims are those maturing after the completion of the Plan, which are not in default. Plan, Section 3.10, Dckt. 13. Since there is a default, Creditor’s claim appears to be misclassified.

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).**

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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, 2022. 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 -----

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<b>The Objection to Confirmation of Plan is sustained.</b>
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Safe Credit Union (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Vehicle not adequately accounted for in the Plan
- B. Plan does not propose adequate payments to Creditor
- C. Cannot comply with Plan

## **DISCUSSION**

Creditor’s objections are well-taken.

## **Failure to Provide for a Secured Claim**

Creditor asserts a claim of \$8,699.94 in this case. Proof of Claim 4-1. Debtor's Schedule D estimates the amount of Creditor's claim as \$6,000.00 and indicates that it is secured by a 2018 Nissan Kix. The Plan provides for treatment of this as a Class 2 claim, however, it states the amount of claim is only \$6,000.00.

Pursuant to § 3.02 of the Plan, "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim."

Additionally, 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)).

Here, Creditor has not agreed to the lower claim amount of \$6,000.00. Additionally, Debtor indicated on their Plan by listing Creditor as Class 2 that they are not intending to surrender the collateral. Therefore, not providing for Creditor in the full amount of their claim is inconsistent with § 3.02 of the Plan and violates 11 U.S.C. § 1325(a)(5).

## **Lack of Adequate Protection Under the Plan**

The objecting Creditor, who holds a security interest in personal property, alleges that the Plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay Creditor are insufficient to provide it with adequate protection during the period of the Plan.

In *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.* for the proposition that adequate protection is intended to protect creditors from depreciation in value of their collateral during the bankruptcy case. See 484 U.S. 365, 377 (1988); see also *First Fed. Bank v. Weinstein (In re Weinstein)*, 227 B.R. 284, 296 (B.A.P. 9th Cir. 1998).

*Timbers* interprets the meaning of the phrase "adequate protection" for purposes of 11 U.S.C. § 362, however. 484 U.S. at 369–70. 11 U.S.C. § 361 provides that:

[w]hen adequate protection is required under section 362, 363, or 364 . . . of this title of an interest of an entity in property, such adequate protection may be provided by (1) requiring the trustee to make a cash payment or periodic cash payments, to the extent that the stay under section 362 of this title . . . results in a decrease in the value of such entity's interest in such property.

11 U.S.C. § 361 says nothing about “adequate protection” for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See, e.g., Diaz v. Davis (In re Digimarc Corp. Derivative Litigation)*, 549 F.3d 1223, 1233 (9th Cir. 2008) (“Accordingly, we cannot find in Congress’ silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act.”).

Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase “adequate protection” as it is used in 11 U.S.C. § 1325 (perhaps unsurprisingly because the phrase was only added to the section by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). Several bankruptcy courts that have considered the issue, however, have found that payments to creditors with secured claims under § 1325 **must always at least equal the amount of depreciation of the collateral**. *See, e.g., In re Sanchez*, 384 B.R. 574, 576 (Bankr. D. Or. 2008); *Royals v. Massey (In re Denton)*, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

Creditor does not provide the court with any information regarding how much its collateral declines in value each month. Creditor asserts it is entitled to a \$326.31 monthly payment, based on the agreed upon monthly payment in Creditor and Debtor’s original loan agreement. Exhibit A, Dckt. 27.

This, however, is not based on the current value of the collateral. Rather, it is based on the amount financed at the time of the loan agreement. The court cannot discern whether this amount is at least equal to the amount of depreciation of the collateral.

However, this is a 2018 model year vehicle which is now five (5) model years old. The court takes judicial notice of the commonly known fact that the rapid depreciation of a vehicle occurs within the first three years a vehicle drives off a lot.

Also, Creditor estimates the value of its collateral at \$17,609.00. Declaration, Dckt. 27; Kelly Blue Book, Exhibit D, Dckt. 27. If Creditor’s Claim is \$8,699.94, there is a more than 100% equity cushion in the collateral. In this case, the equity cushion in the Vehicle for Creditor’s claim provides adequate protection for such claim at this time.

Therefore, the court finds the vehicle is adequately protected with respect to the vehicle. Creditor’s objection regarding adequate protection is overruled without prejudice.

## **PLEADINGS FILED AS ONE DOCUMENT**

Creditor filed the Declaration and Supporting Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of

pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

### **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 proposes to pay a Monthly Plan Payment of \$1,317.00 when Debtor's net income is only \$788.58. (Although Debtor listed \$458.58 as net income, the car payments will be paid through the plan. Therefore, Debtor has an extra \$330 to fund the plan). Plan, Dckt.13; Amended Schedule J, Dckt. 14. 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 Safe Credit Union ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**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.

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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 August 15, 2022. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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).

<b>The Motion to Confirm the Modified Plan is denied.</b>
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The debtor, Anne Marie Price ("Debtor") seeks confirmation of the Modified Plan because debtor lost her car and had to buy a new one while paying off ongoing bills. Debtor also expected to receive a refund from the IRS for 2021 but it applied to her outstanding balance. Declaration, Dckt. 83. The Modified Plan provides \$3,550.00 to be paid for 1 month, \$3,591.16 for 4 months, \$3,622.71 for 12 months, \$3,122.71 for 1 month, \$3,510.00 for 1 month, \$3,581.00 for 1 month, \$3,270.69 for 1 month, \$3,581.00 for 1 month, \$0.00 for 2 months and \$3,622.00 for 36 months and no less than 1 percent dividend to unsecured claims totaling \$225,622.95. Modified Plan, Dckt. 86. 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 13, 2022. Dckt. 94. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor does not plead with particularity for modifying the plan;

- B. Debtor is paid ahead and therefore cannot comply with the Plan;
- C. Amended Schedules I and J lack notice;
- D. Debtor may not be using best efforts; and
- E. Administrative expenses should receive more than \$0.00 in a monthly dividend.

## **DISCUSSION**

### **Review of Minimum Pleading Requirements for a Motion**

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

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

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

### **Grounds Stated in Motion**

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

- A. The financial circumstances of the Debtor and/or the legal circumstances of the Plan have changed; and
- B. The Motion for an Order Confirming the Debtor’s First Modified Chapter 13 Plan dated August 15, 2022 is made pursuant to 11 U.S.C. § 1329(a).

Those “grounds” are merely a conclusion of law by Movant. The grounds need to be stated within the Motion with reasonable specification as to why Movant is entitled to the relief or order



sought. Based on the Motion, the court cannot discern how the financial situation changed that would allow Movant to modify their plan. Presumably, Movant believed that the court would make those conclusions, but the “grounds” cannot merely state the anticipated conclusions.

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

### **Cannot Comply with the Plan**

Debtor may not be able to comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor is ahead under the proposed modified Plan by \$1,725.84. Debtor needs to clarify that the actual amount paid through month 24 (August 2022) is \$80,178.40 and what the correct plan payment is beginning in month 25 (September 22). Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

### **Schedule I and J**

Trustee correctly points that updated Schedules I and J should be filed to determine whether it complies with the Plan, not just as exhibits. 11 U.S.C. § 1325(a)(6).

### **Not Best Effort**

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

Debtor proposes to increase plan payments from \$3,580.68 to \$3,622.00, an increase of \$41.32. However, Debtor is also increasing monthly voluntary retirement contributions from \$108.33 to \$297.92, an increase of \$189.59. This shows Debtor could be increasing their Plan payments which may show Debtor’s failure to provide Best Effort.

### **Insufficient Plan Payments**

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Under the original plan, the monthly dividend for administrative expenses is \$41.67. However, the modified plan proposes a \$0.00 monthly dividend for administrative expenses when \$1,499.92 in attorney’s fees are to be paid. There is insufficient administrative payments under the Plan. Thus, the Plan may not be confirmed.

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, Anne Marie Price (“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 without prejudice, and the proposed Chapter 13 Plan is not confirmed.

12. [21-24084-E-13](#) **GREGORY/CHO FRENCH** **MOTION TO CONFIRM PLAN**  
[DBL-1](#) **Bruce Dwiggins** **8-8-22 [31]**

**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 August 8, 2022. By the court’s calculation, 50 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<b>The Motion to Confirm the Amended Plan is denied.</b>
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The debtor, Gregory Wayne French and Cho Yon French (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments to Plan in the amount of \$3,376.00 for as many as 60 months, with 100% dividend paid toward unsecured claims for a total of \$94,718.54. Amended Plan, Dckt. 35. 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 12, 2022. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments,
- B. Debtor improperly classifies a Creditor as Class 4, however, the Creditor’s Proof of Claim 16-2 indicates arrears of \$23,668.58. Additionally, Debtor may have transferred an interest in estate property attached by promissory not to defer arrearage payments.

## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$5,632.00 delinquent in plan payments, which represents more than one month of the \$3,376.00 proposed 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. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Failure to Cure Arrearage of Creditor**

Trustee indicates Freedom Mortgage (“Creditor”) has a secured claim on Debtor’s property as indicated by their Proof of Claim. Creditor’s original Proof of Claim indicates arrears of \$41,386.22. Creditor amended their Claim on March 22, 2022 and the Claim now indicates arrears of \$23,668.58. Proof of Claim 16-2. 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).

There is no indication of any payment history showing this different of \$17,717.64. Debtor states they came to an agreement with Creditor by signing a Promissory Note which defers arrearage payments to the end of their loan, now confirming the amount of \$34,637.77 to be paid in full on May 1st 2049. Freedom Mortgage Promissory Note, Exhibit in Support of Motion to Confirm, Dckt. 34. The court notes the Promissory Note was dated August 8, 2022, which is after the petition filing. This appears to be a postpetition transfer the Trustee can seek to avoid under 11 U.S.C. § 549.

Even so, it is unclear to the court the amount of arrearages, whether they be \$23,668.58, \$41,386.22, or \$34,637.77.

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

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Gregory Wayne French and Cho Yon French ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

13 thru 14

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on September 6, 2022. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

**The Motion to Sell Property is XXXXXXXXXXXXXXXXXXXXXX.**

The Bankruptcy Code permits Mark Haynes, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 2104 Keith Way Sacramento, California ("Property").

The proposed purchaser of the Property is Elk Grove Real Estate Holding Group, and the terms of the sale are:

- A. Purchase Price: \$110,000.00, cash.
- B. Close of Escrow: 7 Days after acceptance.
- C. Initial Deposit Amount: \$3,000.00.

- D. Commission to Galster Real Estate Group (Debtor's Brokerage Firm where Debtor is employed as a real estate agent): 3.00%.
- E. Commission to Berkshire Hathaway Home Services (Buyer's Brokerage Firm): 2.50%.

Purchase Agreement and Counter Offer, Exhibits A and B, Dckt. 107.

### **TRUSTEE'S OPPOSITION**

Trustee filed an opposition on September 12, 2022. Dckt. 110. Trustee opposes based on the following:

- 1. The Property's address is not clear as the Motion states it is 2104 Keith Way, when Schedule B states it is 2100 Keith Way. *Id.* ¶ 1.
- 2. Debtor did not disclose proceeds they will be receiving from the sale of the Property. No exemption was claimed in the Property and if the Property is 2100 Keith Way, no equity appeared at the time of filing. *Id.* ¶ 2.
- 3. The Motion gives a breakdown of expenses which do not total \$109,999.38 that is stated in the Motion. Rather, the total expenses total \$79,087.73. *Id.*
- 4. The Closing Statement shows property maintenance fees to Debtor for \$19,041.75 which were not disclosed. *Id.*
- 5. Trustee received a subsequent closing statement showing fees to Park Place Properties. Trustee is unclear who this third party is. *Id.*
- 6. The Motion states County Taxes from 07/01/22 to 08/31/22 for \$418.73. The Closing Statement estimates County taxes of \$11,869.90. Trustee is unclear about this discrepancy. *Id.*
- 7. Trustee requests the commissions received by Debtor as a real estate agent be included as an additional plan payment. *Id.*
- 8. Ken Ching is listed under Class 3 claims for a secured claim against the lot of \$80,000.00. Trustee believes Provident Trust Group, LLC is the financial services group and custodian for Mr. Ching as Provident lists two loans of \$61,000.00 and \$10,500.00. Trustee is not clear when Provident Trust Group, LLC became the mortgage holder for the notes. *Id.* ¶ 3.
- 9. No authorization to employ real estate agent has been filed. *Id.* ¶ 4.

### **DEBTOR'S RESPONSE**

Debtor filed a response on September 13, 2022 (Dckt. 115) stating:

- A. The correct address is 2104 Keith Ave. *Id.* ¶ 1. At the time of filing the petition, the address was 2100, however, it has recently been assigned 2104. *Id.* Debtor has amended Schedules A/B, C, and D, to list the correct address and parcel number. Amended Schedules, Dckt. 113.
- B. Debtor is receiving \$0.62 in net proceeds from the sale. Response, Dckt. 115 ¶ 2.
- C. Park Place Properties has been managing the property since it was purchased by Debtor in 2005 (*Id.*) and is owed, according to Debtor's Exhibit C, \$19,041.75 in reimbursements. Exhibit C, Dckt. 117.
- D. The only other funds besides the net proceeds scheduled to go to Debtor are the seller's commission which he splits with his broker. Response, Dckt. 115 ¶ 3. Debtor wishes to have the commission turned to him as "he has indeed performed post petition work for which any other agent would be entitled to compensation." *Id.* However, Debtor then states they are "willing to give up his split of the commission." *Id.* ¶ 6.
- E. Debtor states although they listed surrendering the Property, the holder of the Deed of Trust has not pursued with foreclosure. *Id.* ¶ 4. To facilitate the surrender of the Property, Debtor finds selling the Property to a third party avoids "unnecessary fees in relation to this vacant land." *Id.*
- F. All the property taxes covered in this sale are going to towards the delinquency on this property only. *Id.* ¶ The \$418.73 figure is a pro-rated number due for taxes during this tax period for this parcel. *Id.* The other taxes are for Debtor's primary residence. *Id.*
- G. "As for the other possible liens for Ken Ching and Winsome Ching, the preliminary title report under Exceptions 14 and 15 shows a recorded deed of trust which is much more than the amount they are receiving. This sale is essentially a short sale." *Id.* ¶ 7.
- H. Debtor subsequently filed a Motion to Employ Galster Real Estate Group.

## DISCUSSION

The court finds numerous issues that raise significant questions with respect to the proposed sale. First, from review of the preliminary title report, submitted as Exhibit C, the following Deeds of trusts are secured by the Property (emphasis added):

14. **Deed of Trust to secure an indebtedness of \$160,000.00**, dated October 31, 2005, recorded November 10, 2005, Book 20051110, Page 0572, Official Records.

**Trustor: Mark E. Haynes**, a married man, as his sole and separate property  
Trustee: Alliance Title Company, a California Corporation

**Beneficiary:** Western Sierra Bank, custodian FBO **Winsome A. Ching** IRA

...

The Beneficial Interest under said Deed of Trust was assigned of record to Polycomp Trust Company, Custodian FBO Winsome A. Ching IRA, by assignment, recorded July 6, 2010, Book 20100706, Page 0833, Official Records.

...

15. **Deed of Trust to secure an indebtedness of \$25,000.00**, dated October 31, 2005, recorded November 10, 2005, (book) 20051110, (page) 0576, Official Records.

**Trustor: Mark E. Haynes**, a married man, as his sole and separate property  
Trustee: Alliance Title Company, a California Corporation

**Beneficiary:** Western Sierra Bank, custodian FBO **Winsome A. Ching** IRA

...

Said matter affects other land.

An agreement to modify the terms and provisions of said Deed of Trust recorded December 22, 2008, as Book 20081222, Page 0991, Official Records.

...

Affects Parcels 1 and 2 of Parcel Maps, Book 182, Page 2.

The Beneficial Interest under said Deed of Trust was assigned of record to Polycomp Trust Company, Custodian FBO IRA, by assignment, recorded October 4, 2010, Book 20101 **Winsome A. Ching** 004, Page 0688, Official Records.

Preliminary Title Report, Exhibit D, Dckt. 117 at 17-18.

Upon review of the claims filed in this case, none of the above trustees or beneficiaries have filed proofs of claims. Additionally, under Schedule D, Debtor only lists one creditor as having a secured claim against the vacant lot, Provident Trust Group, LLC, c/o Winsome A. Ching IRA, in the amount of \$80,000. Amended Schedule D, Dckt. 113. As no claims have been filed, and Debtor's Schedules are stated under penalty of perjury, there appears to be secured claims only in the amount of \$80,000.00 against the vacant lot. It is not clear where the Report received information that, rather than \$80,000.00, there are actually secured claims in the amount of \$185,000.00.

Updated Seller's Estimated Statement



From review of Debtor's "Updated Seller's Estimated Statement" (Exhibit B, Dckt. 117), Debtor's sale will payoff two deeds of trusts to Provident Trust Group, the first in the amount of \$61,000.00 with a \$45.00 reconveyance fee and the second in the amount of \$10,500.00 with a \$45.00 reconveyance fee.

Again, it is not clear to the court what the total amount for these claims are, whether they are \$185,000.00, \$80,000.00, or \$71,500.00. If \$71,500.00, it appears Debtor's sale will payoff in full the two secured claims of Provident Trust Group.

It is also not clear to the court who Ken Ching is and whether he has a secured or unsecured claim. On the "Updated Seller's Estimated Statement" (Exhibit B, Dckt. 117), Ken Ching is to be paid \$19,041.75 for the sale of the Property.

#### Reimbursement Due Ken

Upon review of Debtor's "Park Place Properties Fees Breakdown" (Exhibit C, Dckt. 117), there is a notation stating, "REIMBURSEMENT DUE TO KEN," in the amount of \$19,041.75. From review of this exhibit, it appears to state a "Ken Ching" has paid \$19,041.75 to property taxes and weed abatements for Debtor throughout the years of 2015-2021.

If this is so, Mr. Ching appears to be a creditor. However, Mr. Ching has filed no Proof of Claim. Additionally, Mr. Ching is not listed in Debtor's Amended Schedule D, Dckt. 113, or Debtor's Amended Schedule E/F, Dckt. 90. The deadline for filing proofs of claim in this case was January 16, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 19. Even if a claim were filed, it would not be timely and would be disallowed in its entirety. *See* FED. R. BANKR. P. 3002(c).

Even if a claim were timely filed, there is no indication Mr. Ching's claim would have any lien on the Property or priority against unsecured creditors. Therefore, payment to Mr. Ching would be improper discriminatory against other nonpriority unsecured claims, in violation of 11 U.S.C. § 1322(b)(1). Payment to Mr. Ching in the amount of \$19,041.75 through the sales proceeds appears grossly inappropriate.

#### Sales Proceeds, After Paying Debtor's Commission State to be \$0.00

Finally, the court finds it "curious" that Plan Estate or Bankruptcy Estate would receive only \$0.62 in net proceeds. From first glance, this appears "too good to be true," and that all commissions and expenses equate to almost exactly the "value" of the property, \$110,000.00, generating only \$0.62 in net proceeds.

Upon further review of Debtor's Preliminary Title Report (Exhibit D, Dckt. 117 at 16 ¶ 2), as of August 8, 2022, the vacant lot appears to be assessed at a value of **\$201,997.00**. On Debtor's Schedule A/B (Dckt. 113), however, Debtor states the vacant lot's value under penalty of perjury as \$80,000.00. If the vacant lot's value is \$80,000.00, it is not clear to the court why Debtor, as a sophisticated real estate agent, would be paying taxes based on an assessed valuation of \$201,997.00 figure if the lot is actually only worth \$80,000.00.

It could well appear that the sale has been structured to generate no proceeds (from this sale) for the Debtor (other than being paid a commission for selling property that has no value). It is unclear who this “Elk Grove Real Estate Holdings Group, Inc.” is that has come in with a counter offer exactly enough to pay Debtor a commission and nothing else for the creditors.

Even if the value of the Property were \$110,000.00, and all expenses, fees, and payoffs claimed by Debtor were allowed, the sale would only generate \$0.62 in net proceeds. This would be of nominal benefit to the bankruptcy estate. The court, therefore, is unconvinced this sale is in good faith and the best interest of the estate.

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 Motion to Sell Property filed by Mark Haynes, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Sell is **XXXXXXXXXXXXXX**

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney], Chapter 13 Trustee, and Office of the United States Trustee on September 27, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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, -----

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<p><b>The Motion to Employ is <span style="color: red;">XXXXXXXXXX</span>.</b></p>
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Mark Haynes ("Debtor") seeks to employ himself as a real estate agent of Galster Real Estate Group ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks employment to sell property of the estate that is burdensome and of no value to the estate.

Debtor argues that his appointment and retention is necessary to advertise and sell his real property known as 2104 Keith Ave. Sacramento, CA 95825. Total commission sought on property is 5.5% with 3.0% to selling broker and 2.5% to buyer's broker.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Here, it appears to the court that there are no economic benefits to the bankruptcy estate by employing Debtor for the sale of the real property. The sale will only generate \$0.62 in net proceeds. As there is no net benefit to the estate, it is unclear why Debtor is attempting to sell the Property instead of surrendering it as stated in the Plan. Modified Plan, Dckt. 50. At the hearing, ~~xxxxxxxxxxxx~~.

~~Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Galster Real Estate Group as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Motion to Employ filed as Dckt. 119. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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 Employ filed by Mark Haynes (“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 Employ is ~~xxxxxxxxxxxxxxxxxxxx~~

# FINAL RULINGS

15. [22-20711](#)-E-13      **TIMOTHY/SHERYL COSETTI**      **OBJECTION TO DEBTOR'S CLAIM OF**  
[DPC-3](#)      **Mo Mokkaaram**      **EXEMPTIONS**  
8-25-22 [\[57\]](#)

**Final Ruling:** No appearance at the September 27, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 25, 2022. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

**The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in for all amounts in excess of the respective statutory amounts.**

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Timothy Alan Cosetti and Sheryl Ann Cosetti's ("Debtor's") claimed exemptions under Iowa law, because the amount of the exemptions claimed exceed that which is permissible under Iowa Code. Trustee objects to the following exemptions claimed on Debtor's Amended Schedule C (Dckt. 53):

1. \$12,600.00 exemption claimed for a 2014 Subaru Forester is more than the \$7,000.00 amount allowed..... Iowa Code § 627.6(9).
2. \$8,000.00 exemption claimed for jewelry is more than the \$7,000.00 aggregate amount which is allowed for wedding or engagement ring jewelry.....Iowa Code § 627.6(1)(a).

- a. Debtor fails to specify or explain whether any of the jewelry claimed under this exemption is of a type, apart from the wedding-related jewelry addressed in Iowa Code § 627.6(1)(a).
3. \$2,000.00 exemptions for a US Bank checking/savings account, Venmo, PayPal, and Cash App account exceeds the \$1,000.00 limit for such.....Iowa Code § 627.6(14).

Trustee's Objection also notes that Debtor's over-exemptions could be construed as a significant amount of equity, but they do not affect liquidation or confirmation, and the Confirmed Plan proposes to pay 100%.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Because the Debtor has over-exempted assets, in amounts that are not permissible under Iowa Code, the applicable state law in this case, the Chapter 13 Trustee's Objections are sustained, and

1. The exemption in the 2014 Subaru Forester allowed in the amount of \$7,000.00, and disallowed for a/l amounts in excess thereof. Iowa Code § 627.6(9).
2. The exemption in jewelry is disallowed in its entirety, Debtor not having identified any jewelry consisting of a "wedding or engagement ring" on Schedule C or Schedule A/B in which an exemption may be claimed. Iowa Code § 627.6(1)(a).
3. The exemption claimed in a US Bank checking/savings account, Venmo, PayPal, and Cash App account is allowed in the amount of \$1,000.00 and disallowed for all amounts in excess thereof. Iowa Code § 627.6(14).

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

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

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

**IT IS ORDERED** that the Objection is sustained, and:

1. The exemption in the 2014 Subaru Forester allowed in the amount of \$7,000.00, and disallowed for a/l amounts in excess thereof. Iowa Code § 627.6(9).
2. The exemption in jewelry is disallowed in its entirety, Debtor not having identified any jewelry consisting of a “wedding or engagement ring” on Schedule C or Schedule A/B in which an exemption may be claimed. Iowa Code § 627.6(1)(a).
3. The exemption claimed in a US Bank checking/savings account, Venmo, PayPal, and Cash App account is allowed in the amount of \$1,000.00 and disallowed for all amounts in excess thereof. Iowa Code § 627.6(14).

16. [21-23930](#)-E-13      JEANIE REAM      CONTINUED MOTION TO CONFIRM  
[SLE-2](#)      Peter Macaluso      PLAN  
2-10-22 [47]

**Final Ruling: No appearance at the September 27, 2022 Hearing is required.**

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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 Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2022. By the court’s calculation, 61 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).

<p><b>The Motion to Confirm the Plan is granted and the Chapter 13 Plan is confirmed.</b></p>
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The debtor, Jeanie Ream (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides to be 60 months with the Plan being considered as of February 2022, payments shall thereafter be \$525.00 per month until Plan completion, and unsecured claims getting a 0% dividend with claims totaling approximately \$83,350.29. Plan, Dckt. 51. 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 March 24, 2022. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor and Debtor’s Attorney have failed to appear at the two Meeting of Creditors held on February 10, 2022, and March 10, 2022. Debtor’s Attorney contacted Trustee’s office on February 9, 2022, informing them he had a conflict and need to appear in Woodland at 9:00 a.m. Trustee continued the hearing to 1:00 p.m. on March 10, 2022, Debtor’s Attorney was notified of the continuance on February 10, 2022. On March 10, 2022, at 11:10 a.m., Debtor’s Attorney informed the Trustee’s office he was in Woodland for a trial and would not be appearing.
- B. The Debtor is delinquent the first two Plan payments to the Trustee, in the amount of \$1,050.00. The next scheduled payment of \$525.00 is due on April 25, 2022.
- C. The Plan provision states, “2.01 Plan shall be considered as of February 2022.” The Trustee is uncertain what is to be “considered.” If the proposal is that no plan payments will be due until February 25, 2022, the Trustee is not certain if this also modifies the plan length of 60 months to start from the same date, a one month difference.
- D. The Debtor has failed to file “The Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys” identifying what fees have been charged and what fees were paid prior to filing this case.
- E. Debtor filed FRBP 2016(b), which identifies Debtor’s Attorney agreed to accept \$4,000.00 for Chapter 13, and \$1,495.00 was paid prior to filing the case, leaving a balance of \$2,505.00. The Plan states Debtor’s Attorney agreed to \$4,000.00 and \$0.00 was paid prior to filing. Section 3.06 also shows Debtor’s Attorney will receive \$4,000.00 each month as an administrative expense. The Trustee is uncertain what amount the attorney has received prior to filing the case and if there will be sufficient funds to pay the Debtor’s Attorney \$4,000.00 if the Plan is confirmed with the next nine months.

## **DISCUSSION**

### **Failure to Appear at 341 Meeting**



Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Continued Meeting of Creditors was held on February 10, 2022, and March 10, 2022, and the Chapter 13 Trustee's Report indicates Debtor did not appear. The Meeting of Creditors has been continued for a third time to April 14, 2022, at 1:00 p.m.

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$1,050.00 delinquent in plan payments, which represents multiple months of the \$525.00 plan payment. 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. 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). The Plan provision states, "2.01 Plan shall be considered as of February 2022." The Trustee is uncertain what is to be "considered." If the proposal is that no plan payments will be due until February 25, 2022, the Trustee is not certain if this also modifies the plan length of 60 months to start from the same date, a one month difference.

Debtor filed FRBP 2016(b), which identifies Debtor's Attorney agreed to accept \$4,000.00 for Chapter 13, and \$1,495.00 was paid prior to filing the case, leaving a balance of \$2,505.00. The Plan states Debtor's Attorney agreed to \$4,000.00 and \$0.00 was paid prior to filing. Section 3.06 also shows Debtor's Attorney will receive \$4,000.00 each month as an administrative expense. The Debtor has failed to file "The Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" identifying what fees have been charged and what fees were paid prior to filing this case.

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

### **Trustee's Status Report**

The Trustee filed a status report on May 23, 2022. Dckt. 79. Trustee states Debtor is now current in Plan payments. Additionally, the First Meeting of Creditors is continued again to 1:00 pm on June 9, 2022. Trustee believes the Plan can be confirmable once the following outstanding issues are resolved:

1. Debtor appears at the First Meeting of Creditors.
2. The Order Confirming Plan clarifies Debtor's nonstandard provisions to state the following:

- a. “The Plan effective date is December 1, 2021, the date of conversion. The Plan payments are as follows: The Debtor has paid \$1,575.00 through April 2022 (month 4). Plan payments will be \$525.00 for 56 months for a total Plan length of 60 months.”
3. The Order Confirming Plan clarifies procedure for payment of attorney’s fees to state the following:
  - a. “[A]ll attorney fees will be subject to Court approval by filing, and serving, a motion in accordance with 11 U.S.C. §§329 and 330, Fed R. Bankr. P. 2002, 2016, and 2017.”

Trustee requests the court continue the hearing until after the First Meeting of Creditors, which is to be held on June 9, 2022.

The court continues the hearing on the Motion to Confirm to 2:00 p.m. on July 26, 2022, which is the first available hearing date sufficiently after the continued First Meeting of Creditors to allow the parties to address any shortcomings and file supplemental pleadings, if any.

### **Trustee’s Status Report**

On July 19, 2022, Trustee filed a status report stating Debtor is current in Plan payments, however, Debtor has been unable or unwilling to review the Petition, Schedules, Plan, and appear at the Meeting of Creditors. Dckt. 85. Trustee is willing to meet Debtor in person or on Zoom to review the documents. Additionally, the First Meeting of Creditors has now been continued six times.

### **July 26, 2022 Hearing**

At the hearing, the Trustee and Debtor, in light of Debtor now obtaining replacement counsel, agreed to continue the hearing until after the First Meeting of Creditors can be completed.

### **Documents Filed**

On September 2, 2022, Debtor filed the following documents, via counsel: Amended Schedule C, including the required cover sheet (Dckt. 91); Amended Schedules A, B, I, and J, along with the required cover sheet (Dckt. 92); Disclosure of Compensation of Attorney for Debtor (Dckt. 93); and Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys (Dckt. 94).

On September 14, 2022, Debtor’s counsel filed a Certificate of Service purporting to have served Amended Schedule C on Debtor, Chapter 13 Trustee, and U.S. Trustee. Certificate of Service, Dckt. 95.

### **Trustee’s Third Status Report**

On September 19, 2022, Trustee filed a status report indicating Debtor is current on Plan payments, Debtor retained Counsel, Debtor amended Schedules A/B, I, J, and C, and Debtor appeared at the First Meeting of Creditors. Trustee no longer objects to the Plan and recommends it is confirmed.

The proposed Chapter 13 Plan complies with 11 U.S.C. § 1322 and § 1325; the Motion is granted 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 Motion to Confirm the Chapter 13 Plan filed by the debtor, Jeanie Ream (“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 Objection is overruled, and Jeanie Ream’s (“Debtor”) Chapter 13 Plan filed on February 10, 2022, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17.	<a href="#"><u>22-21130</u></a> -E-13 <a href="#"><u>DPC-1</u></a>	<b>RICHARD FONBUENA</b> <b>Thomas Amberg</b>	<b>CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> <b>6-15-22 [22]</b>
	17 thru 19		

**Final Ruling: No appearance at the September 27, 2022 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 15, 2022. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

<b>The Objection to Confirmation of Plan is overruled.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Debtor underestimated the amount of unsecured claims and thus, his plan proposing a 100% dividend will not complete in sixty months.

## **DEBTOR’S RESPONSE**

Debtor filed a response on June 28, 2022 stating they will be filing an objection to Proof of Claim 101 by Viabella, LLC and Hercules Fitness, LLC. Debtor would like the hearing on this objection continued to the hearing on the objections to claims. Upon review of the docket, no objections to claims have been filed yet.

## **DISCUSSION**

Trustee’s objections are well-taken.

### **Plan Term is Greater Than 60 months**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in more than sixty months due to underestimating the unsecured claims by roughly \$200,000. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

In light of the pending Objection to Claim, the court continues the hearing on this Objection to Confirmation to be conducted in conjunction with the Objection to Claim.

### **AUGUST 16, 2022, HEARING:**

At the hearing, the Parties agreed to Creditor filing an *ex parte* motion to modify the automatic stay so that the State Court may enter a judgment on the arbitration award. Debtor will provide notice of the continued hearing on the Trustee’s Objection to Confirmation, and send notice of proposed amendments to provide for the unsecured claim distribution percentage based on Creditors projected claim.

### **Debtor’s Proposed Amendment and Dismissal of Objection**

Debtor filed a Proposed Amendment to the Chapter 13 Plan. Dckt. 47. The Proposed Amendment includes the claim of Viebella, Inc. and now pays no less than thirty (30) percent of unsecured claims, rather than one-hundred (100) percent. Trustee filed a non-opposition to the Proposed Amendment. Dckt. 56.

Additionally, Debtor requests an order dismissing their objection to VieBella, LLC and Hercules Fitness, Inc.’s claims. Dckt. 50.

### **September 27, 2022 Hearing**

Trustee's issues appear to be resolved. The Debtor has filed an supplemental Motion for the Plan. The court overrules this Objection, Debtor having filed amendments to the Plan to address the Trustee's Objection. Amendment to Chapter 13 Plan, Dckt. 47.

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

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

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

**IT IS ORDERED** that the Objection to Confirmation of Plan is overruled, and the Plan as amended pursuant to Debtor's Proposed Amendment to Chapter 13 Plan filed August 19, 2022, Dckt. 47, as follows:

Class 7 nonpriority unsecured claims shall receive no less than a thirty (30) percent dividend;

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

18. [22-21130-E-13](#) **RICHARD FONBUENA**  
[TLA-1](#) **Thomas Amberg**

**CONTINUED OBJECTION TO CLAIM  
OF VIEBELLA LLC AND HERCULES  
FITNESS, INC., CLAIM NUMBER 1  
7-1-22 [29]**

**WITHDRAWN BY MP**

**Final Ruling: No appearance at the September 27, 2022 Hearing is required.**  
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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 1, 2022. By the court's calculation, 46 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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.

<p><b>The Objection to Proof of Claim Number 1-2 of Viebella LLC and Hercules Fitness, Inc. is dismissed without prejudice.</b></p>
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Richard Christian Fonbuena, Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of Viebella LLC and Hercules Fitness, Inc. (“Creditor”), Proof of Claim No. 1-2 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$192,902.71. Objector asserts that Creditor has not provided proper evidence of the claim in the form of a copy of the arbitration award or proof the award was confirmed. FED. R. BANKR. P. 3001(f) .

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

#### **TRUSTEE’S RESPONSE**

Trustee filed a response on July 19, 2022 , Dckt. 37, agreeing with Debtor that Creditor lacked the proper evidentiary showing for their proof of claim.

#### **DEBTOR’S SUPPLEMENTAL RESPONSE**

Debtor filed a supplemental response on July 22, 2022. Dckt. 40. After Creditor amended their proof of claim with a host of exhibits, Debtor maintains that Creditor has not provided any proof that the arbitration award has been confirmed against Debtor.

#### **CREDITOR’S OPPOSITION**

Creditor filed an opposition on July 28, 2022. Dckt. 42. Creditor has since amended their proof of claim to contain the Decision of Arbitrator as evidence of the validity of the claim. The hearing to enforce the Decision of Arbitrator is set for August 3, 2022, at the Contra Costa Superior Court. Opposition, Dckt. 42. Creditor alleges that this evidence satisfies the requirements of a Rule 3001(f) and constitutes a sufficient prima facie showing of evidence.

The court notes that Creditor’s “Opposition” consists of a four page opposition and then fifty-six pages of exhibits attached. The Local Bankruptcy Rules require that the motion, objection, opposition, each declaration, and the exhibits (which may be combined into one indexed document) must be filed as separate pleadings. L.B.R. 9004-2(c). Failure to properly organize pleadings and file them in compliance with the Local Bankruptcy Rules may result in the court not identifying such hidden pleading for consideration

#### **DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *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). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Despite Creditor's lack of exhibit etiquette, the Decision of Arbitrator attached to Creditor's Proof of Claim 1-2 demonstrates *prima facie* evidence of the proof of claim. The Decision of the Arbitrator is dated February 17, 2021. POC 1-2, p. 16. No order of the Superior Court confirming or adopting the Decision of the Arbitrator and a judgment entered thereon is included with Amended Proof of Claim 1-2.

At the hearing, the Parties agreed to Creditor filing an *ex parte* motion to modify the automatic stay so that the State Court may enter a judgment on the arbitration award. Debtor will provide notice of the continued hearing on the Trustee's Objection to Confirmation, and send notice of proposed amendments to provide for the unsecured claim distribution percentage based on Creditors projected claim.

Once the notice of continued hearing is sent and the relief has been granted pursuant to the *ex parte* motion, Creditor agreed that Debtor may dismiss this Objection as provided in Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

### **Debtor's Dismissal of Objection**

On August 19, 2022, Debtor filed a Dismissal of Objection to Creditor's claims. Dckt. 50. The notice states that Debtor is requesting dismissal of their objection to VieBella, LLC and Hercules Fitness, Inc.'s claim and removal from the court's calendar, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). Federal Rule of Civil Procedure 41(a)(1)(A)(ii), however, allows a plaintiff to dismiss an action, without a court order, **by filing a stipulation of dismissal signed by all parties** (emphasis added) who have appeared. No such stipulation has been filed, however. Therefore, the court does not have authority to dismiss the Objection pursuant to 41(a)(1)(A)(ii).

The court does, however, construe the Dismissal as an Ex Parte Motion to Dismiss the pending Objection. No prejudice to the responding party being apparent by the dismissal of the Objection, Debtor 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 Creditor; the Ex Parte Motion is granted, Debtor'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 Proof of Claim Number 1-2 of Viebella LLC and Hercules Fitness, Inc. filed by Debtor having been presented to the court, the Debtor 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. 50, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 1-2 of Viebella LLC and Hercules Fitness, Inc. is dismissed without prejudice.



**Final Ruling:** No appearance at the September 27, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on August 19, 2022. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**This Matter is removed from the Calendar, there being no "Motion to Confirm" having been filed.**

**The document filed at Dckt. 47 are Proposed Amendments to the Chapter 13 Plan that have been filed in connection with the Trustee's Objection to Confirmation (Dckt. 22).**

**Final Ruling:** No appearance at the September 27, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2022. 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Danielle Marquez (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on August 25, 2022. Dckt. 26. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on August 11, 2022, 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

21. [22-21667-E-13](#)      **MICHAEL/TONI KELLEY**      **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#)                      **Marc Voisenat**                      **PLAN BY DAVID CUSICK**  
8-23-22 [25]

**Final Ruling:** No appearance at the September 27, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 23, 2022. By the court's calculation, 35 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed..</b></p>
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Trustee objects to Debtor's Plan filed on July 15, 2022. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed a First Amended Plan and corresponding Motion to Confirm on August 18-19, 2022. Dckts. 19-20. As Trustee states in the Objection, this filing of the new Plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

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

22. [17-27779-E-13](#)      **REINA MONTES**      **MOTION TO MODIFY PLAN**  
[PGM-8](#)                      **Peter Macaluso**                      **8-23-22 [198]**

**Final Ruling:** No appearance at the September 27, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2022. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Reina Montes (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick

("Trustee"), filed a Non-Opposition on September 13, 2022. Dckt. 206. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on August 23, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the September 27, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on August 17, 2022. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings

<p><b>The Objection to Discharge is sustained.</b></p>
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The Chapter 13 Trustee (“Objector”) objects to William R. Doty’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case within the four-year period preceding the date of the order for relief in this case.

Debtor filed a Chapter 7 bankruptcy case on January 19, 2022. Case No. 22-20118. Debtor received a discharge on April 21, 2022. Case No. 22-20118, Dckt. 23.

The instant case was filed under Chapter 13 on June 28, 2022.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on April 21, 2022, which is less than four years preceding the date of the filing of the instant case. Case No. 22-20118, Dckt. 23. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 22-21590), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

The Objection to Discharge filed by the Chapter 13 Trustee (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 22-21590, the case shall be closed without the entry of a discharge