

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 3, 2023 at 2:00 p.m.

1. [23-21904-E-13](#)
[SLG-1](#)

SCOTT JOHNSTON
Joshua Sternberg

MOTION TO CONFIRM PLAN
8-18-23 [\[27\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors and parties of interest, attorneys of record who have appeared in this case, and Office of the United States Trustee on August 18, 2023. 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).

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>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Scott Allen Johnston ("Debtor") seeks confirmation of the Modified Plan (there has not been a confirmed plan in this case, with this being first amended plan) because the Chapter 13 Trustee, David P. Cusick ("Trustee") objected to the prior proposed Plan's confirmation on the basis that Debtor was

likely unable to make plan payments, and Debtor's income and expenses appeared inaccurate. Objection to Plan, Dckt. 19. Debtor attempts to alleviate Trustee's concerns with this Modified Plan. The Modified Plan provides \$1,139.00 to be paid through 60 months, and a 0% percent dividend to unsecured claims. Modified Plan, Dckt. 30. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

Trustee filed an Opposition on September 18, 2023. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

1. It still appears to Trustee that the Debtor cannot make Plan payments, the Plan may not comply with 11 U.S.C. § 1325(a)(1), and Debtor may have failed to carry the burden of showing that the Plan complies with 11 U.S.C. § 1325(a)(6).
2. Debtor is delinquent as all sums required by the Plan have not been paid. Debtor is delinquent \$472.00 with the next payment of \$1,611.00 due on September 25, 2023. Debtor will need to pay a total of \$2,083.00 to be current before the hearing date.
3. Debtor has not amended Schedules I and J, so it still appears that Debtor's expenses are inaccurate. Debtor's plan payment is \$1,139.00 for the first month, and then increases to \$1,611.00, but Debtor's Schedules I and J show only the ability to pay \$935.86.

Dckt 41.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is at least \$472.00 delinquent in plan payments with another amount of \$1,611.00 having been due on September 25, 2023. Without any evidence of plan payments, Debtor is currently \$2,083.00 delinquent. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Furthermore, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). On Debtor's Schedules I and J Debtor lists he has the ability to pay \$935.86 monthly. However, Debtor has proposed to pay \$1,139.00 for the first month, which then increases to \$1,611.00. Trustee expressed the same concerns regarding Debtor's previous Plan in which Debtor proposed to pay \$1,139.00 monthly with the same disposable income of \$935.86. Debtor has now offered to increase its monthly payment without amending or supplementing its Schedules I and J, thereby not explaining where his extra income is coming from. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

The court shall issue 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, Scott Allen Johnston (“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.

2. <u>23-22406-E-13</u> <u>DPC-1</u>	DAVID DURYEE AND FELICA TORTORICI Bruce Dwiggin	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK 9-14-23 <u>[17]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice on September 14, 2023. By the court’s calculation, 19 days’ notice was provided. 14 days’ notice is required.

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

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

- A. All tax returns have not been filed. Debtor admitted at the First Meeting of Creditors held on September 7, 2023 that the last year it filed tax returns was 2018.
- B. The Plan will run over 60 months, so it is underfunded. According to Trustee’s calculations, it will take 127 months to complete the Plan.
- C. The Plan may not be in the Debtor’s best effort. Debtor is above medium income at \$143,535.92, yet it proposes 0% to unsecured creditors and also estimates priority at 0%.
- D. Some claims appear misrepresented or ignored. For example, creditor American Express has obtained a judgment lien on Debtor’s home, yet Debtor does not provide for that creditor’s claim.

Dckt. 17.

DISCUSSION

Trustee’s objections are well-taken.

Insufficient Plan Payments / Infeasible Plan

Trustee alleges that the Plan is underfunded. 11 U.S.C. § 1325(a)(1). The Plan calls for \$3,567.00 for 60 months with 0% to unsecured creditors, with an estimated 0% going to priority claims as well. The priority claims total \$119,219.20 to date. According to Trustee’s calculation, the Plan would take an estimated 127 months to complete at the proposed monthly payment rate. As this payment schedule would double the statutory limit, the Plan may not be confirmed.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the years 2019, 2020, 2021, and 2022 tax years has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Disposable Income / Not Best Effort

Trustee also 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's income is well above the median at \$143,535.92, yet Debtor is not making any payments to unsecured creditors or priority creditors. Debtor projects its disposable income under 11 U.S.C. § 1325(b)(2) at a negative \$70.63. The figures do not appear to be an accurate picture of Debtor's financial reality. Thus, the court may not approve the Plan.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors that have filed claims, and Office of the United States Trustee on August 24, 2023. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Michelle A. Rau ("Debtor") seeks confirmation of the Modified Plan to add another creditor, Piedmont Capital Management, LLC ("Creditor"), to Class 7 unsecured creditors. Dckt. 24. The Modified Plan provides 19% to be paid to unsecured Class 7 creditors for a total amount of \$153,550.00. Modified Plan, Dckt. 31. This differs from the previous Plan's treatment of Class 7 creditors which provided for a 20% dividend for a total amount of \$144,766. 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 19, 2023. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that Trustee is unable to assess the feasibility of the Plan because no supplemental Schedules I and J have been filed. (This Bankruptcy Case was filed on October 2, 2023, one year before the hearing on this Motion.) Trustee notes that Debtor's rent is subject to a 10% increase every October, but there is no indication Debtor can afford plan payments with this cost of living increase.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The court agrees with Trustee and finds supplemental Schedules I and J should be filed. In addition to the cost of living increase for Debtor, Debtor has also added a new creditor to her Class 7 claims. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

The court shall issue 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, Michelle A. Rau ("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.

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

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on September 13, 2023. By the court's calculation, 20 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

Based on a review of the Pleadings and this being a Motion for which opposition may be stated orally at the hearing, the court shortens the notice period to 20 days.

The Motion for Approval of Compromise 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>The Motion for Approval of Compromise is granted.</p>

Frankie Hayduk, the Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Roseburg Forest Products ("Settlor"). The claims and disputes to be resolved by the proposed settlement relate to emotional distress damages Debtor sustained while being forced to leave her home due to a Mill Fire in Weed, California, that destroyed hundreds of structures and forced thousands to flee their homes.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 3 in support of the Motion, Dckt. 80):

1. \$35,000.00 for the emotional damages, with \$8,750.00 going to Debtor's attorneys and the remainder \$26,250.00 going to Debtor.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met. Under the settlement, Movant shall recover \$35,000.00 in satisfaction of the Estate's claim for recovery of emotional distress damages from Settlor. This proposed settlement allows Movant to recover for the Estate \$ \$26,250.00 without further cost or expense.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

Movant argues it has a high probability of success in litigation in pursuing this matter because the firm representing Debtor, Reiner, Slaughter, and Frankel, has experience in representing fire victims and has achieved recoveries of hundreds of millions. Exhibit 1, Dckt. 80.

Difficulties in Collection

Settlor is a privately held family business. Its insurance coverage is inadequate considering the extent of damage caused by the fire. If this court does not approve the settlement, there is a legitimate chance Settlor enters bankruptcy and Debtor does not see any form of compensation. Exhibit 1, Dckt. 80.

Expense, Inconvenience, and Delay of Continued Litigation

Factors that make litigation complex include the need for expert witnesses, the vast number of victims and their respective claims, and the fact that the cost of prolonged litigation could exceed a damages award, especially as Debtor only has a claim for emotional distress damages. Exhibit 1, Dckt. 80.

Paramount Interest of Creditors

Movant's settlement will be exempt from creditors under Cal. Code Civ. P. § 704.140(b). As such, Movant can use the settlement funds for living expenses which will free up money for Movant to pay its monthly plan payment. Dckt. 76.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The Motion is ~~granted~~.

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

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

The Motion to Approve Compromise filed by Frankie Hayduk, the 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 for Approval of Compromise between Movant and Roseburg Forest Products ("Settlor") is ~~granted~~, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 3 in support of the Motion (Dckt. 80).

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 22, 2023. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is ~~XXXXXX~~.

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

1. The debtor, Frankie Hayduk ("Debtor"), has failed to prosecute this case.

DISCUSSION

No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 28, 2023. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court notes that Debtor filed a Motion to Approve Settlement Agreement on May 23, 2023. Debtor filed a skeletal Chapter 13 Petition in December 2022 listing an unknown amount for “Potential Compensation for Damages from 2020 Mill Fire in Weed, California” in Schedule A. Dckt. 10. Debtor was offered a gross settlement of \$35,000.00 and amended the A/B Schedule. Dckt. 60. At the June 6, 2023 hearing, Debtor’s Motion was denied without prejudice and Debtor stated a new motion would be prepared addressing any issues. Although Debtor appears to be prosecuting issues regarding the settlement, Debtor has failed to put forth any plan since their plan’s denial of confirmation.

On June 13, 2023, the court entered its order denying without prejudice the Motion to Approve Compromise. Order; Dckt. 66.

However, counsel for Debtor appeared at the hearing, advising the court that a new motion to approve compromise will be filed.

Based on the apparent prosecution of a settlement, the court continues the hearing on the Motion to Dismiss.

July 19, 2023 Hearing

A review of the Docket on July 15, 2023, indicates that no motion to approve a compromise has been filed. No amended plan has been filed and Debtor is not seeking confirmation of a Chapter 13 plan.

This case was filed on December 13, 2022. While receiving the benefits of Chapter 13, Debtor has chosen not to fulfill Debtor’s obligations.

At the hearing, counsel for the Debtor reported the efforts being made and confirmed that a Plan will be filed (which may include the Enslinger provision providing for adequate protection payments while Debtor pursues a loan modification.

The Trustee did not oppose the request for a continuance.

September 12, 2023 Hearing

The court’s review of the Docket on September 9, 2023, revealed that no further pleadings have been filed. At the hearing, counsel for the Debtor reported that a Motion to Approve Settlement was filed on September 12, 2023, and set for hearing in early October 2023.

Counsel for the Trustee stated that no Plan has been filed and Debtor is not prosecuting a plan.

Debtor’s counsel reported that Debtor will file a Plan and Motion to Confirm by September 26, 2023. With the advances in the Case, the Trustee supported a further continuance of this hearing.

October 3, 2023 Hearing

A review of the Docket on September 28, 2023 indicates no further pleadings have been filed. Debtor’s counsel reported it would file a Plan and Motion to Confirm by September 26, 2023, but has failed to do so.

At the hearing, XXXXXXXXXXXX

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is XXXXXX.

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 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 Debtor, Chapter 13 Trustee, other parties in interest, parties requesting special notice, and Office of the United States Trustee on August 15, 2023. By the court's calculation, 49 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.

The Objection to Proof of Claim Number 2-1 of Carmax is sustained, and the claim is disallowed as to \$15,999.22 in pre-petition arrearage and is instead allowed \$2,568.90 in pre-petition arrearage for its secured claim in this Case.

Roy and Elisabeth Quirarte, the Chapter 13 Debtor, ("Objector" requests that the court disallow the claim of Carmax ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims, to the extent that Carmax asserts arrears in the amount of \$15,999.22. The Claim is asserted to be secured in the amount of \$20,536.56.

Objector filed a prior Chapter 13 case on October 24, 2022, case no. 22-22740, which was ultimately dismissed on April 20, 2023. In that case, Creditor filed its proof of claim stating the balance due was \$19,997.18, including \$1,565.99 of arrears. Objector paid \$2,507.30 in the previous plan. Dckt. 34.

Objector filed its current case on May 1, 2023, just over a week after the previous case was dismissed. In analyzing the finances during the prior case leading up to the current case, Objector states the following in the Objection (identified by paragraph number used in the Objection):

6. Seven additional payments to Creditor came due for the months of November, 2022 to May, 2023.

7. The monthly payment is \$501.46, totaling \$3,510.22 for the seven months.

8. Using the proof of claim amount in the prior case for (\$19,997.18), and adding to it the defaults in payments totaling (\$3,510.00) for the seven months through May 1, 2023, Objector generates a total of (\$23,507.40) for Creditor's claim – before accounting for payments made in the prior case.

9. Applying the \$2,507.30 in payments in the prior case to the total obligation of (\$23,507.40), Objector computes that the balance owing on Creditor's claim as of the May 2023 filing of the current Bankruptcy Case is (\$21,000.10).

With a claim balance of (\$21,000.10), Objector computes the pre-petition arrearage for Creditor in this Case to be (\$2,568.90), and not \$15,999.22 as Creditor states in Claim 2-1.

Chapter 13 Trustee, David P. Cusick ("Trustee"), filed a non-opposition on September 19, 2023. Dckt. 41. In his non-opposition, Trustee states that Debtor is current in plan payments under its current Plan. Trustee confirms that Objector indeed paid Creditor \$2,507.30 under the previous Plan. Trustee also notes that he has disbursed three payments of \$501.67 to Creditor in the current Bankruptcy Case.

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.

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.

Creditor has not filed an opposition to Objector's objection. A copy of Proof of Claim 2-1 is provided by Objector as Exhibit A. Dckt. 36. Proof of Claim 2-1 is signed by Steven J. Cooke, a Bankruptcy Representative II for Creditor, and he states that the information is stated as true and correct under penalty of perjury, as well as subjecting the person completing the proof of claim to criminal penalties (monetary and incarceration) for filing a fraudulent claim. Proof of Claim 2-1, p. 3.

The claim is filed in the amount of (\$20,536.56), with the pre-petition arrearage stated to be (\$15,999.22). POC 2-1, ¶ 9. The attachments to Proof of Claim 2-1 include a "Termination Schedule"

which provides the following information concerning the obligation, computed as of December 31, 2022. The information provided therein is that:

Principal Balance.....(\$19,365.91)

Interest Balance.....(\$ 1,015.30)

Non-Contractual Delinquency.....(\$ 155.35)

The Contractual Delinquency is stated to be (\$2,413.56). POC 2-1, p. 9. Also attached to Proof of Claim 2-1 is a copy of the Purchase Contract, which states that the contractual monthly payment is (\$501.46). Simple division, (\$2,413.56)/(\$501.46), results in there being a stated default equal to 4.8 months of regular payments.

The court has reviewed Proof of Claim 1-1 filed by Creditor in Debtor's prior bankruptcy case - 22-22740. As of the October 2022 filing of the prior case, Creditor states that the pre-petition arrearage was (\$1,599.99), approximately 3.2 months of payments.

From November 2022 through April 2023 (the current Bankruptcy Case being filed on May 1, 2023), there were six payments that came due. With the Debtor's Plan not commencing payments until June 2023, the seventh payment that came due was for May 2023.

Repeating Debtor's math, the seven payments of (\$501.46) that came due November 2022 through May 2023 equals (\$3,510.22). Add to that the (\$1,599.99) arrearage stated on Proof of Claim 1-1 filed in the prior case, the total arrearage, before apply payments in the prior case, would be (\$5,110.21).

The Trustee confirms that Creditor was paid \$2,507.30 in the prior Chapter 13 case. When that payment is applied to the total arrearage, that leaves a pre-petition arrearage of (\$2,602.91).

This is (\$34.01) higher than the (\$2,568.90) stated by Debtor in her calculations. The court accepts Objector's calculation as correct.

Reviewing Proof of Claim 2-1 in this Bankruptcy Case, it may be that there was a clerical error in typing in the arrearage number. Humans make errors and the fact that they occur is not shocking. However, counsel for Objector provides his declaration stating that though contacted (the method not disclosed and no request/demand for correct letter provided as an exhibit) to correct what appeared to be an obvious error, Creditor has stayed moot – apparently trying to stand by its grossly overstated pre-petition arrearage amount.

Based on the evidence before the court, Creditor's claim is disallowed as to \$15,999.22 in arrears and is instead determined to be \$2,568.90 in arrears. The Objection to the Proof of Claim is sustained.

As the Supreme Court provides in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054 and 9014(c), the prevailing party in a contested matter (Fed. R. Bankr. P. 9002(5) defining the term "judgment" to include any appealable order) may seek the recovery of attorney's fees (when otherwise recoverable) and costs by post judgment/order motion.

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

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

The Objection to Claim of Carmax (“Creditor”), filed in this case by Roy and Elisabeth Quirarte, Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 2-1 of Creditor is sustained, and the claim is disallowed for all pre-petition arrearages in excess of (\$2,568.90) [Creditor having stated the pre-petition arrearage to be in the amount of (\$15,999.22)].

7. 21-23539-E-13 RHS-1	DEREK WOLF Peter Macaluso	STATUS CONFERENCE RE: COPY OF PROOF OF CLAIM #2 AND AMENDMENTS 8-28-23 [212]
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7 thru 9

Debtor’s Atty: Peter G. Macaluso

Notes:

Set by order of the court filed 8/28/23 [Dckt 213]. Parties to appear in person; no telephonic appearances permitted.

[RHS-1] Debtor’s Status Conference Statement Regarding U.S. Bank, N.A. as Legal Title Trustee for Truman 2015 SC6 Title Trust Claim filed 9/19/23 [Dckt 221]; Exhibits in support filed 9/19/23 [Dckt 222]



OCTOBER 3, 2023 STATUS CONFERENCE

Debtor Derek L. Wolf commenced this Chapter 13 Case on October 12, 2021. This has not been the usual Chapter 13 proceeding, with some challenges thrown up by the Debtor and some by U.S. Bank, National Association as Legal Title Trustee for Truman 2015 SC6 Title Trust (“U.S. Bank, Trustee”).

On October 19, 2021, U.S. Bank, Trustee filed a Motion to Annul the Automatic Stay. Motion; Dckt. 11. The grounds stated in the Motion to Annul include:

1. A nonjudicial foreclosure sale was set on Debtor’s Residence for October 12, 2021.

2. The obligation owing by Debtor at the time of the October 12, 2021 nonjudicial foreclosure sale was no less than (\$163,476.40).
3. Debtor's Chapter 13 case was filed at 9:00 a.m. on October 12, 2021, prior to the foreclosure sale set for that day.

The proceedings on the Motion to Annul concluded on May 25, 2023, pursuant to the Request (Dckt. 174) of U.S. Bank, Trustee. As addressed in the Civil Minutes (Dckt. 176) for the last scheduled hearing on the Motion to Annul, the issues and disputes between Debtor and U.S. Bank, Trustee, relate to the amount of the secured claim and the application of grant monies the Debtor obtained that were paid to U.S. Bank, Trustee.

As noted in the Civil Minutes, the court notes that U.S. Bank, Trustee asserted as of July 12, 2022, that its Claim had been reduced to \$100,746.66. Dckt. 176, bottom of p. 16 - top of p. 17.

U.S. Bank, N.A. filed a Status Report regarding its Claim and the application of grant monies received and post-petition payments. Dckt. 178. U.S. Bank, N.A. states: (1) All pre-petition arrearages have been cured, (2) All grant monies have been applied, (3) \$8,893.66 of the grant monies were returned to the State Grant Agencies due to overpayments due to U.S. Bank, Trustee overstating the amount of the reinstatement monies, (4) the total monies owing on U.S. Bank, Trustee's Claim were no less than \$117,588.47, and (5) Debtor was current on post-petition payments through August 2023. *Id.* Attached to the Status Report is a very small font spreadsheet which U.S. Bank, Trustee states documents the post-petition payment history, including grant monies and payments during the Chapter 13 Case. It shows receipt of \$56,623.75 in HAFF Funds for Reinstatement. It appears that on August 17, 2022, the HAFF Funds were applied to payments due for May 1, 2020 through August 1, 2022. A lot of financial detail is provided, but it is not clear how this computes the U.S. Bank, Trustee Claim.

U.S. Bank, Trustee has filed an original proof of claim and two amended proofs of claim in this case. The financial information for the U.S. Bank, Trustee Claim stated in each of the proofs of claim is summarized as follows.

- A. Original Proof of Claim 2-1, Filed December 8, 2021.
- B. Amount of Secured Claim.....(\$164,860.13)
 1. Pre-petition arrearage to be cured.....(\$40,899.99)
- C. Interest Rate 4.125%
- D. Proof of Claim signed by employee of Rushmore Loan Management Services.
- E. Attachment to Proof of Claim
 1. Arrearage Computation.... (\$40,899.99)
 - a. Major Amounts in Arrearage
 - (1) Attorney's Fees.....(\$4,050.00)

- (2) Mailing/Service/Sale.....(\$2,014.98)
- (3) Bkcy Fees.....(\$7,100.00)
- (4) Escrow Deficiency...(\$8,410.82)

II. Amended Proof of Claim 2-2, Filed August 8, 2022

- A. Amount of Secured Claim.....(\$164,860.13)
 - 1. Pre-petition arrearage to be cured.....(\$42,887.43)
 - a. (States that Proof of Claim was Amended to Add Two Post-Petition Defaults)
- B. Interest Rate 4.125%
- C. Proof of Claim signed by employee of Rushmore Loan Management Services.
- D. Attachment to Proof of Claim
 - 1. Arrearage Computation.... (\$42,887.43)
 - a. Major Amounts in Arrearage
 - (1) Attorney's Fees.....(\$4,050.00)
 - (2) Mailing/Service/Sale.....(\$2,014.98)
 - (3) Bkcy Fees.....(\$7,100.00)
 - (4) Escrow Deficiency.....(\$8,410.82)

III. Second Amended Proof of Claim 2-3, Filed September 9, 2022

- A. Amount of Secured Claim.....(\$164,860.13)
 - 1. Pre-petition arrearage to be cured.....(\$755.64)
 - a. (States that Proof of Claim was Amended for "Reinstatement From Borrower")
- B. Interest Rate 4.125%
- C. Proof of Claim signed by employee of Rushmore Loan Management Services.

Looking at Original Proof of Claim 2-1, Amended Proof of Claim 2-2, and Second Amended Proof of Claim 2-3, each states that the outstanding amount of U.S. Bank, Trustee's Claim is (\$164,860.13).

Proofs of Claim 2-1 and 2-2 state that of the (\$164,860.13) total claim there is a (\$42,887.43) arrearage that must be cured.

However, when Second Amended Proof of Claim 2-2 is filed U.S. Bank, Trustee states that the (\$42,887.43) arrearage portion of the (\$164,860.13) claim no longer existed. It is not clear how the (\$42,887.43) having been addressed the total amount of the U.S. Bank, Trustee's Claim has not been reduced.

Receipt of \$56,623.75 by U.S. Bank, Trustee
on August 17, 2022 For Its Claim

Additionally, U.S. Bank, Trustee states in its June 14, 2023 Status Report that on August 17, 2022 it received \$56,623.75 in Haff Funds for "Reinstatement." Thus, it appears that the (\$42,887.43) arrearage was paid in August 2022, which was after Amended Proof of Claim 2-1 was filed on August 8, 2022, and the amount of the U.S. Bank, Trustee Claim was reduced to approximately (\$108,000.00), and that the (\$164,860.13) amount of the claim stated in Proof of Claim 2-2 is inaccurate.

**Court Determined Need for In Person Status Conference
Re U.S. Bank, Trustee Claim**

While it is clear to the court that counsel for Debtor and counsel for U.S. Bank, Trustee have been working to try and address the U.S. Bank, Trustee Claim, it appears that their respective clients, including Rushmore Loan Management Services as the loan servicer, are having trouble presenting the court with clear explanations of how the U.S. Bank, Trustee Claim is computed and how grant monies have been applied. It further appears that having counsel appear and clients not having to appear (though Debtor has appeared at most hearings) has caused the ability to constructively communicate as is necessary in most bankruptcy cases to wither away.

The court concludes that it is necessary to conduct in person status conferences with the parties and their counsel for this court to be able to move forward and have the secured claim of U.S. Bank, Trustee determined in this case.

DEBTOR'S STATUS CONFERENCE STATEMENT

Debtor has filed his Status Report, which includes a detailed discussion of how Debtor computes Creditor's Claim. The Status Report does not address what remaining points of dispute exist in doing this computation.

Debtor asserts that the amount of the Claim should be (\$93,916.56), with (\$36,400.00) of that amount being a non-interest bearing balance. Thus, the amount of the claim to be amortized over the remaining 20 years of the loan is (\$57,516.56), with an interest rate of 4.124%

CREDITOR'S REPLY TO DEBTOR'S STATUS CONFERENCE STATEMENT

Creditor has filed a Reply, which recounts "challenges" that Creditor sees in attempting to address this dispute. Creditor recounts the communication efforts made on this issue with Debtor.

Creditor computes the interest bearing principal balance on its Claim to be (\$97,037.00). It concurs that there is a deferred interest bearing additional principal balance of (\$36,400). Creditor computes its Claim as follows:

As of the September 2014 Loan Modification the total unpaid principal balance	(\$208,994.25)	
Non-Interest Bearing Deferred Principal Balance		(\$36,400.00)
Interest Bearing Principal Balance, Current Interest Rate of 4.125%	(\$172,594.24)	
May 2018 - HAFA Funds \$91,700		
\$61,131.14 Applied to Principal	\$61,131.14	
\$30,568.86 Applied to Arrearage		
Payments Made Applied to Interest Bearing Principal Balance	Amt not Stated	
May 2018 Interest Bearing Principal Balance	(\$100,743.66)	
2021 Proof of Claim		
Interest Bearing Principal Balance	(\$97,832.07)	
Non Interest Principal Balance		(\$36,400.00)
2022 HAFA Funds Received	"Accounting Provided on Various Occasions"	

Creditor states that Creditor and Debtor's counsel communicated to further discuss these issues on September 25 and 26, 2023; including increased tax payments, erroneous return of \$1,800 to Debtor, and erroneous application of a 2% interest rate rather than the 2.125%.

Additionally, Creditor states that documentation of the claim has been provided to Debtor's counsel, and that Creditor has requested that Debtor agree to allowing Zoom appearances so as to stop the further accrual of fees and expenses.

Review of Debtor's Exhibits

Exhibit A filed by Debtor is an unrecorded 2018 Deed of Trust. Dckt. 222. In the upper right hand corner the words:

Keep Your Home Calif
\$91,700 Grant Principal Reduct...

The obligation secured by this Deed of Trust is stated to be (\$91,700.00), with the beneficiary of the Deed of Trust identified as CalHFA MAC.

Exhibit B is a Customer Account Activity Statement dated 11/22/21 for Debtor's account. It states that the "Current Principal Balance," for which the Date Payment Due is stated as 10-01-19 is (\$97,632.07) and there being an escrow balance of a negative (\$5,410.82) [the numbers on the exhibit are only partially legible and the court has made its best efforts to read them].

The Statement further states that there is a second mortgage that secured a principle balance of (\$36,400). From the face of the Statement, it appears to state that the (\$36,400) is in addition to (\$97,632.07) and (\$5,410.82).

Attached to the Statement is a Transaction Report that lists each specific advance and payment. The transactions are listed in reverse chronological order. The vast majority of entries are for advances, fees, and charges. There are some items that appear to be payments, but the Transaction Report is not the clearest in information provided, and the court will not try to guess at what is a payment by Debtor.

Scheduling of Evidentiary Hearing

While the court had hoped that the scheduling of this Status Conference would lead the Parties to clearly address the economics of this loan, clearly document the payments and the charges, and bring this long ongoing dispute to a conclusions.

At the Status Conference, **XXXXXXX**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, attorneys of record, and Office of the United States Trustee on July 21, 2023. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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.

<p>The Objection to Notice of Mortgage Payment Change is XXXXXXXX.</p>
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STIPULATION TO CONTINUE HEARING

On August 11, 2023, Derek L. Wolf ("Debtor") and US Bank, National Association ("Creditor") filed a Stipulation to continue the hearing on Debtor's Objection to Mortgage Payment Change to October 3, 2023 at 2:00 p.m. The court construes the document to be an *Ex Parte Motion* (as required by Fed. R. Bankr. P. 9013) and Stipulation to continue the hearing.

Federal Rule of Bankruptcy Procedure 9013 requires the filing of a motion or application when requesting an order from the court. Once a matter is set to the court's calendar, it may be continued by the court, not unilaterally by the parties. See, 8 Moore's Federal Practice - Civil § 40.02[5], L.B.R. 9014-1(j).

At the August 22, 2023 hearing, counsel for the Debtor notified the court that Creditor filed a "Withdrawal" of the Notice of Mortgage Payment Change. It appears that Creditor believes that it can unilaterally dismiss contested matters pending before this court. It cannot. See Fed. R. Civ. P. 41(a) and Fed. R. Bankr. P. 7041, 9014 providing how matters before the federal court may be dismissed.

The court continues the hearing on the Objection to Notice of Mortgage Payment Change to 2:00 p.m. on October 3, 2023.

At the August 22, 2023 hearing, the Debtor and counsel reported that they had not yet been provided a clear accounting and computation of Creditor's Claim. Reviewing the Original Proof of Claim 2-1 and the two Amended Claims filed by Creditor raise issues concerning the amounts stated. The court by separate order shall order an in-person Status Conference concerning Creditor's Claim in this Case.

On September 26, 2022 Debtor submitted to the court a Reply to Creditor stating this matter is a continuation of another matter in this case, docket control number RHS-1. Debtor asserts RHS-1 should be resolved before this matter can be resolved.

October 3, 2023 Hearing

At the hearing, **XXXXXXXXXX**

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

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

The Objection to the Mortgage Payment Change filed by Derek L. Wolf ("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 to Mortgage Payment Change is **XXXXXXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2023. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx.

The debtor, Derek L Wolf ("Debtor") seeks confirmation of the Modified Plan; however, Debtor does not provide the court a reason or evidence to support why a Modified Plan is necessary. Declaration, Dckt. 189. The Motion itself states that circumstances have changed and Debtor is no longer to complete the Plan as originally proposed, Dckt. 187, but there is not sufficient evidence in the form of personal knowledge testimony to support these changed circumstances.

The Motion states:

1. Debtor was approved for pre- and post-petition Mortgage Relief Grants which cured their pre-petition arrears and lowered the principal amount owed and ongoing monthly payment.
2. The remaining dispute is regarding the ongoing mortgage payment, which Debtor's Counsel has filed an Objection to Mortgage Payment Change, set for hearing on August 22, 2023.

The court notes, the hearing on the Objection to Mortgage Payment Change has been continued to October 3, 2023 at 2:00 p.m.

The Modified Plan provides for a thirty-six (36) month plan, with \$16,271.00 to be paid through June 2023, followed by \$900 per month for sixteen (16) months. Modified Plan, Dckt. 191. 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 25, 2023. Dckt. 206. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent in Plan payments.
2. Debtor’s Motion relies on the Objection to Notice of Mortgage Payment Change.
3. Debtor’s Schedule I does not appear accurate.

DEBTOR’S REPLY TO TRUSTEE’S OPPOSITION

Debtor filed its Reply to Trustee’s Opposition on September 5, 2023. Dckt. 217. In its Reply, Debtor states:

1. Debtor was only delinquent because the TFS takes time to process the \$900.00 monthly payment.
2. Debtor has paid a total of \$18,291.00 to the Trustee and all missed payments should be forgiven.
3. Debtor will make plan payments of \$900.00 monthly to begin July 21, 2023 for 40 months to complete the Plan within the maximum term allowed by law.

Dckt. 217.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$900.00 delinquent in plan payments, which represents one month of the \$900.00 plan payment. Debtor requests all missed payments be forgiven, appealing to the amount paid already, but not offering any law in support of its contention. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor’s Reliance on Objection to Notice of Mortgage Payment Change

A review of Debtor's Plan shows that it relies on the court sustaining Debtor's Objection to Notice of Mortgage Payment Change. The court has not yet ruled on the Objection. Without the court ruling on the Objection, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Inaccuracies of Schedule I

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Declaration indicates that Debtor receives rent from his daughter and friend, and earns \$100 per month in odd jobs. Declaration, Dckt. 189 ¶¶ 8, 9. Debtor's Schedule I indicates business income in the amount of \$2,100 and pension income in the amount of \$358.00. Dckt. 193. It is unclear whether Debtor's Schedule I accurately reflects the additional monthly income in rent and odd jobs. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

CONTINUANCE OF HEARING

This case has been plagued by a continuing dispute between Debtor and U.S. Bank, N.A., as Trustee, about the Bank's claim, payments made, and application of payments. The court has set a special, in person Status Conference on October 3, 2023, concerning the U.S. Bank, N.A., as Trustee, claim. Debtor has an Objection to the U.S. Bank, N.A., as Trustee, claim and Notice of Post-Petition Mortgage Payment Change.

The court continues the hearing on this Motion to be conducted in conjunction with the Status Conference.

October 3, 2023 Hearing

At the hearing, **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 Modified Chapter 13 Plan filed by the debtor, Derek L Wolf ("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 **XXXXXXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, other parties in interest, parties requesting special notice, and Office of the United States Trustee on August 28, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Value Collateral and Secured Claim of Placerville Investment Group, LLC ("Creditor") is XXXXXXX</p>
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A Motion to Value filed by Satinder Singh ("Debtor") to value the secured claim of Placerville Investment Group, LLC ("Creditor") is accompanied by John Toney's declaration in his capacity as an accredited senior appraiser. Declaration, Dckt. 34. The Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds and relief requested:

1. On July 31, 2023, Debtor filed this Chapter 13 case to reorganize his debtors.
2. Debtor values the Collateral at \$166,000.00 with the any amount exceeding \$166,000.00 shall be treated as a generally unsecured claim, Class 7.
3. The balance owed to Creditor as of July 31, 2023, is approximately \$245,000.00.
4. The lien on the Collateral secures various personal loans from Creditor to Debtor.

5. Accordingly, the value of the Collateral is less than the amount secured by the Collateral.

6. The value of the Collateral was determined by professional appraisal attached to the Declaration of John Toney as Exhibit “1” and incorporated herein by reference.

Motion; Dckt. 31. The Motion does not identify what the collateral is. The Motion does not identify other liens and amount, or the priority of the liens.

Debtor does say that the collateral is “Wheatland 99 Cent & Liquor Store.” Motion, introductory paragraph; Dckt. 31. This would indicate that it is not merely a building, but an ongoing enterprise, which may include inventory and accounts receivable.

Debtor does not provide copies of the security agreements and perfection documents for the secured claim to be valued.

Expert Testimony For Value of Collateral

John Toney provides his testimony as an expert witness for Debtor. Declaration; Dckt. 34. Mr. Toney testifies that he is an Accredited Senior Appraiser and authenticates his Business Valuation Report for Wheatland 99 Cents & Liquor Store computed as of August 6, 2023.

In his expert opinion, Mr. Toney testifies that the Wheatland 99 Cents & Liquor Store has a value of \$256,000, breaking down the component parts of this value as follows:

Inventory.....	\$ 59,644
Liquor License....	\$ 90,000
FF&E.....	\$ 5,000
Goodwill.....	\$101,356

Dec., ¶5; Dckt. 34.

Attached to the Declaration (and not filed as a separate exhibit document) is the Valuation Report, which provides extensive detail and analysis.

Though the expert values the collateral at \$256,000, the Motion asserts that the value is \$166,000.

Debtor’s Points and Authorities

Debtor has provided a Points and Authorities in support of the Motion. Dckt. 33. Though the expert presented by Debtor values the collateral at \$256,000, the Points and Authorities states that the Debtor lowers the value to \$166,000, based on the assertion that since a liquor license cannot be encumbered (though no citation to such statute is given), Debtor deducts the \$90,000 of value for a liquor license.

In substance, Debtor appears to be “overruling” his expert, based on his expert making a “gross error” by improperly valuing collateral. If such a “gross error” exists, it puts into question the validity of the experts testimony in its entirety.

CREDITOR OPPOSITION

Creditor filed a detailed Opposition on September 18, 2023. The court summarizes the Opposition as follows:

- A. The Debtor has not provided his declaration in support of the Motion to Value, and does not provide any owner testimony as to the value of the collateral. Opp., p. 3:12-17; Dckt. 41.
- B. The expert testimony is not based on any personal investigation by the expert, but based only on data told to the expert by Debtor. *Id.*; p. 3:17-20.
- C. The collateral is valued in its continuing business operations status. *Id.*; p. 3:22 - 4:7.
- D. The expert’s testimony, based solely on data from Debtor, is insufficient to carry the Debtor’s burden of proof. (No case decisions or treatise discussions are provided for the proposition that an expert’s opinion is per se invalid if based on financial data provided by the client.) *Id.*; 4:18 - 5:8.
- E. Debtor’s Schedules are flawed in that it fails to identify the property of the debtor that is now property of the bankruptcy estate, but only states that Debtor owns a 50% interest in Wheatland 99 Cent & Liquor Store, which has a value of \$332,000.00, and therefore Debtor’s interest has a value of \$166,000.00. *Id.*; 5:11-23.

The court’s review of Schedule A/B filed by Debtor (Dckt. 29 at 3-7) Wheatland 99 Cent & Liquor Store, Debtor states:

19. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture		
<input type="checkbox"/> No		
<input checked="" type="checkbox"/> Yes. Give specific information about them.....		
Name of entity:	% of ownership:	
Satinder Singh dba Wheatl and 99 Cents & Liquor Store	50 %	\$166,000.00

As stated on Schedule A/B, it appears that Debtor is stating that he has a 50% interest in some kind of business venture, and there is/are other owner(s) who have obligations relating to that venture.

On Schedule I Debtor states having Net Income from operating a business. Dckt. 29 at 23-24. He further states that Debtor is a “Self-Employed/Owner” for his occupation, for which he has been so employed for 20 years. *Id.* The court does not see the required Statement of Receipts, Expenses, and Net Monthly Income attached to Schedule I.

On the Statement of Financial Affairs Debtor states that he is a “sole proprietor or self-employed” at the business Wheatland 99 Cents & Liquor Store, and has been such since 2003. Stmt. Fin. Affairs, ¶ 27; Dckt. 28. This would indicate that it is only Debtor’s business.

In response to the questions in Part 1 of the Statement of Financial Affairs, Debtor states that he is not now married, but in the eight years prior to the commencement of this case he has lived with a spouse in a community property state. *Id.*; p. 1.

- F. With respect to the expert’s shortcomings, Creditor notes the “qualifications” stated by the expert to the valuation report:
1. The expert did not audit, review, compile, or attest to the financial statements used in expressing his opinion of value.
 2. The value of fixed assets was derived from discussions with management (presumably the Debtor) and a report prepared by “California Inventory Specialists.” The expert states that he “assumes no responsibility for the value of these assets and [the expert] has relied upon the opinions of management [presumably the Debtor] and these third parties experts in our analysis.”
 3. “For purposes of this analysis, we have made no investigation of and assume no responsibility for, the titles to, or any liens against, the property”

Opposition, p. 5:27 - 6:1; Dckt. 41. Creditor states that this shows that the expert is not presenting an expert opinion as to value, but merely repeating values provided to him by Debtor and other third-parties.

- G. The expert concludes that the inventory has a value of \$59,644, the cost basis, rather than the actual retail value to Debtor in the operating business of \$83,253.00. *Id.* at 7: 3-14.

Creditor then requests that if the court is not going to deny the present Motion, that a discovery schedule be set and the matter proceed to an evidentiary hearing (if necessary).

The Declaration of Dalip Gupta, a member and CEO of Creditor is filed in support of the Opposition. Ms. Gupta testimony includes:

- A. In April 2022, Creditor loaned to Debtor \$200,000, for which there is the April 26, 2022 Note, and in November 2022 loaned Debtor an additional \$100,000, for which there is the November 15, 2022 Note. Dec. ¶ 4; Dckt. 43.
- B. Before making the loans, Ms. Gupta was introduced to Sonia Madaan (“Madaan”), who stated that her husband, the Debtor, needed the loans to refinance his business. *Id.*, ¶ 6.
- C. When Ms. Gupta requested that the Debtor and Madaan provide documentation of the sales, it was Madaan who emailed the information to Ms. Gupta. *Id.*

- D. When Ms. Gupta questioned whether the business revenues were sufficient to pay the loan, Madaan told her that:

[i]t was the Debtor's and her practice to conduct "under the counter" cash sales of goods, such that actual revenues were higher than shown on the documents that they provided to me.

Id., p. 3:8-12.

- E. Given that both Debtor and Madaan worked at the business, Creditor required Sonia to guaranty the loan that was being made to Debtor. *Id.*, ¶ 7.
- F. After the loans were made, Madaan contacted Creditor and requested a third loan, made just to Madaan, for family emergency expenses.
- G. Creditor is investigating business valuation experts it may want to engage for discovery in this Bankruptcy Case. *Id.*; ¶ 12.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee has filed his Opposition to the Motion. Dckt. 46. He too calls into question Debtor's expert's opinion testimony.

DEBTOR'S REPLY TO CREDITOR AND TRUSTEE'S OPPOSITION

Debtor filed a support document with the court on September 26, 2023. Dckt. 52. The support document is effectively a Reply to Creditor and Trustee. In its Reply, Debtor states:

1. Creditor's Opposition fails to include any evidence in support of a valuation at all, so Debtor's valuation should be accepted. The Opposition is seemingly irrelevant entirely as to value of the Property.
2. California Business and Professional Code § 24076 prohibits alcohol licenses from being pledged or transferred as security for a loan. Further, a California bankruptcy court recently interpreted the statute to prohibit an alcohol license from being used as loan collateral. *Smith v. C&S Wholesale Grocers, Inc. (In Re Delano Retail Partners, LLC)*, No. 11-37711-B-7, 2017 Bankr. LEXIS 2397, at *39 (Bankr. E.D. Cal. Aug. 14, 2017) ("In sum, a California liquor license is not personal property under state law for purposes of defining it as a general intangible under the California Commercial Code in a bankruptcy case. That means the Liquor License Funds . . . are not (and cannot be) collateral subject to [the creditor's] security interest.")

Dckt. 52.

DISCUSSION

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

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

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

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

Creditor loaned \$300,000.00 to Debtor by way of two transactions, evidenced by promissory notes dated April 26, 2022 (for \$200,000.00) and November 15, 2022 (for \$100,000.00). Declaration, Dckt. 43. Creditor filed UCC-1 Financing Statements to perfect its security interests under the terms of the notes in the Property's inventory, good will, furniture, fixtures, and equipment. Creditor's Exhibit C, Dckt. 44.

Creditor provides a copy of a Default Judgment in favor of Creditor and against Debtor and Sonia Madaan. Dckt. 44 at 10 - 12. It states that the judgment debt is secured by a security agreement, for which the collateral is "Inventory, Goodwill, FF&E (Furniture Fixtures and Equipment) all related to the business of Wheatland 99 Cent * Liquor Store." Default Judgment ¶¶ 3, 8; *Id.* It further states that a Writ of Sale will be issued and the collateral will be sold by a levying officer. *Id.*; ¶ 4.

Creditor has not submitted any valuation to the court of its collateral in the Property, and Creditor agrees that a liquor license should not be included in the Property's valuation. Creditor first asserts that Debtor has failed in its burden of proof to establish a value for Creditor's collateral due to the gross insufficiency of Debtor's expert's testimony.

While Debtor's expert's valuation has some shortcomings, including relying on valuations of other persons, it is some testimony.

Greater Issues

In reviewing this Motion to Value and the Schedules, in addition to the business collateral valuation issues, the Parties appear to have also not hit squarely on what is the Creditor's collateral, 100% of the value of the business value or 50% of such value, and whether the property of the Bankruptcy Estates is 100% of the value of the business or 50% of such value.

Debtor states on the Statement of Financial Affairs that he is not currently married, but has been in the last eight years. Creditor's witness testifies that Debtor and Sonia Madaan represented in 2022 that they were married.

If there was a marriage and the 50% valuation is based on the business being community property, then California law and Federal law come into play with respect to community property being liable for debts of either spouse.

The State Court Judgment; Exhibit D, Dckt. 44; states that the \$293,888.48 judgment is entered against Debtor, doing business as Wheatland 99 Cent & Liquor Store, and also Sonia Madaan. Additionally, the State Court Judgment states that the Property that is subject to the judgment and order for the enforcement of Creditor's liens is "Inventory, Goodwill, FF&E (Furniture Fixtures and Equipment) all related to the business of Wheatland 99 Cent & Liquor Store." State Court Judgment, ¶ 8; *Id.*

The State Court Judgment does not state that the lien is on only 50% of the "Inventory, Goodwill, FF&E (Furniture Fixtures and Equipment) all related to the business of Wheatland 99 Cent & Liquor Store.

The State Court Judgment further provides that the "Inventory, Goodwill, FF&E (Furniture Fixtures and Equipment) all related to the business of Wheatland 99 Cent & Liquor Store will be sold by the levying officer and the proceeds applied to Creditor's secured obligation. State Court Judgment, ¶¶ 4, 5; *Id.*

For determination of the valuation of the secured claim and the effect of the State Court Judgment needs to be determined, issues previously determined given Res Judicata/Collateral Estoppel effect and respect will need to be determined.

Discovery and Scheduling Conference Schedule

The Supreme Court provides that the discovery rules for adversary proceedings applies in contested matters. Fed. R. Bank. P. 7026 - 7037, 9014(c). It is clear that the valuation of Creditor's collateral will need to be determined in this case.

The court sets the following discovery and scheduling deadlines in this Adversary Proceeding:

1. Disclosure of Expert Witnesses..... **XXXXXXX** 2023
2. Non-Expert Discovery Closes
(Including Hearing of Discovery Motions)..... **XXXXXXX** , 2023
3. Expert Discovery Closes
(Including Hearing of Discovery Motions)..... **XXXXXXX** , 2023

4. Filing of Supplemental Pleadings by
Debtor..... **XXXXXXX** , 2023
5. Filing of Supplemental Opposition Pleadings
By Creditor and Other Parties in Interest..... **XXXXXXX** , 2023
6. Filing of Supplemental Reply Pleadings
by Debtor..... **XXXXXXX** , 2023
7. Continued Hearing on Motion to
Value Secured Claim..... 2:00 p.m. on **XXXXXXX**, 2023

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and parties requesting special notice on September 14, 2023. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Extend the Automatic Stay is granted.</p>

Romy E. Oster ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 20-23576) was dismissed on October 13, 2022, after Debtor was delinquent in her plan payments. *See* Order, Bankr. E.D. Cal. No. 20-23576, Dckt. 56, October 13, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as of thirty days after the date Debtor filed this petition, unless extended by the court.

The Debtor incorrectly identified her previous bankruptcy as No. 20-26368 in her declaration. Declaration, Dckt. 11. The Debtor claimed the previous case was filed on January 20, 2020 and dismissed on October 14, 2022. After a review of the Debtor's previous filings, there have been multiple filings since 2020. There was a Chapter 13 filing on January 23, 2020 and dismissed on July 6, 2020, No. 20-20368. This matter was dismissed by the court because the Debtor was delinquent in payments to the Trustee and failed to prosecute the case, causing an unreasonable delay to the creditors pursuant to 11 U.S.C. § 1307(c)(1). *See* Minutes, Bankr. E.D. Cal. No. 20-20368, Dckt. 37, June 30, 2020 (Order entered July 6, 2020).

The Debtor filed a Chapter 13 again on July 22, 2020, No. 20-23576. The case was dismissed on October 13, 2022 because the Debtor was again delinquent in payments. Counsel for the Debtor in that case reported that the Debtor had not communicated with counsel, and Debtor had not returned any of the calls from the counsel's staff. *See* Minutes, Bankr. E.D. Cal. No. 20-23576, Dckt. 55, October 13, 2022 (Order entered July 6, 2020).

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because there has been a substantial change in her financial affairs since the earlier case was dismissed. Declaration, Dckt. 11. These circumstances include that on November 28, 2022 the Debtor changed employers and now makes \$22,000 more than she previously did, plus commission. *Id.* Debtor says she can now earn \$64,000.00 per year. *Id.*

What Debtor does not testify to is why she defaulted in the Prior Case (20-23576). A review of the Trustee's Final Report in the Prior Case discloses that Debtor did fund it with \$61,424.18, none of which was refunded to Debtor. 20-23-23576; Trustee Final Report, Dckt. 59.

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

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

Under the facts of this case and the prior case, Debtor has sufficiently presented facts allowing the court to extend the automatic stay. While Debtor has tried and failed (for unstated reasons), Debtor is not only reporting a substantial increase in income, but has made substantial payments under the prior Plan.

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

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

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

The Motion to Extend the Automatic Stay filed by Romy E. Oster (“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 extend the automatic stay is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

12 thru 13

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice, on September 14, 2023. By the court's calculation, 19 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 -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

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

- A. The Plan may not be feasible as the Debtor has failed to carry her burden of showing that the Plan complies with 11 U.S.C. § 1325(a)(1) & (6). The Plan calls for ongoing payments to the mortgage in Class 1, and the Debtor shall sell the real property within 12 months to pay Class 1 creditor in full. The Class 1 Creditor is shown as Quality Loan Service Corp., secured by 693 Stringtown Ave., Weed, CA 96094, with arrears of \$23,000.00 and post-petition payments of \$280.00. The Trustee is concerned that the Debtor failed to list the lump sum that will be paid to the creditor upon the sale of the Property.

- B. The Debtor does not appear to be able to comply with the Plan or have the ability to make the plan payments. U.S. Bank (“Creditor”) filed an objection to confirmation stating that Creditor must receive a minimum payment of \$602.09, and the Debtor does not have the sufficient funds available to increase the plan payments. The Debtor also admitted to the Trustee at the Meeting of Creditors on September 7, 2023 that she does not have the ability to increase her plan payments.

Dckt. 18.

DISCUSSION

Trustee’s objections are noted.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor’s residence. Creditor U.S. Bank, N.A. has filed a timely proof of claim in which it asserts \$21,696.39 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.

This court has previously stated on several occasions that a debtor’s inability to make regular payments to a creditor does not necessarily doom a debtor to loss of a home and the homestead exempt equity therein. Such a debtor can provide for the sale of the property in a commercially reasonable manner, and make adequate protection payments to the creditor who is to be sold from the sale (a Chapter 13 plan sale of property is not a rent/housing payment free gamble for a debtor).

Here, Debtor’s Plan is to fund the Plan with payments of \$626.00 a month for thirty-six months, from which the Class 1 ongoing mortgage payments are to be made to Creditor, unsecured claims, attorney’s fees, and trustee’s fees. Within twelve months the balance of Creditor’s Class 1 claim will be paid in full from a sale, and if a sale does not occur, Creditor can foreclose on its collateral.

The Plan provides for a current post-petition monthly payment of \$280.00 pending the sale of the Property or Creditor foreclosing on it. Plan, § 3.08(c); Dckt. 3.

In Creditor’s Objection to Confirmation (Dckt. 14), Creditor demands that it be paid not only its current post-petition payments, but cure amounts on the arrearage as a condition of allowing for the marketing and sale of the Property.

Creditor states in Proof of Claim 2-1 that its claim is for (\$58,611.38) and that it is fully secured. POC 2-1 § 9. While able to state the amount of its claim, Creditor U.S. Bank Home Mortgage is unable to make a statement as to the value of its collateral.

On Schedule A/B Debtor lists this Property as having a value of \$264,300.00. Dckt. 1 at 10. On Schedule D, Creditor’s claim is the only one listed (under an incorrect name) as being secured by the Property. Thus, using the Debtor’s value (for which Creditor offers no dispute), Creditor has a \$200,000

(400%) equity cushion, leaving Creditor superbly adequately protected during a commercially reasonable sale time.

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 Creditor, U.S. Bank, must receive a minimum payment of \$602.69, but the Debtor admitted at the First Meeting of Creditors that she did not have the ability to increase her Plan payments. Debtor must submit supplemental Schedules I and J to show she can afford the plan payment to Creditor.

On Schedule I, Debtor states that she is disabled and is receiving \$1,555 in monthly Social Security payments. Dckt. 1 at 27-28. Debtor squeezes down her expenses on Schedule J to show monthly net income of \$626 to fund a plan for three years. *Id.* at 29-30.

Creditor's battle line is drawn with 11 U.S.C. § 1322(b)(2), (b)(5) and 1325(a)(5)(B). These sections provide:

11 U.S.C. § 1322

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

...

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

...

(5) notwithstanding paragraph (2) of this subsection, **provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending** on any unsecured claim or **secured claim on which the last payment is due after the date on which the final payment under the plan is due**;

11 U.S.C. § 1325

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

...

(5) with respect to each allowed secured claim provided for by the plan—

...;

(B)

(i) the plan provides that—

(I) the **holder of such claim retain the lien** securing such claim until the earlier of—

(aa) the **payment of the underlying debt** determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

- (II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;
- (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and
- (iii) if—

(I) property to be distributed pursuant to this subsection is in the **form of periodic payments, such payments shall be in equal monthly amounts;** and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan;

In reviewing the above, Creditor retains its lien, Creditor will be paid in full on its Claim, and the payments are not to be made in periodic payments, but a lump sum payment from the sale of the Property within a commercially reasonable time. Plus, Debtor provides adequate protection (good faith) payments of \$280.00 a month (the normal post-petition contractual monthly payment) for Creditor's claim with a 400%, \$200,000 equity cushion.

Here, the court is presented with the issue of whether allowing 12 months (presumably from the August 2023 filing of the Plan) is a commercially reasonable period of time for the marketing and sale of the Property.

A review of the Docket discloses that Debtor has not sought to employ a real estate broker to see if the Property can be sold in the Summer or Fall of 2023. It appears Debtor chose to assume that Debtor would have a year to market and sell the Property.

It is now October and the Debtor is entering the holiday and Winter selling season – not the preferred Spring and Summer selling season.

While Debtor's adequate protection payments are nominal, they are the regular post-petition installment payments. The court is not persuaded that Creditor has the right under Chapter 13 to demand that a Plan cause Debtor, who is disabled and receiving only Social Security payments, forfeit her exempt equity in her Property.

What is at issue is setting the commercially reasonable period for selling the Property, which is encumbered by Creditor's secured claim (which is protected by the 400%, \$200,000, equity cushion and the additional \$280 a month adequate protection payments).

At the hearing, **XXXXXXX**

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

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

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

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

13. [23-22592-E-13](#)
[JCW-1](#)

AMANDA WILSON
Catherine King

**OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
9-7-23 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 7, 2023. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is XXXXXXX .
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U.S. Bank National Association, (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Creditor is entitled to receive payments pursuant to a Promissory Note which matures on March, 20, 2037 and is secured by a Deed of Trust on the subject property commonly known as 693 Stringtown Ave., Weed, CA 960094 (“Property”). The amount in default is \$21,696.39.
2. The Plan lists the incorrect Creditor. Amanda Wilson (“Debtor”) listed Quality Loan Service Corp. as the Creditor, but Quality Loan Service Corp. is merely the foreclosure trustee who was authorized to conduct the foreclosure proceedings under the Deed of Trust. The correct Creditor is U.S. Bank National Association.
3. The Plan must provide for full payment of the arrearages as well as ongoing monthly payments pursuant to the Note and the Deed of Trust. The Creditor must receive a minimum payment of \$602.69 per month to cure the pre-petition arrearages of \$21,696.39. Although the Debtor does not provide for payments to the Creditor in the Plan, the Plan provides for payments to the Trustee in the amount of \$626.00 per month for 36 months. The Debtor does not have the sufficient funds available to increase the Plan payments in order to cure the arrears.
4. The Debtor proposes to sell the Property within 12 months. While the Creditor does not oppose the Debtor’s intent to sell the Property, the Creditor objects to any delay or non-payment of the arrearages during the 12 month period. The Creditor further objects to the sale if the Debtor does not intend to continue making the full post-petition payments due under the Note and underlying security installments.
5. The Debtor shall commence payments proposed under the Plan within 30 days after the petition is filed under 11 U.S.C. § 1326(a)(1), and the Plan must comply with all the applicable provisions of 11 U.S.C. § 1325 to be confirmed. Given the foregoing, the Creditor believes the Plan cannot be confirmed.

Dckt. 14.

DISCUSSION

Creditor’s objections are noted. The court has created a joint analysis of the Chapter 13 Trustee’s Objection and Creditor’s Objection to Confirmation, which is provided herein.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor’s residence. Creditor U.S. Bank, N.A. has filed a timely proof of claim in which it asserts \$21,696.39 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.

This court has previously stated on several occasions that a debtor's inability to make regular payments to a creditor does not necessarily doom a debtor to loss of a home and the homestead exempt equity therein. Such a debtor can provide for the sale of the property in a commercially reasonable manner, and make adequate protection payments to the creditor who is to be sold from the sale (a Chapter 13 plan sale of property is not a rent/housing payment free gamble for a debtor).

Here, Debtor's Plan is to fund the Plan with payments of \$626.00 a month for thirty-six months, from which the Class 1 ongoing mortgage payments are to be made to Creditor, unsecured claims, attorney's fees, and trustee's fees. Within twelve months the balance of Creditor's Class 1 claim will be paid in full from a sale, and if a sale does not occur, Creditor can foreclose on its collateral.

The Plan provides for a current post-petition monthly payment of \$280.00 pending the sale of the Property or Creditor foreclosing on it. Plan, § 3.08(c); Dckt. 3.

In Creditor's Objection to Confirmation (Dckt. 14), Creditor demands that it be paid not only its current post-petition payments, but cure amounts on the arrearage as a condition of allowing for the marketing and sale of the Property.

Creditor states in Proof of Claim 2-1 that its claim is for (\$58,611.38) and that it is fully secured. POC 2-1 § 9. While able to state the amount of its claim, Creditor U.S. Bank Home Mortgage is unable to make a statement as to the value of its collateral.

On Schedule A/B Debtor lists this Property as having a value of \$264,300.00. Dckt. 1 at 10. On Schedule D, Creditor's claim is the only one listed (under an incorrect name) as being secured by the Property. Thus, using the Debtor's value (for which Creditor offers no dispute), Creditor has a \$200,000 (400%) equity cushion, leaving Creditor superbly adequately protected during a commercially reasonable sale time.

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 Creditor, U.S. Bank, must receive a minimum payment of \$602.69, but the Debtor admitted at the First Meeting of Creditors that she did not have the ability to increase her Plan payments. Debtor must submit supplemental Schedules I and J to show she can afford the plan payment to Creditor.

On Schedule I, Debtor states that she is disabled and is receiving \$1,555 in monthly Social Security payments. Dckt. 1 at 27-28. Debtor squeezes down her expenses on Schedule J to show monthly net income of \$626 to fund a plan for three years. *Id.* at 29-30.

Creditor's battle line is draw 11 U.S.C. § 1322(b)(2), (b)(5) and 1325(a)(5)(B). These sections provide:

11 U.S.C. § 1322

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

...

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

...

(5) notwithstanding paragraph (2) of this subsection, **provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending** on any unsecured claim or **secured claim on which the last payment is due after the date on which the final payment under the plan is due**;

11 U.S.C. § 1325

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

...

(5) with respect to each allowed secured claim provided for by the plan—

...;

(B)

(i) the plan provides that—

(I) the **holder of such claim retain the lien** securing such claim until the earlier of—

(aa) the **payment of the underlying debt** determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) **if—**

(I) property to be distributed pursuant to this subsection is in the **form of periodic payments, such payments shall be in equal monthly amounts**; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan;

In reviewing the above, Creditor retains its lien, Creditor will be paid in full on its Claim, and the payments are not to be made in periodic payments, but a lump sum payment from the sale of the Property within a commercially reasonable time. Plus, Debtor provides adequate protection (good faith) payments of \$280.00 a month (the normal post-petition contractual monthly payment) for Creditor's claim with a 400%, \$200,000 equity cushion.

Here, the court is presented with the issue of whether allowing 12 months (presumably from the August 2023 filing of the Plan) is a commercially reasonable period of time for the marketing and sale of the Property.

A review of the Docket discloses that Debtor has not sought to employ a real estate broker to see if the Property can be sold in the Summer or Fall of 2023. It appears Debtor chose to assume that Debtor would have a year to market and sell the Property.

It is now October and the Debtor is entering the holiday and Winter selling season – not the preferred Spring and Summer selling season.

While Debtor's adequate protection payments are nominal, they are the regular post-petition installment payments. The court is not persuaded that Creditor has the right under Chapter 13 to demand that a Plan cause Debtor, who is disabled and receiving only Social Security payments, forfeit her exempt equity in her Property.

What is at issue is setting the commercially reasonable period for selling the Property, which is encumbered by Creditor's secured claim (which is protected by the 400%, \$200,000, equity cushion and the additional \$280 a month adequate protection payments).

At the hearing, **XXXXXXX**

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

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

The Objection to the Chapter 13 Plan filed by U.S. Bank National Association ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

The Motion to Confirm the Modified Plan is XXXXXXXXXX.

The debtor, Brian Michael Carpenter ("Debtor") seeks confirmation of the Modified Plan to become current on Plan payments. Debtor states they misunderstood the process of increasing Plan payments and fell behind. Declaration, Dckt. 35. The Modified Plan provides \$180.89 for 45 months, followed by \$314.00 per month for the remainder of the Plan. Modified Plan, Dckt. 36. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

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

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

Dckt. 41.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

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

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

Dckt. 48.

TRUSTEE'S RESPONSE TO DEBTOR REPLY

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

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

Dckt. 50.

DISCUSSION

Ability to Comply with the Plan

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

Failure to Provide Disposable Income / Not Best Effort Analysis

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

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

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

September 26, 2023

At the hearing, counsel for the Trustee reported that some issues remain outstanding. Some can be fixed in the order confirming, but Debtor's counsel was not present at the hearing. Counsel for the Trustee requested a short continuance to afford Debtor's counsel the opportunity to make these amendments and the Motion be granted.

October 3, 2023 Hearing

At the hearing, xxxxxxxxxxxxxx

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

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

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

IT IS ORDERED that the Motion to Confirm the Modified Plan is
xxxxxxxxxx

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and parties in interest, and parties requesting special notice on September 6, 2023. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Incur Debt is XXXXXXX.
--

Mahagony Bonafide (“Debtor”) seeks permission to purchase a motor vehicle because she lost her vehicle in a car accident. Debtor seeks to incur debt to afford the vehicle with a total purchase price of \$32,445.00 with \$34,989.79 financed, and having monthly payments of \$725.00 to the car dealership Future Honda located in Citrus Heights, California. The loan period is for 72 months with an 13.99% fixed interest rate. Declaration, Dckt. 57.

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

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

Debtor previously presented the court with financing at an 18.55% interest rate. This is extraordinarily high. Debtor has subsequently found a better interest rate at 13.99%. However, the court notes monthly payments are higher, and the vehicle is much more expensive as well, going up from \$25,720.00 with \$21,520.00 financed to now \$32,445.00 with \$34,989.79 financed. Declarations, Dckts. 49, 47.

Debtor seeks to purchase a 2023 Honda Accord. The Motion states that Debtor believes that the terms of the purchase and financing are more favorable than the previous financing agreement, including the 13.99% interest rate. Declaration; Dckt. 57.

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

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

Debtor and Debtor's counsel have provided the court with a more favorable interest rate, but they do not inform the court why a new, 2023 model is the most reasonable vehicle given the circumstances.

Counsel for Debtor reported that another vehicle and better financing have been obtained and supplemental pleadings are being filed. In those filings, Debtor submits to the court three valuations of similar Honda Accords to show why Debtor's proposed purchase is reasonable. The court observes that a 2021 Honda Accord is approximately \$7,142 cheaper than the vehicle Debtor has chosen, seeming to be a more reasonable option. Exhibit 2, Dckt. 64. The court continues the hearing to allow the additional information to be presented to the court.

October 3, 2023 Hearing

At the hearing, **XXXXXXXXXXXX**

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

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

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

IT IS ORDERED that the Motion to Incur Debt is **XXXXXXXXXXXX**

FINAL RULINGS

16. [23-22535-E-7](#)
[DPC-1](#)

LARRY/SENA STEWART
Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
9-13-23 [\[21\]](#)

CASE CONVERTED: 09/19/23

Final Ruling: No appearance at the October 3, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on September 13, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Objection to Confirmation of Plan is dismissed without prejudice as moot, this Bankruptcy Case having been converted to one under Chapter 7.

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

1. Larry and Sena Stewart ("Debtor") are delinquent in plan payments.
2. Debtors cannot afford the payments proposed.

CONVERSION OF CASE TO ONE UNDER CHAPTER 7

On September 19, 2023, the Debtor elected to convert this Case to one under Chapter 7. Notice of Conversion; Dckt. 30. The Debtor is no longer prosecuting confirmation of a Plan.

The court dismisses without prejudice this Objection, it having been rendered moot by the conversion of this case to one under Chapter 7.

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, this Bankruptcy Case having been converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is dismissed as moot.

17. [23-22641-E-7](#)
[RAS-1](#)

ALLAN WEST
Bruce Dwiggin

**OBJECTION TO CONFIRMATION OF
PLAN BY CITIBANK, N.A.
8-29-23 [27]**

CASE CONVERTED: 09/13/23

Final Ruling: No appearance at the October 3, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 29, 2023. By the court’s calculation, 35 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

<p>The Objection to Confirmation is overruled as moot.</p>

Citibank, N.A. as trustee for American Home Mortgage Assets Trust 2006-3 (“Creditor”) holding a secured claim objects to confirmation of the debtor, Allen West’s (“Debtor”) Chapter 13 plan. Debtor filed a Notice of Conversion on September 13, 2023, however, converting the case to a proceeding under Chapter 7. Dckt. 32. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 13, 2023. *McFadden*, 37 B.R. at 521.

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

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

The Objection to Confirmation filed by Citibank, N.A. as trustee for American Home Mortgage Assets Trust 2006-3 (“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 is overruled as moot.

18. [23-21552-E-13](#)
[PLG-2](#)

RONALD RATLIFF
Rabin Pournazarian

MOTION TO CONFIRM PLAN
8-22-23 [\[44\]](#)

Final Ruling: No appearance at the October 3, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 22, 2023. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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>The Motion to Confirm the Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Ronald Ratliff (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on September 14, 2023. Dckt. 53. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Chapter 13 Plan filed on August 22, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. [23-20962-E-13](#)
[CK-2](#)

RUTHIE SHOULDERS
Catherine King

MOTION TO CONFIRM PLAN
8-24-23 [\[50\]](#)

Final Ruling: No appearance at the October 3, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 24, 2023. By the court’s calculation, 40 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.

<p>The Motion to Confirm the Plan is granted.</p>
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Ruthie Mae Shoulders (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on September 11, 2023. Dckt. 56. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on August 24, 2023, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.