UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 8, 2022 at 2:00 p.m.

1.	**22-22304-E-13** **DPC-1**	**JASWINDER SANDHU** **Mikalah Liviakis**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **10-19-22 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney, on October 19, 2022. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Plan pay not be in Debtor's best efforts.

DISCUSSION

Trustee's objections are well-taken.

Not Best Effort

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

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

The Plan proposes to pay $1,779.00 per month, for 60 months, with a 42 percent dividend to unsecured claims, which total $92,564.00. The Trustee asserts that the Plan payment may not reflect Debtor's best efforts and Debtor may have additional disposable income to pay towards the Plan. Debtor's Schedule A/B lists two vehicles including a 2016 Honda Civic and a 2015 Subaru Outback. Dckt. 1, p. 9. Debtor rents the Subaru vehicle from her mother, for $388.00 per month, which Trustee believes is an unnecessary expense. Dckt. 22.

Supplemental Schedules I and J have been filed on October 14, 2022. Dckt. 21. Debtor's monthly gross income is $11,575 for her family unit of one person. Schedule I, Dckt. 21 at 1. After deductions for taxes, Medicare, Social Security, insurance, union dues and a 457 retirement plan, Debtor states having $7,224 in monthly take-home income. *Id*. at 2.

On Amended Schedule J, Debtor states having ($5,452) in reasonable and necessary monthly expenses. These include ($900) for "Support to elderly parents," ($388) for a car payment, and ($210) for pet food and pet insurance.

On Schedule A/B Debtor lists owning a 2016 Honda Civic with 180,000 miles on it. Dckt. 1 at 9. Debtor states this vehicle has a value of $14,000. On Schedule C, Debtor exempts only $1.00 of value in the Honda Civil as exempt. On Schedule D Debtor lists Onemain Financial Group, LLC as having a ($25,861) claim secured by the stated $14,000 value vehicle with over 180,000 miles on it. *Id*. at 17.

The court denied Debtor's Motion to Value the Onemain secured claim pursuant to 11 U.S.C. § 506(a) because the debt was incurred within 901 days of the bankruptcy case and Debtor failed to provide any evidence of a non-purchase money amount included in the Onemain secured claim. Civil Minutes, Dckt. 26.

Debtor's proposed Plan provides that Debtor will only pay $14,000 of the ($25,861) secured claim as a Class 2(B) reduced secured claim in section 3.08 of the proposed Plan. The court has not reduced the value of the secured claim, Debtor's motion to value having been denied without prejudice.

Even if Debtor had obtained the reduced valuation, the proposed Plan would have the Debtor spend ($271) a month to keep the 2016 Honda Civic and the Debtor also pay her mother ($388) a month so Debtor could have a second car to drive as a lease vehicle. Thus, Debtor seeks to have creditors fund (as part of her 42% unsecured claim dividend plan) ($658) a month so Debtor could have the luxury of having two vehicles to drive.

Possibly, the Subaru is actually a vehicle driven by Debtor's parent and the "lease payment" is merely a disguised car payment being made for the benefit of Debtor's parents, in addition to the ($900) support contribution listed on Schedule J.

If Debtor's parents need support, Debtor has not yet explained why it is Debtor's creditors who will provide the support, rather than the array of governmental and charitable support services. The court is unaware of Debtor's parents income and benefits they received.

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.

2.	**18-22123-E-13 DEF-9**	**ROBERT/KATHRYN PETERSON David Foyil**	**OBJECTION TO CLAIM OF ELSA SHEKELLE, CLAIM NUMBER 5 9-6-22 [147]**

2 thru 3

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 6, 2022. By the court's calculation, 63 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 is overruled on several grounds:

(1) The court has dismissed (not without prejudice) Debtor's prior Objection to Proof of Claim 5-1. Order, Dckt. 69.

(2) The court has determined, by subsequent final judgment (Adv 18-2121; Dckt. 96), that the obligation of Debtor to Creditor is $123,486.51, plus 10% simple post-judgment interest, with the court's final Judgment superceding the amounts for the claim as stated in Proof of Claim 5-1.

Debtor's Objection is moot, the court having entered a final Judgment determining the amount of the claim and that it is nondischargeable. Further, this Objection is an improper attempted collateral attack on this court's final Judgment.

Robert Peterson and Kathryn Peterson, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Elsa Shekelle ("Creditor"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $220,054.32.

Objector asserts that on March 23, 2021, the court entered a Judgment of Nondischargeability ("Judgment") in the Adversary No. 18-02121, in favor of Creditor, in the amount of $70,241.70 and $44,000.00 in attorney's fees and costs. Additionally, the Judgment is subject to the credit of $38,776.68 "upon Plaintiff's receipt of original notarized releasers and full release of claims against/to Martha J. Voester Living Trust and Elsa Shekelle, Trustee from children of Defendants."

Objector states they were able to get notarized releases of the claims and provide them to Creditor. Therefore, Objector claims they are entitled to the $38,776.68 credit. Objector asserts the Claim, after credit adjustments, should be for the following:

Principle $70,241.70
Attorney's fees.....$44,000.00
Credit .....($38,776.68)
Balance after credit..... $75,565.02
Interest.....$2,550.50
Total Balance.....$78,115.52

Objector has not filed a copy of the Judgment as an exhibit with this Motion, but rather, asks the court to take "Judicial notice of the Proof of Claim, First Amended Petition for Redress, Second Amended Petition for Redress, Summons, and Petition for Redress previously filed with the Court as Docket 52 under case number 2018- 22123." Motion, Dckt. 147 at ¶ 13.

Judicial Notice

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

> The first category of adjudicative facts subject to judicial notice are facts which are "generally known within the territorial jurisdiction of the trial court." **This category requires that the fact to be noticed be of general notoriety in the geographical area of the court, but not of the United States as a whole**. It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."
>
> **This category is also limited to facts presently generally known within the jurisdiction**. Obviously, as time passes, the character of a jurisdiction in terms of its occupations, etc., will change. Accordingly, what a court might properly take judicial note of in the year 1800 might not be a proper subject of judicial notice in the year 2000.

The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.

Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.

The second subcategory of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are facts capable of being determined precisely by astronomical and mathematical calculations, such as the times of sunrise and sunset, moonrise and moonset, the phases of the moon, what day of the week a given date was, and standard actuarial and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.

The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday; Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table; time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

What Debtor's counsel actually asks here is that the court review documents that have already been filed with the court. These documents are within the court's records. However, in the future, Objector should file all evidence, regardless of whether they are within the court's records, as exhibits in support of their Motion.

Trustee's Nonopposition

Trustee filed a nonopposition on September 14, 2022. Dckt. 157. Trustee has no opposition to the Objection as the confirmed Plan proposes 100% percent to unsecured creditors. Trustee confirms that so far, Trustee has disbursed $9,911.55 to Creditor.

While stating no Opposition, the Trustee does not reconcile that the court's Judgment was entered on March 31, 2021, pursuant to a Motion to Enforce Settlement Agreement. 18-2121; Motion, Dckt. 73.

As addressed below, at issue in the Adversary Proceeding was the correct amount of the Judgment to be entered, and the credits that Debtor was entitled to in the court entering the monetary, nondischargeable judgment.

In the nonopposition, the Trustee does not address the propriety of attacking the Judgment of this court outside of the adversary proceeding in which the Judgment was entered.

Creditor's Opposition

Creditor filed an opposition on October 25, 2022. Dckt. 169. Creditor states whether the Judgment has been offset or reduces has already been litigated in Creditor's Motion to Enforce Bankruptcy Dispute Resolution Settlement Agreement and Judgment for Nondischargeability of Debt. Additionally, Objector's never appealed nor sought relief under Federal Rules of Civil Procedure 60(b) within the statutory period. Creditor requests the court overrule Objector's Objection.

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.

The court has reviewed the Adversary Proceeding's Judgment in Creditor's prior Motion for Relief from Automatic Stay, Dckt. 159, which was granted by the court on September 29, 2022. Dckt. 160.

In the Adversary, Objector was entitled to a "credit of $38,776.68 upon Plaintiff's receipt of original notarized releases" of claims against Creditor from children of Objector. Bankruptcy Dispute Resolution Agreement, Creditor's Exhibit 1, Dckt. 165 ¶ 2. Proof of the credit, however, must have been submitted by Objector within thirty (30) days of execution of the Settlement Agreement. The Settlement Agreement was executed on November 13, 2019. *Id.* ¶ 3(c). Thirty days after the execution of the Settlement Agreement was December 13, 2019.

A copy of the Settlement and Stipulation for Entry of Nondischargeable Judgment is provided as Exhibit B to the Debtor's Opposition to the Motion to Enforce Settlement Agreement. 18-2121; Exhibit A, Dckt. 81. It states that for both the $38,776.68 credit and the $21,900.00 credit:

> 4) Proof of the two above-referenced credits/reductions **to be submitted by Defendants** to Plaintiff **within Thirty (30) days of date of execution of this formal Stipulation for Nondischargeability of Debt and Stipulated Settlement**-with reasonable extensions authorized;

Id.; Exhibit A, Stipulation for Nondischargeability of Debt and Stipulated Settlement ¶ (4), p. 5:1-4 (emphasis added).

The Debtor failed to obtain the releases by the deadline. The court did not find persuasive that it was Creditors responsibility for drafting the documents and getting the required releases. The court's findings and conclusions included the following:

> While making this argument, Defendant-Debtor does not cite the court to any language in the Settlement Agreement imposing a duty on Plaintiff or Plaintiff's attorney to prepare or to have received the waivers and agreement as a condition precedent for the entry of the default judgment. Rather, it states that when Plaintiff "receives" the releases, the "Non-Dischargeable Judgment [will be] subject to credit of $38,776.68 . . . . Exhibit A, Settlement Agreement, ¶ 2; Dckt. 81. Plaintiff is to receive, not to "prepare," "track down," and "convince the Defendant-Debtor's children to sign releases."

Id.; Civil Minutes, p. 9; Dckt. 94.

Therefore, on March 31, 2021, the court entered a Judgment of Nondischargeability, with no credits applied, in the amount of $123,486.51 (comprised of $114,341.70 principal and prejudgment interest of $9,144.81 (computed at 7% per annum, which is $21.93 per day x 471 days computed to March 30, 2021)). Judgment of Adversary No. 18-02121, Creditor's Exhibit 2, Dckt. 165. Additionally, there is a post-judgment simple interest of ten (10) percent per annum. *Id.*

The court has, by final Judgment, determined the amount of the Judgment obligation, having considered Debtor's contention that there should be additional credits. While Proof of Claim 5-1 is "on the books," all parties in interest know that there is the subsequent Judgment of this court determining the amount of the obligation, entering a monetary judgment for that amount and post-judgment simple interest of 10%, and determining that the Judgment is nondischargeable.

At best for Debtor, the court's Judgment has rendered this Objection, filed more than a year after this court's final Judgment, moot. "Less best" for Debtor is that this Objection is an improper attempted collateral attack on this court's final Judgment outside of that Adversary Proceeding.

The Objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Elsa Shekelle ("Creditor"), filed in this case by Robert Peterson and Kathryn Peterson, 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 5-1 of Creditor is overruled, this court having entered a final judgment determining that the obligation upon which Proof of Claim 5-1 is based is $123,486.51, plus ten percent (10%) simple post-judgment interest, and that the Judgment is nondischargeable.

3. 18-22123-E-13 DEF-8 ROBERT/KATHRYN PETERSON David Foyil MOTION TO MODIFY PLAN 9-6-22 [140]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2022. By the court's calculation, 63 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Robert Edward Peterson and Kathryn Martha Peterson ("Debtor") seeks confirmation of the Modified Plan to account for the judgment entered in the Adversary No. 18-02121, *Shekelle v. Peterson et al.* Declaration, Dckt. 143. The Modified Plan provides Plan payments of $700 per month for months 1-56 and in month 57 the payment shall be $124,000.00 and a 100% dividend to unsecured creditors. Modified Plan, Dckt. 142. 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 October 25, 2022. Dckt. 161. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan relies on Debtor's Objection to Claim 5-1, Dckt. 147.

B. The Plan relies on Debtor selling their Real Property by December, which, it does not appear they are making significant progress towards.

C. No current Schedules I and J have been filed.

D. The Modified Plan may not be in Debtor's best efforts and they may have additional income from a decreased additional mortgage payment.

CREDITOR'S OPPOSITION

Elsa Shekelle, as Trustee of the Martha J. Voester Living Trust, Established June 30, 2022 ("Creditor") holding a nondischargeable debt filed an Opposition on October 25, 2022. Dckt. 164. Creditor opposes only to the extent Debtor seeks to reduce the debt Debtor owes to Creditor.

DISCUSSION

Debtor's Reliance on Objection to Claim

A review of Debtor's Plan shows that it relies on the court sustaining an Objection to Proof of Claim 5-1. Objection to Claim, Docket Control No. DEF-9. ~~Being heard in conjunction with this Matter, the court, however, has overruled Debtor's Objection. The Plan is not feasible. 11 U.S.C. § 1325(a)(6).~~

Failure to Make Plan Payment / Cannot Comply with the Plan

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

Debtor states they intend to "sell real property commonly described as 3030 Woodleigh Ct, Cameron Park, CA 95682-8159, shall be sold no later than month 56." December 2022 is month 56 of the Plan. There have been no Motions filed or any evidence signaling steps to sell the Property.

Additionally, Debtor has not filed current Schedules I and J. Therefore, the court cannot determine whether this Plan is feasible.

Failure to Provide Disposable Income / Not Best Effort

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

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

Debtor's Supplemental Schedule J, filed May 5, 2021, Dckt. 79, indicates additional mortgage payments of $400.00. However, the Notice of Mortgage Payment Change, filed on March 17, 2022, indicates as of April 10, 2022, the new payment amount is only $163.70. Therefore, Debtor may be able to contribute more to the Plan.

Although the Plan proposes to pay a 100 percent dividend to unsecured claims, it only accounts for $78,115.52 of unsecured claims. This is less than the amount Creditor Shekelle's unsecured Claim. Therefore, Debtor will need to increase their total Plan payments to provided a 100 percent dividend to unsecured claims. It appears there may be additional disposable income with the reduced mortgage payments. Thus, the court may not approve the Plan.

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, Robert Edward Peterson and Kathryn Martha Peterson ("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.

**4. 22-22624-E-13 MET-1 | MATTHEW/MICHELE KING
Mary Ellen Terranella | MOTION TO EXTEND AUTOMATIC STAY
10-19-22 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 19, 2022. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Matthew David King and Michele Elizabeth Prather King ("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. 20-21922) was dismissed on August 26, 2022, after Debtor failed to make timely Plan payments to the Trustee. *See* Order, Bankr. E.D. Cal. No. 20-21922, Dckt. 57, August 26, 2022; Civil Minutes, Dckt. 56. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor fell behind in Plan payments due to debtor Matthew King's loss of employment in March 2022, and a marital separation between the debtors this past spring. Declaration, Dckt. 10. Debtor further states that debtor Michele King had suffered a work related injury earlier this year, but she is now back to work at her primary job. She is currently employed with a hair salon in Pleasant Hill.

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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 Matthew David King and Michele Elizabeth Prather King ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

5. **22-21656-E-13 DPC-2** | **ERROL QUOCK/IRENE WONG** **Michael Mahon** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **10-4-22 [41]**

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 and Debtor's Attorney, on October 4, 2022. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Errol Quock and Irene Chi-Wia Wong's ("Debtor") claimed exemptions under California law because it is unclear whether the amount claimed qualifies for the tools of trade exemption, because Debtor offered insufficient supporting evidence thereof. California Code of Civil Procedure § 704.060(a) states (emphasis added):

> Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, **one commercial motor vehicle**, one vessel, and other personal property **are exempt** to the extent that the **aggregate equity therein does not exceed**:
>
> > (1) **Six thousand seventy-five dollars ($6,075), if reasonably necessary to** and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor **earns a livelihood**.

> (2) Six thousand seventy-five dollars ($6,075), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.
>
> (3) **Twice the amount of the exemption provided in paragraph (1), if reasonably necessary** to and actually used **by the judgment debtor and by the spouse of the judgment debtor** in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

Debtor claimed an exemption of $4,850.00 for a 2018 Nissan Kix, which is reflected on Schedule C. Dckt. 14, p. 10. However, as the Trustee notes, Schedule I, shows Errol Quock is not employed and Irene Wong is employed, however, Irene's occupation is not listed. Therefore, it cannot be determined if the vehicle is reasonably necessary, in accordance with California Code of Civil Procedure.

Debtor's Amended Schedule I

On October 17, 2022, Debtor filed an Amended Schedule I. Dckt. 51. The Amended Schedule I shows debtor Irene Wong is a "Lactation Educator" for "Community Resource Project."

Discussion

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

It is still not clear to the court whether a vehicle is required as tools of the trade based on this information alone. At the hearing, XXXXXXXXXX

~~The Trustee's Objection is sustained, and the claimed exemption is disallowed.~~

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

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

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

~~**IT IS ORDERED** that Objection is sustained, and the claimed exemptions for the 2018 Nissan Kix, under California Code of Civil Procedure § 704.060 is disallowed in its entirety~~.

6.	**22-21966-E-13** **TBG-2**	**JUDITH MOSHER** **Stephan Brown**	**MOTION TO CONFIRM PLAN** **9-30-22 [29]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 30, 2022. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx .

The debtor, Judith Ann Mosher ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $200.00 for 36 months, and at least a 3% dividend on nonpriority unsecured claims of $36,076.73. Amended Plan, Dckt. 18. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a response on October 11, 2022. Dckt. 35. Trustee states the application requests $4,000.00 in fees and costs to be paid throughout the Plan. However, the Plan does not allow Trustee to disburse any fees to Debtor's Attorney if the Application for Compensation (Dckt. 22) is granted until the end of the Plan.

Trustee asks the court to grant the Debtor's Motion but asks the court to consider adding order language to include a monthly payment for attorney's fees. The Application for Interim Compensation is set for hearing on November 1, 2022. Dckt. 22.

Identification of Plan

A review of the Docket reflects that no Plan has been filed in this case as a separate document. Rather, it appears to have been included as an attachment to the Schedules, Statement of Financial Affairs, Statement of Current Monthly Income, Notice Required by 11 U.S.C. § 342(b), Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, and Disclosure of Compensation of Attorney for Debtor.

In looking at the Plan included with the various other Documents, ¶ 3.05 states "Subject to prior court approval, additional fees shall be paid through this plan." Dckt. 18, p. 40. However, the monthly plan payment is stated to be only $200.00. *Id*., ¶ 2.01.

The court's order allowing Debtor's Counsel fees, Dckt. 40, allows $5,885.43 in fees and expenses of $82.57. It is disclosed in the Disclosure of Compensation that Debtor's Counsel received $2,000.00 prior to the filing of this case (the source identified as Debtor's daughter).

The Plan provides no less than a 3% dividend on projected ($36,076) in general unsecured claims, which would total at least $1,082.00.

On Schedule A/B Debtor states that he has only an "Equitable Interest" in the property where she resides and that her interest has a value of $772,924 (the entire value of the property), though she states that another person has an interest in the property. Dckt. 18 at 3. On Schedule D, Debtor identifies Bank of the West as having a lien on the residence to secure an obligation of ($561,189.84). *Id*. at 12.

The Plan provides that Debtor's daughter will make the ($4,266.09) monthly payment to Bank of the West. Plan, ¶ 3.10; *Id*. at 43.

It is curious to the court that this Debtor, who has no creditors who will be paid any significant amount through the Chapter 13 Plan and appears to have no non-exempt assets is proceeding with a thirty-six month plan.

At the hearing, xxxxxxxxx.

~~The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 30, 2022 as amended at the hearing as follows:~~

~~Attorney's fees in the amount of $4,000 as approved by court order on Date, Order, Dckt. XX, shall be paid throughout the life of the Plan as an administrative expense, requiring monthly payments of $xxxx.~~

~~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.~~

7. 18-20567-E-13 LBG-4 | **JOYCE BILYEU** / **Lucas Garcia** | **CONTINUED MOTION TO VACATE DISMISSAL OF CASE** **9-21-22 [65]**

DEBTOR DISMISSED: 09/08/2022

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Motion to Vacate is granted.

Joyce Ann Bilyeu ("Debtor") filed the instant case on February 1, 2018. Dckt. 1. A plan was confirmed on July 12, 2018, and an order confirming the plan was entered on July 18, 2018. Dckt. 49 & 50.

On July 27, 2018, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to delinquency in Plan payments. Dckt. 57. On September 7, 2022, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 62. The ruling was final because Debtor did not file any opposition.

On September 21, 2022, Debtor filed this instant Motion to Vacate, claiming Debtor believed they cured their default prior to the hearing on the Motion to Dismiss.

Debtor cites no legal authority for vacating dismissals.

Trustee's Response

On October 12, 2022, Chapter 13 Trustee, David Cusick ("Trustee"), filed a response indicating Debtor would be delinquent $3,499.00. Dckt. 69. Additionally, Debtor was required to provide the Trustee with any tax refund over $2,000.00. Therefore, Debtor may be further delinquent.

Trustee argues that its been over a month and a half since the case was dismissed. Reopening the case would confuse creditors who believe the case was dismissed. Additionally, Trustee has already issued a refund to Debtor in the amount of $672.71, which has not been mailed yet due to the filing of this Motion. If this Motion is granted, the amounts would need to be credited back to the case or accounted for in a modified Plan.

Trustee has also indicated Debtor has failed to prosecute the prior case, noting numerous failures of Debtor and Debtor's Counsel to prosecute the Chapter 13 case prior to dismissal.

Additionally, Trustee argues, the Motion has failed the heightened pleading standard.

APPLICABLE LAW

Review of Minimum Pleading Requirements for a Motion

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

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

Grounds Stated in Motion

In the Motion originally filed, only stated as the grounds for the relief were:

A. Debtor believed their payments were completed.

B. The error caused no disadvantage to creditors because the Trustee was still able to disburse payments and Debtor can make past due payments.

C. The enforcement of the dismissal would be a burden as Debtor would need to administer a fresh sixty (60) month case.

Debtors' Declaration provides testimony that Debtor stopped making payments because TFS sent a notice that payments had been completed. Dec. ¶ 6.a.; Dckt. 67. Debtor states that she just relied on the TFS notice, and din not provide any testimony about how that notice compared to what she understood the payments on the Plan to be or that she sought out the assistance of her counsel to confirm that she no longer had to make payments.

Debtor then "semi-admits" that she made an error and told TFS an incorrect number of payments Debtor was required to make. *Id*., ¶ 6.b.

Debtor then testifies that she will be able to make payments and the Trustee can make payments to creditors, would "TFS allows for it." *Id*., ¶ 6.c.

Finally, Debtor concludes testifying that she concludes that dismissal will not benefit creditors, as "a refiling would be shortly accomplished at an extreme burden to both myself and the bankruptcy trustee in administering a new case." *Id*., ¶ 6.d. Debtor provides not information about what these "great burdens" would be and how such would be so prejudicial to the Chapter 13 Trustee.

In stating that the Debtor "testifies," the court uses that term generously, as the Debtor's statements are made under penalty of perjury. They are merely "arguments."

Continued Hearing

After substantial discussion at the October 18, 2022 hearing and considering that the Debtor would be in the final months of a sixty (60) month Chapter 13 Plan, the court determined that continuing the hearing to afford Debtor's Attorney and Debtor to file a supplemental pleading to the Motion which states the grounds with particularity upon which the relief is based and a supplemental points and authorities in which Debtor provides the court with the applicable law and legal argument/analysis applying the grounds to the law and why such relief is proper.

Debtor and Debtor's Attorney (and any other person as may be relevant) may also provide supplemental declarations and supplemental exhibits to provide evidence in support of the grounds stated with particularity.

Attorney's Supplemental Declaration

On October 25, 2022, Debtor's Attorney filed a Supplemental Declaration indicating Attorney will send proof of funds and make the delinquent payment on October 26, 2022, one day late from the court's order. Dckt. 77.

Debtor's Supplemental Points and Authorities and Declaration

Debtor filed Points and Authorities on October 31, 2022. Dckt. 78. Within Debtor's Points and Authorities, Debtor states the following grounds, with particularity, reason to vacate the dismissal:

1. The Motion is made pursuant to Federal Rules of Civil Procedure 60(b)(1); due to mistake, inadvertence, surprise, or excusable neglect; as incorporated in Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 9024.

2. Debtor meets three out of four factors of the *Pioneer* test *(Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993)), discussed further below.

Debtor provides an analysis of these factors, providing the court with specific events in Debtor's life, including a notice from TFS, the final illness of a close family member (for whom Debtor was providing care) and the family member's death, and the prejudice to the dismissal occurring within the final months of Debtor's sixty month plan. Counsel notes that while there may have been some communication challenges in those months, Debtor's counsel could have filed a "we are trying to figure this out" response to the Motion to Dismiss, which likely would have resulted in the court continuing the hearing.

It also acknowledges that the cornerstone mistake was when Debtor provided TFS with the plan payment detail and made a clerical error in stating the ending date.

It is also noted that Debtor diligently performed the plan prior to the clerical error by Debtor caused the premature notice of completion by TFS and Debtor's mistaken belief that she did not need to continue in the Plan payments.

In her Supplemental Declaration (Dckt. 80), Debtor provides testimony in support of the grounds as stated in the Supplemental Points and Authorities. She explains how the life events (care for and passing of close family member) "detoured" her from being timely responsive to her attorney. She also testifies of her vehicle being repossessed and Debtor and her son having recovery of the vehicle as a substantial "distraction."

DECISION
Relief From Prior Order or Judgment

The U.S. Supreme Court provides an avenue for relief from a prior judgment or order, even when such is final, in Federal Rule of Civil Procedure 60(b). Relief from such judgment or order may be made for the specified grounds, which includes "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). The enumerated grounds include "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). 12 Moore's Federal Practice - Civil § 60.41 provides a discussion of what types of conduct are

sufficient to grant relief pursuant to Federal Rule of Civil Procedure 60(b), noting that there is not a simple punch list test.

While generally the mistake must be made by a party or party's counsel, it has been recognized that there can be a mistake of the court for which relief may be granted. However, when one is asserting a "judicial mistake," the Ninth Circuit Court of Appeals has required that the motion seeking relief pursuant to Federal Rule of Civil Procedure 60(b)(1) be filed before the time expires for filing an appeal on the judgment or order. *Gila River Ranch, Inc. v. United States*, 368 F.2d 354, 357 (9th Cir. 1966). This use of Rule 60(b)(1) in lieu of an appeal was discussed in the unpublished Ninth Circuit Decision *Sattler v. Russell (In re Sattler)*, 840 Fed. Appx. 214 (9th Cir. 2021), stating:

> "[U]nder Rule 60(b)[,] the [lower court] can, within a reasonable time not exceeding the time for appeal, hold a rehearing and change [its] decision." *Gila River Ranch, Inc. v. United States*, 368 F.2d 354, 357 (9th Cir. 1966) (emphasis added). While this rigid timeliness requirement does not apply to "mistakes" other than mistakes of law that go to the merits of a case, *see Fid. Fed. Bank, FSB v. Durga Ma Corp.*, 387 F.3d 1021, 1024 (9th Cir. 2004) (mistake in post-judgment interest rate), that does not help Sattler here, *see, e.g., SEC v. Seaboard Corp.*, 666 F.2d 414, 415-16 (9th Cir. 1982) (courts should not grant a Rule 60(b) motion based only on alleged legal errors, if the motion comes after the time to appeal has expired). Granting motions to vacate orders involving alleged legal errors on the merits, "after a deliberate choice has been made not to appeal, would allow litigants to circumvent the appeals process and would undermine greatly the policies supporting finality of judgments." *Plotkin v. Pac. Tel. & Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982) (alleged mistake in granting summary judgment). "The uncertainty resulting from such a rule would be unacceptable." Id. [the court then discusses when there can be an exception to the appeal period deadline based on "existence of extraordinary circumstances with prevented or rendered him [person filing the Rule 60(b)(1) motion based on judicial mistake] unable to prosecute an appeal."

Id., 214-215. Unfortunately, the time to appeal this court's order on the Motion for Compensation expired fourteen (14) days after it was entered on the Docket on June 24, 2021. Fed. R. Bankr. P. 8002(a). Under this standard, if Movant's arguments rely on "judicial mistake," under Rule 60(b) they are not timely. However, if the mistake was based on a party's mistake, Special Counsel would not be time barred and would satisfy. From reading the Motion, it appears to the court that the mistake is on behalf of Special Counsel for not noticing the fixed fee and not knowing the actual sale price. As such, Special Counsel's Motion is timely, being brought within one year of the June 24, 2021 order.

Rule 60(b)(1)

Under Rule 60(b)(1), "[o]n motion and just terms, the court **may relieve a party** or **its legal representative** from a final judgment, order, or proceeding for . . . **mistake, inadvertence, surprise, or excusable neglect**" (emphasis added). "Although 'mistake, inadvertence, surprise, or excusable neglect' are recognized as grounds for relief from a final judgment by Rule 60(b)(1), the Rule is completely silent on what these terms mean. Court language does not precisely define these terms, either. What is or is not sufficient to justify relief under Rule 60(b)(1) is best understood by analyzing the fact patterns, rather than the language, of the cases." 12 Moore's Federal Practice - Civil § 60.41 (2022).

In analyzing excusable neglect, the Supreme Court developed a four factor test which has been adopted by the Ninth Circuit. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388-394 (1993); *Pincay v. Andrews*, 389 F.3d 853, 855-895 (9th Cir. 2004)(*en banc*). The Supreme Court held the court must take into account all relevant circumstances including:

(1) the danger of prejudice to the opposing party;

(2) the length of the delay and its potential impact on the proceedings;

(3) the reason for the delay; and

(4) whether the movant acted in good faith.

Pioneer 507 U.S. at 395; *Bateman v. United States Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir. 2000) (emphasis added).

Moore's Federal Practice describes some fact patterns justifying relief from judgment:

1. The record shows that one of the **parties** proceeded to trial under an understandable but **mistaken assumption** concerning the issues to be tried.

2. Settlement was made by an **attorney** who **lacked authority**.

3. An appeal was not timely because **errors of court clerk contributed to appellant's lack of notice** that final judgment had been entered.

4. An untimely appeal was dismissed because the court **clerk's error deprived the appellant of an opportunity to** identify and **correct the defect.**

5. An **ambiguous local rule misled a party** as to the time required to act in order to secure trial on the merits.

6. **Ignorance of unfamiliar local procedures** may be excused when additional facts and circumstances contribute to the ignorance.

7. **Failure to appear at trial** may be excused when **court created confusion** in process of setting trial date.

8. **Misunderstanding** over terms of an **agreed extension** to plead may constitute mistake or excusable neglect.

9. **Inability of party to hire counsel** or otherwise communicate with court may be excusable neglect.

10. **Procedural errors made by lay parties** that attempt to represent themselves and who are given confusing instructions may justify relief from the consequences of understandable errors.

12 Moore's Federal Practice - Civil § 60.41 (2022) (emphasis added). Additionally, Moore's states inadvertent conduct is not automatically a mistake or excusable neglect sufficient to justify relief from judgment under Federal Rules of Civil Procedure 60(b)(1). A claim of mistake or excusable neglect will always fail if facts demonstrate a lack of diligence. *Id.* Scenario in which relief has failed due to a lack of diligence include inadequate trial preparation or simple carelessness in failing to read legal papers. *Id.* In particular, Moore's states a failure to read a court's order "is even more true of carelessness." *Id.* (citing *In re Four Seasons Sec. Laws Litig.*, 502 F.2d 834, 839 (10th Cir. 1974)).

Factors Favoring Relief for Debtor

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Debtor claims three of the four *Pioneer* factors have been met:

(1) The Danger of Prejudice to the Opposing Party

Debtor argues this factor weighs in favor of granting the Motion.

Debtor states "[t]here is great effort and lost momentum lost by refiling." Points and Authorities, Dckt. 78 at 3:7-8. Additionally, Debtor's vehicle was repossessed during the interim and her son had to repurchase it. Debtor hopes the continuation of the case could recover the vehicle.

As for adverse parties, Debtor states the continuation of the case will be beneficial to creditors who have participated in the case.

Given we are in the fourth year of the bankruptcy case, granting this Motion to continue the bankruptcy case does not appear to prejudice creditors. The only creditor who may be prejudiced is the creditor who repossessed Debtor's vehicle within the thirteen (13) day period of the case being dismissed and Debtor requesting to vacate the dismissal.

This factor weighs in favor of Debtor.

(2) The Length of Delay and Potential Impact on Proceedings

Debtor argues delay is less than ten (10) percent of the case time. The delay Debtor is addressing, the court assumes, is the five-month delay in making payments.

Debtor also notes Debtor's attorney should have responded to Trustee's Motion to Dismiss, however, failed to do so.

The court notes, the case was dismissed on September 8, 2022. 62. Debtor filed the Motion thirteen (13) days later, on September 21, 2022. Dckt. 65.

Therefore, there is not significant delay in bringing forth this Motion.

(3) The Reason for Delay

Debtor argues the reason for missing the payments was because Debtor was an "amateur" user of TFS. Debtor ran into technical difficulties with TFS and assumed her payments went through. Additionally, her mother passed away and, as a result, Debtor failed to respond promptly to her attorney's communications. By that time, they were past the date of replying to the Motion to Dismiss.

The court notes final rulings posted the day before a hearing state, "No appearance . . . is required." Therefore, parties in interest can still appear, even on a final ruling, to inform the court if there have been any changed circumstances that could affect the ruling. If Debtor or Counsel appeared, explained the difficulties with TFS, and assured the court that Debtor would cure the delinquency, as a court of equity, the court would likely find reason to continue the matter. However, no such appearance occurred.

Additionally, the court has, countless times in the past, allowed for late responses to motions for good faith reasons, understanding "life happens." Even though the reply period was over, it would seem in Debtor and Debtor's Counsel's best interest to throw a "Hail Mary" response to prevent the Motion from being granted. No response, opposition, declaration, or otherwise, was filed.

The reason for the delay is a closer call, but the court concludes that it does lean in favor of Debtor.

(4) Whether Movant Acted in Good Faith

The sole ground for the Motion to Dismiss was delinquency in plan payments. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

Debtor filed this Motion to Vacate Dismissal only thirteen days after the case was dismissed. Dckts. 62, 65. Debtor appear to be acing in good faith, and asserts they are ready and willing to cure their delinquent payments.

Therefore, in light of the foregoing, the Motion is granted, and the order dismissing the case (Dckt. 62) is vacated.

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 Vacate Dismissal filed by Joyce Ann Bilyeu ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Vacate Dismissal is granted, and the order dismissing the case (Dckt. 62) is vacated.

8.	**22-21667-E-13** **MEV-1**	**MICHAEL/TONI KELLEY** **Marc Voisenat**	**CONTINUED MOTION TO CONFIRM PLAN** **8-19-22 [20]**

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 August 19, 2022. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx .

The debtor, Michael Lawrence Kelley and Toni Lorraine Kelley ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for one payment of $2,459.28 for month 1, payments of $2,874.57 for 59 months, to cure the arrears of Cenlar in the amount of $10,000.00, cure the arrears of Rushmore/Loan Management in the amount of $21,000.00, pay priority claims in the amount of $22,552.80, and for a 0% dividend to general unsecured claims. Amended Plan, Dckt. 19. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 24, 2022. Dckt. 39. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor failed again to appear at the continued Meeting of Creditors, held September 22, 2022,

2. Debtor cannot make the Plan payments, and failed to disclose information in the Plan, Schedules, and provide documents to the Trustee.

    a. Debtor is delinquent in Plan payments to the Trustee,

    b. Debtor failed to file tax returns for the last four years,

    c. The Plan payment does not reflect all of Debtor's disposable income available,

    d. Debtor failed to provide business documents to the Trustee, including:

        i. business questionnaire(s) and supporting documents,

        ii. profit and loss statements for each individual month for each business,

        iii. financial statements including, but not limited to, bank statements, credit union statement, retirement statements, investment accounts, etc., from January 5, 2022 through July 5, 2022, and

        iv. two years of tax returns.

    e. Chapter 13 Schedules are inaccurate or contain unreliable evidence.

        i. Petition and Statement of Financial fails to identify any ownership or operation of businesses by Debtor, but Schedule I reflects both Debtors are self-employed.

        ii. Schedule I identifies Debtors' income of $6,000.00, including revenue from two businesses generating $3,000.00 each, but fails to attach two Business Income and Expense statements.

3. Under the proposed Plan, unsecured claimants may not be receiving what they would receive in the event of a hypothetical Chapter 7 liquidation.

DISCUSSION

Failure to Appear at 341 Meeting

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

by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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) due to the below reasons.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $5,333.85 delinquent in plan payments, which represents more than one month of the $2,874.57 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 202x tax year 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 Tax Returns

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Disposable Income

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

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

The Plan proposes to pay a 0 percent dividend to unsecured claims, which total $33,880.11, though Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals at least $4,720.00. Thus, the court may not approve the Plan.

Failure to File Documents Related to Business

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

A. Questionnaire,
B. Two years of tax returns,
C. Six months of profit and loss statements,
D. Six months of bank account statements, and
E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Failure to File Business Documents Required by Schedule I

The Chapter 13 Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

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

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Unsecured Claimants may not be receiving what they would receive in the event of a hypothetical Chapter 7 Liquidation as Schedule A/B reflects non-exempt assets totaling $32,527.00.

September 23, 2022 Hearing

Pursuant to the court's Order on, Dckt. 32, this matter was continued to November 8, 2022, at 2:00 p.m. in Courtroom 33.

November 8, 2022 Hearing

As of the court's November 2, 2022 review of the Docket, nothing further had been filed by the Parties. At the hearing, XXXXXXXXXX

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

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

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

~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael Lawrence Kelley and Toni Lorraine Kelley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

9. **22-20975-E-13 RHS-1** | **LINDA MIZOGAMI** | **CONTINUED CHAPTER 13 PLAN**
Eric Schwab | **5-16-22 [18]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Stipulation was served by MEB Loan Trust IV, U.S. Bank National Association, and Linda Kaori Mizogami on Debtor, Debtor's Attorney, Chapter 13 Trustee, and the Office of the U.S. Trustee on July 14, 2022.

The court issued an Order for Initial Hearing for Debtor's proposed Chapter 13 Plan on July 18, 2022. This was served July 19th and 20th, 2022. The court computes that 13 and 14 days notice have been provided.

The Proposed Chapter 13 Plan is xxxxxxx.

On May 16, 2022, Debtor Linda Mizogami filed a Proposed Chapter 13 Plan. Dckt. 18. On July 14, 2022, Debtor and Creditor MED Loan Trust, IV, US Bank National Association, not in its individual capacity but solely as trustee, as serviced by Specialized Loan Servicing, LLC lodged with the court, through their respective very experienced bankruptcy counsel, a proposed order titled "Stipulation Re: Chapter 13 Plan." The court rejected the proposed order on the Stipulation for several reasons, each stated in said rejection order.

The Debtor's Plan appearing to be in limbo, the court has determined that an Initial Hearing on Debtor's Proposed Chapter 13 Plan is necessary.

Trustee's Status Report

On July 25, 2022, Trustee filed a status report indicating Debtor is $2,352.01 delinquent in Plan payments. Dckt. 28. Additionally, Debtor's Attorney failed to appear at the second continued First Meeting of Creditors. Also, Trustee has been unable to verify Debtor's Social Security Number and has not received any tax transcripts or copies of Debtor's Federal Income Tax Returns. Also, the Plan may be over the unsecured debt limit of 11 U.S.C. § 109(e) as the case was filed on April 19, 2022, prior to the debt limits changing on June 21, 2022.

Debtor has not filed a status report.

Failure to Appear at 341 Meeting

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

Failure to Provide Tax Returns

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

Failure to Provide Social Security Number

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

Section for 109 Amount of Debt Compliance

On the April 19, 2022 filing, 11 U.S.C. § 109(e) limited Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $394,725 and noncontingent, liquidated, secured debts of less than $1,184,200."

However, effective as of June 21, 2022, 11 U.S.C. § 109(e) was amended to provide "Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than $2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than $2,750,000 may be a debtor under chapter 13 of this title."

This case having been filed on April 19, 2022, the debt limits in 11 U.S.C. § 109(e) effective that date, and not the debt limits in the June 2022 amendment, apply in this case.

August 2, 2022 Hearing

At the hearing, counsel for the Debtor reviewed the effort being made to communicate with Debtor in light of her suffering two heart attacks. Counsel requested that the hearing be continued so that he and the Debtor could focus on getting the back tax returns filed, attend the First Meeting of Creditors, and work with counsel for the Chapter 13 Trustee to address issues concerning whether an amended plan may be prosecuted in this case.

Debtor's Status Report

Debtor filed a Status Report on August 2, 2022 stating that Debtor's Domestic Partner advised that Debtor is aware that the meeting with Trustee was continued to August 18, 2022, and Debtor is recovering from health issues. Dckt. 32.

August 30, 2022 Hearing

At the hearing, counsel for Debtor reported that Debtor was readmitted to the hospital on August 27, 2022. Counsel for the Trustee concurred with Debtor's request for a continuance of this Status Conference on Debtor's prosecution of this case.

October 27, 2022 Status Report

Trustee filed a Status Report on October 27, 2022. Dckt. 38 Trustee states Debtor is now $9,086.02 delinquent in Plan payments. Additionally, Debtor and Debtor's Attorney have failed to jointly appear at numerous continued Meetings of Creditors. Trustee is also still unable to verify Debtor's Social Security Number and whether Debtor filed 2018-21 tax returns.

Also, the Motion to Confirm Plan has still not been set for hearing. Debtor additionally appears to be over the unsecured debt limit.

November 8, 2022 Hearing

At the hearing, xxxxxxxx.

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.
>
> Debtor's Proposed Chapter 13 Plan filed by Linda Kaori Mizogami ("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 Chapter 13 Plan is **xxxxxxx** .

10. 22-22276-E-13 DPC-1 | **COREY/GLORIA PARKS** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
Matthew DeCaminada | **10-17-22 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney on October 17, 2022. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor failed to provide proof of Social Security Number

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Debtor has not provided Trustee with proof of her social security number to the Trustee at the Meeting of Creditors as required by 11 U.S.C. § 521(a)(3); FED. R. BANKR. P. 4002(b)(1)(B). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

11. 22-21978-E-13 APN-1

11 thru 13

LILLIAN DEANER
Cindy Hill

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MEB LOAN TRUST VI, U.S. BANK NATIONAL ASSOCIATION
9-2-22 [28]

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 2, 2022. By the court's calculation, 46 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxxxxxx.

MEB Loan Trust VI, U.S. Bank National Association dba Specialized Loan Servicing LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Proposed interest rate is lower than the rate in the loan agreement

B. Motion to value property not filed

C. Cannot comply with plan

Debtor's Response

Debtor filed a response on October 4, 2022. Dckt. 52. Debtor asserts she will amend the interest rate back to the agreed 9.25%. Debtor further notes that the secured liens by FHL and MEB Loan Trust will be paid in full from sale and refinance. Debtor also asserts that a motion to value is irrelevant because the claim will be paid in full from the sale or refinance of the property. Lastly, Debtor asserts that she will make plan payments because her income is projected to increase due to lower mortgage payments starting September 2023.

DISCUSSION

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5.00%. Creditor's claim is secured by $121,031.65. Creditor argues that this interest rate is impermissibly modified from the agreed upon rate of 9.250% and violates 11 U.S.C. § 1322(b)(2).

However, Debtor agreed in her reply that she will amend the plan back to the original interest rate of 9.25%. Dckt. 52.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of MEB Loan Trust VI, U.S. Bank National Association dba Specialized Loan Servicing LLC . Debtor has failed to file a Motion to Value the Secured Claim of MEB Loan Trust VI, U.S. Bank National Association dba Specialized Loan Servicing LLC , however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor plans to make monthly payments of $2,550.00 for 5 months then $2,720.00 for 6 months even though Debtor has a monthly new income of $2,555.10. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing Debtor requested a thirty (30) day continuance to allow for the drafting of several simple amendments to the Plan which resolve the confirmation issues. The Trustee and Creditor concurred in the request for a continuance.

Debtor's Supplemental Response

Debtor filed a supplemental response on October 28, 2022. Dckt. 75. Debtor submitted a proposed order to amend the plan to Trustee and objecting creditors. Debtor has received tentative approval from the Trustee and is in discussion with objecting parties. Debtor will submit the order approved as form upon receipt. The amendments are:

A. MEB shall be paid at an interest rate of 9.25% as a Class 2 Claim

B. Section 7: Debtor will pay $2550 per month for up to 12 months until the sale or refinance of Debtor's residence. Debtor will use the proceeds of the refinance or sale to pay the claims on the first and second deeds of trust. Any amount over the homestead exemption will also be paid into the plan. After the sale or refinance, plan payment will decrease to $338 per month for a minimum of 48 months.

November 8, 2022 Hearing

At the hearing, xxxxxxxxxxx.

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

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

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

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

12. 22-21978-E-13 DPC-1 | **LILLIAN DEANER** Cindy Hill | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** 9-21-22 [37]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's attorney on September 21, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxxxxxxx.

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

A. Cannot Make Payments

B. Plan Relies on Pending Motion

C. Schedule B is not Accurate

D. Amended Mailing Matrix has no Attachment

E. Plan Payment Coming Due

Debtor's Response to Trustee's Objection to Confirmation

Debtor filed a response to Trustee's objection on October 4, 2022. Dckt. 49. Debtor states that the Plan relying on Pending Motion is true. Debtor will also correct the typographical error.

Debtor also states that the bank accounts on Schedule B are closed and that Debtor sent the bank statement for the new account. Debtor also states that the amended Mailing Matrix is filed on Dckt. 8 instead of Dckt. 11. Debtor also made her first plan payment. Lastly, Debtor states that Trustee is not questioning her ability to make plan payments but rather the sale of property.

DISCUSSION

Trustee's objections are well-taken in part.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan relies on sale or refinance of the residence by month 13 to pay the arrearages on first and second mortgage. Additionally, there is a secured claim of Citi Bank of an unknown amount. Also, there are significant liens on the property which may or may not be paid off with the sale of the Property.

It is unclear to the court and Trustee whether there is sufficient equity given the "unknown" amount owed to Citi Bank. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Plan Relies on Pending Motion

Trustee asserts that compliance with the plan rests on the Motion to Value Collateral of Cavalry SVP LLC that is set for hearing on the same day. If motion to value is not granted, Trustee asserts that Debtor cannot comply with plan.

The court has granted that Motion to Value Secured Claim.

Various Concerns

Trustee directs the courts to various issues with Debtor's Chapter 13 documents, which, on their own, does not give rise to denial of the Plan, but should be addressed by Debtor:

Schedule B is not Accurate

Debtor failed to provide account numbers for their two US bank accounts.

Amended Mailing Matrix has no Attachment

Debtor filed an Amended Verification of Creditor Matrix on August 12, 2022 but it appears that no creditor addresses were attached.

Plan Payment Coming Due

Debtor's first Plan payment of $2,550.00 was due on September 25, 2021. Trustee fails to articulate how this is grounds for denying confirmation of plan.

At the hearing Debtor requested a thirty (30) day continuance to allow for the drafting of several simple amendments to the Plan which resolve the confirmation issues. The Trustee and Creditor concurred in the request for a continuance.

Trustee's Supplemental Response

Trustee filed a Supplemental Response on October 28, 2022. Dckt. 74. Trustee states Debtor is working with Trustee and Objecting Parties to propose an order amending the Plan.

Debtor's Supplemental Response

Debtor filed a supplemental response on October 28, 2022. Dckt. 74. Debtor submitted a proposed order to amend the plan to Trustee and objecting creditors. Debtor has received tentative approval from the Trustee and is in discussion with objecting parties. Debtor will submit the order approved as form upon receipt. The amendments are:

A. MEB shall be paid at an interest rate of 9.25% as a Class 2 Claim

B. Section 7: Debtor will pay $2550 per month for up to 12 months until the sale or refinance of Debtor's residence. Debtor will use the proceeds of the refinance or sale to pay the claims on the first and second deeds of trust. Any amount over the homestead exemption will also be paid into the plan. After the sale or refinance, plan payment will decrease to $338 per month for a minimum of 48 months.

November 8, 2022 Hearing

At the hearing, xxxxxxxx.

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

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

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

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

13. 22-21978-E-13 KMM-1 | **LILLIAN DEANER** **Cindy Hill** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FEDERAL HOME LOAN MORTGAGE CORPORATION** **9-21-22 [41]**

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 21, 2022. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is xxxxxxxxxx.

Federal Home Loan Mortgage Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Fails to cure default on Secured Creditor's claim.

B. Cannot make all payments or comply with Plan.

Debtor's Response

Lillian Deaner ("Debtor") filed a response on October 4, 2022. Dckt. 54. Debtor asserts that she will pay off the arrearages within 1 year of filing and that her income will increase, allowing her to comply with the payment plan. Debtor also notes that the sale or refinance of property will help her comply with plan.

DISCUSSION

Trustee's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $75,964.90 in pre-petition arrearages. Although Debtor states their income will increase and they will pay off the arrearages in a year, the Plan only proposes to pay $65,385 of arrearages, not the total amount. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to make monthly payments of $2,550.00 for 5 months, $2,720.00 for months 6 through 12, and then sell or refinance the property. However, Debtor only has a monthly net income of $2,555.20, which the creditor asserts is insufficient to fund the plan and the pre-petition arrearages. Creditor is also concerned that Debtor has not filed a motion to sell or refinance real property at the time the objection was filed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing Debtor requested a thirty (30) day continuance to allow for the drafting of several simple amendments to the Plan which resolve the confirmation issues. The Trustee and Creditor concurred in the request for a continuance.

Debtor's Supplemental Response

Debtor filed a supplemental response on October 28, 2022. Dckt. 76. Debtor submitted a proposed order to amend the plan to Trustee and objecting creditors. Debtor has received tentative approval from the Trustee and is in discussion with objecting parties. Debtor will submit the order approved as form upon receipt. The amendments are:

A. MEB shall be paid at an interest rate of 9.25% as a Class 2 Claim

B. Section 7: Debtor will pay $2550 per month for up to 12 months until the sale or refinance of Debtor's residence. Debtor will use the proceeds of the refinance or sale to pay the claims on the first and second deeds of trust. Any amount over the homestead exemption will also be paid into the plan. After the sale or refinance, plan payment will decrease to $338 per month for a minimum of 48 months.

November 8, 2022 Hearing

At the hearing, xxxxxxxxxxx.

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 Federal Home Loan Mortgage Corporation ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of Plan is xxxxxxxx.

14. 19-26495-E-13 MB-1 | **ESTHER LAGUNA** / **Mario Blanco** | **MOTION TO APPROVE LOAN MODIFICATION** **10-4-22 [25]**

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, parties requesting special notice, and Office of the United States Trustee on October 4, 2022. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by Esther Laguna ("Debtor") seeks court approval for Debtor to incur post-petition credit. Debtor did not state the creditor-lender subject to the loan modification in the motion. It appears to the court that the creditor is MidFirst Bank ("Creditor"), which issued Debtor's first mortgage on the residence. Declaration of Esther Laguna, Dckt. 27.

Based on the Motion, the skeletal terms of the loan modification are:

> (1) Debtor is entering into a loan modification on her first mortgage secured by her residence;
>
> (2) the new debt is secured by a subordinate deed of trust of the residence for the missed payments; and
>
> (3) arrears are to be paid on October 1, 2045 in the amount of $8,684.71.

The court, however, cannot discern from this Motion key terms of the modification such as who the holder of the first mortgage is, the total amount due to the creditor, monthly payments, interest rate, or really any other key term of the agreement. This inadequate, bare-bones Motion is discussed further below.

Pleadings Filed as One Document

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

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Review of Minimum Pleading Requirements for a Motion

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

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

actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

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

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

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

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

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

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

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

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

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

Grounds Stated in Motion

Movant has not provided any flesh to its bones and is merely just requesting relief. The Motion in its entirety is stated below:

> The Debtor, Esther Laguna, hereby moves the court for an Order granting permission to enter into a loan modification on her first mortgage secured by her residence. The new debt is secured by a subordinate deed of trust on the residence for the missed payments, with arrears in the amount of $8,684.71 to be paid October 1, 2045, with no interim payments.

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

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. The court has not waived that Local Rule for Movant.

Additionally, the court notes that Debtor's counsel had appeared in many, many cases (dating back to 2013) in this District. He clearly has to be well informed of not only the Local Bankruptcy Rules, but the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure as enacted by the U.S. Supreme Court.

The "Motion" is denied without prejudice.

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 Approve Loan Modification filed by Esther Laguna ("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 Approve Loan Modification is denied without prejudice.

15. 22-21528-E-13 JCW-1

MICHAEL CARTER/TORRIE GIDGET CONN
Pro Se

MOTION TO VACATE AND OBJECTION TO ORDER ON MOTION FOR RELIEF FROM STAY
10-24-22 [117]

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Set Hearing for Debtor's Motion to Vacate a Prior Order was served by the Clerk of the Court on Debtor (*pro se*), US Trustee, and Chapter 13 Trustee as stated on the Certificate of Service on October 29 and 30, 2022. The court computes that 9 and 10 days' notice has been provided.

The Objection/Motion to Vacate is xxxxx.

On October 24, 2022, Debtors Michael Carter and Torrie Conn ("Debtors") filed a pleading stating they "**object to** [the judge's] Order to Lift Automatic Stay (Unlawful Detainer). . . ." Dckt. 117, 1:12-13 (emphasis in original). The Objection continues, stating that the judge had "**no Authority** for said Lift of Automatic Stay." *Id*., 1:16 (emphasis in original).

The court cannot identify any procedural basis for "Objecting to" an order issued by the court, and such "objection" having any legal effect. As discussed below, this appears to be in the nature of a motion to vacate a prior order of the court (Fed. R. Civ. P. 60(b) and Fed. R. Bankr. P. 9024), and the court initially treats it as such to afford Debtors access to the court.

The Objection focuses on earlier challenges that Debtors do not believe that the attorneys who state that they represent the Party named seeking relief from the stay, Federal National Mortgage Association, are really not attorneys for Federal National Mortgage Association, and are officious intermeddler (the court's term) attorneys without a client.

The Objection grounds, as summarized by the court, set forth in the Objection are:

1. Federal National Mortgage Association ("FNMA") is not a creditor. *Id*., 1:17. [FN 1]

2. FNMA is not a creditor because Debtors have challenged the attorneys purporting to represent FNMA and Debtors assert that the attorneys have no authority to represent FNMA. *Id*., 1:19-23.

3. Attorney Jennifer Wong entered a notice of appearance on the record in the Bankruptcy Case by filing a request for Special Notice (Dckt. 30), which Debtors assert is false because Attorney Wong and the other attorneys are not authorized to represent FNMA. *Id*., 1:24-28.

4. The Order granting Relief from the Automatic Stay was entered prematurely due to the court's incorrect order denying Debtors' Motion for the Court to Issue an Order to Show Cause. *Id*., 2:4-6.

FN.1. The Motion for Relief From the Stay filed naming Federal National Mortgage Association as the Movant (Dckt. 47) seeks relief to obtain possession of real property pursuant to an unlawful detainer action from Debtors, not to enforce a debt against the Debtors.

---

5. The court's reference to Local Bankruptcy Rule 2017-1(b) is in error, wrongly stating that "Attorney's Appearance is in Good Standing and Done Correctly." Local Bankruptcy Rule 2017-1(a)(1) requires that the attorney be retained to represent the client, and Debtors dispute that the attorney has been retained to represent FNMA. *Id*., 2:25-28. [FN 2]

FN.2. The Motion for Relief From the Stay filed naming Federal National Mortgage Association as the Movant (Dckt. 47) seeks relief to obtain possession of real property pursuant to an unlawful detainer action from Debtors, not to enforce a debt against the Debtors.

---

6. The court incorrectly denied Debtor's Motion for Order to Show Cause. The court referenced Federal Rule of Bankruptcy Procedure for Debtor to conduct discovery of who FNMA's attorneys are, but Federal Rule of Bankruptcy Procedure 2004 precludes examinations of attorneys. *Id*., 3:1-11.

7. Debtors do not seek to examine any creditor or equity holder, but want the court to issue an Order to Show Cause and require the attorneys who purport to represent FNMA to provide documentation of such to rebut Debtor's allegation that they do not represent FNMA. *Id*., 3:11-16.

8. Federal Rule of Bankruptcy Procedure 2004 only governs "Witnesses of Parties," and Debtors assert "Attorneys cannot be witnesses . . . , Attorneys are not a Party." The judge is in error believing that Rule 2004 can be used by Debtors to conduct discovery in their Bankruptcy Case. *Id*., 3:17-19.

On the application of Federal Rule of Bankruptcy Procedure 2004 to conduct an Examination, the court first notes the granting of the right which the United States Supreme Court states in Rule 2004(a) to be:

> Rule 2004. Examination
>
> (a) Examination on motion. On motion of any party in interest, the court may order the examination of any entity.

On its face, the examination may be made of any entity. The term "entity" is defined in 11 U.S.C. § 101(15) as, "(15) The term "entity" includes person, estate, trust, governmental unit, and United States trustee." The term person is defined in 11 U.S.C. § 101(41) as "(41) The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that. . . ."

Thus, the universe of a "person" who may be examined in a Rule 2004 Examination is wide and broad, not merely a "creditor" or an "equity security holder." Additionally, no immunity is granted an attorney from a Rule 2004 Examination.

Rule 2004(b) states the Scope of Examination that may be conducted and in pertinent part provides (**emphasis** added):

> (b) Scope of examination. The **examination of an entity under this rule** or of the debtor under § 343 of the Code may **relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge.** In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

In Debtors case, their concerns go directly to matters which effect the administrator of debtor's estate, which includes Debtors' right to possession of property (that right to possession being property of the Bankruptcy Estate, 11 U.S.C. § 541) and all of the Debtors' personal property (which is also property of the Bankruptcy Estate) that would be the subject of the unlawful detainer eviction proceeding.

A 2004 Examination can be the examination of an "entity" and/or production of documents. Fed. R. Bankr. P. 2004(c). A 2004 Examination is not a "voluntary" process for the entity to be examined, but can be ordered and a subpoena issued. *Id*.

COLLIER ON BANKRUPTCY describes the broad, and somewhat unique, scope of a 2004 Examination, stating:

> The scope of Rule 2004(b) is very broad:

> The scope of a Rule 2004 examination is exceptionally broad and the rule itself is "peculiar to bankruptcy law and procedure because it affords few of the procedural safeguards that an examination under Rule 26 of the Federal Rules of Civil Procedure does." *In re GHR Energy Corp*., 33 B.R. 451, 454 (Bankr. D. Mass. 1983). Examinations under Rule 2004 are allowed for the "purpose of discovering assets and unearthing frauds" and have been compared to "a fishing expedition." There are, however, limits to the scope of Rule 2004 examination. Significantly, Rule 2004 examinations may not be used for "purposes of abuse or harassment." *In re Mittco, Inc.*, 44 B.R. 35, 36 (Bankr. E.D. Wis. 1984); 9 Collier on Bankruptcy P 2004.01[1] (15th ed. 1996).

9 COLLIER ON BANKRUPTCY P 2004.01 (16th 2022).

Here, the gravamen of Debtors' assertion is that the attorneys are committing a fraud on the Debtors and the court, falsely stating that they represent FNMA. Further, that this fraud is being committed to impair the administration of the bankruptcy estate and improperly hinder Debtors' ability to prosecute a Chapter 13 Plan (providing how the Bankruptcy Estate will be administered) by removing Debtors and their personal property from their abode (the right to occupy also being property of the Bankruptcy Estate[FN.3.]).

FN.3. In making references to what may be property of the Bankruptcy Estate, the court is not making such findings or determinations, but only what colorably appears from what has been presented. The court does not impose any limits or make any determinations as to what Debtors or other parties in interest may assert is or is not property of the Bankruptcy Estate.

It appears that the entity to be examined is FNMA, not the attorneys. If the attorneys are not authorized to represent FNMA, then presumably it would be greatly relieved to learn of such from Debtors and would likely become Debtors' Ally. If, as Debtors assert, the attorneys are not authorized to represent FNMA, and the attorneys are committing written and oral fraud on the Debtors and the court, then presumably they would do the same if they were ordered to present the court with something that says they have been retained to represent FNMA.

> 9. Debtors have an absolute right for the court to issue an order to show cause (and conduct an investigation of whether the attorneys actually represent FNMA) and that an immediate hearing within three (3) days is required. FN. 6.

Debtors do not identify the authority by which they assert having the absolute right to have the court issue an order to show cause and then "prosecute" said order to show cause based on the allegation of Debtors that they do not believe that the attorneys represent FNMA. Additionally, Debtors do not identify the basis for asserting that in addition to requiring the court to issue the order to show cause, they have a right to a hearing within three (3) days because their motion is not a "normal" motion. *Id*.

Federal Rule of Bankruptcy Procedure 2020 provides that Federal Rule of Bankruptcy Procedure 9014 (motion practice) governs a motion for an order of contempt when it is sought by a party in interest. In *Placid Ref. Co. V. Terrebonne Fule & Lube (In re Terrebonne Fuel & Lube)*, 108 F.3d 609 (9th Cir.

1997), the Ninth Circuit Court of Appeals clearly held that bankruptcy judges have the power and ability, arising under 11 U.S.C. § 105(a) (as well as other courts stating the inherent powers of a federal court) to issue corrective sanctions.

> We agree with our brethren in their ultimate determination. Moreover, we assent with the majority of the circuits which have addressed this issue and find that a bankruptcy court's power to conduct civil contempt proceedings and issue orders in accordance with the outcome of those proceedings lies in 11 U.S.C. § 105. This section provides in pertinent part:
>
> . . .
>
> The language of this provision is unambiguous. Reading it under its plain meaning, we conclude that a bankruptcy court can issue any order, including a civil contempt order, necessary or appropriate to carry out [**10] the provisions of the bankruptcy code.

Placid Ref. Co. v. Terrebonne Fuel & Lube (In re Terrebonne Fuel & Lube), 108 F.3d at 613. However, the Ninth Circuit Court of Appeals does not state that the bankruptcy judge shall, upon request of a person asserting that some grounds for contempt may exist, to issue the order to show cause, investigate the allegations, and then rule on the order to show cause.

> 10. Debtors assert that they are creditors of themselves, and that their interests as creditors of themselves have not been considered or taken into account. *Id*., 4:21-24.
>
> 11. Debtors state that they are Creditors of Debtors based on "Creditors by Bankruptcy Definition." FN. 9.
>
> 12. Debtors state, as Debtors being Creditors of themselves, have recorded an Equitable Security Interest in the County, and are asserting those claims against themselves as set forth in Proofs of Claims Nos. 3-1 and 5-1. *Id*., FN. 10.

Debtors do not provide the court with the definition of "creditors" by which Debtors can be "creditors of themselves in this Bankruptcy Case." The term "creditor" is defined in 11 U.S.C. § 101(10) to be:

> (10) The term "creditor" means—
>
> (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> (B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(I) of this title; or
>
> (C) entity that has a community claim.

The term "claim" is defined in 11 U.S.C. § 101(5) to mean:

> (5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Proof of Claim 3-1 has been filed by Torrie G. Carter, aka Torrie Gidget Conn, in the Michael Carter and Torrie Conn Bankruptcy Case, stating that she has a claim for "$1,191,864.00, 50% of Possessory Equitable Interest" in the 3141 Claremont Drive Property. POC 3-1, ¶ 7, and attached Notice of Intent to Preserve Interest.

Proof of Claim 5-1 has been filed by Michael Carter Conn in the Michael Carter and Torrie Conn Bankruptcy Case, also asserting a claim for "$1,191,864.00, 50% of Possessory Equitable Interest" in the 3141 Claremont Drive Property. POC 3-1, ¶ 7, and attached Notice of Intent to Preserve Interest.[FN.4.]

FN.4. On Schedule A/B, Debtors list the 3141 Claremont Drive Property as real property in which they have an interest. However, they list his asset as being a "Secured Interest" and that the value of the "portion you own" in that property is $0.00. Dckt. 18 at 3.

Further on Schedule A/B, ¶ 34, Debtors state that they have a $3,508,513.00 "2-Secured Possessory Interest, pursuant to Senate Resolution 62 . . ." *Id.*

EXPEDITED INITIAL HEARING

Though Debtors have not provided the court with any authority that a request for the court to hold someone in contempt, or here for the court to issue an order to show cause and the court prosecute the allegations of Debtors, the court sets an initial hearing on the Objection, which the court construes as a Motion to Vacate the prior order of the court.

Debtors have engaged in productive presentation of their points in court. The federal process is not one in which parties are barred (absent an order so doing) or it being a "game" in which an imprecisely identified pleading is left to linger on the shelf.

As the court addressed at the October 18, 2022 hearing, Debtors appear to again seek to have the bankruptcy court judge undertake their discovery and prosecution of what they believe is improper conduct by the attorneys who state they represent FNMA. Debtors allege that the attorneys do not, but have not presented the court with any substantive evidence of such.

Debtors have provided their conclusion as to the scope of Federal Rule of Bankruptcy Procedure 2004 Examinations, which conclusion appears to contradict the plain language of Rule 2004. Debtors cite to Local Bankruptcy Rule 2017-1(a)(1) as being the basis for the court being wrong in citing to Local Bankruptcy Rule 2017-1(b) as recognized methods of appearances being made in this federal court. (This

method of making appearances in the bankruptcy court parallels Eastern District of California District Court Rule 182(1)(2).)

However, the provision of Local Bankruptcy Rule 2017(a)(1) applies to "An attorney who is retained to represent a debtor in a bankruptcy case. . . ." Here, the attorneys in question are not alleged to have been retained to represent the Debtor, but attorneys who state that they represent FNMA.

Here, the court is presented with attorneys stating they representing a client, FNMA, and Debtors stating, no they don't. The attorneys have made the appearances in this Bankruptcy Case in the manner provided by the Local Bankruptcy Rules. Debtors argue that the appearances are invalid because it has not yet been proven to Debtors that the attorney(s) actually represent FNMA. Based upon their belief, Debtors' seek to weaponize the bankruptcy court judge to do the investigation, presuming Debtors' allegations are true.

As clearly shown, Debtors have the ability to use the extraordinary discovery powers of Federal Rule of Bankruptcy Procedure 2004 to conduct discovery on FNMA to get the word straight from "the horse's mouth" of whether FNMA has retained the services of the attorneys who are appearing in this federal court proceeding (and in the State Court Action in light of the Unlawful Detainer Judgment entered therein impacting the administration of the Bankruptcy Estate in this Case).

From an initial look at the present Motion, the court does not see a basis for the court jumping in and issuing orders to show cause based on the allegations of Debtors. Further, the court does not see a basis stated under Federal Rule of Civil Procedure 60(b) to vacate the Order Granting Relief From the Automatic Stay.

However, this is merely a preliminary, *ex parte* review based on Debtors filing the Objection/Motion to Vacate. It may well be that Debtors can assert grounds, given the time to conduct discovery (whether in this Objection/Motion to Vacate or a 2004 Examination) and to develop the legal basis for the relief requested. As clearly stated in *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010), a federal judge does not just issue an order or judgment because a party asks for it, but must do so based on the law. That requires the parties to provide the court with the law and evidence, as well as the court independently making sure that the law is correctly stated (not merely what someone argues, even when there is no opposition).

The court sets this expedited initial hearing on the Objection/Motion to Vacate so the Debtors can be up and running in advancing the relief being sought, both as to the evidence and the law.

November 8, 2022 Hearing

At the hearing, XXXXXXXXXX

Therefore, upon review of the Objection/Motion to Vacate, the files in this Bankruptcy Case and good cause appearing;

IT IS ORDERED that Debtors' Objection/Motion to Vacate (Dckt. 117) is xxxxxxxxxx

16. 22-21528-E-13 TGC-2 | **MICHAEL CARTER/TORRIE GIDGET CONN** | **MOTION FOR ORDER TO SHOW CAUSE O.S.T.**
Pro Se | **10-24-22 [112]**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order Setting Hearing for Debtor's Re-filed Motion for Order to Show Cause and Evidentiary Hearing was served by the Clerk of the Court on Debtor (*pro se*), US Trustee, Chapter 13 Trustee, and Creditors as stated on the Certificate of Service on October 31, 2022. The court computes that 10 days' notice has been provided.

The Re-Filed Motion for Order to Show Cause and Evidentiary Hearing is xxxxx.

On October 24, 2022, Debtors Michael Carter and Torrie Conn filed a "Request/Motion For Shortening of Time For the Evidentiary Haring For the Issuance of an Order Associated with Emergency and The Re-Filed Motion for Order to Show Cause and Evidentiary Hearing." Dckt. 110. The Refiled Motion for Order to Show Cause and Evidentiary Hearing was also filed on October 24, 2022. Dckt. 112. The court denied without prejudice the Motion when it was originally filed. Order, Dckt. 107.

The court has scheduled an Initial Hearing on an Objection/Motion to Vacate the court's Order Modifying the Automatic Stay for 2:00 p.m. on November 8, 2022. Order, Dckt. 120. In the Refiled Motion, Debtors are seeking to have the court issue an order to show cause, require purported counsel for Federal National Mortgage Association ("FNMA") provide evidence that they actually represent FNMA and are not attorneys appearing in federal court without such client to represent. In the Order setting the Initial Hearing on the Objection/Motion to Vacate, the court addressed some of the Debtors' conclusions that they could not conduct discovery of the attorneys and FNMA to find evidence to support the allegation that there are rogue (the court's terminology) attorneys operating in federal court.

The court concludes that setting an Initial Hearing on the Refiled Motion for an Order to Show Cause should be conducted in conjunction with the Initial Hearing on the Objection/Motion to Vacate.

November 8, 2022 Hearing

At the hearing, XXXXXXXXXX

Therefore, upon review of the Objection/Motion to Vacate, the files in this Bankruptcy Case and good cause appearing;

IT IS ORDERED that Debtors' Re-Filed Motion for Order to Show Cause and Evidentiary Hearing is xxxxxxxxxx

FINAL RULINGS

17.	**22-22233-E-13** **DPC-1**	**KATHRYN FRANKLIN** **Mark Shmorgon**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **10-20-22 [19]**

Final Ruling: No appearance at the November 8, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on October 20, 2022. By the court's calculation, 19 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Prior to the filing of this Objection, Debtor filed a First Amended Plan and corresponding Motion to Confirm on October 13, 2022. Dckts. 13, 17. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

18. 22-21935-E-13 DPC-2 | **TAMMY RANDOLPH** | **Mark Briden** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** | **10-3-22 [17]**

Final Ruling: No appearance at the November 8, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, and Debtor's Attorney on October 3, 2022. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is overruled without prejudice.

The Chapter 13 Trustee, David P. Cusick ("Trustee") objects to Tammy L. Randolph's ("Debtor") claimed exemptions under California law because the debtor is not entitled to claim 155 West Oak Ave., Hayfork, CA 96041 ("Hayfork Property") as exempt since it was not her primary residence on the date the petition was filed under California Code of Civil Procedure § 704.730 . The voluntary petition indicates that the Debtor lives at 25505 Hwy 44, Millville, CA 96062-0000. However, the debtor claimed an exemption for the Hayfork Property listed on Schedules A/B and C for $81,602.00. Since the Hayfork Property is not the primary residence, Debtor cannot use 11 U.S.C. § 704.730.

The court notes, Debtor amended their Schedule C on October 18, 2022. Amended Schedule C, Dckt. 25. With the Amendment, Debtor removes the Hayfork Property from their list of exemptions and

adds the Millville Property. Therefore, Trustee's concerns appears to be resolved, at least with respect to an exemption being claimed in the Hayfork, California property.

The Objection is overruled without prejudice

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is overruled without prejudice.