

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 21, 2023 at 2:00 p.m.

1. <u>23-21007</u> -E-13	MANJIT SINGH	MOTION TO MODIFY PLAN
<u>PGM-3</u>	Peter Macaluso	10-11-23 <u>[53]</u>

1 thru 2

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on October 11, 2023. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Manjit Singh (“Debtor”) seeks confirmation of the Modified Plan. In his Declaration, Debtor states it seeks modification because he has had a mortgage loan modification.

Declaration, Dckt. 58. Debtor does not explain how this mortgage loan modification affects the plan payments, but does inform the court that he is “delinquent with plan payments because [he] was paying the mortgage directly, [not through the Plan].” *Id.* The Modified Plan provides for plan payments of \$70.00 to begin on November 25, 2023, where Debtor has already paid \$2,650.00 in the Plan to date. Debtor proposes a 100% dividend to unsecured creditors. Plan, Dckt. 57, ¶ 3.14. 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 November 6, 2023. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

1. The Plan purports to be completed in 36 months, but as proposed, it would take likely 107 months to complete, thereby exceeding the statutory time limit under 11 U.S.C. § 1322(d). Debtor estimated his general unsecured claims total \$997.53 (Plan, Dckt. 57, ¶ 3.14), but Trustee informs the court that the general unsecured claims come in at \$9,975.23. This discrepancy likely explains the over-extension.
2. Debtor marked subsequently filed Schedules I and J as amended, not supplemental, but they likely should have been marked as supplemental.

Dckt. 67.

Debtor’s Reply to Trustee’s Opposition

On November 14, 2023 Debtor files its Reply to Trustee’s Opposition. Dckt. 72. In his Reply, Debtor states:

1. Debtor acknowledges the over-extension problem and agrees to increase plan payments to \$400.00 per month.

Dckt. 72.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor’s proposed Modified Plan exceeds the statutory time limit allotted under 11 U.S.C. § 1322(d). According to the Chapter 13 Trustee, the Plan will complete in 107 months because Debtor, while proposing to pay all general unsecured claims, did not list the correct amount of general unsecured claims. Debtor stated it is amicable to a plan payment increase, but must submit a Modified Plan reflecting such increase. Failure to comply with 11 U.S.C. § 1322(d) is grounds for denial of confirmation.

On Supplemental Schedule I filed on November 14, 2023 (Dckt. 74), Debtor states having gross monthly income of \$5,250.01, with the only deduction being (\$970.45) for Taxes, Medicare, and Social Security. On Supplemental Schedule J (Dckt. 74), Debtor states having a family until of three persons,

Debtor and Debtor's two minor children. On it Debtor lists (\$5,078.93) in expenses, generating a projected monthly net income of \$400. Dckt. 74 at 6-7.

On prior Supplemental Schedule J Debtor stated under penalty of perjury that Debtor's family unit had (\$5,479.56) in reasonable monthly expenses, thus there was only \$70.63 in projected monthly disposable income. Dckt. 60 at 6-7.

With respect to codebtors, Debtor states that his former spouse resided in his community property state in the eight years prior to filing this case, and the state in which they lived is "-NONE-." Schedule J; Dckt 1 at 27.

To generate \$400 a month in projected disposable income, Debtor says in the Second Supplemental Schedule that the following reasonable and necessary expenses stated on First Supplemental Schedule J, showing only \$70 of projected disposable income to fund the Plan:

	First Supplemental Schedule J	Second Supplemental Schedule J	Expense Reduction to Fund Plan
Home Maintenance	(\$125)	(\$20)	\$105
Transportation	(\$600)	(\$500)	\$100
Entertainment	(\$125)	\$0	\$125
			=====
			\$330

With these changed expenses stated under penalty of perjury, Debtor states that he can now perform the plan even with a higher plan payment. Debtor provides no testimony as to how his reasonable and necessary expenses have dropped \$330.

The court also notes that some of Debtor's now stated reasonable and necessary expenses stated under penalty of perjury in the Second Supplemental Schedule J may be unreasonably low. These expenses include:

- A. Home repair and maintenance expense of only \$20 per month.

It is not clear how Debtor would have only \$240 a year for repairs and maintenance of his home for the three years of this Chapter 13 Plan.

- B. Entertainment expenses of \$0.00 a month.

For the six years of the Chapter 13 Plan Debtor and his two minor children have no entertainment, no recreation, and no books or magazines (or their digital equivalent) for the three years of this Chapter 13 Plan.

While Debtor may desperately want to save his home from sale, such is not a justification for "creative" stated expenses to generate a predetermined necessary projected disposable expense. Either the

expenses were reasonable and necessary when stated under penalty of perjury for the First Supplemental Schedule J, or they were misstated to try and shelter projected disposable income from funding the Plan.

At the hearing, counsel for Debtor explained, **XXXXXXX**

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, Manjit Singh (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on October 17, 2023. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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.

<p>The Motion to Approve Loan Modification is granted.</p>

The Motion to Approve Loan Modification filed by Manjit Singh ("Debtor") seeks court approval for Debtor to modify his mortgage loan by adding arrearage amounts to the principal. PHH Mortgage Corporation ("Creditor"), whose claim the confirmed Plan provides for in Class 1 (Dckt. 3) (the proposed Modified Plan provides for in Class 4 (Dckt. 57)), has agreed to a loan modification that changed Debtor's mortgage payment from the current \$1,734.37 per month to \$1,738.86 per month. Exhibit A, Dckt. 64. The modification adds the pre-petition arrears to the principal balance owed on the note, increasing the principal balance to \$323,057.32 from \$267,351.81. *Id.* at 3(B). The modification provides for a fixed interest rate of 3.5% with the note maturing on July 1, 2063. *Id.* at 3(A). Creditor and Debtor entered into this loan modification agreement on July 12, 2023, and now seek the court's approval.

The Motion is supported by the Declaration of Debtor. Declaration, Dckt. 63. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

The Chapter 13 Trustee, David Cusick, filed a Non-Opposition on November 7, 2023, stating that the loan modification appears beneficial to Debtor and the estate. Dckt. 70.

This post-petition modification is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve Loan Modification filed by Manjit Singh ("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 court authorizes Manjit Singh to amend the terms of the loan with PHH Mortgage Corporation ("Creditor"), which is secured by the real property commonly known as 878 Trehowell Drive, Roseville, California 95678, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 64).

3. [22-21314-E-13](#) NADIA ZHIRY

[DPC-5](#)

3 thru 6

**CONTINUED STATUS CONFERENCE
RE:**

MOTION TO DISMISS CASE

6-21-23 [\[260\]](#)

**NO APPEARANCE AT THE HEARING IS REQUIRED FOR A PARTY
IF THEY DO NOT OPPOSE THE CONTINUANCE OF THIS MATTER**

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.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on January 30, 2024.

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 332. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court's calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

REVIEW OF MOTION

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Nadia Zhiry ("Debtor") has failed to file a new plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 3, 2023. Dckt. 272. Debtor states an amended plan will be filed. Debtor awaits the discharge of the Receiver in a civil action in Superior Court. *Id.* Debtor then plans to file a motion for final payment to Debtor's contractor, which will allow for the increase in payments to satisfy the claims in the Chapter 13 case, specifically the non-dischargeable claim of the City of Sacramento, California. *Id.*

Failure to Provide Evidence

Debtor's counsel filed an Opposition making several factual assertions. However, no declaration of the Debtor was filed to support those assertions or authenticate the exhibits provided. The court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

FILING OF SECOND AMENDED PLAN

Debtor filed a Second Amended Plan and Motion to Confirm on July 12, 2023. Dckts. 285, 289. The court has reviewed the Motion to Confirm the Second Amended Plan and the Declaration in support filed by Debtor. Dckts. 287, 289. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

The Court continues the hearing on the Motion to Dismiss for consideration in conjunction with Debtor's Motion to Confirm the proposed Second Amended Plan in this Bankruptcy Case.

August 22, 2023 Hearing

At the hearing, the Parties agreed to continue the hearing to allow the Debtor and Receiver to prosecute the Motion for discharge of the Receiver and determination of the Receiver's fees and expenses, the hearing for which is set for October 31, 2023, in the State Court.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

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 hearing on the Motion to Dismiss this Chapter 13 Case filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, the court being notified that the hearings in the State Court Receivership Action having been continued to November 8, 2023, and now having been concluded, upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to **2:00 p.m. on January 30, 2024.**

**NO APPEARANCE AT THE HEARING IS REQUIRED FOR A PARTY
IF THEY DO NOT OPPOSE THE CONTINUANCE OF THIS MATTER**

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.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

**The hearing on the Motion to Excuse Turnover is continued to 2:00 p.m on
January 30, 2023.**

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court's calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

JULY 11, 2023 CONTINUED STATUS CONFERENCE

On June 27, 2023, Nadia Zhiry, the Debtor, filed an updated Status Report (Dckt. 267). The court summarizes the updated Status Report as follows:

A. Debtor has completed all of the repairs and abatements on the Property and has received final approval for all such repairs and abatements from the City.

B. Debtor has moved to discharge the Receiver and conclude those state court proceedings.

C. Upon the determination of the Receiver's claim (fees and expenses), the Debtor will provide for payment of those through the Chapter 13 Plan.

The court has modified the automatic stay to allow the Receiver to prosecute the necessary motions for the determination of his fees, costs, and expenses in the Receivership State Court Action. Order; Dckt. 280.

The Status Conference is continued, it appearing that the remedial work for which the Receiver was seeking relief from the stay has been resolved by the General Contractor hired by the Debtor.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

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 hearing on the Motion to Excuse Turnover filed by Gerard F. Keena II, the State Court Receiver, having been presented to the court, the court being notified that the hearings in the State Court Receivership Action having been continued to November 8, 2023, and now having been concluded, upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Excuse Turnover is continued to **2:00 p.m on January 30, 2023.**

**NO APPEARANCE AT THE HEARING IS REQUIRED FOR A PARTY
IF THEY DO NOT OPPOSE THE CONTINUANCE OF THIS MATTER**

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

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

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

**The hearing on the Objection to Claim of Gerard Keena, II, POC 1-1 is
continued to 2:00 p.m. on January 30, 2024.**

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Objection may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court's calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

REVIEW OF OBJECTION

Nadia Zhiry, Chapter 13 Debtor, ("Debtor") requests that the court disallow the claim of Gerard F. Keena, II, ("Receiver"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$183,585.18. Debtor asserts, without stating the legal basis supporting such argument, that:

1. **Receiver has no claim:**

- a. Receiver has no claim against Debtor “having been discharged in the ‘Chapter 7’, as the ‘Receiver’ . . .” The Receiver has not been reappointed. Objection, Dckt. 193 at 3:4-7.

The court notes, Debtor has not provided any legal grounds that Receiver was discharged upon Debtor receiving their Chapter 7 discharge. Upon review of 11 U.S.C. § 727, a Chapter 7 discharge does not discharge the duties of an appointed custodian, but rather discharges debts and liabilities that arose before the date requesting relief. Debtor does not point to any authority in the Bankruptcy Code or the Superior Court’s Receivership Order (*see* Order Appointing a Receiver Pursuant to Stipulated Judgment, Cal. Super. Ct. Sacramento Cnty. No. 34-2017-00208154, May 3, 2021 (filed in this case as Dckt. 195) (hereinafter the “Receivership Order”)) that requires “reappointment” of the Receiver. The discharge did not abate the Receiver and Debtor provides no grounds that Receiver would need to be reappointed after receiving Chapter 7 relief.

2. **Receiver has no standing:**

- a. Receiver has no “standing” to assert any claim in this Chapter 13 case. Objection, Dckt. 193 at 3:14-15.

Upon review of the Proof of Claim, Receiver states they are owed money for the services provided. Receiver is not asserting a claim for a third party. Receiver, thus, has standing. Debtor conceded this at the hearing on the Status Conference on the Motion to Excuse Turnover and/or Motion to Confirm Termination or Absence of Stay.

3. **Receiver is owed no funds:**

- a. Receiver’s Proof of Claim reflects no costs, no fees, and no charges between the filing of the previous Chapter 7 case and the filing of the current Chapter 13 case. Objection, Dckt. 193 at 2:8-12.

The Chapter 7 case was filed on July 29, 2021. E.D. Cal. No. 21-22759. The current case was filed on May 25, 2022. E.D. Cal. No. 22-21314.

Upon review of Receiver’s Proof of Claim (E.D. Cal. No. 22-21314, Proof of Claim 1-1), Receiver does not provide a breakdown of the fees incurred before and after the Chapter 7 case. However, Receiver’s Proof of Claim in the Chapter 7 case (E.D. Cal. No. 21-22759, Proof of Claim 1-1) was for \$82,217.54. Receiver’s Proof of Claim in the current case is for \$183,585.18. Receiver clarifies their pre-Chapter 7 filing fees and post-Chapter 7 filing fees in their Response, which is summarized under “Receiver’s Response.”

- b. Having been discharged, and no claim transferring into the pending Chapter 13 case, Receiver is owed no funds.

The court notes, the claim is asserted to be fully secured. It is well known that liens survive a debtor’s discharge, so the fact that Debtor received a discharge is not relevant to the claims survival. The debt still exists, and to the extent it is secured it is still enforceable.

RECEIVER’S RESPONSE

Receiver filed a response on May 30, 2023. Dckt. 234. Receiver indicates they amended their Proof of Claim to clarify distinctions between the *in personam* and *in rem* claim. The court notes, once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006. The court acknowledges that Receiver attempts to address Debtor's contentions that Receiver would be violating the discharge injunction.

The amended Proof of Claim, Proof of Claim 1-2, indicates the following:

Claim amount.....Unknown

It is not clear to the court why the amended claim amount is unknown, when Receiver later asserts the claim is fully secured in the amount of \$185,585.18.

Amount of claim that is secured.....\$185,585.18

Amount owed from expenses incurred
pre-Chapter 7 filing (July 29, 2021).....\$84,461.04

Amount owed from expenses incurred
post-Chapter 7 filing to date of
Chapter 13 filing (July 29, 2021 - May 25, 2022).....\$99,124.14

Receiver first addresses the *in personam* claim and states that Debtor's Objection to Receiver's Proof of Claim has been rendered moot because the \$99,124.14 *in personam* claim in the Amended Receiver Proof of Claim does not reflect any personal liability of Debtor that was previously discharged in Debtor's Chapter 7 case. *Id.* at 7; *see also* Attachment A to Amended Proof of Claim of Gerard F. Keena II, filed May 26, 2023.

Receiver also states that it still has a secured claim that was not previously discharged and that remains as an encumbrance against the Claire Avenue Properties. Dckt. 234, at 7. Finally, Receiver states that it appears that Debtor is arguing that the Chapter 7 case abated the Receivership Order. Dckt. 234, at 7. Receiver asserts that this argument is incorrect and lacks citation to any legal authority in support. *Id.* Receiver points to 11 U.S.C. § 543(d) and argues that the order appointing Receiver has not been abated and it was not necessary to reappoint the Receiver as Debtor suggests. *Id.* at 8.

DEBTOR'S REPLY

Debtor filed a reply on June 3, 2023. Dckt. 240. Debtor's reply concedes that the Amended Proof of Claim "technically moot[s]" Debtor's Objection, but asserts that:

(1) Receiver did not follow the state court order;

(2) Receiver has not had any fees approved;

and (3) Receiver has not recorded its lien as required by the state court, rendering any claim as unsecured rather than secured.

Dckt. 240, at 1-2.

Debtor identifies a number of disputed material facts, *id.* at 7-8, and requests that this court either sustain its objection or, in the alternative, allow for an evidentiary hearing to determine the value of the claim, if any, *id.* at 9-10.

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.

It appears what remains unresolved is the amount of fees and expenses that are to be recoverable by Receiver. Debtor argues that Receiver has no fees allowed by the state court under the Receivership Order.

California Rule of Court 3.1179 states that the Receiver is “the agent of the court,” to act in the benefit of all people. The Receiver is an agent of the Superior Court of California. The court has not been provided with any legal authority indicating that a federal bankruptcy judge takes over the state court's jurisdiction to determine the rights of the Receiver.

California Health and Safety Code gives explicit authority to a receiver to record a lien for fees and expenses, allowing a receiver:

To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, **with court approval, secure that debt** and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. The **lien shall be recorded in the county recorder's office** in the county within which the building is located.

Cal. Health & Safety Code § 17980.7 (emphasis added).

Pursuant to the court order that was provided to the court, and recorded on May 13, 2021, “[t]he Receiver may record a lien (‘Receiver’s Lien’) against the Subject Properties to secure the repayment of the Receiver’s compensation, costs, and expenses, in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver’s Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.” Proof of Claim 1-2, Recorded Order Appointing a Receiver Pursuant to Stipulated Judgment, Attachment 1 at ¶ 7.

Continuance of Hearing

As the court addressed at the hearing, in light of the Receiver seeking to pursue the allowance of fees and expenses in the State Court Action, the court continues the hearing on this Objection for purposes of conducting

a status conference thereon to determine what, if any amended pleadings are required and if any dispute remains to be resolved.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

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 Gerard F. Keena, II, (“Receiver”), filed in this case by Nadia Zhiry, Chapter 13 Debtor, (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Claim of Gerard Keena, II, POC 1-1 is continued to **2:00 p.m. on January 30, 2024.**

**NO APPEARANCE AT THE HEARING IS REQUIRED FOR A PARTY
IF THEY DO NOT OPPOSE THE CONTINUANCE OF THIS MATTER**

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.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 11/7/23. The hearings in the State Court receivership proceeding being continued to 11/8/23.

The hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on January 30, 2024.

NOVEMBER 21, 2023 HEARING

On November 14, 2023, Gerard F. Keena III, the State Court Receiver, filed an updated Status Report. Dckt. 338. He reports that the State Court Judge has further continued the hearing on the motions in the State Court Receivership Action which the Parties have identified as needing to be resolved before this Motion may be determined. The State Court hearings have now been continued to January 17, 2024. The State Court Receiver requests that this matter be continued to a date after January 17, 2024.

The court continues this matter to 2:00 p.m. on January 30, 2024. Due to the court's calendar for February, the first available date after January 30, 2024, would not be until mid-February, 2024.

REVIEW OF MOTION

The debtor, Nadia Zhiry ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of \$500 per month for the first 13 months, followed by \$2,000 per month for the remainder of the Plan. Amended Plan, Dckt. 289. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Over the 60 months of the Plan, this would total \$100,500 in plan payments by Debtor.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 1, 2023. Dckt. 300. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.
- B. The Plan may extend sixty (60) months, depending on when the Civil Action concludes.
- C. Debtor relies on payments from daughter, however, Daughter has not provided a declaration indicating they will be able to make Plan payments for sixty (60) months.
- D. Debtor’s expenses appear low.
- E. The Plan appears underfunded if the receiver’s claim remains allowed in the full amount.

RECEIVER’S JOINDER

The Receiver, Gerard F. Keena II (“Receiver”), filed a “Joinder” to Trustee’s opposition on August 8, 2023. Dckt. 303. The court treats the “Joinder” as the Receiver’s Opposition. The Receiver shares Trustee’s concerns in that:

- 1. No information is provided to determine how long the Debtor’s daughter intends to relocate at the property.
- 2. The rent is taxable income and there has been no discussion as to the anticipated amount of taxes paid on the rent.
- 3. There is no evidence as to the daughter’s intention and ability to make the payments on a consistent basis.

DEBTOR’S RESPONSE

Debtor filed a response, Dckt. 305, on August 8, 2023, indicating:

- 1. Debtor intends to be current by the hearing date.
- 2. Debtor believes the Receiver fees will be determined on August 31, 2023, thus concluding the civil action and not making the case overextended.
- 3. Debtor submitted the declaration of Debtor’s daughter as evidence to support the daughter’s commitment to helping fund the Plan.

From the court’s review of the docket, Debtor’s daughter, Vera, submitted a declaration on April 24, 2023, in support of Debtor’s First Amended Plan, indicating that they are willing and able to contribute \$1,500 per month. Dckt. 198. Vera does not indicate how long they intend to live at the property.

Debtor's daughter has not submitted a declaration in support of the current Motion indicating their ability to help fund the Second Amended Plan.

4. Debtor has filed current amended schedules and assert that their expenses are lower than the average family of two.

The court notes, Debtor has only filed Amended Schedules I, no Amended Schedule J. Dckt. 292.

5. Debtor asserts that the Receiver's fees will be significantly less than the Proof of Claim.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,500 delinquent in Plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Complete Plan Within Allotted Time

Trustee indicates Debtor may not be able to complete the Plan in sixty months, as the Civil Action is still pending and Debtor does not intend to pay the Receiver until after the conclusion of the "Civil Action." Debtor indicates the Civil Action will be concluded at the end of the month.

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's daughter has not submitted a declaration in support of the current Motion and ability to fund the Second Amended Plan. Debtor's daughter only submitted a declaration for the First Amended Plan, which was denied confirmation.

Debtor has only filed an Amended Schedule I, and not an Amended Schedule J. Dckt. 292. Therefore, the court does not have an accurate picture of Debtor's expenses and financial reality.

Debtor leaves the court to consider her family expenses (for two adults, Debtor and her husband) as set forth in Supplemental Schedule J filed on April 10, 2023. Dckt. 192. The expenses which Debtor states under penalty of perjury are reasonable and necessary for her family unit of two adults consist of:

Mortgage	\$0.00	In the proposed Chapter 13 Plan Debtor's Daughter is to make monthly payments totaling \$1,750.00 to JPMorgan Chase Bank as Class 4 direct payments under the Plan.
----------	--------	---

Property Insurance	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Real Estate Taxes	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Home Maintenance and Repairs	\$0.00	
Electricity, Heat, Natural Gas	\$200.00	This is for two residential properties on the Debtor's real property
Water, Sewer, Garbage	\$140.00	
Telephone, Internet, Cell Phone	\$50.00	
Food and Housekeeping Supplies	\$400.00	Assuming \$50 a month for housekeeping supplies, that leaves \$350 a month for food for the two adults. In a thirty day month, that allows for \$1.94 per meal per person for food (assuming three meals a day per person).
Clothing and Dry Cleaning	\$10.00	This allows each adult \$5 a month for clothing over the 60 months of the Plan. This is only \$60 per adult per year for clothing for five years.
Personal Care and Products	\$20.00	This allows each adult \$10 a month for personal care (such as haircuts and hair dressers) and products (such as lotions, creams, and the like).
Medical and Dental Expenses	\$25.00	This allows each adult \$12.50 a month for medical and dental co-pays, band-aids, creams, mouthwash, toothpaste and the like.
Transportation (gas, maintenance, and repairs)	\$100.00	<p>On Amended Schedule C, Debtor claims an exemption in a 2007 Kia Rondo with 165,000 miles on it. Dckt. 227. Debtor lists this as the only vehicle Debtor has an interest in on Amended Schedule A/B, stating it has a value of \$2,500.00. Dckt. 207.</p> <p>If one allows only \$35.00 a month for repairs for the next five years (which is only \$420 a year), there is \$65 for gas a month. Paying \$5.00 a gallon for gas, Debtor and her non-debtor Spouse can purchase only 13 gallons of gas a month. Assuming the 2007 vehicle gets 20 miles to the gallon, that would allow Debtor to drive only 65 miles a week, which is only 9 miles a day.</p>

Entertainment	\$10.00	This allows the Debtor and her non-debtor Spouse only \$5 a month for entertainment. Thus, for the five years of the Plan, Debtor and her non-debtor Spouse will have next to no entertainment in their lives.
Vehicle Insurance	\$50.00	For the 2007 vehicle that Debtor and her non-debtor Spouse can only drive for 9 miles a day, Debtor will pay \$600 a year in insurance.

Debtor's statement under penalty of perjury that Debtor and her non-debtor Spouse only have \$1,005 a month in necessary and reasonable expenses for the five years of the bankruptcy plan.

On the latest Supplemental I filed, Dckt. 292, Debtor states having the following Income:

Debtor's Social Security Income.....\$505.00
Non-Debtor Spouse's SSI.....\$1,000.00

Dckt. 292. Debtor also lists an additional \$1,500.00 in monthly rent paid by her daughter Vera and Debtor includes that in computing her monthly income. However, the Second Amended Plan requires an unidentified daughter of Debtor to make monthly payments of \$1,500.00 and \$250.00 to Class 4 Creditor JPMorgan Chase Bank, N.A. Second Amd Plan, ¶ 3.10; Dckt. 289. In her Declaration in support of the Motion to Confirm the Second Amended Plan, Debtor testifies that it is her daughter Luyba who is making the monthly mortgage payments, which include insurance and taxes. Dec., ¶ 8; Dckt. 287.

There appear to be some significantly understated expenses by Debtor. These include gas, maintenance, and repairs for Debtor 16 year old vehicle, maintenance and repair of Debtor's two residences, cell, internet, and video service for two adults, food, personal care, medical expenses, and entertainment. Rather than stating actual reasonable and necessary expenses, it appears that Supplemental Schedule J is a MAI (made as instructed) Schedule J to show a preconceived monthly net income.

The Receiver's Proof of Claim indicates a secured claim in the amount of \$183,585.18. Debtor insists the Civil Action will determine that the claim is for significantly less, and is hopefully that the Receiver's fees and costs will be only \$3,625.10. This is significantly less than Receiver's claim.

Looking at Amended Proof of Claim 1-2, the Receiver has filed it as a secured claim, with the lien being asserted on the Real Property in this case. Exhibit 1 to Amended Proof of Claim 1-2 is a copy of the order appointing the receiver that was recorded with the Sacramento County Recorder, which states a recording date of May 13, 2021. With respect to compensation, expenses, and a lien securing the amounts owing to the Receiver, the State Court Order Appointing Receiver includes:

3. The Receiver will be compensated for his services in the amount of \$250 per hour. The Receiver may use the Receiver's attorneys, paralegals, and other staff to assist him as necessary. Receiver's personnel will be compensated in the amounts outline in the billing rate schedule attached here to as Exhibit A. The Receiver will be reimbursed for the Receiver's reasonable costs and expenses incurred in connection with receivership activities, including expenses for those labor and service described in this Order, travel, copying, long distance telephone calls, and legal process. . . .

7. The Receiver may record a lien (“Receiver’s Lien”) against the Subject Properties to secure the repayment of the Receiver’s Compensation, costs, and expenses in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver’s Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.

In the General Statement of Claim that is attached to Amended Proof of Claim 1-2, the Receiver states that there were \$84,461.04 in fees and expenses incurred from his May 3, 2021 appointment (Date on the State Court Order of Appointment) through July 29, 2021, and additional fees and expenses in the amount of \$88,124.14 incurred for the period July 30, 2021 through May 25, 2022 (the Chapter 13 filing date). Amended Proof of Claim No. 1-2 does not include amounts for fees and expenses incurred during this Chapter 13 Case.

The Order appointing the Receiver allows him to bill his time at \$250 an hour. There are similar hourly rates allowed for in-house counsel of the Receiver. There is not an hourly rate stated for any “out-house counsel” employed by the Receiver. If during the fourteen months of this Chapter 13 Case the Receiver and his counsel billed only ten hours a month, then each would be seeking compensation for 140 hours each, with an hourly rate of at least \$250.00 (this court does not know what hourly rate the State Court will allow for the “out-house counsel”). One hundred and forty hours times \$250 an hour equals \$19,600.00, each for the Receiver and the “out-house counsel,” which then totals \$39,200.00 in fees since the commencement of this Chapter 13 case.

It is not readily apparent how Debtor computes Receiver to have a claim of only \$3,625.10 at the outset. It is also unclear how the Receiver has incurred fees and expenses totaling \$183,585.18, plus additional fees and expenses during this case, in light the status of the property at issue when this case was filed.

Debtor has not provided a provision in the Plan as to what will occur if Receiver’s claim is determined to be for the full amount of \$183,585.18, plus post-Chapter 13 filing fees and costs, or any lesser reasonable amount allowed by the State Court judge in the Receivership Action. Without the court knowing the extent of Receiver’s claim, the Plan does not appear confirmable.

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

In light of the prosecution of the discharge of the Receiver and determination of his fees and expenses, which hearing is set for October 31, 2023, the Parties agreed to the continuance of the hearing on this Motion.

NOVEMBER 7, 2023 STATUS CONFERENCE

On October 31, 2023, the State Court Receiver notified the court that the hearings in the State Court receivership have been continued to November 8, 2023. The court has been continuing the hearings in this Motion, Motion to Excuse Turnover, Objection to Proof of Claim, and Motion to Confirm the Second Amended Plan until sufficiently after the State Court scheduled proceeding.

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, Nadia Zhiry (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm the Amended Plan is continued to **2:00 p.m. on January 30, 2024.**

7. <u>23-23216-E-13</u> <u>KMM-1</u>	CLIFTON ROBERTS Mo Mokarram	OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN SERVICING LLC 10-10-23 [12]
---	--	--

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 October 10, 2023. By the court’s calculation, 42 days’ notice was provided. 14 days’ notice is required.

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

<p>The Objection to Confirmation of Plan is overruled, and the Plan as amended at the hearing is confirmed.</p>

Specialized Loan Servicing LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor has filed a Claim in this case in the amount of \$891,464.55, including \$102,464.19 in arrears. POC 4-1. Creditor's Claim is secured by the real property commonly known as 7601 State Highway 70, Marysville, California 95901. The Plan fails to provide for curing the arrears in the amount of \$102,464.19 on Creditor's secured claim.

Dckt. 12.

Debtor's Reply to Creditor's Objection

On November 15, 2023 Debtor filed a Reply to Creditor's Objection. Dckt. 20. In his Reply, Debtor states:

1. The Plan provides for full repayment to creditors, including by making a plan payment step up from \$11,000.00 per month to \$11,450.00 per month beginning on month 26 for the remainder of the Plan's life.

Dckt. 20.

DISCUSSION

The proposed Chapter 13 Plan (the Eastern District of California required plan form) expressly provides in Paragraph 3.02 that:

3.02. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

Plan; Dckt. 3 at 2. It is this amount that the Debtor has to pay through the Plan.

Creditor's Objection, while stating the Objection as one being its arrearage is not provided for in the Plan, really raises the point as to whether the Chapter 13 Plan is adequately funded. Though it appears that Creditor did not appreciate its rights under the Plan that requires the claim being in the amount stated in the proof of claim, the court does not treat the Objection as a waiver of Creditor's rights.

Unfortunately, Creditor has not provided an economic analysis of the Plan and whether it is actually underfunded, rendering it insufficient for the Chapter 13 Trustee to make the required arrearage cure payments. Correspondingly, Debtor's response does not provide such an analysis, but merely states what the Plan payments are to be (as amended as stated at the 341 Meeting of Creditors).

Court's Review of Plan Funding

The Chapter 13 Plan, as filed, provides for the payment of \$11,000.00 a month for sixty months. Plan, ¶¶ 2.01, 2.03. In the Opposition to the Objection, Debtor states that it has been agreed that the plan payments shall be:

Monthly Payment	Number of Payments	Plan Funding
\$11,000	25	\$275,000
\$11,450	35	\$400,750
		=====
	Total Plan Funding	\$675,750

The Plan requires the following payments (including the arrearage stated in Creditor's Proof of Claim 4-1.

	Plan Funding	\$675,750
Administrative Expense/Claim	Amount	
Debtor's Counsel	(\$6,500)	(\$6,500)
Chapter 13 Trustee Fees (Est. 8%)	(\$54,060)	(\$54,060)
Creditor Class 1 Post-Petition Monthly Payments (\$7,198 per month)	(\$431,880)	(\$431,880)
Creditor Class 1 Arrearage Cure Payments	(\$102,464)	(\$102,464)
Class 2 Payments - Chrysler Vehicle	(\$8,412)	(\$8,412)
Class 2 Payments - Ford Vehicle	(\$6,489)	(\$6,489)
Class 7 Payments - General Unsecured Claims (amount stated in Plan from Schedules, Claims Bar Debt Not Expired.	(\$64,430)	(\$64,430)
		=====
	Over/(Under) Funding of Plan	\$1,515

With the Plan as amended to increase the monthly payment to \$11,450 beginning in month twenty-sixth and continuing for the term of the Plan does get the ball over the goal line, though with little cushion (0.002%).

Nobody has raised the question of the Debtor's ability to make such substantial Chapter 13 Plan payments for sixty months. Debtor's income, Schedule I, appears to be with a stable employer. Dckt. 1 at 32-33. On Schedule J, Debtor lists a family unit of four persons, Debtor and three children. Reviewing Schedule J, it appears that reasonable and realistic expenses are listed (with some being substantial enough to be reduced if claims come in higher). *Id.* at 34-35.

The Statement of Financial Affairs states that Debtor is married. *Id.*; Stmt. Fin. Affairs, Question 1-3. On Schedule I and Statement of Financial Affairs Parts 4 and 5, no information is provided for the

spouse's income. No marital dissolution actions on listed on the Statement of Financial Affairs. *Id.*, Part 4.

On Schedule H, Debtor states he has no co-debtors, that he and his spouse have lived in community property states, but in response to which community property state Debtor and his spouse lived is stated as “-NONE-.” On Schedule A/B, Debtor lists one of the four listed vehicles as being “Non-filing spouse car.” Sch. A/B, ¶ 3.3; Dckt. 1. Also, on Schedule A/B, ¶ 31, Debtor states that his Spouse is the beneficiary under a life insurance policy.

Schedule I expressly required that if Debtor's non-filing spouse is living with Debtor, then her income information must be included on Schedule I. However, if separated, then the information of the non-filing separated spouse is not included. Schedule I does not state any payments by the spouse for the expenses of the children listed by Debtor on Schedule J.

It is possible that this issue was addressed at the First Meeting of Creditors. The court does not participate in the First Meeting of Creditors. Based on the documents filed in this case, there is a huge income hole and possible over-expenses claimed by Debtor who is proposing a plan with no reasonable economic cushion in Plan funding.

At the hearing, Debtor's counsel reported **XXXXXXX**

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

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

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

~~—————The Objection to the Chapter 13 Plan filed by Specialized Loan Servicing LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~—————**IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled, and the proposed Chapter 13 Plan filed on September 15, 2023, as amended at the hearing to increase the monthly plan payment to \$11,450.00 commencing with month twenty-six of the Plan and continuing through the term of the Plan, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which includes the amendment to the Plan stated above, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2023. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Gary Sparks ("Debtor") seeks confirmation of the Modified Plan to reflect changes in the Internal Revenue Service's ("IRS") Claim, as well as provide for repayment of Debtor's home equity line of credit loan. Declaration, Dckt. 58. Specifically, Debtor informs the court that he seeks to modify the Plan in part because he has now filed his 2016 through 2021 tax returns showing that he has properly paid withholding amounts, so the IRS should accordingly amend its Claim to reflect those payments. *Id.* The IRS submitted an amended Proof of Claim 9-6 on November 6, 2023, showing a secured claim in the amount of \$5,702.66 and an unsecured claim in the amount of \$59,229.17. POC 9-6. The IRS asserts \$27,116.70 as an unsecured priority claim. *Id.* at ¶ 12.

The Modified Plan provides for plan payments of \$4,855.00 for 14 months, and then \$5,320.00 for 46 months, with unsecured creditors receiving a 0% dividend. Modified Plan, Dckt. 60, s. 7. 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 November 7, 2023. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$863.27 delinquent in plan payments as of November 7, 2023. Debtor has paid \$72,426.73 into the Plan of that date, but the proposed Modified Plan calls for \$73,290.00 having been paid as of November 7, 2023.
2. Trustee calculates that the Plan will take approximately 63 months to complete, which exceeds the time allotted by 11 U.S.C. § 1322(d). However, if the IRS processes Debtor’s tax returns and amends its proof of claim, then the plan will be adequately funded.
3. Debtor has filed Supplemental Schedules I and J. But because the Debtor is a self-employed attorney, Debtor must file an attachment evidencing the gross business income and expenses required by the Schedule I form on Line 8a.

Dckt. 67

Debtor’s Reply to Trustee’s Opposition

On November 14, 2023 Debtor filed a Reply to Trustee’s Opposition. Dckt. 70. In is Reply, Debtor states:

1. Debtor will cure the delinquency. Plan payments shall be \$4,793.34 per month for 14 months, \$5,320.00 per month for 3 months, and \$5,570.00 per month for 43 months. Debtor has paid \$72,426.73 in the Plan as of October, 2023.
2. Debtor will fix the over-extension issue by providing for a slight increase in plan payment.
3. Debtor is waiting to hear back from the IRS to clear up this issue of the secured claim. It may be the case that the secured portion of the IRS’ claim will be reimbursed by future tax refunds.

Dckt. 70.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$863.27 delinquent in plan payments, which represents less than a month of the \$4,855.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6). However, Debtor states

the reason for the perceived delinquency is due to mortgage payment fluctuations, and there is no delinquency, or at least proposes to fix any delinquency. At the hearing, **XXXXXXXXXX**

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 his Supplemental 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).

As of the court’s November 19, 2023 review of the Docket, Debtor has not yet filed the gross business and expenses statement to the Supplemental Schedule I. On November 14, 2023, Debtor filed several exhibits with his Reply, one of which is a Business Income and Expenses Form. Exhibit B; Dckt. 71. However, this must be filed with the Schedule I, not as an exhibit separate and apart from a Schedule I.

Looking at Supplemental Schedules I and J, Dckt. 59, no provision is made for paying income or self-employment taxes.

Reviewing the Gross Income and Expense Form filed as an exhibit, Debtor states monthly net income of \$6,933. However, there are no income or self-employment taxes shown. Exhibit B; Dckt. 17.

At the hearing, **XXXXXXX**

Failure to Provide for a Priority Claim and a Secured Claim

The Internal Revenue Service has a claim for \$5,702.66 in secured debt, \$27,116.70 in priority unsecured debt, and \$32,112.47 in general unsecured debt. Proof of Claim 9-6, filed on Nov. 6, 2023. The IRS recently amended its proof of claim, so the Debtor’s October 3, 2023 Plan could not account for this recent modification. The Debtor’s Plan does not mention any secured claim of the IRS at all, and it only lists priority unsecured claims of \$21,991.00, which is less than the IRS’ recently modified proof of claim. The Debtor must address this recent claim amendment and in any proposed Modified Plan. As it currently stands, the Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

At the hearing, **XXXXXXXXXXXXXX**

~~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, Gary Sparks (“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.~~

9. [23-23131-E-13](#)
[RAS-1](#)

DIANE GARCIA
Harry Roth

OBJECTION TO CONFIRMATION OF
PLAN BY WILMINGTON SAVINGS
FUND
SOCIETY, FSB
10-10-23 [13]

**CREDITOR’S MOTION FOR RELIEF FROM THE AUTOMATIC STAY
ON THE COURT’S 1:30 P.M. CALENDAR IS
HEARD IN IN CONJUNCTION WITH THIS OBJECTION**

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 October 10, 2023. By the court’s calculation, 42 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as Trustee for Premium Mortgage Acquisition Trust (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Plan does not provide for paying all of Creditor’s arrears. The Plan provides for repayment of \$27,000 in arrears, but Creditor asserts arrears in the amount of \$40,914.02.

Dckt. 13.

Creditor has not provided a Declaration in support of its Objection. Creditor provided the Declaration of Genevieve A. Jacobs to support its Motion for Relief, which was improperly filed as an exhibit, but failed to offer evidence in support of this Objection. Exhibit B, Dckt. 20.

In its supporting Declaration, Creditor argues that the terms of the Note and Mortgage have been in default and remain in default since September 9, 2023. Exhibit B, Declaration, Dckt. 20.

DISCUSSION

Creditor is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the objecting party reused a Docket Control Number for multiple separate motions. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Creditor’s counsel filed an Objection making several factual assertions. However, no Declaration or other evidence was filed to support those assertions.

Creditor has filed Proof of Claim 2-1, which asserts a secured claim in the amount of (\$259,007.78), which includes an arrearage of (\$40,914.02). In the Objection, Creditor states that the Proof of Claim was being drafted when the Objection was filed.

The Objection continues, apparently waiving Creditor’s rights under the Plan that the Proof of Claim controls a creditor’s claim in the Bankruptcy Case, Plan ¶ 3.02, which provides:

3.02. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court’s disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

Plan; Dckt. 3. It appears that Creditor may be stipulating to the amounts stated in the Plan controlling the amount of Creditor’s claim, rendering Proof of Claim 2-1 a mere informational document. The court does not deem the stated objection to be a waive of the express stated terms of the Plan in ¶ 3.02.

Creditor’s Objection includes an economic analysis of the proposed Plan and the arrearage now stated in Proof of Claim 2-1. The Plan is funded with a \$2,433.20 a month payment. Creditor’s Class 1 post-petition monthly payment is \$1,709.00. With a (\$40,914.02) arrearage, the monthly cure payment would

be \$681.90 a month. These two total \$2,391 a month, leaving only \$42 a month to fund the balance of the Plan.

The Plan does not provide for payment of any other claims; however, Debtor's counsel is to be paid an additional \$1,850 through the Plan, which averages \$30 a month, and the Chapter 13 Trustee's fees are projected to be (estimated at 8%) to be \$194.64 a month. This leave the Plan underfunded by approximately (\$183) a month.

Review of Amended Schedules I and J

On October 10, 2023, Debtor filed Amended (which relate back to the filing of this Case) Schedule J. Dckt. 16. On Amended Schedule J, Debtor lists a family unit of four persons: Debtor, two adult children, and Debtor's sister. Dckt. 16 at 5. For these four adults, Debtor states that the monthly expenses for these four adults is (\$1,238.46) a month. Some questionable expenses include:

- A. Electricity and Natural Gas.....(\$100)
- B. Food and Housekeeping Supplies.....(\$300)
- C. Transportation.....(\$ 20)

Dckt. 16.

On Schedule I, Debtor lists having \$4,098.33 in income, including contributions from Debtor's sister. Dckt. 1 at 36-37.

November 21, 2023 Hearing

At the hearing, **XXXXXXX**

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

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

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

~~_____ The Objection to the Chapter 13 Plan filed by Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as Trustee for Premium Mortgage Acquisition Trust ("Creditor") holding a secured claim, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

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

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, and Office of the United States Trustee on October 12, 2023. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

<p>The Objection to Claimed Exemption is xxxxxxx.</p>

Creditor Placerville Investment Group, LLC ("Creditor"), objects to Satinder Singh's ("Debtor") claimed exemptions under California law, arguing that a liquor license is not a tool of the trade and should not be exempt under California Code of Civil Procedure § 703.140(b)(6). Debtor has claimed his liquor license exempt under California Code of Civil Procedure § 703.140(b)(5) for the amount of \$29,586.88 and under § 703.140(b)(6) in the amount of \$9,525.00. Schedule C, Dckt. 29. Creditor objects to Debtor's claimed exemption under § 703.140(b)(6) in the amount of \$9,525.00. California Code of Civil Procedure § 703.140(b)(6) states the following exemption may be elected:

The debtor's aggregate interest, not to exceed eight thousand seven hundred twenty-five dollars (\$8,725) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

Creditor argues that this exemption, known as the tools of the trade exemption, should not apply to Debtor's liquor license because the license is not an implement, professional book, or tool. Objection, Dckt. 62.

According to Creditor, the tools of the trade exemption should only exempt tangible items of property used in the business. *Id.* Creditor cites to two opinions supporting its contention. *In re Johnson*, 255 B.R. 554 (Bankr. S.D. of Ohio 2000) (holding that a license confers a right or privilege to transact a type of business and is not a tool of the trade within the meaning of that exemption); *In re Nickeas*, 503 B.R. 453 (Bankr. W.D. Wisc. 2013) (concurring with *In re Johnson*).

Creditor directs the court to an unreported decision out of the Central District of California; *In re Gonzalez*, 2016 WL 3910323 (Bankr. C. D. Cal. 2016). In that case, Bankruptcy Judge Kwan was addressing a claim of exemption in bank accounts and accounts receivable.

Creditor also cites to *C.F. Nielsen, Inc.*, 11 Cal.App. 4th Supp. 22, 25, which addressed the tools of the trade exemption stated in California Code of Civil Procedure § 704.060(a)(1) and (a)(3), stating:

Subdivisions (a)(1) and (a)(3) of Code of Civil Procedure section 704.060 expressly exempt only those items of personal property "reasonably necessary to and actually used" in the exercise of a trade, business or profession.

The usual and ordinary meaning of the above quoted language and the relevant case law pertaining to personal property exemptions indicate subdivisions (a)(1) and (a)(3) of Code of Civil Procedure section 704.060 were intended to protect only those tools, equipment, and other items of tangible property which are reasonably necessary and actually used by a judgment debtor in pursuing his livelihood. (See, e.g., *Sun Ltd. v. Casey* (1979) 96 Cal.App.3d 38, 40-42; *Lopp v. Lopp* (1961) 198 Cal.App.2d 474, 476-478; *Peebler v. Danziger* (1951) 104 Cal.App.2d 490, 490-491; *Twining v. Taylor* (1959) 170 Cal.App.2d Supp 842, 843-845.) 2 To construe subdivisions (a)(1) and (a)(3) otherwise would be inconsistent with the apparent purpose and intent of the Legislature and would lead to unjust results.

We conclude appellant was not entitled to a personal property exemption for his business bank account under subdivision (a)(1) or (a)(3) of Code of Civil Procedure section 704.060.

Debtor's Opposition

Debtor filed an Opposition to Creditor's Objection on November 6, 2023. Dckt. 76. In its Opposition, Debtor argues:

1. The tools of the trade exemption should be interpreted broadly, and so the *In re Johnson* court got it wrong.
2. In the sale of liquor, a liquor license is the same as any other tool commonly exempted. There is no justification in finding that a tool is confined to a physical object.

Dckt. 76. Debtor submits his own Declaration in support of the Opposition, testifying that a liquor license is a tool in the sale of liquor business. Declaration, Dckt. 77.

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.*

Debtor has elected to apply state bankruptcy exemptions under 11 U.S.C. § 522(b)(3) in this case. However, the court has not found any California case law directly on point. The court has instead found that “California cases purporting to interpret the scope of the tools of the trade exemption are few and far between.” *In re Rawn*, 199 B.R. 733, 735 (Bankr. E.D. Cal. 1996).

Discussion of California Code of Civil Procedure § 704.060 (Non-Bankruptcy Business Asset Exemptions)

Of note, California courts have held that “[h]istorically, the tools and materials exempted from execution under section 704.060 and its predecessor statute were the utensils and implements owned and actually used by a debtor tradesman in exercising the trade, business or profession by which he earns a living, or the utensils and implements owned by a debtor in the business of the trade who employed others to assist him in doing the work.” *Kono v. Meeker*, 196 Cal. App. 4th 81, 88 (Cal. Ct. App. 3d D. 2011). Inventory can not be said to be a tool of the trade. *Id.* at 89. The *Kono* court lists examples of tools in the trade, including shelving, fixtures, a cash register, a computer, or camera, all items “actually used by judgment debtor in the exercise of the business by which he and his spouse earn their livelihood.” *Id.* (internal quotations omitted).

However, neither Party has cited to the court cases that address a license that is necessary for the operation of a business. The court begins with the plain language of the exemption statute. California Code of Civil Procedure § 704.060 states the exemption for personal property used in a trade, business, or profession. California Code of Civil Procedure § 704.060 is the statutory provision providing for exemptions that may be claimed for property used in proceedings that do not include a bankruptcy.

First, California Code of Civil Procedure § 680.290 a statutory definition of “personal property,” stating:

§ 680.290. “Personal property”

“Personal property” includes both tangible and intangible personal property.

Thus, we begin with the statutory definition that personal property includes both tangible and intangible assets.

The court next notes that California Code of Civil Procedure § 695.060 expressly addresses licenses issued for a person to engage in business. It provides:

§ 695.060. License to engage in business

Except as provided in Section 708.630, a license issued by a public entity to engage in any business, profession, or activity is not subject to enforcement of a money judgment.

Cal C.C.P. § 695.060. Going to California Code of Civil Procedure § 708.630, it expressly addresses how a liquor license is subject to enforcement of a money judgment, stating:

§ 708.630. Receiver to transfer alcoholic beverage license

(a) The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment only as provided in this section.

(b) The court may appoint a receiver for the purpose of transferring the judgment debtor's interest in an alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code, unless the judgment debtor shows in the proceeding to appoint a receiver that the amount of delinquent taxes described in Section 24049 of the Business and Professions Code and claims of creditors with priority over the judgment creditor pursuant to Section 24074 of the Business and Professions Code exceed the probable sale price of the license.

(c) The receiver may exercise the powers of the licensee as necessary and in exercising such powers shall comply with the applicable provisions of Division 9 (commencing with Section 23000) of the Business and Professions Code and applicable regulations of the Department of Alcoholic Beverage Control. An application shall be filed to transfer the license to the receiver and a temporary retail permit shall be obtained during the pendency of the transfer.

Cal Code Civ Proc § 708.630

Review of California Code of Civil Procedure § 703.140(b)(6)

Getting back to the plain language of California Code of Civil Procedure § 703.140(b)(6), the exemptions may be claimed in any:

- ◆ implements
- ◆ professional books
- ◆ tools of the trade.

The Parties do not provide the court with any statutory or other definitions of what are “implements.” While in the context of attempts to claim bank accounts and accounts receivable as exempt, the Parties do not provide the court with an analysis of whether a license for a specific business purpose at a specific location is an “implement” or a “tool of the trade” to do business at that location.

The court notes that the scope of such property used in trade, business, or profession provided for a non-bankruptcy claim of exemption is written to be apparently more expansive, with California Code of Civil Procedure § 704.060 providing for the following assets that may be claimed as exempt:

1. Tools,
2. Implements,
3. Instruments,
4. Materials,
5. Uniforms,
6. Furnishings,
7. Books,
8. Equipment,
9. One Commercial Motor Vehicle,
10. One vessel, and
11. Other Personal Property

Cal Code Civ Proc § 704.060(a).

It appears that the California Legislature may have been a bit more miserly in setting the exemptions that may be claimed in the context of a bankruptcy case.

November 21, 2023 Hearing

At the hearing, **xxxx**

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 Creditor Placerville Investment Group, LLC (“Creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is **xxxxx**.

11. [23-23545](#)-E-13

FRANK WALKER

[MOH-1](#)

Michael Hays

**MOTION FOR COMPENSATION FOR
EXP REALTY OF
NORTHERN CALIFORNIA, INC.,
REALTOR(S)
10-30-23 [\[21\]](#)**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, creditors, and Office of the United States Trustee on October 30, 2023. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is granted.
--

Frank Woodville Walker ("Debtor") makes this Motion for Allowance of Professional Fees requesting the court to approve Suzanne Peter's ("Broker") real estate broker commission related to the sale of Debtor's residence commonly known as 11576 Meridian Road, Chico, California ("Property"). Debtor's proposed Chapter 13 Plan called for the sale of this Property no later than February 9, 2024. Plan, Dckt. 9. The sale provides for paying off the mortgage in full, \$8,000.00 in attorney fees, paying the Trustee's fees, and with general unsecured creditors receiving 0%. Pursuant to the Residential Listing Agreement ("Agreement"):

“Seller agrees to pay Broker as compensation for services irrespective of agency relationships(s) either 5 percent of the listing price (or if a purchase agreement is entered into, of the purchase price)”.

Exhibit 1, Dckt. 23. Paragraph 3.D. of the Agreement also states that Broker will split that 5% commission with the Multiple Listing Service broker involved, each receiving 2.5%. *Id.*

Sale of Property of the Bankruptcy Estate

Debtor commenced this Bankruptcy Case on October 9, 2023. A proposed Plan was filed on October 13, 2023. Dckt. 9. That Plan has not yet been confirmed.

The Listing Agreement between the Debtor and Broker is dated as signed on September 30, 2023. Exhibit 1. This appears to be a pre-petition executory contract.

The Motion to Approve Compensation for Realtor does not state that the Property has been sold. There is no court order authorizing the sale of any property of the Bankruptcy Estate or property subject to a bankruptcy plan.

The Debtor, exercising the power of a trustee for the administration of this case (11 U.S.C. § 1303), appears to want to now hire a real estate professional (11 U.S.C. § 327), for which a court order authorizing the employment is required, to sell property of the Bankruptcy Estate (11 U.S.C. § 363(b)), for which a court order is required.

Debtor has not obtained authorization to employ the Broker and there is no sale of the Property that has been ordered by the court.

Debtor also states that the proposed Chapter 13 Plan provides for the sale of the Property as set forth in the additional provisions of the proposed Plan. The proposed Chapter 13 Plan does not contain any additional or nonstandard provisions. Dckt. 9.

There being no order authorizing employment and the services not having yet been provided, the Motion for Allowance of Compensation is denied without prejudice.

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

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

The Motion for Allowance of Fees and Expenses filed by Frank Woodville Walker (“Debtor”) on behalf of Suzanne Peters, Real Estate Broker for Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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, creditors, persons who have filed a Request for Notice, and Office of the United States Trustee on October 30, 2023. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is granted.
--

John Roy Adams ("Debtor") makes this Motion for Allowance of Professional Fees requesting the court to approve Lou Martone and Martone Realty's ("Broker") real estate broker commission related to the sale of Debtor's residence commonly known as 4119 Stone Valley Court, Chico, California 95973 ("Property"). Debtor's proposed Chapter 13 Plan did not originally call for a sale of this Property, but Debtor intends to now sell the Property and submit a proposed Modified Plan due to a lack of sufficient income to make plan payments. Motion, Dckt. 23. The sale provides for paying off the mortgage in full, \$8,000.00 in attorney fees, paying the Trustee's fees, and with general unsecured creditors receiving 0%. Pursuant to the Residential Listing Agreement ("Agreement"):

“Seller agrees to pay Broker as compensation for services irrespective of agency relationships(s) either 4.5 percent of the listing price (or if a purchase agreement is entered into, of the purchase price)”.

Exhibit 1, Dckt. 25. Paragraph 3.D. of the Agreement also states that Broker will split that 4.5% commission with the buyer’s realtor, each receiving 2.25%. *Id.*

Sale of Property of the Bankruptcy Estate

Debtor commenced this Bankruptcy Case on September 5, 2023. A proposed Amended Plan was filed on November 14, 2023. Dckt. 9. That Plan has not yet been confirmed.

The Listing Agreement between the Debtor and Broker is dated as signed on August 14, 2023, 2023. Exhibit 1; 25. This appears to be a pre-petition executory contract.

The Motion to Approve Compensation for Realtor does not state that the Property has been sold. There is no court order authorizing the sale of any property of the Bankruptcy Estate or property subject to a bankruptcy plan.

The Debtor, exercising the power of a trustee for the administration of this case (11 U.S.C. § 1303), appears to want to now hire a real estate professional (11 U.S.C. § 327), for which a court order authorizing the employment is required, to sell property of the Bankruptcy Estate (11 U.S.C. § 363(b)), for which a court order is required.

Debtor has not obtained authorization to employ the Broker and there is no sale of the Property that has been ordered by the court.

Debtor also states that the proposed Chapter 13 Plan provides for the sale of the Property as set forth in the additional provisions of the proposed Plan. The proposed Amended Chapter 13 Plan provides the following in the nonstandard provisions:

Re Sections 2.01, 20.3 and 3.08: Debtor’s Plan is for he and his wife to sell their residence at 4119 Stone Valley Court [*sic*] in Chico, California no later than 4/1/2024 to pay off in full the two secured mortgages against their residence, the Trustee’s fee and his \$8,000. attorney fee with a 0% dividend to his unsecured creditor.

Amended Plan, p. 8; Dckt. 32.

In reading the above written in the passive voice, it does not appear to set terms of a Chapter 13 Plan which the Debtor must comply with and the consequences if the sale does not occur, but appears merely states that the Debtor and his non-debtor Spouse “plan” on selling the Property which may occur or may not occur, but there are no binding terms in the Chapter 13 Plan.

There being no order authorizing employment and the services not having yet been provided, the Motion for Allowance of Compensation is denied without prejudice. ^{Fn.1.}

FN. 1. The court notes that no declaration has been filed in support of this Motion and the Exhibit has not been authenticated as required by the Federal Rules of Evidence. Fed. R. Evid. 901 et seq. No testimony is provided by the professional to be hired that such professional meets the disinterestedness requirements and has the ability to provide such professional services.

The court also notes that the Declaration of Debtor filed in support of the Motion to Confirm the Amended Plan in this case (as Debtor's counsel has recently done in at least one other unrelated case, but is attached as an exhibit to a cover sheet signed by Debtor's counsel. Filing declarations as exhibits is not proper. *See*, L.B.R. 9004-2(c)(1) and (d)(1) which state:

(c) Organization.

- 1) Filing of Separate Documents. 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.

...

(d) Exhibits.

- 1) Separate Exhibit Document(s). Exhibits shall be filed as a separate document from the document to which it relates and identify the document to which it relates (such as "Exhibits to Declaration of Tom Swift in Support of Motion for Relief From Stay"). A separate exhibit document may be filed with the exhibits which relate to another document, or all of the exhibits may be filed in one document, which shall be identified as "Exhibits to [Motion/Application/Opposition/...]."

See also, L.B.R. 9014-1(d)(3)(D), (d)(4).

The rules do not provide for a Declaration to be attached as an exhibit to a "cover sheet" prepared by a party's counsel.

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

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

The Motion for Allowance of Fees and Expenses filed by Frank Woodville Walker ("Debtor") on behalf of Lou Martone and Martone Realty, Real Estate Broker for Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice October 26, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Melanie Megan Johnson ("Debtor") cannot make the Plan Payments, and does not appear able to comply with the Plan. The Debtor's first Plan payment was due on October 25, 2023 and has not been paid.
- B. The Debtor has not provided the 11 U.S.C. § 521 documents. The Debtor has failed to provide the Trustee with the past 60 days of employer payment advices. The Debtor has also failed to provide the Trustee with a tax transcript or a copy of the federal income tax return, with attachments, for the most recent pre-petition tax year for which a return was required.

Objection, Dckt. 26.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$1,151.00 delinquent in plan payments, which represents one month of the \$1,151.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Provide Pay Stubs / Pay Advices

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

Failure to Provide Tax Returns

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice, on October 18, 2023. 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 opposition was presented by the Debtor.

The Objection to Confirmation of Plan is XXXXX.

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

1. The Plan calls for OneMain Financial's claim, estimated at \$14,189.00, to be valued as secured for \$6,100.00 in Class 2(B). Plan, Dckt. 4, ¶ 3.08. No motion to value has been filed to date and a claim was filed for \$15,405.56 with a secured value of \$15,050.00. POC 7-1. The Debtor, therefore, is not complying with their own Plan.
2. The Debtor has not provided a completed business questionnaire as requested. The Debtor only provided a 2022 federal tax return, a 6-month aggregate profit and loss statement, and only 3 months of bank statements. The Trustee normally requests 2 years of tax returns, 6 months of bank statements, and a completed questionnaire.

DISCUSSION

Trustee's objections are well-taken.

At the November 9, 2023 hearing, counsel for Debtor reported that the documents have been provided, and the Trustee concurred. However, there is a motion to value that has not yet been filed.

At the November 9, 2023 hearing, Debtor stated the following amendments:

OneMain Financial is moved to Class 2(A) with a \$15,050.00 Claim, to be paid with 8% interest.

The monthly plan payment is increased to \$305.16 for the OneMain Financial claim.

The monthly plan payment is to be increased (the Chapter 13 Trustee and the Debtor's computations showed different numbers).

The parties requested a short continuance so that the amended monthly plan payment amount could be computed.

Trustee's Status Report

Trustee provided a status report on November 14, 2023, informing the court of the status of its Objection. Dckt. 31. In its status report, the Trustee states:

1. The minimum monthly payment required to cover attorney fees, Trustee fees, and secured claims is \$2,130.61. The lump sum payment called for by the Plan is needed to pay the unsecured claims in full.
2. Debtor still needs to file a motion to value the claim of OneMain Financial if it proposes OneMain Financial's secured claim is \$6,100.00.
3. Business documents have been provided to the Trustee.

Dckt. 31.

November 21, 2023 Hearing

At the hearing, **XXXXXXXXXX**

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

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

The Objection to the 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 hearing on the Objection to Confirmation of Plan is **XXXXX**.

15. [23-23466-E-13](#)
[MOH-1](#)

ELDA/GUADALUPE
VILLALPANDO
Michael Hays

**MOTION TO VALUE COLLATERAL
OF KITSAP CREDIT UNION**
11-7-23 [\[19\]](#)

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, other parties in interest, and Office of the United States Trustee on November 7, 2023. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of Kitsap Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$14,030.00.

The Motion filed by Elda and Guadalupe Villalpando (“Debtor”) to value the secured claim of Kitsap Credit Union (“Creditor”) is not accompanied by Debtor’s declaration. Rather, this Motion is accompanied by Debtor’s attorney’s office manager’s declaration. Declaration, Dckt. 21. Debtor is the

owner of a 2017 Mazda CX-9 4 Door Sport SUV (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$14,030.00 as of the petition filing date. Debtor does not provide a declaration testifying, as the owner, to the value of the Vehicle. Debtor’s opinion of value would have been evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

However, the Declaration of Clancy Callahan, an employee of Debtor’s counsel, has been filed to authenticate the Kelley Blue Book valuation of the Vehicle. Dckt. 21. The Kelley Blue Book Valuation is provided as Exhibit 1, Dckt. 22, and states a Fair Purchase Price as \$14,030, and a Fair Market Value Range of \$13,064 to \$14,995. Kelly Blue Book is recognized as a Market Report Publication generally relied upon by the public and those in the auto sale industry that states values of vehicles. Fed. R. Evid. 803(17) ^{Fn.1.}

FN. 1. In addition to authenticating the Kelley Blue Book Valuation Report, Clancy Callahan also attempts to provide testimony based on information and belief. Testimony of a non-expert witness such as Mr. Callahan must be based on personal knowledge and not merely something that someone may have informed him of. Fed. R. Evid. 602. Mr. Callahan also attempts to testify that based on the Kelley Blue Book Valuation the value of the vehicle is \$14,030. Mr. Callahan is not an expert witness, and his repeating what the Kelley Blue Book Valuation states is hearsay and not something based upon his personal knowledge.

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on March 5, 2021, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$22,127.93. Proof of Claim, No. 1-1. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$14,030.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Elda and Guadalupe Villalpando (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Kitsap Credit Union (“Creditor”) secured by an asset described as 2017 Mazda CX-9 4 Door Sport SUV (“Vehicle”) is determined to be a secured claim in the amount of \$14,030.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$14,030.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 16, 2023. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Amanda Dean Wilson ("Debtor") seeks confirmation of the Modified Plan in response to creditor U.S. Bank National's ("Creditor") Objection to the previous Plan (Dckt. 14) and the Chapter 13 Trustee David Cusick's ("Trustee") Objection to the previous Plan (Dckt. 18). Declaration, Dckt. 29. The Modified Plan provides ongoing payments of \$460.22 per month to Creditor, calculating arrears in the amount of \$21,696.39 to be paid. Modified Plan, Dckt. 32 s. 7. Debtor's plan payments will be \$665.00 per month for the first 12 months, including the \$460.22 being paid to Creditor. *Id.* The Plan then calls for a payment increase to \$1,150.00 per month beginning on month 13 for the remaining 48 months of the Plan. *Id.* Debtor proposes to pay this increase by obtaining new financing within nine months; alternatively, if Debtor cannot obtain a refinance, Debtor informs the court she will sell her house to afford the increased payment. Declaration, Dckt. 29. 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 November 7, 2023. Dckt. 35. Trustee opposes confirmation of the Plan on the basis that:

1. The Debtor cannot afford to make plan payments under 11 U.S.C. § 1325(a)(6).
2. The Plan’s current structure may result in unsecured claims not being paid their statutory minimum of no less than \$8,243.00.

Dckt. 35.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes a massive plan payment increase beginning on month 13, relying on a refinancing agreement that is not yet in existence. If Debtor cannot negotiate the refinancing agreement, Debtor purports to sell the home to afford plan payments, which is another complicated contingency. Without actually knowing how or if Debtor can afford the price increase, the court cannot determine whether the Plan is confirmable.

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.

11 U.S.C. § 1325(b)(1). Specifically, Trustee argues that the Plan may result in not paying unsecured creditors their statutorily required amount of no less than \$8,243.00. Without these concerns addressed, the Plan cannot be confirmed.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Amanda Dean Wilson (“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.

FINAL RULINGS

17. [23-21904-E-13](#)
[SLG-2](#)

SCOTT JOHNSTON
Joshua Sternberg

MOTION TO CONFIRM PLAN
10-9-23 [[49](#)]

Final Ruling: No appearance at the November 21, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2023. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Scott Johnston (“Debtor”), has provided evidence in support of confirmation. *See Declaration*, Dckt. 52. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on November 6, 2023. Dckt. 55. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on October 9, 2023, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

18. [23-21312-E-13](#)
[CK-1](#)

BARBARA FULLER
Catherine King

MOTION TO CONFIRM PLAN
10-10-23 [32]

Final Ruling: No appearance at the November 21, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2023. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Barbara Jean Fuller ("Debtor"), has filed evidence in support of confirmation. *See* Declaration, Dckts. 34, 40, & 41. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on November 7, 2023. Dckt. 44. Trustee states it is not opposed to confirmation so long as the pending electronic payment of \$250.00 is received. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on September 28, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

19. 22-22567 -E-13 PGM -4	TERRANCE/SACHA HALL Peter Macaluso	MOTION TO CONFIRM PLAN 10-12-23 [101]
--	---	--

Final Ruling: No appearance at the November 21, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 12, 2023. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

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

The debtor, Terrance and Sasha Hall (“Debtor”) seek confirmation of the Modified Plan to address the proceeds from an insurance payout relating to Debtor’s accident involving its 2007 GMC Yukon. Declaration, Dckt. 103. The Modified Plan provides for the turnover of all extra proceeds after the purchase

of a replacement family vehicle, and continuing regular payments. Modified Plan, Dckt. 10. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Chapter 13 Trustee's Response

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition, but requesting clarification, on November 6, 2023. Dckt. 111. Trustee suggests the Modified Plan be confirmed, but requests that Debtor clear up the issue of which interest rate will be used as stated in the non-standard provision of Debtor's proposed Modified Plan. *Id.*

Debtor's Reply to Trustee's Response

Debtor filed a Reply to Trustee's Response on November 14, 2023. Debtor clears up the issue regarding the interest rate, stating the rate is 5.41%. Dckt. 113.

The Debtor has resolved the issuing stating that the interest rate is 5.41% for creditors with general unsecured claims, and the Plan is amended to state such.

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

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 12, 2023, as amended to provide that the interest rate to be paid on general unsecured claims is 5.41%, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which order shall include the forgoing amendment setting the 5.41% interest rate, 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.