

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

December 5, 2023 at 2:00 p.m.

1. <u>23-23293</u>-E-13 <u>DPC</u>-1	MYESHA PAYNE Matthew DeCaminada	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 11-8-23 <u>16</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on November 8, 2023. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor is delinquent in plan payments.
2. The Plan is overextended by the Trustee's calculations, completing in 63 months instead of the required 60 months.

Dckt. 16.

DISCUSSION

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

Delinquency

Debtor is \$429.50 delinquent in plan payments, which represents approximately half of the \$859.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Overextended Plan

11 U.S.C. § 1325(b)(4) permits a Plan to not exceed 60 months in length of performance. Here, Trustee alleges that as the Plan is currently drafted, it would take 63 months to complete, thus violating 11 U.S.C. § 1325(b)(4). Overextension indicates that the Plan is not feasible and is another independent reason to deny confirmation.

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

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

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

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

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

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

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

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

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

The Objection to Confirmation of Plan is XXXXX.

December 5, 2023 Hearing

Trustee filed a Status Report on November 28, 2023, stating his concerns in this Objection have been resolved. Dckt. 36. However, Trustee notes that Debtor is delinquent in the amount of \$2,506.73, representing November’s payment. Trustee recommends the Objection be sustained on this ground unless this payment is made. At the hearing, XXXXXXXXXX

A REVIEW OF OBJECTION

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

- A. Romy Oster (“Debtor”) and Donald Oster (“Spouse”) filed a Waiver of Exemptions on August 7, 2023, waiving the normal California exemptions

other than CCP §703.140(b). Waiver of Exemptions, Dckt. 8. However, Debtor claimed the same exemptions they waived when they filed their petition on September 5, 2023. Because the waiver was signed before the existence of this bankruptcy case, it may not be effective and Debtor must present testimony of Spouse disavowing the waiver. If the Debtor and Spouse do not disavow the waiver, the Trustee will need to object to the claimed exemptions. Additionally, the confirmation of the Plan with these exemptions may be contrary to 11 U.S.C. §1325(a)(1) and (3) without Spouse's testimony.

- B. Debtor shows year-to-date income for an "AirBnB" on the Statement of Financial Affairs, Statement of Financial Affairs, Dckt. 1, p. 29, Question 5, but does not show this income on Schedule I. Dckt. 1, p. 25-26. Debtor also shows a single family home as real property with a separate listing for "Arrears." Dckt. 1, p. 11-12, 1.1 and 1.2. Debtor only shows two (2) claims, both on their residence, although four (4) unsecured claims and a claim for the residence have been filed. The information is unreliable, and the Trustee cannot determine if Debtor can make the plan payments. 11 U.S.C. §1325(a)(6).
- C. Debtor's attorney seeks a flat fee of \$2,000 in the Plan where \$2,000 has already been paid prior to filing. Trustee opposes the flat fee unless Debtor provides sufficient information to confirm the Plan.

Dckt. 21

Trustee submits the Declaration of Neil Enmark, attorney for the Trustee, in support of this Objection. Declaration, Dckt. 23. Mr. Enmark testifies as to the veracity of the facts presented in the Objection.

A review of the Docket on November 2, 2023 reveals Debtor has not filed a Response to Trustee's Objection. However, Debtor did submit Amended Schedules and Statement of Financial Affairs on October 31, 2023. Dckt. 26.

At the hearing on November 7, 2023, counsel for the Debtor says the Debtor seeks to have this Plan confirmed.

With respect to the bed and breakfast income and expenses, Debtor argued that they should be listed but it will not increase the income.

DISCUSSION

The Parties agreed to continue the hearing to 2:00 p.m. on December 5, 2023, to allow Debtor the opportunity to address these issues.

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

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

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

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

3. [22-22350-E-13](#) **ROSE LIZOLA** **MOTION TO MODIFY PLAN**
[GC-1](#) **Julius Cherry** **10-20-23 [37]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 20, 2023. By the court’s calculation, 46 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 granted.

The debtor, Rose Lizola (“Debtor”) seeks confirmation of her Modified Plan because she received a loan modification. Dckt. 46 ¶ 5. The Modified Plan provides for her plan payments to be \$4,500 per month with 0% going to unsecured creditors. Modified Plan, Dckt. 42. Debtor’s previous Plan called for payments of \$4,500 per month for the first 12 months with a step up to \$7,500 payments for the

remainder of the Plan's life, also with 0% going to unsecured creditors. There is no step up provision in the Modified Plan.

The main difference between the Plans is that the court has approved Debtor's loan modification (Order, Dckt. 35), meaning the mortgage will now be paid outside of the bankruptcy case. Debtor submits her own Declaration to authenticate the facts alleged in the Motion. Dec., Dckt. 39. 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 14, 2023. Dckt. 43. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor does not state why she seeks a modification of her Plan, so the Trustee does not know if the modification is made in good faith.
2. Debtor has not explained the \$800 increase of her expenses.
3. In order to be completed in 60 months, Debtor must make plan payments of \$4,541.25, not \$4,500.
4. Debtor's Declaration appears to rely on information and belief, so it may not comply with 28 U.S.C. § 1746(2).
5. Debtor amended her Schedules I and J and showed increased expenses without explanation.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

Debtor filed a Reply to Trustee's Opposition on November 28, 2023. Dckt. 46. In her Reply, Debtor informs the court:

1. Debtor is willing to increase plan payments from \$4,500 to \$4,550.00.
2. The expenses on Schedules I and J are explained by supplemental documentation filed with Debtor's Reply (Exhibit A, Dckt. 47), showing Debtor's principal, interest, insurance, and taxes is actually \$2,676.00 per month, not \$2,585.00 per month as previously listed. Debtor is willing to cut personal expenses to afford the increased payment.
3. Debtor has spoken with Trustee's counsel and informs the court Trustee's concerns have been satisfied.

DISCUSSION

Debtor informs the court that Trustee is amicable to confirming the Modified Plan, Trustee's concerns having been addressed. Dckt. 46 ¶ 4. At the hearing, **XXXXXXXXXX**

~~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, Rose Lizola ("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 20, 2023 (Dckt. 42), is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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, parties requesting special notice, and Office of the United States Trustee on October 11, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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. Debtor cannot make the plan payments. Debtor has failed to make its payment, disclose information in the Statement of Financial Affairs and Schedules or Form 122C, and Debtors failed to provide business documents in a timely manner.
2. Debtor had its business truck stolen and did not disclose to the Trustee a GoFundMe distribution paid to reimburse for the theft.
3. Debtor has inaccurate or missing information in its Schedules.

4. Debtor failed to identify all businesses it is currently operating in its Statement of Financial Affairs.
5. Debtor has not cooperated with Trustee with Trustee's investigation of Debtor's businesses.
6. Debtor otherwise has failed to give an accurate reality of its financial situation, leading Trustee to believe Debtor may be above the median income level despite reporting it was below the median income level.

Dckt. 15.

DISCUSSION

At the hearing on November 7, 2023, Counsel for the Debtor stated that Amended Schedules and other necessary documents have been filed to address the Trustee's concerns. Counsel for the Trustee said that some information has been received, but not all documents have been provided (or may have been provided the day before the hearing and not yet reviewed).

The Chapter 13 Trustee agreed to continue the matter so the Trustee can review the documents that were recently provided by Debtor.

TRUSTEE'S STATUS REPORT

After reviewing the documents provided by the Debtor, Trustee submitted to the court its Status Report on November 28, 2023. Dckt. 31. In its Report, Trustee states:

1. Debtor is now current in plan payments with the next payment due December 25, 2023.
2. There are potential liquidation test issues:
 - a. The proposed plan states that the unsecured creditors will be paid 10% of their timely filed and allowed claims. However, the filed claims are less than what the Debtor estimated. If the plan only pays 10%, then it will not pass the liquidation test. The Trustee calculates that the liquidation amount is approximately \$24,800.00. The total unsecured debt according to the proofs of claim filed is \$72,830.49. The Trustee calculates the plan will actually pay 61% to the unsecured creditors which is approximately \$44,426.60 and more than passes the liquidation amount required. Since the plan is already funded to pay this amount, the plan payment doesn't need to change. The Trustee requested that the Order Confirming state that the unsecured creditors will receive 61% of their claims instead of 10%.

On this point, the court notes that the proposed Plan states that unsecured claims shall be paid a dividend of not less than 10%, not that the dividend will be only 10%. While the computed 61% is greater than 10%,

there is a valid purpose for having a debtor make a good faith statement of how large a dividend is anticipated so that creditors can make an informed decision on whether to oppose a plan or not. Debtor's 10% projection was based on the Debtor's listing of the claims. As it has turned out, some of those creditors have remained outside of this bankruptcy case and not filed claims. Thus, there is a much larger distribution to creditors who have taken the time to file a proof of claim.

3. Trustee has received and reviewed debtor's tax refunds for 2021 and 2022. Both refunds show Debtor is receiving excessive refunds that are not included in the budget. Trustee requests that Debtor pays all refunds over \$2,000.00 per year, beginning with their 2023 refund, into the Plan.
4. Trustee recommends confirmation if Debtor is amenable to these changes.

DEBTOR'S OPPOSITION TO TRUSTEE'S STATUS REPORT

On November 29, 2023 Debtor submitted an Opposition to Trustee's Status Report stating:

1. These new issues Trustee raises should not be considered in the Objection to Confirmation.
2. Debtor does not disagree that they need to pay their unsecured creditor the liquidation amount of \$24,800, and in fact, is paying \$44,426 to unsecured creditors under the Plan. Therefore, there is no legal basis to require Debtor to put into their Plan that Debtor will pay its unsecured creditors at least 61%.
3. There is no legal basis to require Debtor to turn over its excess tax refunds, especially because Debtor is contributing its social security income to the Plan.

Dckt. 33.

December 5, 2023 Hearing

As Trustee notes, the deadline for filing claims in this case for non-governmental entities has passed. The court is concerned with the Trustee's request that the court order that the dividend will be 61% for two reasons. First, the 61% is a projection based on estimations of how the Case will play out. Rather than locking in a specific percentage, it would be more reasonable to state that the dividend will not be less than 50%.

Second, and more concerning, is that for the court to begin stating specific unsecured claim dividend amounts would create the appearance that: (1) such statement in an order is required, and absent such, no dividend amount is part of a confirmed plan, and (2) while the plan expressly requires a statement of the unsecured claim dividend to be a not less than percentage, that really is a guaranteed percent, even if the plan could actually pay more.

If Debtor wants to amend the Plan, in light of the proofs of claim filed, to state that the dividend will not be less than 50%, the Debtor may do so and have the Plan facially state a percentage amount more closely tied to reality.

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 Objection to Confirmation of Plan is **XXXXX**.

5 thru 6

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on August 21, 2023. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan XXXXX.

December 5, 2023 Hearing

A review of the docket on November 29, 2023 reveals that Debtor filed an amended Statement of Financial Affairs, shedding light on the Debtor's current financial affairs. Dckt. 62. The amendment adds an additional Federal Court pre-petition piece of litigation. *Id.* at 4.

At the hearing, XXXXXXXXXX

REVIEW OF OBJECTION

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

- A. Tax returns were not provided to the Trustee, the Debtor has not filed all tax returns required under 11 U.S.C. § 1308, and the priority claims by the Internal Revenue Service and the Franchise Tax Board will not allow the Plan to be completed in 36 months.
- B. The Debtor failed to provide documents as requested by the Plan. Debtor is self-employed, and owns two LLCs. The Debtor only provided the Trustee with a 6-month Profit and Loss Statement for one LLC.
- C. Debtor may be unable to make the payments called for by the Plan. Schedule I does not appear to contain accurate business income. The Debtor admitted at the Meeting of Creditors that his ex-wife resides with the debtor and helps with the expenses. The Debtor had failed to comply with the Plan as the non-standard provision calls for an adversary to be filed within 30 days of filing, and no adversary appears filed. Wells Fargo Bank, N.A., had filed a proof of claim identifying that the Debtor is delinquent, and it was misclassified in Class 4 and should be listed in Class 1 of the Plan.
- D. The Plan payment may not be the Debtor's best efforts under 11 U.S.C. § 1325(b). The Trustee believes 60 months is required and the Debtor may have a required payment to unsecured creditors other than 0%.

Dckt. 33.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Tax Returns

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

Failure to File Tax Returns

Claims by two different tax entities show tax returns have not been filed. The Internal Revenue Service shows years 2017, 2018, 2019, 2020, 2021 or 2022 returns have not been filed. Claims by the Franchise Tax Board show 2013, 2016, 2017, 2019, 2020, 2021, and 2022 tax returns have not been filed. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Documents Related to Business

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

- A. The business questionnaire,

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

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

Failure to Afford Plan Payment / Cannot Comply with the Plan

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

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

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

Not Best Effort

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

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

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

At the hearing, Debtor's counsel requested additional time to address these issues. Rather than sustaining the objection, the court continues the hearing to afford Debtor and Debtor's counsel a little more flexibility in putting forward and amended plan.

October 2024, 2023 Hearing

At the hearing, counsel for the Debtor addressed what information had been provided and the efforts Debtor was making to confirmation of the Plan. The Trustee concurred with the request for an extension.

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

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

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

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

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 July 26, 2023. By the court's calculation, 62 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXX.

December 5, 2023 Hearing

A review of the Docket on November 29, 2023 reveals that Creditor filed its Proof of Claim on September 13, 2023. POC 25-1. Creditor asserts a Claim in the amount of \$200,726.02. However, the parties have not submitted any supplemental briefing addressing the effect of a 1099-C on debt forgiveness.

At the hearing, XXXXXXXXXX

REVIEW OF OBJECTION

MEB Loan Trust IV, U.S. Bank Trust National Association, acting as trustee serviced by Specialized Loan Servicing LLC ("Creditor") holding a secured claim, opposes confirmation of the Plan on the basis that:

- A. The Creditor has a claim secured by the property commonly known as 3704 Larkspur Lane, Cameron Park, California 95682 (“Property”). The Creditor will file its proof of claim by the deadline of September 13, 2023. In the mean time, Creditor will file a copy of the note, deed of trust, and assignment of deed of trust to evidence the claim. A review of the docket on October 18, 2023 shows Creditor did file its Proof of Claim on September 13, 2023.
- B. The Plan fails to provide for the curing of the default on the Creditor’s claim pursuant to 11 U.S.C. § 1322(b)(5).

Objection, Dckt. 23.

DEBTOR’S REPLY TO CREDITOR’S OPPOSITION

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

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

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

Reply, Dckt. 37.

CREDITOR’S RESPONSE TO DEBTOR’S REPLY

Creditor filed its Response to Debtor’s Reply on September 22, 2023. Dckt. 40. In its Response, Debtor states:

- A. On September 13, 2023, Creditor filed its Proof of Claim as Claim 25-1 in the amount of \$200,726.02 with arrears in the amount of \$113,388.60.
- B. The lien referred to by Debtor (previous servicer, Bank of America) has not been released by either Creditor or Bank of America.
- C. Creditor is in contact with Bank of America and is obtaining signed declarations of individuals who are familiar with the situation.

Dckt. 40.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$200,726.02 in this case, including arrearages in the amount of \$113,388.60. Debtor's Schedule D estimates the amount of Creditor's claim as \$0.00 and indicates that he was released from this obligation on September 27, 2019. The Plan does not provide for this claim.

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

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

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

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

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

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

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

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

Alleged Claim was Allegedly Forgiven

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

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

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

Looking at Exhibit 2, it does not state that the obligation was determined uncollectible and Bank of America deemed a bad debt with little likelihood of payment, but states "Amount of Debt Discharged 188,462.28."

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

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

At the hearing, Creditor states that it is asserting a claim in this case.

The court continues the hearing to allow Debtor and Creditor to investigate the claim and prior 1099 Statement of Debt Forgiveness.

October 24, 2023 Hearing

At the hearing, counsel for the Debtor reported the efforts made to date to address the issue of whether the debt has been forgiven. Counsel for Creditor concurred with a continuance as Creditor and Debtor work to address the effect of the 1099-C "debt forgiveness" tax statement, with counsel to proceed with determining the information from Bank of America about its records on this specific debt and treatment of 1099-C debt forgiveness tax reporting.

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

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

The Objection to the Chapter 13 Plan filed by MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee as serviced by Specialized Loan Servicing LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

7. [23-23234-E-13](#)
[DPC-1](#)

RANDY HOWARD
Pro Se

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-9-23 [\[28\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, and Office of the United States Trustee on November 9, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor failed to appear at the 341 meeting of creditors held on November 2, 2023, which was continued to January 11, 2024 at 2:00 p.m.
2. Debtor has not paid the \$839.21 plan payment.
3. Debtor did not file tax returns for 2019, 2020, 2021, and 2022.
4. Debtor claims \$7,700.00 per month in income from either business or real property but does not provide any evidence to support this contention. Debtor did not submit any gross receipts or other evidence of income.

Motion, Dckt. 28.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$839.21 delinquent in plan payments, which is the first month's 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 Appear at 341 Meeting

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

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the years 2019, 2020, 2021, and 2022. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Submit Evidence of Income

Debtor lists an income (Dckt. 1 at p. 1) but fails to provide any evidence supporting this assertion. The court cannot assume the amount of income is correct without supporting evidence. Without an accurate picture of Debtor's financial reality, the court cannot confirm the Plan. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

8 thru 10

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

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

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

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

<p>The Objection to Notice of Mortgage Payment Change is XXXXXX.</p>

December 5, 2023 Hearing

On December 1, 2023, a Notice of Mortgage Payment Change was filed by U.S. Bank, N.A., Trustee, stating that the Debtor's monthly payment to Creditor is \$792.89. It states that the escrow payment amount is reduced to \$419.06.

Attached to the Notice of Mortgage Payment Change is a letter dated November 27, 2023. It states that Debtor's monthly mortgage payment to Creditor (principal, interest, escrow) is reduced from (\$1,274.20) to (\$792.89). Ntc., p. 5.

At the hearing, XXXXXXXXXX

REVIEW OF OBJECTION

Derek Wolf, the Debtor, filed an Objection to Notice of Mortgage Payment Change that has been filed by Creditor U.S. Bank, N.A. Obj.; Dckt. 183. The Objection focuses on whether Grants obtained by Debtor to be applied to arrearages on Creditor's loan have been properly applied, as well as post-petition payments made pursuant to the proposed Plan.

As the court has observed with the Parties at prior hearings on this and related matters, it does not appear that there is any significant factual dispute about the underlying debt, grants obtained and payments made, but arguing about prior statements, letters, notes, and computations by some predecessors in interest who have communicated directly with the Debtor.

Fortunately, it appears that Debtor, Creditor, and their counsel appreciate that rather than arguing about what others have said, done, and computed, the Parties and their counsel can prepare their joint accounting/application of the grants and payments, interest computation. By focusing on the actual facts and computation, these Parties can get these matters promptly resolved or the actual issues identified and those actual, material disputes litigated..

STIPULATION TO CONTINUE HEARING

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

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

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

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

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

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

October 3, 2023 Hearing

At the hearing, the Parties agreed to continue this hearing, to be conducted in conjunction with the Status Conference regarding Creditor’s claim, docket control number RHS-1.

NOVEMBER 7, 2023 HEARING

Ex Parte Joint Motion to Continue
November 7, 2023 Hearing

On November 2, 2023, Debtor Derek L. Wolf and Creditor Mr. Cooper filed an Ex Parte Motion requesting the court continue the hearing on the Objection to Notice of Mortgage Payment Change to December 5, 2023. The Motion does not state the reason for the requested continuance, but in light of the efforts of the Parties and their counsel to address the issues between the Parties, obtain documentation from predecessors in interest, their focus on these matter, the court grants the *ex parte* request.

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

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

The Objection to the Mortgage Payment Change filed by Derek L. Wolf (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Notice of Mortgage Payment Change **xxxxx**.

9. [21-23539](#)-E-13 **DEREK WOLF**
[RHS-1](#)

**CONTINUED STATUS CONFERENCE RE:
COPY OF PROOF OF CLAIM #2 AND
AMENDMENTS
8-28-23 [212]**

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 Parties agreed to a continuance of the Status Conference. The court stating the Parties need to provide a straight-forward computation of the principal balance going forward from the balance as of their agreed date.

The Status Conference is xxxxx.

December 5, 2023 Hearing

At the hearing, **xxxxxxxxxx**

REVIEW OF CLAIM ISSUES

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

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

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

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

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

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

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

- A. Original Proof of Claim 2-1, Filed December 8, 2021.
- B. Amount of Secured Claim.....(\$164,860.13)
 1. Pre-petition arrearage to be cured.....(\$40,899.99)

- C. Interest Rate 4.125%
- D. Proof of Claim signed by employee of Rushmore Loan Management Services.
- E. Attachment to Proof of Claim

- 1. Arrearage Computation.... (\$40,899.99)
 - a. Major Amounts in Arrearage
 - (1) Attorney's Fees.....(\$4,050.00)
 - (2) Mailing/Service/Sale.....(\$2,014.98)
 - (3) Bkey Fees.....(\$7,100.00)
 - (4) Escrow Deficiency...(\$8,410.82)

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

- A. Amount of Secured Claim.....(\$164,860.13)
 - 1. Pre-petition arrearage to be cured.....(\$42,887.43)
 - a. (States that Proof of Claim was Amended to Add Two Post-Petition Defaults)

- B. Interest Rate 4.125%
- C. Proof of Claim signed by employee of Rushmore Loan Management Services.
- D. Attachment to Proof of Claim

- 1. Arrearage Computation.... (\$42,887.43)
 - a. Major Amounts in Arrearage
 - (1) Attorney's Fees.....(\$4,050.00)
 - (2) Mailing/Service/Sale.....(\$2,014.98)
 - (3) Bkey Fees.....(\$7,100.00)
 - (4) Escrow Deficiency.....(\$8,410.82)

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

- A. Amount of Secured Claim.....(\$164,860.13)

1. Pre-petition arrearage to be cured.....(\$755.64)
 - a. (States that Proof of Claim was Amended for “Reinstatement From Borrower”)

B. Interest Rate 4.125%

C. Proof of Claim signed by employee of Rushmore Loan Management Services.

Looking at Original Proof of Claim 2-1, Amended Proof of Claim 2-2, and Second Amended Proof of Claim 2-3, each states that the outstanding amount of U.S. Bank, Trustee’s Claim is (\$164,860.13). Proofs of Claim 2-1 and 2-2 state that of the (\$164,860.13) total claim there is a (\$42,887.43) arrearage that must be cured.

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

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

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

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

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

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

DEBTOR’S STATUS CONFERENCE STATEMENT

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

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

CREDITOR’S REPLY TO DEBTOR’S STATUS CONFERENCE STATEMENT

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

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

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

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

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

Review of Debtor's Exhibits

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

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

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

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

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

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

OCTOBER 3, 2023 STATUS CONFERENCE

At the Status Conference, counsel for the Creditor says they provided documentation and the issues. An issue appears to be the current amount of the payment in November 2023. An amount was provided that appears to be one the parties can agree too.

An extensive, and productive discussion occurred at the October 3, 2023. First, by the parties outside the courtroom, and then as part of the Status Conference conducted by the court.

It appears that a substantial part of the inability to agree results from the Parties trying to focus back on multiple documents, reports, and information provided by Creditor and by Debtor. This appears to be leading to arguing over what a number means on a report, when that number may actually be irrelevant to the bigger picture and actual computation of Creditor's claim.

There is also argument about Creditor recovering \$8,800.00 which was returned to Cal HAFA. Creditor reports that Cal HAFF confirmed that the refund is being reversed and the \$8,800.00 being returned to CAL HAFA.

Debtor seeks to have this applied to the principal portion of the obligation, which Creditor asserts that these fund are properly applicable only to arrearage amounts. Debtor's counsel states that he can document for Creditor that they can be applied to principal of an obligation.

Two points were made at the hearing. First, the Chapter 13 Trustee notes that the Debtor has approximately \$8,800.00 in arrearages to be paid, and that application of the monies would they allow Debtor to proceed with a confirmed Plan. The court also addressed whether an issue could exist as to there having been \$8,800.00 of other monies applied to arrearages that could have been applied to principal if the \$8,800.00 had been applied to arrearages rather than returned to Cal HAFA.

What appears to be at the heart of Debtor's and Creditors inability to agree to the amount of the Claim is that the parties get lost in prior statements, attachments to the Proof of Claim, letters sent from Creditor's loan servicer directly to the Debtor, and a multitude of "the documents already show" and "the number on page 4 of 14 is wrong" down the rabbit hole assertions.

The parties concurred that they could agree to the principle amount of the interest bearing portion of the Claim as of a date in 2019. The parties can then document the payments made, whether by the Debtor, the Cal HAFA grant(s), and payments through the Chapter 13 Trustee from that date going forward. Creditor can document - in a clear and simple statement, rather than a multi-year spread sheet showing other information and not clearly showing - the payments received, how they were applied, and what the interest bearing principle balance is at this time.

As the court stated several times, the parties need to provide a straight-forward computation of the principal balance going forward from the balance as of their agreed date. Stating that the information is in some other documents and letters only adds to the confusion and delay.

The Parties agreed to continue the Status Conference to 3:30 p.m. on November 7, 2023. Telephonic appearances are permitted for all parties, their representative, and their respective counsel for all further hearings and status conferences, except as may otherwise subsequently ordered by the court.

NOVEMBER 7, 2023 STATUS CONFERENCE

On November 2, 2023, Debtor Derek L. Wolf and Creditor Mr. Cooper filed an *Ex Parte* Motion requesting the court continue the hearing on the Objection to Notice of Mortgage Payment Change to December 5, 2023. The Motion does not state the reason for the requested continuance, but in light of the efforts of the Parties and their counsel to address the issues between the Parties, obtain documentation from predecessors in interest, their focus on these matter, the court grants the *ex parte* request.

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 Status Conference Regarding the U.S. Bank, National Association as Legal Title Trustee for Truman 2015 SC6 Title Trust Claim having been conducted by the court, and upon review of the pleadings, files in this Case, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is **XXXXX**.

10. [21-23539](#)-E-13

DEREK WOLF

**CONTINUED MOTION TO MODIFY
PLAN**

[PGM-4](#)

Peter Macaluso

7-27-23 [[187](#)]

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

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

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

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

The Motion to Confirm the Modified Plan is XXXXX.

December 5, 2023 Hearing

At the hearing, **XXXXXXXXXX**

REVIEW OF MOTION

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

The Motion states:

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

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

The Modified Plan provides for a thirty-six (36) month plan, with \$16,271.00 to be paid through June 2023, followed by \$900 per month for sixteen (16) months. Modified Plan, Dckt. 191. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 25, 2023. Dckt. 206. Trustee opposes confirmation of the Plan on the basis that:

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

Dckt. 206.

DEBTOR’S REPLY TO TRUSTEE’S OPPOSITION

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

1. Debtor was only delinquent because the TFS takes time to process the \$900.00 monthly payment.
2. Debtor has paid a total of \$18,291.00 to the Trustee and all missed payments should be forgiven.

3. Debtor will make plan payments of \$900.00 monthly to begin July 21, 2023 for 40 months to complete the Plan within the maximum term allowed by law.

Dckt. 217.

DISCUSSION

Delinquency

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

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

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

Inaccuracies of Schedule I

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

CONTINUANCE OF HEARING

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

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

October 3, 2023 Hearing

At the hearing, the Parties agreed to continue this hearing, to be conducted in conjunction with the Status Conference regarding Creditor's claim, docket control number RHS-1.

NOVEMBER 7, 2023 STATUS CONFERENCE

On November 2, 2023, Debtor Derek L. Wolf and Creditor Mr. Cooper filed an *Ex Parte* Motion requesting the court continue the hearing on the Objection to Notice of Mortgage Payment Change to December 5, 2023. The Motion does not state the reason for the requested continuance, but in light of the efforts of the Parties and their counsel to address the issues between the Parties, obtain documentation from predecessors in interest, their focus on these matter, the court grants the *ex parte* request.

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

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

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

IT IS ORDERED that the Motion to Confirm the Modified Chapter 13 Plan is **XXXXX**.

11 thru 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, parties requesting special notice, and Office of the United States Trustee on November 9, 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 XXXXX.</p>

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

1. Brian Gallinger ("Debtor") cannot make plan payments and has failed to show how the Plan complies with 11 U.S.C. § 1325(a)(6).
2. Debtor states he will sell the real property commonly known as 9421 Fair Oak Blvd, Fair Oaks, California 95628 ("Property"), on or before month 36, then pay 100% to creditors. There needs to be a more detailed time line for the sale and estimate of the amount of payment.
3. The Debtor states the Levick Family Trust Claim, POC 1-1, is disputed and is the subject of pending arbitration. Debtor admitted at the first meeting

of creditors that there is no pending arbitration and he has not yet filed a lawsuit against the Levick Family Trust Claim. Debtor stated it will file an objection to claim within 60 days if the claim is not resolved in arbitration. To date, there is no pending objection to claim filed in this case.

4. There is no property insurance or property taxes being paid on the Property.
5. Debtor claims he is making \$1,200.00 in rent from the Property, but Debtor has not submitted any evidence to support this rental income.
6. There remains inaccurate or missing information on Schedules A/B and I, despite Trustee requesting Debtor fix those inaccuracies.

Dckt. 29.

DEBTOR'S REPLY TO TRUSTEE'S OBJECTION

On November 21, 2023 Debtor submitted a Reply to this Objection. Dckt. 33. In his Reply, Debtor states:

1. Debtor will sell the Property in six to eight months. Debtor will file a motion to employ a broker in January of 2024, make repairs in February of 2024, and begin marketing the sale in March of 2024.
2. Debtor admits arbitration is not pending and the Levick Family Trust Claim, referred to by Debtor as Claim#6, is being reviewed.
3. Debtor has obtained property insurance.
4. Debtor has amended Schedules B/C and I/J.
5. Debtor is making \$1,800.00 per month in rent on the Property.

Debtor did not submit a Declaration in support to authenticate or attest to these facts alleged.

DISCUSSION

Insufficient Plan Payments / Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). First, Trustee asserts that a time line of on or before month 36 of the Plan does not provide a concrete process for how and when a sale will occur. This ambiguity prevents the court from Confirming a Plan. Of note, Debtor has responded with a time line of 6-8 months, including describing when the Property will be repaired and marketed. However, Debtor has not mentioned a price the sale will likely generate, so the court cannot determine if the Plan can result in a 100% repayment.

Further, Debtor admits that he has not contested the Levick Family Trust Claim, POC 1-1, which is not properly accounted for in the Plan. Plan, Dckt. 15, p. 4 (asserting the Levick Family Trust Claim to be in the amount of \$344,702.64). The Levick Family Trust Claim is asserted to be in the amount of

\$453,675.57 for a recorded deed of trust on the Property. This claim has not been objected to and is not in arbitration, so it must be provided for in the Plan. The court notes that Debtor refers to this claim as Proof of Claim #6, but there is no such claim filed in this case.

Finally, Debtor asserts it has obtained property insurance on the Property and also corrected the inaccuracies in his Schedules, including listing an increased rent income of \$1,800.00 per month. To the contrary, upon the court's review of the docket, Debtor has not submitted any supplemental or amended Schedules, nor has he filed any exhibits or declarations in support of that contention. The court cannot determine whether a Plan is confirmable without properly submitted evidence to support these contentions.

At the hearing, **XXXXXXXXXX**

~~_____ The Plan, as it stands, 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 **XXXXX**.

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, creditors, and Office of the United States Trustee on November 6, 2023. By the court's calculation, 29 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 XXXXX.</p>

Secured creditors Douglas and Melba Levick as trustees of the Levick Family Trust, and Ron Levick ("Creditors"), filed this Objection to Confirmation on November 7, 2023. Dckt. 23. Creditors are one of two creditors in this case; the other being Sacramento County for unpaid taxes. Creditors possess a promissory note and accompanying deed of trust in debtor Bryan Gallinger's ("Debtor") real property commonly known as 9421 Fair Oak Blvd, Fair Oaks, California 95628 ("Property"). Creditors oppose confirmation of the Plan on the basis that:

1. The Plan is not feasible. Where the Plan calls for a sale by month 36, Debtor is unable to meet payments to Creditors in the mean time. Debtor's total monthly income is \$3,551.54, which would not be enough to even cover the interest rate on the note and deed of trust.
2. Creditors' Claim is not in any pending arbitration.
3. Debtor is not paying property taxes on the Property.

4. Debtor's Schedules are inconsistent. Debtor lists different and contradictory amounts of income.

DEBTOR'S REPLY TO CREDITORS' OBJECTION

On November 21, 2023 Debtor submitted a Reply to this Objection. Dckt. 35. In his Reply, Debtor states:

1. Debtor will sell the Property in six to eight months. Debtor will file a motion to employ a broker in January of 2024, make repairs in February of 2024, and begin marketing the sale in March of 2024.
2. Debtor will make good faith payments to Creditors on the interest on the note, amounting to \$1,870.00 monthly payments at 5.3% interest.

Debtor did not submit a Declaration in support to authenticate or attest to these facts alleged.

CREDITORS' RESPONSE TO DEBTOR'S REPLY

On November 28, 2023 Creditors submitted a Response Brief to Debtor's Reply. Dckt. 38. In their Response, Creditors state:

1. Debtor's Plan improperly states the claim amount is \$344,702.64, where Creditors assert their claim to be in the amount of \$453,675.57.
2. Debtor's Plan proposed a 10% interest rate due on the note, but now Debtor is proposing a 5.3% interest rate in his Reply brief.

DISCUSSION

Insufficient Plan Payments / Infeasible Plan

Similar to the Chapter 13 Trustee's Objection in this case, Creditors allege that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). First, Creditors contend Debtor is unable to afford a plan payment that would satisfy Creditors' claim. Debtor has proposed a monthly payment of \$2,250.00 for 36 months until the sale of the Property, including \$1,870.00 to Creditors. Plan, Dckt. 15, p. 7. Creditors submit that the interest payment on their Claim alone should be at 10%, as mentioned originally in Debtor's Plan (Plan, Dckt. 15 ¶ 3.08) and would amount to a monthly payment of \$3,541.66. Brief, Dckt. 27. p. 4. This discrepancy prevents the court from Confirming a Plan. Of note, Debtor has responded with a time line of 6-8 months for a sale of the Property, including describing when the Property will be repaired and marketed. However, Debtor has still not suggested a feasible plan payment to Creditors pending the sale.

Further, Debtor recently admits that he has not contested the Levick Family Trust Claim, POC 1-1, which is not properly accounted for in the Plan. Plan, Dckt. 15, p. 4 (asserting the Levick Family Trust Claim to be in the amount of \$344,702.64). The Levick Family Trust Claim is asserted to be in the amount of \$453,675.57 for a recorded deed of trust on the Property. This claim has not been objected to and is not in arbitration, so it must be provided for in the Plan.

Finally, Debtor asserts it has obtained property insurance on the Property and also corrected the inaccuracies in his Schedules, including listing an increased rent income of \$1,800.00 per month. To the contrary, upon the court's review of the docket, Debtor has not submitted any supplemental or amended Schedules, nor has he filed any exhibits or declarations in support of that contention. The court cannot determine whether a Plan is confirmable without properly submitted evidence to support these contentions.

~~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 secured creditors Douglas and Melba Levick as trustees of the Levick Family Trust, and Ron Levick ("Creditors") 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 **xxxxx**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 11, 2023. By the court’s calculation, 55 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 Third Amended Plan is granted.

The debtor, Eric and Stephanie Hutton (“Debtor”), seeks confirmation of the Third Amended Plan to address delinquencies in the amount of \$7,834.86 resulting from missed payments under prior proposed Plans. Declaration, Dckt. 92. The Modified Plan provides for \$3,940.00 to be paid for the remainder of the life of the Plan. Modified Plan, Dckt. 87. 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 20, 2023. Dckt. 100. Trustee opposes confirmation of the Plan on the basis that:

1. The Modified Plan does not explain how it will deal with the delinquency. Otherwise, the Modified Plan appears viable and can be confirmed.

DEBTOR’S REPLY TO TRUSTEE’S OPPOSITION

Debtor filed its Reply on November 28, 2023 (Dckt. 103), stating that Debtor will submit an order confirming the Modified Plan that includes an additional nonstandard provision in the Plan. The additional nonstandard provision adds \$142.23 per month to the plan payment until the \$7,822.86 delinquency is cured.

DISCUSSION

Debtor addresses Trustee's concerns in Debtor's Reply, rendering the Modified Plan confirmable. At the hearing, **XXXXXXXXXX**

~~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, Eric and Stephanie Hutton ("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 11, 2023 (Dckt. 87), is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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, parties requesting special notice, and Office of the United States Trustee on November 9, 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:

1. Debtor failed to appear at the meeting of creditor on November 2, 2023, which was continued to January 4, 2024.
2. Debtor did not file tax returns for 2020, 2021, and 2022.

Dckt. 20.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

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

Failure to File Tax Returns

Trustee asserts tax returns for the tax years 2020, 2021, and 2022 have not yet been filed. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1)

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, attorneys of record who have appeared in the bankruptcy case, and Office of the United States Trustee on October 26, 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 Amended 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 Amended Plan is denied.

The debtor, Errol Quock and Irene Wong ("Debtor") seeks confirmation of the Amended Plan to account for a large sum of non-exempt property in a foreign jurisdiction that will result in a 100% plan. Motion, Dckt. 96. Debtor does not submit any exhibits or supporting declaration in support of its Motion.

The Amended Plan provides:

1. This is a non-standard plan. It is a 100% payment plan.
2. The unsecured creditors are to receive dividends covering their entire proofs of claim, with interest calculated based on 5.41%, the rate equal to 1-Year Treasuries of constant maturity on October 13, 2023, as reported by the St. Louis Federal Reserve Bank.

3. Based on constant payments, an equal monthly payment for the 60-month term, inclusive of a 7.2% trustee fee would be \$1,810.88.
4. Based on payments made by the debtors, it appears an arrearage, including recursive calculation going back to the first payment, equals approximately \$5,016.07.
5. Debtors propose to pay down this arrearage through the sale of collectables and/or the RX-7 and Vega, which are unencumbered, by four months of equal plan payments of \$3,064.90 (\$1,254.02 above the equalized payment of \$1,810.88), with the higher payments to commence in November 2023. This will reduce the arrearage and return to equal payments. After this, payments would return to \$1,810.22. A schedule of payments is included herewith as Exhibit 7A. The trustee shall be compensated at the rate indicated on either the basis of the amount of each monthly plan payment or as he may determine appropriate under the local rules. This modifies sections 2.01 and 3.06.
6. Debtors have substantially reduced their phone bills, eliminated cable TV, eliminated \$199 in monthly mini-storage fees, and have taken on a \$700 per month lodger, Mr. Zhi Jian Qu. Two months' of receipts are included for the lodger, a non-English-speaking Chinese man, included herewith as Exhibit 7B.

Amended Plan, Dckt. 97 ¶¶ 7.01-7.06. 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 17, 2023. Dckt. 101. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor's Notice of Hearing (Dckt. 96) fails to comply with Local Bankruptcy Rule 9014-1(D)(3)(B)(iii).
2. Debtor has not filed any supporting evidence for this Motion.
3. Debtors amended Schedule A/B no longer shows some assets that the previous Schedules showed. These assets include:
 - A. 1994 Jeep Cherokee \$2,000
 - B. 2004 Chrysler PT Cruiser \$2,000
 - C. 1998 Jeep Grand Cherokee \$2,000
 - D. 1987 Mazda RX-7 \$20,000
 - E. 2018 Nissan Kix \$17,609
 - F. 1972 Chevy Vega \$15,000
 - G. 1972 Honda 750 \$2,000

Trustee is uncertain whether these assets have been sold or are otherwise no longer in the Debtor's possession.

4. Trustee is concerned Debtor has altered the language in the court's plan form.

This Opposition asserts that § 3.04 has been altered and purports to set the Chapter 13 Trustee's fees, usurping the U.S. Trustee's duties and responsibilities. Opposition, p. 3:2-9; Dckt. 101. This amendment is not stated in Section 7, Additional Provisions, or as a strike out and new bold text insertion so that it could clearly be seen that the Plan Form has been (improperly) altered. Rather, it appears to have been done using the Adobe edit function to make it appear that there was no alteration.

The required Chapter 13 Plan text for § 3.04 states as follows:

3.04. Trustee's fees. Pursuant to 28 U.S.C. § 586(e), Trustee shall receive up to 10% of plan payments, whether made before or after confirmation, but excluding direct payments by Debtor on Class 4 claims, executory contracts and unexpired leases, and obligations of the kind described in section 3.03.

28 U.S.C. § 586(e) provides that it is the U.S. Attorney General, after consulting with the U.S. Trustee, shall set the maximum amount of fees a Chapter 13 Trustee may seek to recover in a bankruptcy case. It does not grant a debtor to set the maximum amount that the Trustee may claim.

5. Debtor appears \$4,888.45 delinquent in plan payments, or \$1,186.43 delinquent if the payment schedule found on page 7 of the Amended Plan is controlling.
6. Debtor's net monthly income is not enough to fund the Plan. The Plan requires sales of the collectible vehicles to work, but no motion to sell has been filed with the court.
7. Finally, it appears that Debtor now shows an increased gross income, but Debtor has not explained this increase.

Dckt. 17.

DISCUSSION

Notice as a Motion Under Local Bankruptcy Rule 9014-1(f)(1) or f(2) is Unclear

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held to confirm the third Amended Plan, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may be submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(1). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

Lack of Evidence in Support of Motion

Debtor's counsel filed this Motion making several factual assertions. However, no declaration of the Debtor or other evidence was filed to support those assertions. Debtor instead informs the court "[t]his motion will be based on the files in the case." Motion, Dckt. 96.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). The court will not spend its time scrolling through the docket trying to piece the puzzle together on its own. Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

Amended Schedules A/B not Listing Assets

As the Trustee notes, the Amended Schedules A/B (Dckt. 95) omit Debtor's vehicles. If these vehicles were sold, such sales would require court authorization. Any funds derived from those sales would constitute funds of the bankruptcy estate. At the hearing, **XXXXXXXXXX**

Delinquency / Infeasible Plan

Trustee asserts that Debtor is \$4,888.45 delinquent in plan payments, or \$1,186.43 delinquent if the payment schedule found on page 7 of the Amended Plan is controlling. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Moreover, the Plan cannot be funded by Debtor's income alone and requires sales of the collectible vehicles, which may or may not have already taken place. The Plan is infeasible without these sales, but no motions to sell have been filed. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

The Amended 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 Amended Chapter 13 Plan filed by the debtor, Eroll Quock and Irene Wong ("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 Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

16 thru 17

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties in interest, and Office of the United States Trustee on November 14, 2023. By the court's calculation, 21 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 Harley Davidson Financial ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$5,605.00.

The Motion filed by Tiffany Miller ("Debtor") to value the secured claim of Harley Davidson Financial ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 26. Debtor is the owner of a 2015 Harley Davidson Sportster ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$5,605.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan to secure a debt owed to Creditor with a balance of approximately \$9,205.24. Declaration, Dckt. 26. 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 \$5,605.00, 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 Tiffany Renee Miller ("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 Harley Davidson Financial ("Creditor") secured by an asset described as 2015 Harley Davidson Sportster ("Vehicle") is determined to be a secured claim in the amount of \$5,605.00, 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 \$5,605.00 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.

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, parties requesting special notice, and Office of the United States Trustee on November 8, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is XXXXXX.

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

1. The Plan relies on a Motion to Value that has not yet been filed.

Dckt. 20.

DISCUSSION

Approximately one week after Trustee filed this Objection, Debtor filed the Motion to Value in this case, addressing the Trustee's concern. The Motion to Value is being heard in conjunction with this Objection. At the hearing, XXXXXXXXXX

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

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

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

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

~~**IT IS ORDERED** that the Objection is overruled, and Tiffany Miller’s (“Debtor”) Chapter 13 Plan filed on September 20, 2023 (Dekt. 3), is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 18, 2023. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, James Roehr ("Debtor") seeks confirmation of the Modified Plan because creditors submitted proofs of claims not anticipated by the Debtor. Declaration, Dckt. 34. The Modified Plan provides:

1. Fay Servicing, LLC c/o Citibank, N.A. (First DOT 3701 Odd Fellows Road, Diamond Springs, CA 95619) ongoing mortgage payment shall be paid directly by Debtor in months 1 through 2, thereafter the ongoing monthly mortgage payment of \$1,450.55 shall be paid as a Class 1 Creditor.
2. Fay Servicing, LLC c/o Citibank, N.A. (First DOT 3701 Odd Fellows Road, Diamond Springs, CA 95619) arrears shall be paid \$110 in months 1 through 6 and \$116.40 in months 7 through 52.
3. Select Portfolio Servicing, inc. c/o U.S. Bank Trust National Association, as Trustee, for MEB loan Trust IV (3701 Odd Fellows Road, Diamond

Springs, CA 95619) shall be paid \$100 in months 1 through 6 and \$118.67 in months 7 through 52.

4. County of El Dorado (3701 Odd Fellows Road, Diamond Springs, CA 95619) shall be paid \$40.55 in months 1 through 6.
5. The Chapter 13 Plan payment shall be \$1,040 in months 1 through 2 and \$2,620 in months 3 through 60.

Modified Plan, Dckt. 33. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CREDITOR'S OPPOSITION

U.S. Bank Trust National Association, as trustee for MEB Loan Trust IV ("Creditor"), holding a secured claim filed an Opposition on November 7, 2023. Dckt. 37. Creditor opposes confirmation of the Plan on the basis that:

1. The Plan fails to provide for the total debt owed to Creditor. Creditor's secured claim is in the amount of \$64,510.05, and the Plan does not provide for repayment in full of this claim.
2. Creditor has been improperly classified as a Class 1 Creditor. Creditor should be in Class 2 of the Plan because the loan matured before completion of the Plan, and Class 1 is reserved for secured claims that mature after completion of the Plan.

Dckt. 37.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition and addressing Creditor's Opposition on November 17, 2023. Dckt. 37. In his response, Trustee states:

1. Trustee does not oppose Debtor's Motion to Confirm Plan as Proposed.
2. If Creditor is moved to Class 2, then the Trustee needs to know the interest rate, when interest would begin accruing, and the monthly dividend Trustee would be disbursing to Creditor.
3. If the court sustains Creditor's Objection as stated in its Opposition, and Debtor must pay the amount of \$64,510.05, the Plan would be overextended.

CREDITOR'S STATUS REPORT

On November 30, 2023 Creditor filed a status report updating the court on where the case stands. Dckt. 42. In its status report, Creditor informs the court that Creditor relayed the requested information to Trustee regarding its claim and the interest rate.

DISCUSSION

Improper Classification / Failure to Provide for the Full Amount of a Secured Claim

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

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

However, if the claim is secured only by the Debtor's principal residence and has matured before the completion of a Plan, a Debtor may modify that secured claim pursuant to 11 U.S.C. § 1325(a)(5). 11 U.S.C. § 1322(c)(2). 11 U.S.C. § 1325(a)(5) gives the debtor three options:

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

In this case, Creditor argues that its claim, secured by the Debtor's principal residence, matured on January 1, 2020, as evidenced in the promissory note and accompanying deed of trust listed in Proof of Claim 4-1. Because Class 1 of secured creditors only involves claims that mature after completion of the Plan, Creditor has been improperly classified.

The court notes this is the type of secured claim that may be modified by Debtor because the final payment on the promissory note was due before completion of the Plan. However, debtor has not filed any objection to Creditor's claim, nor has Debtor filed any motion to value Creditor's claim. Therefore, the Proof of Claim controls, and Debtor must pay Creditor's claim in the entire amount of \$64,510.05. *See Plan*, ¶ 3.02. The Plan does not currently provide for repayment of creditor's claim in full, and so may not be confirmed.

At the hearing, **XXXXXXXXXX**

~~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, James Roehr (“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

19. [23-23197-E-13](#)
[PLG-2](#)

MORGAN BRYNNAN
Steven Alpert

MOTION TO CONFIRM PLAN
10-25-23 [\[26\]](#)

Final Ruling: No appearance at the December 5, 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 25, 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 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.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Morgan Brynnan ("Debtor"), has filed evidence in support of confirmation. *See* Exhibits, Dckt. 30; Dec., Dckt. 29. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 21, 2023. Dckt. 35. 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, Morgan Brynnan (“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 25, 2023 (Dckt. 28), 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.

20. [22-20007-E-13](#)
[PGM-2](#)

WANDA MOORE
Peter Macaluso

MOTION TO MODIFY PLAN
10-24-23 [73]

Final Ruling: No appearance at the December 5, 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 that have filed claims, and Office of the United States Trustee on October 24, 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, Wanda Moore (“Debtor”), has filed evidence in support of confirmation. *See Exhibit, Dckt. 75; Dec., Dckt. 76.* The

Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on November 14, 2023. Dckt. 81. 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 Wanda Moore (“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 24, 2023 (Dckt. 77), is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the December 5, 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, persons who have filed a Request for Notice, Attorneys who have appeared in the case, and Office of the United States Trustee on October 24, 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, Jo Ann Brazil ("Debtor"), has filed evidence in support of confirmation. *See* Exhibits, Dckt. 41; Dec., Dckt. 40. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 17, 2023. Dckt. 48. 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 Jo Ann Brazil ("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 24, 2023 (Exhibit 1, Dckt. 41), 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.

22. [22-20510-E-13](#) **ARMANDO/EMILY GONZALEZ** **MOTION TO MODIFY PLAN**
[TLA-2](#) **Thomas Amberg** **10-30-23 [55]**

Final Ruling: No appearance at the December 5, 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 all creditors and parties in interest and Office of the United States Trustee on October 30, 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 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, Armando and Emily Gonzalez ("Debtor"), has filed evidence in support of confirmation. *See* Exhibits, Dckt. 58; Dec., Dckt. 60. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 14, 2023. Dckt. 62. 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, Armando and Emily Gonzalez (“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 30, 2023 (Dckt. 57), 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.