UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

December 10, 2024 at 1:30 p.m.

1.	**24-23608-E-13** **DWE-1**	**KRISTINA FRASIER AND BO MCBRAYER** **Mikalah Liviakis**	**CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **9-30-24 [12]**

FREEDOM MORTGAGE CORPORATION
VS.

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 7 Trustee, and Office of the United States Trustee on September 30, 2024. By the court's calculation, 71 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is denied.

Freedom Mortgage Corporation ("Movant") seeks relief from the automatic stay with respect to Kristina Renae Frasier and Bo Mathew McBrayer's ("Debtor") real property commonly known as 758 Aster Way, Woodland, CA 95695 ("Property"). Movant has provided the Declaration of Heather Marie Diaz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 14.

Movant argues Debtor has not made 13 monthly contractual payments in the amount of $3,846.25 each, including at least one post-petition payment. Decl. ¶ 8, Docket 14. The total outstanding arrearage is $49,146.79 exclusive of fees and costs. *Id.*

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 28, 2024. Docket 27. Debtor argues that the case was originally brought under Chapter 7 of the Code, but has since been converted to Chapter 13 on November 5, 2024. Docket 38. Now, in Chapter 13, Debtor has filed a Plan that accounts for Movant's arrearage, so Movant is adequately protected. *See* Plan, Docket 40. The Motion should therefore be denied.

DISCUSSION
11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Here, with the proposed Chapter 13 Plan placing Movant in Class 1 of the Plan and making payments to cure the arrearage, the court finds that Movant is adequately protected. Movant states there is an arrearage of almost $50,000 while the Plan provides for an arrearage of $60,000. Plan § 3.07, Docket 40.

At the hearing, **xxxxxxx**

Therefore, the court determines that cause does not exist for terminating the automatic stay, and the Motion is denied. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Freedom Mortgage Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~denied.~~

2.	**21-20814-E-13** **RAS-1**	**ARLEANER COLLINS** **Peter Macaluso**	**CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **9-18-24 [45]**

MORTGAGE ASSETS MANAGEMENT, LLC VS.

Item #4 on the 2:00 Calendar

THIS MOTION WILL BE HEARD ON THE COURT'S DECEMBER 10. 2024 2:00 P.M. CALENDAR IN CONJUNCTION WITH THE MOTION TO SUBSTITUTE A REPRESENTATIVE IN PLACE OF THE DECEASED DEBTOR

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, parties requesting special notice, and Office of the United States Trustee on September 18, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxxxx.

December 10, 2024 Hearing

The court continued the hearing on this Motion after confirming at the prior hearing that Debtor had indeed passed away. The court continued the hearing to provide the parties with an opportunity to decide if they wanted to pursue a sale of the Property. Nothing new has been filed with the court as of December 4, 2024, under this Docket Control Number. However, Debtor has filed a Motion to Substitute

at Docket 61, which will be heard on the 2:00 p.m. calendar on December 10, 2024. At the hearing, **xxxxxxx**

REVIEW OF MOTION

Mortgage Assets Management, LLC ("Movant") seeks relief from the automatic stay with respect to Arleaner Collins' ("Debtor") real property commonly known as 1828 Jamestown Dr, Sacramento, California 95815 ("Property"). Movant has provided the Declaration of Carlene Reid to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 48.

Movant states that on June 16, 2024, Debtor passed away. Mot. 3:12-13, Docket 45. Movant is still owed $330,501.41 on the reverse mortgage Note that is secured by the deed of trust in the Property. *Id.* at 4:1; Decl. ¶ 9, Docket 48. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) as Movant's death has caused the loan to go into default, and the terms of the reverse mortgage permit the balance of the loan to be due and payable upon death of Debtor. Decl. ¶ 7.

DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on October 8, 2024. Docket 52. Debtor's counsel states he has been unable to determine for himself whether Debtor has passed away and asks the court for a continuance until he can find if Debtor has truly passed away.

TRUSTEE'S OPPOSITION

On October 11, 2024, David Cusick, the Chapter 13 Trustee ("Trustee") filed an Opposition. Trustee opposes on the ground that Movant has not elaborated how Movant learned of Debtor's death, and Trustee has not been presented with evidence of Debtor's death.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $330,501.41, while the value of the Property is determined to be $375,000 as stated in Schedules A/B filed by Debtor. Am. Schedule A/B 4, Docket 29.

Absence of Evidence

In the Motion, the grounds for the requested relief is that the Debtor has died. Motion, p. 5:1-7; Dckt. 45. The Declaration of Carlene Reid, a "Contract Management Coordinator of PHH Mortgage," includes the following testimony:

> 8. Arleaner Collins ("Debtor") is the only borrower on this Note. Debtor passes away on June 15, 2024; thus, calling the Note all due and payable upon such date. The total amount due remains due and owing."

Dec., ¶ 8; Dckt. 48. This testimony is provided under penalty of perjury. It is also provided by Movant and Movant's counsel subject to the Federal Rules of Evidence. As counsel knows, witness testimony must be

based on that witnesses personal knowledge and not mere speculation or hearsay (with specific exceptions not applicable here).

Ms. Reid, in her testimony under penalty of perjury does not explain how she has personal knowledge of the death for which she provides her testimony. Possibly, she was present with the Debtor in her final minutes and personally witnessed the death.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Here, the terms of the reverse mortgage are such that the balance of the Note become due and payable once the Debtor passes away. The confirmation from Debtor's daughter that the Debtor has passed away, the condition cited by Movant has occurred.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, as it is unclear whether the Property is being properly maintained, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 5:9-15, Docket 45.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3).

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in

existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

OCTOBER 22, 2024 HEARING

At the hearing, counsel for Movant, stated that he has not been able to reach his client. Debtor's daughter appeared at the hearing, and confirmed that the Debtor, her mother, has passed away.

In light of there not having been a successor representative for the late Debtor, and Debtor's counsel apparently not having been contacted by the family, the Parties agreed to a continuance to allow Debtor's heirs to determine if they wan to pursue a sale of the Property.

The hearing is continued to 1:30 p.m. on December 10, 2024.

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

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

The Motion for Relief from the Automatic Stay filed by Mortgage Assets Management, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is **XXXXXXX**.

3. 23-21835-E-13 AT-1 — ANGELA FIELDS, Mo Mokarram — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
9-24-24 [20]

RIVER CITY COMMONS HOMEOWNERS ASSOCIATION VS.

NO APPEARANCE BY COUNSEL FOR MOVANT OR COUNSEL FOR DEBTOR IF THEY CONCUR WITH THE DENIAL OF THE MOTION WITHOUT PREJUDICE

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Co-Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 24, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

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

The Motion for Relief from the Automatic Stay and the Co-Debtor stay is denied without prejudice.

December 10, 2024 Hearing

The court continued the hearing on this Motion so Debtor may file Supplemental Schedules I and J and address with the Trustee the issue of whether an amendment to the Plan needs to be made. Supplemental Schedules were filed on November 1, 2024. Docket 34. On December 2, 2024, Trustee filed an *ex parte* Motion with the court to approve a Stipulation between Debtor and Movant that was filed on October 28, 2024. Stip., Docket 29; Mot., Docket 35. The court approved that Stipulation on December 3, 2024. Order, Docket 36.

The grounds for the Motion are resolved, and relief from stay is denied.

REVIEW OF THE MOTION

River City Commons Homeowners Association ("Movant") seeks relief from the automatic stay with respect to Angela Yvonne Fields' ("Debtor") real property commonly known as 1630 Bannon Creek Drive, Sacramento, California 95062 ("Property"). Movant has provided the Declaration of Terin Reeder to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 24.

Movant pleads with particularity that:

1. Debtor and Co-Debtor Brian Chiesa ("Co-Debtor") own an interest in the River City Commons as their Property is apart of the development. Movant is a non-profit mutual benefit corporation charged with the management, governance and operation of the development. Debtor and Co-Debtor are obligated to pay regular monthly assessments to Movant. Mot. 2:7-13.

2. Debtor and Co-Debtor's monthly assessment is $93. Since filing the Chapter 13 Petition commencing this matter, Debtor and Co-Debtor have failed to make payment of the monthly assessment obligations and are now post-petition delinquent in the amount of $2,611.13. *Id.* at 2:23-26; Decl. ¶ 6, Docket 24.

3. As such, Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) to record its assessment and foreclose on the Property. Movant seeks leave to file a proof of claim reflecting the delinquency and associated attorneys' fees and costs in the amount of $1,500.

The court notes that filing an Amended Proof of Claim does not violate the provisions of the automatic stay. *See* Official Form 410.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $2,611.13 (Declaration ¶ 6, Docket 24), while the value of the Property is determined to be $450,000, as stated in Schedules A/B filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted as Movant would be unable to foreclose on the Property and if the Co-Debtor stay remained in effect.

OCTOBER 10, 2024 HEARING

At the hearing counsel for the Debtor reported the steps being taken to address the HOA arrearage and the Parties agreed to continue the hearing to allow the Debtor to promptly address the matter.

The hearing on the Motion for Relief from the Automatic Stay and the Co-Debtor stay is continued to 1:30 p.m. on October 30, 2024. (Specially Set Day and Time).

October 30, 2024 Hearing

The court continued the hearing as Debtor had reported the steps being taken to address the HOA arrearage, and the Parties agreed to continue the hearing to allow the Debtor to promptly address the matter.

On October 28, 202, the parties filed a Stipulation for Adequate Protection with the court. Docket 29. The Stipulation provides:

1. Debtor is currently post-petition delinquent in the amount of $2,611.13 as of the date of this Order for Adequate Protection ("APO"). The Association has also incurred $2,000.00 in attorneys' fees (as of September 30, 2024) that Debtor is required to reimburse, for a total of $4,611.13. Stip. ¶ 1, Docket 29.

2. On the first day of each month, commencing November 1, 2024, the Debtor shall timely tender the regular monthly Association assessment payments

of $98.00 (or as they may increase) and any other assessment obligation including but not limited to special assessments, which come due after the date of execution of this APO. *Id.* at ¶ 2.

3. Additionally, on the first day of each month beginning November 1, 2024, Debtor shall also pay twenty-four (24) monthly installments of $192.13, for a total of $4,611.13, in order to become current on the post-petition delinquency and the Association's collection costs and attorneys' fees. *Id.* at ¶ 3.

4. On or by October 1, 2026, i.e., one month before the conclusion of this twenty-four (24) month repayment period, the Association shall invoice any remaining attorneys' fees and/or other costs that have accrued over the course of the repayment period to Debtor via Debtor's attorneys, to be paid within thirty (30) days of the date of the invoice, to conclude the repayments and complete performance under this Repayment Plan. *Id.* at ¶ 4.

5. In the event Debtor fails to timely perform any obligations set forth in this APO, the Association shall be entitled to notify Debtor and Debtor's attorney of record of said default in writing with service via electronic (to Debtor's attorney) and U.S. Mail. Debtor shall have fifteen (15) calendar days from the date of the written notification to cure the default. *Id.* at ¶ 6.

6. If Debtor fails to cure the default, the Association shall be entitled to lodge Declaration of Default and an Order Terminating the Automatic Stay which includes a waiver of the 14-day stay provided by Bankruptcy Rule 4001(a)(3). A Declaration shall accompany the Order Terminating the Automatic Stay which states that the Association duly notified Debtor and Debtor's attorney of record of the default and that the default was not timely cured. The Order Terminating the Automatic Stay shall be entered without further hearing. *Id.* at ¶ 7.

The court noted that the procedure it has used in the past is an *ex parte* motion, based solely on the default, with the Debtor having ten days to file an opposition and set the matter for hearing if it disputes that the default existed and was not cured.

This Stipulation is brought without a Motion to Approve Compromise. Fed. R. Bankr. P. 9019(a) states:

> (a) Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Confirmed Plan, Treatment of Movant's Claim

In the confirmed Chapter 13 Plan, Movant's secured claim is not provided for. Plan, Dckt .3; and Confirmation Order, Dckt. 15. The Stipulation reached by the Parties is effectively Plan treatment, by

which Movant will make arrearage cure payments of $192.13 for 24 months to cure a post-petition delinquency of ($2,611.13) in assessments and an additional ($2,000.00) for legal fees. Additionally, Debtor shall make the currently monthly assessment payment of ($98.00), or any increased monthly assessment amount, timely.

In the 23rd Month, Movant will issue an invoice for any remaining fees or costs that have accrued over the repayment period, which will then be paid within 30 days.

There is also a co-debtor on this obligation, Brian Chiesa, who is named in the Motion. It is not stated in the Stipulation who will be generating the monies to make the post-petition cure payments. The pre-petition cure payments are provided for in Class 2 of the Plan. Dckt. 3; A.S.A.P. Collection Services, as Trustee, is identified as the creditor.

Reviewing Schedules I and J (Dckt. 1), it appears questionable that Debtor would have sufficient monies to come up with an additional $192.14 a month to make the post-petition cure payment.

There are two questions that come to mind for the court:

1. What is the source of the monies to make the cure payment?

2. Should the Debtor and Chapter 13 Trustee have a stipulated Plan amendments to provide for the post-petition default cure payments to be made directly by the Debtor outside of the Plan?

At the hearing, counsel for the Debtor reported that Debtor has received a raise at work and can afford the additional payment.

The Parties requested a short continuance for Supplemental Schedules I and J filed, and address with the Trustee the issue of whether an amendment to the Plan needs to be made.

The hearing is continued to 1:30 p.m. on December 10, 2024.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by River City Commons Homeowners Association ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief from the Automatic Stay and the Co-Debtor stay is denied without prejudice**.**

4.	**24-20837-E-13 DPC-3**	**TERRI COOK PALACIOS AND JOSE PALACIOS Leo Spanos**	**CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 8-20-24 [61]**

Item 4 thru 5

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, parties requesting special notice, and Office of the United States Trustee on August 20, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is xxxxxxx.

December 10, 2024 Hearing

The court continued the hearing on this motion to allow supplemental briefing on the issues, setting the deadline of November 15, 2024. On November 15, 2024, Trustee filed a status Report with the court. Docket 95. Trustee explained the parties are close to resolving their disagreement on the issues and should be filing an amended Status Report prior to the hearing.

On December 4, 2024, Debtors filed a Status Report informing the court that Debtors are currently in the process of reviewing a Schedule C that drops the Arizona exemptions and hope to have that on file shortly to resolve the Objection. Docket 96. That Amended Schedule C was not on file as of the court's review of the Docket on December 6, 2024.

At the hearing, xxxxxxx

REVIEW OF OBJECTION

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Terri Lashai Cook Palacios and Jose Camacho Palacios' ("Debtors") claimed exemptions under both California and Arizona state laws. Trustee states:

A. Debtors are claiming different state exemptions under Arizona and California law, Ariz. Rev. State § 33 and C.C.P. § 704. Obj. 2:1-3, Docket 61.

B. Schedule C shows that 6255 N. Camino Pimeria Alta property as exempt, for "(Jose Camacho Palacios only)", under Arizona Rev. Stat. §33-1101(A) in the amount of $400,000.00, and the 5273 Cumberland Drive property is exempt, for "(Terri Lashai Cook Palacios only)", under C.C.P. § 704.730(A)(2) for $189,900.00. Obj. 2:4-7, Docket 61.

C. If Debtors reside in separate homesteads, they are only entitled to claim one of the spouses' homesteads as exempt. *Id.* at 2:8-9.

D. Debtors have not stated any authority that they can claim both properties exempt under Arizona Rev. Stat. § 33-1101(A) and C.C.P. § 704.730, or if they are allowed to stack the homestead exemption by claiming both properties exempt with different state statutes. Obj. 2:10-13, Docket 61.

E. In addition to the above claimed exemptions, the Debtors have also duplicated all their community assets, and amounts, on Amended Schedule C, citing all assets are exempt under both Ariz. Rev. Stat. § 33 and C.C.P. § 704 exemptions. With the Court's previous ruling, the Debtors' Amended Schedule C does not appear proper and it does not appear that the Debtors are allowed Debtors to stack different state exemption codes for the same community assets using two different states simultaneously. Obj. 2:14-20, Docket 61.

DEBTORS' RESPONSE

Debtors filed a Response to Trustee's Objection on September 8, 2024. Docket 70. Debtors state:

A. Debtors lived at 5228 Whitetail Run Court, Antelope, CA 95843 ("Whitetail property") from July 2007 through December 2021. *Id.* at ¶ 1.

B. In July 2020, the Debtors purchased real property at 6255 N. Camino Pimeria Alta, #114, Tucson, AZ 85718 ("Camino property"). *Id.* at ¶ 5.

C. Debtor Mr. Palacios lives at the Camino Property for work and to be close to their children. *Id.*

D. In February 2022, Debtors purchased real property at 5273 Cumberland Drive, Roseville, CA 95747 ("Cumberland property").

E. Since purchasing it, Debtor Mrs. Palacios lives in the Cumberland Property, visiting the Camino Property occasionally for holidays, weekends, and to see the children. *Id.* at ¶ 10.

F. Debtor Mrs. Palacios satisfies the statutory requirements of 11 U.S.C. § 522 to claim the California homestead exemption in the Cumberland Property. *Id.* at 4:11-5:10.

G. The language of Cal. Code Civ. P. § 704.720(c) states:

> "[i]f the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt."

Because Mrs. Palacios is not seeking a separate homestead exemption, the prohibition under § 704.720(c) does not apply. *Id.* a 5:1-4.

H. Debtor Mr. Palacios satisfies the statutory requirements of 11 U.S.C. § 522 to claim the Arizona homestead exemption in the Camino Property.

I. Under Arizona Rev. Statute § 33-1101(A), Mr. Palacios is entitled to a homestead exemption of $400,000. Arizona Rev. Statute § 33-1101(B) states: "Only one homestead exemption may be held by a married couple or a single person under this section. . ." Because neither Mr. and Mrs. Palacios are seeking another homestead exemption under this section, the homestead exemption is properly claimed here. *Id.* at 5:13-6:5.

DISCUSSION

Federal law allows states to opt out of the federal exemption scheme. 11 U.S.C. § 522(b). 11 U.S.C. § 522(b)(2) and (3)(A) state:

(b)

> (2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize. . .
>
> (3) Property listed in this paragraph is—
>
> > (A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place. . .

These two sections read together show the law allows a state to opt out of the federal exemption scheme entirely.

California has made such an election. *See* Cal. Code Civ. P. § 703.130. Therefore, a debtor filing bankruptcy who is domiciled in California must use the California exemptions, including the homestead exemption.

However, this is a unique case where it is asserted that these two debtors, a husband and wife, live in and are domiciled in two separate states, but they are filing jointly in California, which is their right. The venue statute for bankruptcy is broad, providing a potential debtor with various venues. *See* 28 U.S.C. § 1408 (stating venue is proper for a debtor where that debtor is domiciled, resides, or has a principal place of business).

Legal Basis, Analysis, and
Arguments Presented by the Parties

The court is presented with a very interesting and unique argument – two married Debtors who seek to assert that they are each domiciled in different States and can claim double exemptions, one under California Law and the other under Arizona Law.

The legal analysis for each sides position is thin and no evidence has been provided by Debtors for the Opposition.

Determination of Domicile

In this Bankruptcy Case what has been presented to this court is that the two Debtors and their children lived in California from July 2007 through December 2021, except as explained in the following. Opposition, ¶ 1; Dckt 70. In 2019, the Debtors rented property in Arizona and Jose Palacios and their two children moved to Arizona. *Id*.; ¶ 2. Debtors' two children began attending Arizona schools and Debtor Jose Palacios began looking for work in Arizona. *Id*.; ¶ 3.

However, Debtor Terri Palacios continued to work and live in California. *Id*.; ¶ 2.

In July 2020, the two Debtors purchased the 6255 N. Camino Pimeria Alta, #114, Tucson Arizona Property. Debtor Jose Palacios and the two children live in the Arizona Property. *Id*. ¶¶ 5,6.

Debtor Terri Palacios visits the Arizona Property on weekends and other occasions, but "continues to work and reside" in California. *Id*., ¶ 7.

In February 2022, the Debtors purchases the 5273 Cumberland Drive, Roseville California Property, and Debtor Terri Palacios lives there - splitting her time between the Roseville Property and the Arizona Property. *Id*., ¶ 10, 11.

For income taxes, the Debtors have in:

1. 2023 filed taxes in California as Nonresident or Part-Year Residents

2. 2022

a. filed taxes in California as Nonresident or Part-Year Residents

b. filed taxes in Arizona as Nonresidents.

What neither the Trustee nor Debtors provide the court is an analysis of the applicable law on several points. The first is how a person's domicile is determined. In *Lew v. Moss*, 797 F.2d 747, 749-750 (9th Cir. 1986), the Ninth Circuit Court of Appeals provides the following discussion on determination of domicile in connection with determining whether there was federal diversity jurisdiction (emphasis added and this court restructuring, shown in the *indented italic text*, the third paragraph to put the nonexclusive list of factors on separate lines for ease of review by the Parties):

> Second, a person is "domiciled" in a location where he or she has established a **"fixed habitation** or abode in a particular place, and **[intends] to remain there permanently or indefinitely**.'" *Owens v. Huntling*, 115 F.2d 160, 162 (9th Cir. 1940) (quoting *Pickering v. Winch*, 48 Ore. 500, 87 P. 763, 765 (1906)); 1 J. Moore, Moore's Federal Practice para. 0.74(3.-3), at 707.58-60 (1985) [hereinafter Moore's]. . .
>
> Finally, a person's old domicile is not lost until a new one is acquired. *Barber v. Varleta*, 199 F.2d 419, 423 (9th Cir. 1952); see also Restatement (Second) of Conflicts §§ 18-20 (1971) (and examples provided). A change in domicile requires the confluence of (a) **physical presence at the new location** with (b) **an intention to remain there indefinitely**. *See Owens*, 115 F.2d at 162; 13B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3613, at 544-45 (1984 & Supp. 1986) [hereinafter Wright & Miller].
>
> Courts in other jurisdictions have recognized additional principles relevant to our present analysis. The courts have held that the determination of an individual's domicile involves a number of factors (no single factor controlling), including:
>
> *current residence,*
> *voting registration and voting practices,*
> *location of personal and real property,*
> *location of brokerage and bank accounts,*
> *location of spouse and family,*
> *membership in unions and other organizations,*
> *place of employment or business,*
> *driver's license and automobile registration, and*
> *payment of taxes.*
>
> Wright & Miller, *supra* § 3612, at 529-31 (citing authorities). *See also Bruton v. Shank*, 349 F.2d 630, 631 n.2 (8th Cir. 1965); *S.S. Dadzie v. Leslie*, 550 F. Supp. 77, 79 n.3 (E.D. Pa. 1982); *Mizell v. Eli Lilly & Co.*, 526 F. Supp. 589, 592-93 (D. S.C. 1981); *Griffin v. Matthews*, 310 F. Supp. 341, 342-43 (M.D. N.C. 1969), aff'd, 423 F.2d 272 (4th Cir. 1970). The courts have also stated that domicile is evaluated in terms of "objective facts," and that "'statements of intent are entitled to little weight when in conflict with facts.'" *Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553,

556 (5th Cir. 1985) (quoting, *Hendry v. Masonite Corp*., 455 F.2d 955, 956 (5th Cir.), cert. denied, 409 U.S. 1023, 93 S. Ct. 464, 34 L. Ed. 2d 315 (1972)); *Korn v. Korn*, 398 F.2d 689, 691-92 n.4 (3rd Cir. 1968).

In 2024, the Ninth Circuit reviewed the concept of domicile, again noting that it has both a physical and subjective intent requirement, stating:

> "'Domicile' is, of course, a concept widely used in both federal and state courts for jurisdiction and conflict-of-law purposes, and its meaning is generally uncontroverted." *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 104 L. Ed. 2d 29, 109 S. Ct. 1597 (1989). "A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return." *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citing *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986)). "A person residing in a given state is not necessarily domiciled there . . . ." *Id*. A person generally assumes the domicile of his or her parents, and she may have only one domicile at a time. *See Lew*, 797 F.2d at 750-51. Domicile may be changed by being physically present in the new jurisdiction with the intent to remain there. *See Mississippi Band*, 490 U.S. at 48; Kanter, 265 F.3d at 857. Thus, domicile includes a subjective as well as an objective component, although the subjective component may be established by objective factors.

Von Kennel Gaudin v. Remis, 379 F.3d 631, 636-637 (9th Cir. 2004).

The distinction between "residence" and "domicile" for purposes of 11 U.S.C. § 522 is discussed in 4 Collier on Bankruptcy (16th Edition) ¶ 522.06, which includes:

> "Domicile" as used in section 522 means more than mere residence.[16] Although domicile and residence are often loosely used as synonymous terms, the specified reference to each in the Code[17] indicates an intention to maintain a legal distinction between them. The residence of a debtor may be nothing more than a place of sojourn. While ordinarily used in a sense of fixed and permanent abode, as distinguished from a place of temporary occupation, the term "residence" does not include the intention required for domicile. Domicile means actual residence coupled with a present intention to remain there.[18] It is the place where one intends to return when one is absent and where one's political rights are exercised. Mere physical removal to another jurisdiction without the requisite intent is insufficient to effect a change of domicile. The fact that the debtor, therefore, has resided elsewhere during the 730-day period will not defeat the applicability of the law of the state where the debtor keeps the principal home.[19] It may be, however, that under the laws of the state of the debtor's domicile that the debtor must also reside within the state to obtain its exemption privileges.[20]
>
> . . .
>
> The facts on which the question of domicile will be decided are those existing at the time of the filing of the petition and a subsequent change by the debtor will have no effect upon this determination.[26]

[16] The determination of the debtor's domicile is governed by federal common law. *See Farm Credit Bank of Wichita v. Hodgson (In re Hodgson)*, 167 B.R. 945 (D. Kan. 1994) (federal law applies in order to insure uniform nationwide application of bankruptcy laws); *In re Mendoza*, 597 B.R. 686, 688 (Bankr. S.D. Fla. 2019) (citing Treatise); *see also Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989) (term "domicile" in federal statute shall be interpreted under federal law absent clear expression by Congress that state law definition is applicable).

[17] See 11 U.S.C. § 101.

[18] *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); *see also Lowenschuss v. Selnick (In re Lowenschuss*), 171 F.3d 673, 684, 41 C.B.C.2d 1049 (9th Cir. 1999) (debtor satisfied both physical presence and intent requirements for establishing domicile), *cert. denied*, 528 U.S. 877, 120 S. Ct. 185, 145 L. Ed. 2d 156 (1999); *In re Mendoza*, 597 B.R. 686 (Bankr. S.D. Fla. 2019) (noncitizen debtors who were lawfully residing in Florida and intended to permanently reside there if their asylum application was granted were domiciled in Florida).

[19] *In re Porvaznik*, 456 B.R. 738 (Bankr. M.D. Pa. 2011) (debtor's domicile remained unchanged even though she resided during the 730-day period in another state where her husband was stationed as a member of the military); *Smith v. Wellberg (In re Wellberg*), 4 C.B.C.2d 1007, 12 B.R. 48 (Bankr. E.D. Va. 1981) (domicile is not affected or changed by entry into the armed forces).

[20] *See In re Chandler*, 362 B.R. 723 (Bankr. N.D. W. Va. 2007) (debtor may claim federal exemptions because Georgia opt-out statute is not applicable to nonresidents); *In re Volk*, 7 C.B.C.2d 1096, 26 B.R. 457 (Bankr. D. S.D. 1983). (debtors who were nonresidents of South Dakota were not prohibited from claiming exemptions under the federal exemption system because the South Dakota opt-out provision provided only that residents of South Dakota were barred from claiming exemptions under section 522(d)); *see also In re Calhoun*, 47 B.R. 119 (Bankr. E.D. Va. 1985) (debtors' interest in real estate in Kansas under installment purchase agreement was a real property interest under Kansas law, and to claim that interest as exempt, they must comply with Virginia exemption statute, which required recording of homestead deed in county where the property was located).

. . .

[26] *White v. Stump*, 266 U.S. 310, 45 S. Ct. 103, 69 L. Ed. 301 (1924).

4 Collier on Bankruptcy P 522.06

While presented with arguments, the court has not been presented with objective evidence, buy either party, to make the determination of the domicile of each of the two Debtors.

Both California and Arizona Law provide that if a judgment debtor is married, one homestead exemption may be claimed.

Arizona Revised Statute 33-1101. Homestead exemptions; persons entitled to hold homesteads; annual adjustment [emphasis added]

A. Any person the age of eighteen or over, married or single, who resides within the state may hold as a homestead exempt from attachment, execution and forced sale, not exceeding $400,000 in value, any one of the following:

1. The person's interest in real property in one compact body upon which exists a dwelling house in which the person resides.

2. The person's interest in one condominium or cooperative in which the person resides.

3. A mobile home in which the person resides.

4. A mobile home in which the person resides plus the land upon which that mobile home is located.

B. **Only one homestead exemption may be held by a married couple or a single person under this section.** The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed $400,000 in value.

Debtors read this statute to say that one homestead exemption may be claimed under this Code section (Statute) and a second homestead exemption may be claimed under another statute or law. No case law, legislative history, or statutory analysis is provided for this interpretation. Alternatively, this statute could possibly be read to say that under this statute, a married couple may claim one homestead exemption if they seek to claim it under this Arizona statute.

California Code of Civil Procedure § 704.720. Exemption from sale; Exemption of sale proceeds or indemnification [**emphasis** added]

(a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.

. . .

(c) **If the judgment debtor and spouse of the judgment debtor reside in separate homesteads**, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt.

California Code of Civil Procedure § 703.140, which provides for the California exemptions to apply in bankruptcy cases, provides [**emphasis** added]

(a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision

(b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

> (1) **If spouses are joined in the petition**, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

In *Talmadge v. Duck*, 832 F.2d 1120 (9th Cir. 1987), the Ninth Circuit Court of Appeals reviewed the California statutes which provide that for joint debtors there can be only one set of exemptions, and the joint debtors cannot "double up" on the exemptions. The Ninth Circuit's decision includes:

> Section 703.140 is modeled on 11 U.S.C. § 522. However, unlike the guarantee in subsection 522(m), section 703.140 does not provide that joint debtors may each claim their own exemptions; it is silent as to whether a married couple is limited to a single set of exemptions. The only affirmative limitation of this kind is found in section 703.110, enacted prior to both sections 703.130 and 703.140, which provides:
>
> > Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount . . . .
>
> The primary issues in this case are whether California has in fact, via section 703.110, limited married debtors to a single set of exemptions, and if it has, whether the scheme adopted is constitutionally valid. We review the district court's conclusions of law *de novo*. *See Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986).
> . . .
> The relevant provisions are reproduced below, and the allegedly contradictory language is underscored. Section 703.110 provides in pertinent part:
>
> > Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.
>
> Section 703.140(a)(1) provides:
>
> > If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter

> other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.
>
> . . .
>
> The ordinary meaning of "jointly may elect" seems to be simply that husband and wife must come to an agreement on whether or not to choose the exemptions listed in subsection 703.140(b). There would have to be agreement between the husband and [**10] wife because section 703.110 specifically limits the two spouses to one set of exemptions. Any other reading would make section 703.110 a nullity. Moreover, the Senate Legislative Committee Comment to the underscored language in section 703.110 explains that "this new sentence makes clear how the exemption scheme works with respect to married persons." (Emphasis added). The general language in section 703.110, therefore, was intended to modify all of California's exemption statutes which do not specifically express a contrary intent.

In re Talmadge, 832 F.2d at 1123-1124.

On this statutory language, the court is presented with the question that in light of the married Debtors electing to file bankruptcy in California, for Debtor Terri Palacios desiring to claim a homestead exemption pursuant to California Code of Civil Procedure § 703.140, then joint Debtor Jose Palacios must "jointly may elect to utilize the applicable exemption provisions of [Chapter 7 of the California Code of Civil Procedure]."

This separate residing of spouses is discussed in 8 WITKIN CALIFORNIA PROCEDURE 6TH ENFORCEMENT OF JUDGMENTS § 248 (2024), stating:

> (3) Effect of Spouses Residing Separately. If a judgment debtor and the debtor's spouse reside in separate homesteads, only one homestead is exempt and only the proceeds of the exempt homestead are exempt. (C.C.P. 704.720(c).) (On application of exemptions to marital property, see C.C.P. 703.110, supra, § 199.)

SEPTEMBER 24, 2024 HEARING

Based on the pleadings filed to date, the court has not been presented with the legal authorities and analysis for the legal conclusions, and the evidence for the court to make necessary factual objective and subjective (which must be based on objective evidence) factual findings to determine where the Debtors are domiciled and whether there may be two different sets of statutory exemptions claimed in this Bankruptcy Case.

At the Hearing, the Parties agreed to continue the hearing for a Scheduling Conference to address the scope of any evidentiary hearing, the legal issues presented, the scope of their dispute, and other issues for the effective administration of this Contested Matter.

The hearing on the Objection to Claimed Exemptions is continued to 1:30 p.m. on October 22, 2024 (Specially Set Time) for a Scheduling Conference. The Parties shall file, whether jointly or severally, a Status Report on or before October 15, 2024, addressing how this matter will proceed and the scope of any evidentiary hearing.

October 22, 2024 Hearing

The court continued the hearing on this Objection to afford the parties time to decide how they wish to proceed with prosecuting and defending against the Objection. The court set the following dates in continuing the hearing: "[t]he Parties shall file, whether jointly or severally, a Status Report on or before October 15, 2024, addressing how this matter will proceed and the scope of any evidentiary hearing." Order, Docket 85.

On October 15, 2024, Trustee filed a Status Report that appears to represent the status of both parties. Docket 87. Trustee states:

1. The parties agree that both separate Debtors are respectively domiciled in separate states, and this no longer remains an issue. *Id.* at 1:23-27.

2. What remains an issue is whether the joint Debtors are entitled to claim two sets of exemptions, one for Arizona and one for California. Despite conducting extensive research, the parties have been unable to find any cases on point beyond what the court has already found. Both parties agree that if the court would like for them to conduct further research and/or further brief the issue, then they are willing to do that, but they are also both willing to submit the matter to the court at this time on the remaining issue. *Id.* at 2:1-23.

3. Trustee argues that the Debtors cannot claim two states' exemptions as that would amount to stacking exemptions. Debtor would be required to pay much more to unsecured creditors if two sets of exemptions were not permitted. Trustee argues that, in this joint case, there is only one Bankruptcy Estate of which the community property constitutes, so only one set of exemptions may be used. *See Talmadge v. Duck*, 832 F.2d 1120 (9th Cir. 1987). Status Report 3:1-4:12, Docket 87.

4. Debtor argues that since the Debtors are claiming separate state exemptions, there is no stacking of exemptions, so Debtor should be entitled to claim both sets of exemptions. *Id.* at 4:13-17.

In the above, the Parties appear to state that the two debtors, husband and wife, and the parents of their one child, are permanently indefinitely residing in different locations, thus creating two different "domiciles." Thus, Debtor Terri Palacios presents to the court that she is and permanently intends to live separate and apart from children. (See discussion herein of domicile being more than where someone happens to currently reside.)

At the hearing, the court addressed with the Parties the need to file supplemental pleadings on the issue of whether two homestead exemptions can be claimed by one married couple.

Supplemental Pleadings shall be filed by the Parties on or before November 15, 2024.

The hearing on the Objection to Claimed Exemptions is continued to 1:30 p.m. on December 10, 2024 (Specially set time).

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

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

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

IT IS ORDERED that the Objection to Claimed Exemptions is **xxxxxxx**.

5.	**24-20837-E-13 JLL-2**	**TERRI COOK PALACIOS AND JOSE PALACIOS** **Leo Spanos**	**CONTINUED MOTION TO CONFIRM PLAN** **7-16-24 [46]**

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 July 22, 2024. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm is xxxxxxx.

December 10, 2024 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the Trustee's Objection to Claimed Exemptions. A review of the Docket on December 4, 2024, reveals nothing new has been filed.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The debtor, Terri Lashai Cook Palacios and Jose Camacho Palacios ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for Debtor to pay $3,125 per month for 4 months, then $3,590 for 46 months, then $4,496 for 10 months with general unsecured creditors receiving a 41% dividend. Amended Plan, Docket 49. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 27, 2024. Docket 65. Trustee opposes confirmation of the Plan on the basis that:

A. Unsecured creditors may not be receiving what they would receive in the event of a hypothetical Chapter 7 liquidation, 11 U.S.C. §1325(a)(4). Debtors' First Amended Plan proposes to pay no less than 41% of $224,408.00 (or $92,007.28) to unsecured creditors and $68,896.00 to priority claims, for a total of $160,903.28. However, Trustee calculates Debtor has $245,481 of non-exempt assets listed in ths Amended Schedule A/B. This liquidation analysis relies in part on Chapter 7 Trustee's Objection to Claimed Exemptions which is set for hearing on September 24, 2024. Obj. 1:23-2:11, Docket 65.

B. Debtors Plan relies on the Motion to Avoid Lien of Regions Bank/Enerbank USA, which is to be heard in conjunction with this Motion. *Id.* at 2:12-17.

C. Debtors failed to attach a statement for property or business income. *Id.* at 2:18-19.

DISCUSSION

Liquidation Analysis

Trustee argues that Debtor may potentially fail a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." Here, General unsecured creditors will receive a 41% distribution, Am. Plan, Docket 49 § 3.12.

The Trustee estimates Debtor has $245,481 in non-exempt equity in assets of the estate. Trustee's calculation hinges on whether the court sustains trustee's Objection to Claimed Exemptions, which is set for hearing on September 24, 2024.

The Objection to Exemptions arises from the two Debtors attempting to claim exemptions under Arizona law and also under California law. Dckt. 61. In substance the two Debtor are seeking to claim two

separate homestead exemptions. Additionally, the two Debtors seek to claim double exemptions in all assets, stating exemptions under California law and Arizona law for each asset on Schedule C.

The court has granted by final ruling the related Motion to Avoid Lien, so this part of the opposition is rendered moot.

Failure to File Business Documents Required by Schedule I

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

At the hearing, counsel for the Trustee reported that the hearing on the Objection to Exemptions is set for 2:00 p.m. on September 24, 2024.

September 24, 2024 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the Trustee's Objection to Claimed Exemptions.

At the Hearing, the Parties agreed to continue the hearing on this Motion to the same day and time of the Scheduling Conference on the Trustee's Objection to Exemptions.

The hearing on the Motion to Confirm the Amended Plan is continued to 1:30 p.m. on October 22, 2024 (Specially Set Time) , to be conducted in conjunction with the Scheduling Conference for the Trustee's Objection to Exemptions.

The hearing on the Motion to Confirm is continued to 2:00 p.m. on September 24, 2024, to be conducted in conjunction with the hearing on the Objection to Exemptions.

October 22, 2024 Hearing

The court continued the Motion to Confirm to be heard in conjunction with the Objection to Exemptions.

The court having set a supplemental briefing schedule and continued hearing on the Objection, the hearing on the hearing on the Motion to Confirm is continued to 1:30 p.m. on December 10, 2024 (Specially set time).

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, Terri Lashai Cook Palacios and Jose Camacho Palacios ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm is **xxxxxxx**.

FINAL RULINGS

6.	**17-27346-E-13** **DPC-13**	**KENNETH TABOR** **Scott Shumaker**	**CONTINUED MOTION TO DISMISS CASE** **10-7-24 [282]**

Final Ruling: No appearance at the December 10, 2024 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on October 7, 2024. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is dismissed without prejudice.

December 10, 2024 Hearing

Trustee, having filed an *Ex Parte* Motion to Dismiss the pending Motion on December 3, 2024, Docket 293; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

REVIEW OF THE MOTION

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

1. The debtor, Kenneth Roger Tabor ("Debtor"), is delinquent $7,780.00 in plan payments. Debtor will need to have paid $9,725.00 to become current by the hearing date. Mot. 1:19-22, Docket 282.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 284.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration of his attorney on October 29, 2024. Dockets 286, 287. Debtor's attorney states the delinquency will be cured prior to the hearing date.

DISCUSSION
Delinquent

Debtor is $7,780.00 delinquent in plan payments, which represents multiple months of the $1,945.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

On November 6, 2024, the Trustee filed a Reply, stating that while the Trustee has received a payment of $6,441.38, that is not sufficient in light of the $946.22 mortgage payment that is part of the Plan.

The Trustee computes that $1,026.26 must be paid prior to November 25, 2024. Counsel for the Debtor concurred in the amount and stated it would be paid prior to November 25, 2024.

At the hearing, counsel for the Trustee reported that there is one payment remaining on the Plan payment.

The Trustee concurred with the Debtor's request for a short continuance so that the Plan can be completed and this Case concluded.

The hearing is continued to 1:30 p.m. on December 10, 2024 (Specially Set Time and Date).

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

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