UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

December 10, 2024 at 2:00 p.m.

1.	**24-25153-E-13** **THN-2**	**CLAUDINE BINGHAM** **Teresa Hung-Nguyen**	**MOTION TO EXTEND AUTOMATIC STAY O.S.T.** **11-29-24 [24]**

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2024. By the court's calculation, 6days' notice was provided. The court set the hearing for December 10, 2024. Dckt. 33.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is granted.

Claudine Marine Bingham ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 24-23753) was dismissed on August 30, 2024, for failing to timely file documents in the case. *See* Order, Bankr. E.D. Cal. No. 24-23753, Dckt. 26, August

30, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor filed on an emergency basis in *pro se* to stop a foreclosure on her home, being unable to prosecute the case on her own. Mot. 4:1-7, Docket 24. However, Debtor's income is stable and consistent as the sources are: social security, pension, and IHSS payments for taking care of her sister. *Id.* at 5:10-13. The Motion states Debtor is sincere in her desire to pay off her debts and is only in bankruptcy due to falling prey to a scam that led to her falling behind on her mortgage. *Id.* at 6:4-8.

Debtor affirms these facts in her Declaration filed in support, stating she "filed this case in good faith and will conduct this case responsibly as [she] did and intended to in the previous case. [She is] not trying to abuse the system, avoid any creditors or delay payment(s) to them. First and foremost, [she] is filing this case to propose a fair and equitable repayment solution to all bona fide secured, priority and unsecured debt [she has] incurred. Additionally, [she] intends to pursue this case with the same integrity and responsibility that [she] displayed in the previous case. Decl. ¶ 8.A., Docket 25.

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is Motion is granted, and the automatic stay is extended for all purposes and parties, through **xxxxxxx**. The final hearing on this Motion shall be conducting on **xxxxxxx**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Claudine Marine Bingham ("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 on an interim basis, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court, through and including xx:xx x.m. on xxxx, 202x.
>
> **IT IS FURTHER ORDERED** that the final hearing on this Motion shall be conducted at xxx p.m. on xxxx, 202x. Debtor shall provide notice of the continued hearing on or before xxxx, 202x, with written oppositions, if any, filed and served on or before xxxx, 202x; and replies, if any, filed and served on or before xxxx, 202x.

2. 24-23181-E-13 PGM-2 MICHAEL/ANGELIQUE VALERA Peter Macaluso MOTION TO CONFIRM PLAN 11-5-24 [47]

Item 2 thru 3

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

Local Rule 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 parties in interest,, and Office of the United States Trustee on November 5, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxxxx.

The debtor, Michael Anthony Valera and Angelique Marie Valera ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid $6,650 through October of 2024 with payments of $6,400 monthly to commence November 25, 2025 for 57 months with 0% to unsecured claimants. Amended Plan, Docket 51. 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 November 25, 2024. Docket 73. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has not amended their Schedule A/B to include a refund check from Selene, in the amount of $5,624.44, from their previous bankruptcy case, despite indicating to the Trustee they would do so. *Id.* at 2:6-12.

B. Debtors' Plan relies on the Motion to Value Collateral of Franchise Tax Board, which is being heard in conjunction with this Motion. *Id.* at 2:13-17.

CREDITOR'S OPPOSITION

California Franchise Tax Board ("Creditor") filed an Opposition on November 25, 2024. Docket 67. Creditor opposes confirmation of the Plan on the basis that:

A. Debtor's Plan impermissibly seeks to modify Creditor's claim where it seeks to value the secured portion at $27,800.26, but Creditor calculates its secured claim should at least be in the amount of $48,275.66. *Id.* at 4:26-5:7.

B. Debtors projected future net income of $6,400 is not supported by the evidence. Debtor projects to earn $25,000 per month from Mr. Valera's demolition business, but the historical figures have been much lower than that projection. *Id.* at 5:9-24.

DEBTOR'S REPLY

Debtor filed a Reply to both Trustee and Creditor on December 3, 2024. Docket 79. To Trustee, Debtor states they have filed the Amended Schedule A/B to address Trustee's concerns. Debtor has further agreed to increasing the amount of Creditor's secured claim in the Motion to Value as the court sees fit.

In response to Creditor, Debtor states the Plan is feasible. Debtor also states the HOA lien is going to be senior to Creditor's tax lien.

DISCUSSION

It appears Debtor has addressed Trustee's concerns regarding amending Schedules. At the hearing, **xxxxxxx**

The court finds that the evidence does support Debtor's projected future net income of $6,400. The record shows Debtor appears to be current under the terms of the proposed Plan. Debtor's Amended Schedules I and J show a combined monthly income of $10,125.58, which is in line with Debtor's historical earnings operating the demolition business. Am. Schedule I at 5:12, Docket 52. Debtor has testified that they are able to make all payments under the Plan. Decl. ¶ 11, Docket 50. Therefore, this portion of Creditor's argument is denied.

The main lynchpin of this Plan depends on the outcome of the Motion to Value, being heard in conjunction with this Motion. At the hearing, **xxxxxxx**

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

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on November 5, 2024, 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.

3. 24-23181-E-13 PGM-3 — MICHAEL/ANGELIQUE VALERA — Peter Macaluso — MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD — 11-11-24 [55]

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, Franchise tax Board, parties in interest,, and Office of the United States Trustee on November 11, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Franchise Tax Board ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $48,275.66.

The Motion to Value filed by Michael Anthony Valera and Angelique Marie Valera ("Debtor") to value the secured claim of Franchise Tax Board ("Creditor") is accompanied by Debtor's declaration.

Declaration, Docket 58. Debtor is the owner of the subject real property commonly known as 2152 Moonstone Avenue, Sacramento, CA 95835 ("Property"). Debtor seeks to value the Property at a fair market value of $550,000.00 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).

Creditor has filed an Amended Proof of Claim in this case (POC 9-2) stating their claim is secured in the amount of $167,262.90 and a general unsecured claim in the amount of $11,019.53.

Debtor identifies the following liens on the Property that they claim are senior in priority to Creditor's liens:

1. Selene Financial: $496,706.34
2. Natomas HOA: $20,475.40
3. IRS Lien: $5,018.00

Mot. 2:19-21, Docket 55. *See* Schedule C, Docket 1. After subtracting the value of those liens, there would be $27,800.26 in net equity for Creditor's lien to attach.

The Chapter 13 Trustee filed a Nonopposition on November 26, 2024. Docket 76.

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

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

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

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

OPPOSITION

Creditor has filed an Opposition on November 25, 2024. Docket 70. Creditor states:

1. The HOA lien is not senior in priority to Creditor's lien. *Id.* at 3:19.

2. A homeowners' association lien created pursuant to Cal. Civ. Code § 5675 is prior only to liens "recorded subsequent to the notice of delinquent assessment." Cal. Civ. Code § 5680.

3. The HOA Lien itself states that its Notice of Delinquent Assessment was made pursuant to Cal. Civ. Code § 5740. POC 16-1 at 6. ("[I]n accordance with 5740 of the California Civil Code … [Natomas Park Master Association] hereby claims a lien for the following amount…"). The 2020 FTB Lien, in the current amount of $149,167.72, was recorded on August 5, 2020. *See* POC No. 9-2 at 5. The 2020 FTB Lien is therefore senior to the HOA Lien. Cal. Civ. Code § 5680.

4. Therefore, accepting Debtor's opinion of the fair market value of the Subject Property at $550,000, FTB's secured claim would be no less than $48,275.66 ($550,000 minus $517,181.74 in senior liens). Opp'n at 4:25-5:2.

5. Creditor reserves its right to assert that, to the extent that Debtors reduce FTB's secured claim to the FTB's interest in the Subject Property, any remaining unsecured claim is nondischargeable and may be asserted as a lien on the Subject Property after conclusion of Debtors' bankruptcy case. *Id.* at 5:21-23.

DEBTOR'S REPLY

Debtor filed a Reply on December 3, 2024. Docket 78. Debtor agrees the HOA lien is not senior in priority, but states the correct arithmetic outcome of Creditor's secured claim is $38,274.66, not $48,275.66. Debtor agrees the Claim should be determined secured in the amount of $38,274.66.

DISCUSSION

The court calculates, when removing the HOA lien, the senior in priority liens are as follows: Selene Financial in the amount of $496,706.34 + IRS Lien in the amount of $5,018.00 = $501,724.34. Therefore, subtracting this figure from the fair market value of $550,000, that would leave $48,275.66 in equity for Creditor's lien to attach. It appears Creditor made a typo when adding the senior in priority liens but did ultimately arrive at the correct amount of available equity for its lien to attach. Debtor, in their formula, used the incorrect calculation of senior in priority liens Creditor provided in its opposition to arrive at the incorrect figure of $38,274.66.

At the hearing, **XXXXXXX**

Therefore, Creditor's secured claim is determined to be in the amount of $48,275.66, the value of the nonexempt equity in the collateral, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). 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 Michael Anthony Valera and Angelique Marie Valera ("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 Franchise Tax Board ("Creditor") secured by a recorded tax lien against the real property commonly known as 2152 Moonstone Avenue, Sacramento, CA 95835, is determined to be a secured claim in the amount of $48,275.66. The value of the Property is $550,000 and is encumbered by senior liens securing claims in the amount of $501,724.34, which do not exceed the value of the Property that is subject to Creditor's lien.

4. 22-23383-E-13 LORRAINE COHEN
Chinonye Ugorji

CONTINUED MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF $ 5420.91
9-10-24 [52]

CASE CLOSED: 01/22/24

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—Opposition Filed.

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 June 11, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Application for Unclaimed Funds 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). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Application for Unclaimed Funds is xxxxxxx.

December 10, 2024 Hearing

The court continued the hearing to allow Applicant to upload some evidence that he is entitled to claim the unclaimed funds, showing that he is successor to Debtor, and also providing Applicant an opportunity to file a certified certificate of death with the court. As of the court's review of the Docket on December 6, 2024, nothing new has been filed with the court.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

This matter comes before the Court pursuant to 11 U.S.C. § 347(a), 28 U.S.C. § 2042, and the application of Eddie Cohen III ("Applicant"), seeking payment of funds previously unclaimed by Lorraine Cohen in the above-entitled case.

The Application states that Eddie Cohen III states that he is a representative of Lorraine Cohen's estate. Application, § 3; Dckt. 52 at 2. No documentation of being such a representative is provided.

A document titled Report of Death of a U.S. Citizen or U.S. Non-Citizen National Abroad is attached to the Application. *Id*. at 13. This document is not under seal or certified by the government agency.

Applicant has not presented the court with any evidence that Applicant is entitled to claim any unclaimed funds in this case. There is no probate order or similar document that shows Eddie Cohen III is the lawful representative entitled to claim unclaimed funds of Lorraine Cohen in this case.

At the hearing, the court addressed with Applicant the absence of evidence showing that he is the successor to the Debtor, nor there being a certified certificate of death.

The Applicant requested a continuance so that he can obtain such documentation.

The hearing on the Application for Unclaimed Funds is continued to 2:00 p.m on December 10, 2024.

The court shall issue an order stating:

> The Motion for Payment of Unclaimed Funds filed by Eddie Cohen III ("Applicant"), 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 Application for Unclaimed Funds is **XXXXXXX**.

5. 20-24311-E-13 BB-1 | **JASON DIVEN, Bonnie Baker** | **CONTINUED MOTION TO MODIFY PLAN, 8-5-24 [158]**

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 parties in interest, parties requesting special notice, and Office of the United States Trustee on August 5, 2024. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxxxx .

December 10, 2024 Hearing

The court continued the hearing on this Motion so the Parties may address and document the final amendments to the Plan so it may be confirmed. On November 14, 2024, Debtor submitted multiple supplemental pleadings. Dockets 185-190. Debtor provides a long history and overview of the case. Brief at 2-7, Docket 185. Ultimately, Debtor argues he is contributing all of his disposable income to the Plan, so it should be confirmed. *Id.* at 8.

Trustee filed a Response that should resolve this Motion on November 25, 2024. Docket 198. Trustee states:

> Debtor's response is convoluted and confusing and does not appear to resolve the Trustee's issues that are stated in the Objection to Confirmation. . . However, Trustee has reviewed the case, and the Debtor is in month 50 of a 60-month plan. All of the secured and administrative creditors have been paid and the unsecured

creditors have received approximately 9.16% toward the 21% of their claims that the confirmed plan, and the proposed modified plan proposes to pay them. **The Trustee estimates that the plan needs an additional $27,565.10 in order to fund the plan as proposed. If the Debtor pays $2,505.92 a month for the remaining 11 months of the plan, starting 11/25/2024, then the plan can complete timely.** From what the Trustee can tell after reviewing the Debtor's Supplemental Schedule I and J, this amount might be feasible for the Debtor to pay every month. If the Debtor agrees to this amount, then the Trustee would request that the Debtor's plan be confirmed with payments as follows: $65,584.38 total paid into the plan through 10/25/2024 and then starting 11/25/2024 (month 50) and continuing monthly until the end of the 60-month plan, Debtor will pay $2,505.92 a month, paying 21% to the unsecured creditors.

Resp. 1:25-2:19, Docket 198 (emphasis added).

Debtor's recently filed Supplemental Schedule J shows a monthly disposable income of $3,041, and so this monthly payment appears feasible to complete the Plan. Thus confirming Debtor is able to make these final ten monthly payments in the amount of $2,505.92 each.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The debtor, Jason Diven ("Debtor") seeks confirmation of the Modified Plan based on Debtor inadvertently overlooking the required step up in plan payments on month 37 of the Plan, thereby becoming delinquent. Mot. 2:17-21, Docket 158. The Modified Plan provides for payments of $1,000 per month for the first 36 months, then a step up of $1,773.30 per month for 24 months starting on month 37. Modified Plan, Docket 162. Debtor also will pay into the Plan his Federal Tax Refund, including a refund of $7,700 for 2023. *Id.* Debtor's Modified Plan further proposes a second step-up payment beginning on month 47 [sic] in the amount of $2,995 for the final 13 months of the Plan. *Id.* It is not clear if this second proposed step up is in addition to or replaces the step up provision provided for in paragraph 2 of Section 7 of the Plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on September 10, 2024. Docket 166. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may not be committing all disposable income to the Plan. Schedule I shows that the Debtor has a monthly income of $12,126.00 and Schedule J shows the Debtors monthly expenses are $6,154.00, leaving $5,982.00 in monthly net income. Yet, the plan is proposing plan payments of $2,995.00 (or potentially $4,768.30) for the remaining 13 months of the plan, this is a total of at least $2,987.00 that the Debtor is not contributing into the Plan. Opp'n 2:3-8, Docket 166.

B. Furthermore, it appears Debtor has made an agreement with a cattle owner to purchase 1/3 of his cows for $2,600.00 per pair and Debtor will receive 4 payments of $16,250.00 each. It does not appear that this income will be contributed to the plan. *Id.* at 2:9-12.

C. The Modified Plan is changing the interest rate for secured creditor Siskiyou County Farm Service Agency from 2.625% to 2.20%. The claim has already been paid in full and the interest was paid at 2.625% per the Order Confirming Plan. *Id.* at 2:19-21.

D. Debtor is slightly paid ahead, although the terms of the Plan require clarification to determine how much has been paid ahead. *Id.* at 2:26-27.

E. Debtor cites to no legal authority in support of the Motion to Confirm Modified Plan. *Id.* at 3:11-14.

F. Debtor has not submitted to the Trustee his 2023 tax returns or any refund that was received for that tax year which is estimated at $7,700.00 in the plan. *Id.* at 3:16-19.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration on September 17, 2024. Dockets 171, 172. Debtor states:

A. Debtor requests in the order confirming that the interest rate for secured creditor Siskiyou County Farm Service Agency be 2.625%, not 2.20%.

B. Debtor's second proposed step up in paragraph 4 of Section 7 of the Plan is to start on month 47, not 37 as mistakenly submitted. *Id.* at 1:27-28.

C. Debtor has filed a Declaration that has clarified fluctuations on income, and he will file amended profit and loss statements showing certain fluctuations not reflected on an annual profit and loss statement, which is equally divided into monthly allotments. *Id.* at 2:2-5.

D. Debtor requests the Plan be confirmed pursuant to 11 U.S.C. § 1329 and inadvertently left out the applicable code section in the Motion. *Id.* at 2:9-11.

Debtor states in his Declaration in support:

A. Debtor is in the construction business, and payments do not come in on a regular basis. Decl. 1:25-2:1, Docket 172.

B. As such, Debtor cannot say for sure that he will always keep the same level of income as indicated by the average profit and loss provided. *Id.* at 2:2-6.

C. Debtor also needs a certain amount of cash on hand at all times to finance and pay advances on job material, pay subcontractors, and keep up with normal bills. *Id.* at 2:7-9.

D. Debtor's ranching business is seasonal. He has provided a yearly profit and loss statement, but he only receives pasture rent for the months of June to November. Furthermore, weather conditions may limit this income, such as droughts. *Id.* at 3:1-12.

E. Debtor testifies he cannot allocate the full amount of the average profit and loss provided, considering these contingencies in his line of work. *Id.* at 3:13-23.

F. Debtor has no problem submitted his 2023 tax refunds to the Trustee as a plan contribution. *Id.* at 3:25-4:2.

DISCUSSION
Providing Disposable Income

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

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

This is an interesting case where the most recently Amended Schedules submitted show Debtor may have up to $5,982 in net income, but Debtor is proposing plan payments of either $4,768.30, or $2,995, depending on how the Plan's terms are to be understood. Am. Schedule J at 2:23c, Docket 157. Debtor explains that the figures provided are averages, subject to change month to month. Debtor further explains he must have a certain amount of cash on hand to fund his construction jobs. As such, Debtor argues the proposed payments are his best efforts.

It appears Debtor has worked with Trustee to resolve the remainder of the issues in trustee's Opposition. Debtor has submitted to the correct interest rate for the secured claim of Siskiyou County Farm Service Agency, Debtor will submit the tax refunds for the year 2023, and Debtor can correct the amount paid ahead in the order confirming. Debtor has further corrected the issue of failing to cite to legal authority, proposing confirmation pursuant to 11 U.S.C. § 1329.

At the hearing, counsel for the Debtor reported that some issues have been resolved. With respect to the step-up payment starting in month 47 (August 2024) to $2,995.00. The Debtor is also paying his 2023 tax refund into the Plan, which is $12,284.00, and the cattle payment of $16,250.00 in February 2025.

Counsel for the Trustee responded, stating that further clarifications and documentation of amendments are necessary.

The Parties agreed to an extended continuance of the hearing to allow for them to address and document the final amendments to the Plan so it may be confirmed.

The hearing on the Motion to Confirm the Modified Plan is Continued to 2:00 p.m. on December 10, 2024. Supplemental Pleadings by the Debtor shall be filed and served on or before November 8, 2024. Supplemental Opposition shall be filed and served on or before November 22, 2024. Replies, if any, may be presented orally at the hearing.

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, Name of Debtor ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Modified Plan is granted, and the Modified Plan filed on August 5, 2024 is confirmed, as amended to state: "$65,584.38 total has been paid into the plan through October 25, 2024 and then starting November 25, 2024 (month 50) and continuing monthly until the end of the 60-month plan, Debtor will pay $2,505.92 a month, ultimately paying 21% to the unsecured creditors." 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.

6. 21-20814-E-13 PGM-2 | **ARLEANER COLLINS** | **Peter Macaluso**

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR

Item #2 on the 1:30 Calendar

11-5-24 [61]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors that have filed claims, and Office of the United States Trustee on November 5, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Substitute 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 to Substitute is granted.

Proposed successor-in-interest, Hosea Wheeler, seeks an order approving the motion to substitute Mr. Walker for the deceased Debtor, Arleaner Collins. [Fn.1.] Mr. Wheeler is the deceased Debtor's God Son who wishes to continue making timely payments, and ultimately sell the Deceased Debtor's residence. Mot. ¶ 5, Docket 61. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016 and 7025.

FN. 1. The Motion states that both the Deceased Debtor and Hosea Walker, by and through her (Deceased Debtor's) attorney moves the court for this order. It is Hosea Walker who is seeking the relief, as a deceased person is not a party who may seek relief from the court.

Debtor filed for relief under Chapter 13 on March 9, 2021. On May 13, 2021, Debtor's Chapter 13 Plan was confirmed. Dckt. 31. On June 16, 2024, Debtor Arleaner Collins passed away. Mr. Wheeler asserts that he is the lawful successor and representative of Debtor. Decl. ¶ 4, Docket 63.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Mr. Wheeler requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Certificate of Death was filed on November 5, 2024. Docket 60.

Mr. Wheeler also requests the court waive the 11 U.S.C. § 1328 certifications.

Debtor's attorney, Mr. Macaluso, uses the names "Hosea Walker" and "Hosea Wheeler"interchangeably as the successor-in-interest in the Motion. Debtor's attorney also refers to the proposed successor-in-interest as "her" and "son," seemingly confusing the gender of the proposed successor-in-interest.

At the hearing, **xxxxxxx**

Chapter 13 trustee filed a Nonopposition on November 26, 2024. Docket 66. Trustee informs the court there is a slight delinquency, and Trustee expresses some concerns over Mr. Wheeler's Declaration, including that Mr. Wheeler's Declaration contains much factual and legal testimony. However, Trustee does not oppose the Motion.

At the hearing, **xxxxxxx**

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement**

> **of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge. The rule allows for waiver of the certification requirements, only "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." Local Bankruptcy Rule 1016-1(b)(4).

Here, Mr. Wheeler has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Based on the evidence provided, the court determines that further administration

of this Chapter 13 case is in the best interests of all parties, and that Mr. Wheeler, as the God Son of the deceased party and as the successor's heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Arleaner Collins. The court grants the Motion to Substitute Party.

Waiver of 11 U.S.C. § 1328 Certifications

The Motion requests that the court waive the 11 U.S.C. § 1328 requirement for the Debtor and waive the requirement for the Debtor to complete the post-petition Financial Management course. This request is tacked to the end of the prayer for relief. Congress provides for the following certifications as a condition of obtaining a discharge in a Chapter 13 Case:

> (a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in t**he case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation**, after such **debtor certifies that all amounts payable under such order or such statute** that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) **have been paid,** . . .
>
> (g)
> (1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.
>
> (2) Paragraph (1) shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).
> . . . .

Waiver of the Debtor taking a post-petition financial management course specified in 11 U.S.C. § 1328(g) is warranted. However, it is not explained how if there is a domestic support obligation, it cannot be certified as paid or stated that none exists.

> At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by 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 Hosea Wheeler is substituted as the successor-in-interest to Arleaner Collins and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the Requirement for Debtor to complete the post-petition Financial Management course as provided in 11 U.S.C. § 1328(g) is waived, and ~~the requested waiver of 11 U.S.C. § 1328 Certification is granted.~~

7. 24-23517-E-13 HRH-1 | **KENDRON FRYER** | **Peter Macaluso** | **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** | **8-20-24 [13]**

CROSSROADS EQUIPMENT LEASE AND FINANCE VS.

Item 7 thru 8 (confirmation)

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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on August 20, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter xx 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, opposition was stated by the Debtor.

The Motion for Relief from the Automatic Stay is xxxxxxx.

December 10, 2024 Hearing

The court continued the hearing on this Motion to be conducted in conjunction with the Motion to Confirm. At the hearing, **xxxxxxx**

REVIEW OF MOTION

Crossroads Equipment Lease and Finance, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Freightliner CA125SLP tractor truck, VIN ending in 0593 ("Vehicle"). The moving party has provided the Declaration of Rebecca Elli to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kendron Nisan Fryer ("Debtor"). Decl., Docket 16.

The Motion states that Movant and Debtor entered into a Master Lease Agreement (the "Agreement") on June 8, 2020, for the Vehicle. A copy of the Agreement is provided as Exhibit 1.

While titled as a Master Lease Agreement, this Agreement includes a provision whereby the Debtor may "purchase" the Vehicle from Movant. The terms of such purchase provided for in the Agreement are that the purchase price are the lease payments, and additional $101.00, and the sales tax for such purchase. The Agreement further states that it is "agreed" that the Vehicle has a value of only $101.00 at the end of the lease. Exhibit 1, Equipment Lease Schedule (TRAC Lease).

The lease commenced on June 8, 2020, and is for 54 months. The Lease, as computed by Movant, matures on June 22, 2025. There is less than one year remaining on this lease, the vehicle having already been exhausted through the first four years of the lease.

Movant argues Debtor defaulted under the terms of the loan agreement on March 22, 2024, and so Movant accelerated the balance of the loan in the amount of $23,071.70. Mot. 2:21-25, Docket 13. With fees and expenses, the total owed is $25,567.68 as of July 22, 2024. *Id.* at 2:26-3:3. Movant informs the court that this is the second Bankruptcy filing by Debtor in the past 30 days. In his first Chapter 13 case, case number 24-23792, Debtor did not file his Schedules and Plan, so the case was subsequently dismissed on August 6,2024. Movant moves this court for an order granting relief pursuant to 11 U.S.C. § 362(d)(1).

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. 3, Docket 17. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

REVIEW OF BANKRUPTCY FILE

Debtor commenced this Chapter 13 Bankruptcy Case on August 9, 2024, and is prosecuting it in *pro se*. As Movant notes, Debtor had one prior bankruptcy case in this District, 24-23192, that was filed on July 22, 2024, and dismissed on August 6, 2024. Debtor attempted to prosecute that case in *pro se*.

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 $25,567.68 (Declaration ¶ 9, Docket 16), while the value of the Vehicle is determined to be $27,725, as stated on the J.D. Power Valuation Report.

Debtor filed a proposed Chapter 13 Plan on August 9, 2024. Dckt. 7. The basic terms of the Chapter 13 Plan are:

1. Monthly Plan payments of $881 for a term of thirty-six (36) months. Plan, ¶¶ 2.01, 2.03; Dckt. 7.

2. Movant's Claim is provided for in Class 1, with a stated arrearage of ($3,000), plus an 11% interest rate on the arrearage. No amount of arrearage dividend is stated and no amount of the regular post-petition monthly payment is stated to be paid. *Id*.; ¶ 3.07.

3. No claims are provided for in Classes 2, 3, 4,6, or 7, with those sections of the Plan left blank. *Id*.; ¶¶ 3.08, 3.09, 3.10, 3.13, 3.14.

4. Debtor states that there is ($26,000) in Class 5 priority claims to be paid. *Id*.; ¶ 3.12.

On August 26, 2024, the Debtor filed a Motion to Confirm the Chapter 13 Plan. Debtor set the hearing on the Motion to Confirm for October 8, 2024. Ntc of Hrg.; Dckt. 24. No Certificate of Service has been filed by Debtor.

Review of Schedules

On Schedule A/B (assets) filed by the Debtor, the only vehicle listed is a 2005 Ford Expedition. Dckt. 1 at 14-15. Nothing is listed for machinery or equipment used in a business. *Id*.; at 21. The 2016 Freightliner CA125SLP tractor truck is not listed as an asset of the Debtor on Schedule A/B.

The court notes that Debtor has not claimed any exemptions on Schedule C. *Id*. at 23-24.

Debtor does list Movant on Scheduled D (secured claims) as having a claim in the amount of ($25,637.68) which is secured by a "semitruck 2016 freightliner." *Id*. at 25.

No other creditors are listed on Schedule D, and no creditors are listed on Schedule E/F (priority and general unsecured claims. *Id*. at 25 - 31.

On Schedule I Debtor lists having $10,000 a month in income (which includes $1,000 a month from his non-debtor spouse). *Id*. at 38-39. This is gross income, with no deductions for taxes, insurance, or other amounts.

On Schedule J, Debtor lists having ($8,649) a month in expenses for his family unit of three persons (Debtor, non-debtor spouse, and one child). *Id*. at 40-42. No provision is made for payment of income or other taxes on Schedule J.

It is not clear from the Schedules whether Debtor is an employee (whereby the employer is making the mandatory withholding and deductions for taxes, Social Security, and the like), or whether the Debtor is self-employed or an independent contractor.

Motion to Extend Automatic Stay

On September 3, 2024, the Debtor filed a Motion to Extend Automatic Stay. Dckt. 25. Debtor also filed a Notice of Hearing on Motion to Extend Automatic Stay on September 3, 2024, and set the hearing on the Motion to Extend for 1:30 p.m. on September 10, 2024. Dckt. 26.

The grounds stated in the Motion to Extend are quite simple and straightforward, as follows (identified by paragraph number in the Motion):

> 1. The Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on 08/09/2024.
>
> 2. The automatic stay provided by 11 U.S.C. § 362(a) is set to expire on 09/09/2024.
>
> 3. The Debtor requires additional time to reorganize his/her financial affairs and has already filed a motion with this court to confirm chapter 13 payment plan. Debtor has also filed a notice of hearing with this court.
>
> 4. The Debtor has acted in good faith and has not previously requested an extension of the automatic stay in this case.

Motion, Dckt. 25. No Declaration or other evidence is filed in support of the Motion to Extend.

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).

In this case, Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) for cause, and in the Motion states that cause exists because:

> [t]he interests of Movant in the Trust are not adequately protected. Debtor is not making any payments to Movant pursuant to the Agreement, Debtor has filed a

> second Bankruptcy case within the past 30 days, this case was filed in bad-faith, Debtor does not have any equity in the Truck after costs of sale and the Truck is not necessary for an effective reorganization, and the automatic stay will automatically expire on September 9, 2024, pursuant to 11 U.S.C. § 362(c)(3)(A).

Motion, p. 1:27-2:4; Dckt. 13.

It is true that the record shows a prepetition delinquency; however, Debtor has filed a Plan and proposes payments to Movant in that Plan. Plan, Docket 7. Movant does nothing to argue how the proposed plan payments do not provide adequate protection or provide for Movant's claim. Movant has merely stated that Debtor is in default, which is presumably why this Debtor (and all debtors) filed bankruptcy. There is no legal authority presented showing why a prepetition default is grounds for 11 U.S.C. § 362(d)(1) relief when a debtor has a plan and Motion to Confirm on file providing for that creditor's claim. Movant has not provided the court with grounds for relief under 11 U.S.C. § 362(d)(1).

Assertion that Stay Terminates 30 Days
After this Case Was Filed

In the Motion, Movant makes passing reference to 11 U.S.C. § 362(c)(3), stating:

> 13. Movant cannot proceed with its efforts to recover and sell the Truck in light of the automatic stay herein. Pursuant to 11 U.S.C. § 362(c)(3)(A), the automatic stay will automatically expire on September 9,2024.

Motion, ¶ 13; Dckt. 13. This is repeated as a basis for asserting that there is cause to grant relief pursuant to 11 U.S.C. § 362(d)(1).

In the Points and Authorities filed by Movant, no legal analysis is provided, no authorities stated, for Movant's repeated proposition:

> [a]nd the automatic stay will automatically expire on September 9,2024, pursuant to 11 U.S.C. § 362(c)(3)(A).

Points and Authorities, p. 4:2-3; Dckt. 15.

The Debtor has filed a Motion to Extend the Automatic Stay, in connection with the court provides a detained analysis of the reading of the plain language of 11 U.S.C. § 362(c)(3)(A) providing for the automatic stay to terminate only as to the Debtor, but it does not terminate as to the property of the bankruptcy estate and other parties in interest, such as the trustee (or person exercising the powers of a trustee). That discussion includes the following.

The language in 11 U.S.C. § 362(c)(3) expressly is limited to the Automatic Stay as it applies to the Debtor, **and only the Debtor**. This court first addressed the issue a number of years ago and then more recently in *In re Burns*, 639 B.R. 761 (Bankr. E.D. Cal. 2022). In *Burns*, the court provides a detailed analysis of statutory construction, statutory definitions, specific applications of the Automatic Stay to different persons or property (such as certain protections given to a debtor and other protections expressly given to property of the bankruptcy estate), and the application of 11 U.S.C. § 362(c)(4) in which Congress

expressly provides when no stay goes into effect in the "bankruptcy case," rather than merely stating it does not go into effect as to the debtor. *Id*.

In a Chapter 13 case, Congress provides in 11 U.S.C. § 1306 that in addition to all prepetition assets of the Debtor that become property of the Bankruptcy Estate pursuant to 11 U.S.C. § 541(a), the property of the Chapter 13 bankruptcy estate includes (emphasis added):

> § 1306. Property of the estate
>
> (a) Property of the estate includes, in addition to the property specified in section 541 of this title—
>
> > (1) **all property** of the kind specified in such section [541] that the **debtor acquires after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, or 11, or 12 of this title, whichever occurs first; and
> >
> > (2) **earnings from services performed by the debtor after the commencement of the case** but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.
>
> (b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

See, 7 Collier on Bankruptcy, Sixteenth Edition, ¶ 13.06.02[3].

In 11 U.S.C. § 362(a) Congress expressly provides for a multifaceted, multi-protected persons and properties in bankruptcy cases.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) **the enforcement**, against the debtor or **against property of the estate, of a judgment obtained before the commencement of the case under this title**;
>
> (3) **any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate**;
>
> (4) **any act to create, perfect, or enforce any lien against property of the estate**;

> (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title; . . . .

11 U.S.C. § 362(a) [emphasis added].

Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I).

This termination of the stay as it applies to the debtor, but not property of the bankruptcy estate, is also discussed in 3 Collier on Bankruptcy ¶ 362.06[3][a], which includes the following (emphasis added):

> [a] Scope of Stay Limitation
>
> There are certain limitations arising from the express wording of subsection (c)(3). **First, the stay terminates under this provision only "with respect to the debtor.**" As in other provisions in section 362, Congress sought in subsection (c)(3) to distinguish between actions taken against property of the debtor and property of the estate.[18] **This intent to limit the stay termination to actions against the debtor is made abundantly clear when the language in subsection (c)(3) is compared to the much broader scope of the parallel stay termination provision in subsection (c)(4)**[19] for a debtor who has had two dismissed cases within the prior year, particularly since both provisions were enacted at the same time as part of the 2005 amendments.[20] Thus, if there has been a **stay termination based on the operation of subsection (c)(3)** in a case filed within a year of a prior dismissal, **the automatic stay provided under section 362(a) continues to apply in that case as to actions taken against property of the estate**, but not as to actions against the debtor or property of the debtor that is not property of the estate.[21]

See referenced footnotes in the above quotation for case citations and statutory analysis.

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, in light of Debtor's lack of equity in the Truck, Debtor's failure to pay therefor, along with its depreciating nature, and his serial Bankruptcy filing, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 4:7-9, Docket 13.

September 6, 2024 Hearing

At the hearing, the Debtor stated his opposition to the Motion. The court addressed with the Debtor the shortcomings and challenges the Debtor faced in pursuing this Chapter 13 case in *pro se*.

The Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on October 8, 2024. Opposition pleadings by the Debtor or other party in interest shall be filed and served on or before September 24, 2024, and Reply pleadings, if any, shall be filed and served on or before October 1, 2024.

The Debtor having commenced Plan payments, and providing for Movant's secured claim in the proposed Plan, the Chapter 13 Trustee shall make a September 2024 disbursement of $1,484.99 to Movant on its secured claim based on the current proposed Chapter 13 Plan.

October 8, 2024 Hearing

The court continued the hearing on this Motion after Debtor appeared at the previous hearing and opposed the Motion. Opposition pleadings were to be filed and served on or before September 24, 2024, and Reply pleadings by the Debtor or other party in interest, if any, were to be filed and served on or before October 1, 2024. Docket 32. Trustee was also directed to make a disbursement of $1,484.99 to Movant on its secured claim.

On October 1, 2024, Debtor filed a late Opposition to the Motion. Docket 47. Debtor states his counsel was hired recently, on September 18, 2024, and they are working together on a new Plan. Docket 47.

At the hearing, the Parties agreed to a two week continuance to allow Debtor's counsel to address these issues.

The hearing is continued to 1:30 p.m. on October 22, 2024.

October 22, 2024 Hearing

The parties agreed to a continuance at the prior hearing, affording Debtor time to address Movant's issues in this Motion. Debtor informed the court he hired counsel recently, and an Amended Chapter 13 Plan will be on file.

On October 17, 2024, an Amended Plan was filed, along with a Motion to Confirm, which is set for hearing on December 10, 2024. Dckts. 63-66. The Parties agreed to continue the hearing on this Motion to be conducted in conjunction with the Motion to Confirm.

The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on December 10, 2024, to be conducted in conjunction with the Motion to Confirm the Chapter 13 Plan.

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 Crossroads Equipment Lease and Finance, 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**.

8. 24-23517-E-13 PGM-1 — KENDRON FRYER — Peter Macaluso — MOTION TO CONFIRM PLAN — 10-17-24 [63]

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 17, 2024. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Kendron Nisan Fryer ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid a total of $1,600.21 through October 2024 with Plan payments of $755.00 per month to commence on November 25, 2024 for 58 months. Amended Plan, Docket 66. 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 November 26, 2024. Docket 73. Trustee opposes confirmation of the Plan on the basis that:

A. There is no business attachment to Schedule I, although the Schedules reflect income from a business. The nature of Debtor's wife's contribution is also unclear in the Schedules. *Id.* at 2:26-2:3.

B. Schedule J fails to include any expenses for personal care, medical and dental expenses, entertainment, taxes or a car payment. These are all typical expenses that most Debtors have. Schedule J further does not provide for transportation expenses where Debtor works and has a school aged child so most likely is incurring some sort of expenses associated with transportation, especially where there is a significant expense ($1,124.62 a month) for car insurance. *Id.* at 2:4-11.

C. Debtor failed to accurately complete the Statement of Financial Affairs ("SOFA").

D. Debtor received a tax refund of $5,453.00 for the tax year 2023. No future tax refund income is projected on Schedule I. Where Debtor is receiving tax refunds of over $2,000, the Trustee believes the Debtor's tax withholding for taxes may be overstated and Debtor should be paying into the Plan any amount received in excess of $2,000 in net tax refunds received during the life of the Plan. *Id.* at 2:19-3:8.

DEBTOR'S REPLY

Debtor filed a Reply on December 3, 2024, acknowledging Trustee's concerns and stating he will file an Amended Plan to address these concerns. Docket 76.

DISCUSSION
Failure to File Business Documents Required by Schedule I

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

Moreover, Trustee argues Debtor should be contributing a portion of the tax refund into the Plan in the amount of funds in excess of $2,000. At the hearing, **xxxxxxx**

Problems with Schedules

Trustee argues that Schedule J lacks normal expenses that should be present, such as personal care, medical and dental expenses, entertainment, taxes, car payment, or transportation costs. However, upon review of the Amended Schedule I and J at Docket 61, Debtor has listed these expenses.

Moreover, the court sees a completed SOFA at Docket 59.

At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Kendron Nisan Fryer ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to confirm the Amended Plan is denied.

9. 24-22625-E-13 DNL-1 JAMES WALTHOFF Peter Macaluso CONTINUED OBJECTION TO HOMESTEAD EXEMPTION 8-26-24 [20]

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

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

Sufficient Notice not Provided. There is no complete Proof of Service filed in this case, so the court is unable to determine which parties have been served and when. The Proof of Service filed only contains the front page of the form.

The Debtor has filed an Opposition to the Objection to Claim of Exemption, documenting that Debtor was served.

A review of the Verification of Master Address List filed by Debtor lists Experian, Equifax Information Services, LLC, TransUnion, LLC, Amex, Buchalter Law, and Creditor's State Court Counsel as the only persons for noticing in this Bankruptcy Case. Dckt. 4. On Schedule D Debtor lists having no creditor's with secured claims, and on Schedule E/F having no creditors with priority unsecured claims and having two creditors, Other than Creditor brining this Objection, with general unsecured claims, those being Amex and Buchalter Law (those to claims totaling less than $10,000).

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 sustained.

December 10, 2024 Hearing

The court continued the hearing as it set a new briefing schedule to allow Creditor to file supplemental opposition pleadings and properly filed, admissible, authenticated evidence in support of the Objection, and for Debtor to file supplemental opposition pleadings and evidence.

Creditor filed its supplemental pleadings on November 7, 2024. Dockets 37, 38. Creditor states:

1. As already discussed, in accordance with well-settled law, the Debtor is limited to the exemptions he was entitled to claim on the petition date. Supp. Pleading 2:1-2, Docket 37.

2. Regarding the transfers to and from MRDC, LLC, the Debtor—having gone through trial with the assistance of counsel and waiting on entry of the judgment— voluntarily chose to transfer his interest to the LLC. It appears that the transfer had the clear intent to hinder, delay, or defraud the Judgment Creditor in the aftermath of the bench trial that ultimately resulted in the Judgment. The Debtor then waited a year before promptly transferring the Subject Property back from MRDC, LLC, once he had the "cover" of bankruptcy. *Id.* at 2:7-12.

Creditor also requests the court take judicial notice of the attached exhibits at Docket 38. The Exhibits include evidence of the assignment of the Property and then the transfer of the Property back to Debtor after the bankruptcy was filed.

Debtor's Supplemental Pleadings

Debtor filed his Supplemental Pleading on November 21, 2024. Docket 40. Debtor states:

1. The transfer does not constitute a change in ownership because the transfer did not result in the beneficial use of the Property. *Id.* at 2:22-3:1.

2. The transfer was more akin to a transfer into a revocable trust, which holding arrangement can be declared a homestead. *Id.* at 3:4-9.

3. There was no reassessment charged by the County, so there was no ownership change. *Id.* at 3:15-22.

One day after filing his Supplemental Pleadings, Debtor filed a Motion to dismiss his own case. Docket 41. This Motion was not served on any parties, so the court has held off on issuing the Order in the event there may be some reason the court should not dismiss the case.

DISCUSSION

Creditor cites to the snapshot rule, asserting that Debtor may only claim exemptions he was entitled to as of the filed. Since title was in the LLC as of the filing, Creditor concludes no exemption. Debtor's opposition just argues that the court should treat the transfer to a limited liability company the same as if it was made to a revocable trust. Creditor's response is that it is not a trust and there is no evidence of a "gift transfer."

As the Supreme Court has directed trial court judges in the federal courts, it is for the judge to get the law right. *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). Neither party provides the court with a good analysis of the law relating to this transfer and what rights arise under California Law.

With respect to there having been "gift" transfers to the LLC and then back to the Debtor, Objection has provided copies of the two deeds (which Creditor had to provide as part of its objection). Exhibits F and G; Dckt. 38.

Exhibit F is a certified copy of the Grant Deed by which James Walthoff (the Debtor) and Francieline Walthoff grant title to the Property to MRDC, LLC. The Grant Deed is dated May 13, 2023, and has a recording date of May 18, 2023.

The Grant Deed to MRDC, LLC has a documentary transfer tax of $0.00, stating that "None Due - Gift T&T Code 11930." California Revenue and Taxation Code § 11930 provides (emphasis added):

> § 11930. Transfer by inter vivos gift or by death
>
> Any tax imposed pursuant to this part shall not apply to any deed, instrument, or other writing which purports to grant, assign, transfer, convey, divide, allocate, or vest lands, tenements, or realty, or any interest therein, **if by reason of such inter vivos gift or by reason of the death of any person**, such lands, tenements, realty, or **interests therein are transferred outright to, or in trust for the benefit of, any person or entity.**

Then, Exhibit G is a certified copy of the Grant Deed From MRDC, LLC to James Walthoff (the Debtor) and Francieline Walthoff. Dckt. 38. The Grant Deed From MRDC , LLC to James Walthoff and Francieline Walthoff is dated June 19, 2024, and a recording date of June 25, 2024. The June 19, 2024, date of the Grant Deed is two days after this Bankruptcy Case was filed on June 17, 2024.

The Grant Deed from MRDC, LLC to James Walthoff and Francieline Walthoff states that the documentary transfer tax is $0.00, "None Due - Gift R&T Code 11930." *Id*.

California Law Relating to Transfers of Homestead Property to Third-Parties

Debtor appears to argue that the transfer, because there was no ownership change where the Debtor continually resided in the Property, was like transferring property into a revocable trust. Debtor cites the court to *Fisch, Spiegler, Ginsburg & Ladner v. Appel*, 13 Cal. Rptr. 2d 471 (Cal. Ct. App. 1992) to support its contention.

In *Fisch* the judgment debtors had quitclaimed title to their residence to a revocable family trust.

> The Appels [the judgment debtors] say they are entitled to revoke the trust, an assertion which Fisch does not dispute. Although the trust instrument is not part of the record, in light of the Appels' uncontradicted statement it appears the Appels are trustors. This gave them a contingent reversionary interest in the subject property (*see In re Moffat* (C.D.Cal. 1989) 107 Bankr. 255, 259), an interest in real property within the meaning of section 704.910, subdivision (c). Furthermore, the Appels maintain they have life estates in the trust assets, another claim which Fisch fails to dispute. This too amounts to an interest in real property within the meaning of section 704.910, subdivision (c). While a trust is not a natural person, and the homestead exemption applies only to property of natural persons (§ 703.020, subd. (a)), there is

> no requirement title be held by a natural person. "[H]omestead statutes are to be construed liberally on behalf of the homesteader." (*Ingebretsen v. McNamer* (1982) 137 Cal.App.3d 957, 960 [187 Cal.Rptr. 529].) We determine placing title to property in a revocable living trust does not preclude homeowners from availing themselves of the benefits of the homestead law.

Fisch, Spiegler, Ginsburg & Ladner v. Appel, 10 Cal. App. 4th at 1813. In *Fisch* the person claiming the homestead exemption resided in the property and had the ability to have or control title to the property in which the exemption was claimed.

California law defines a "homestead" in which an exemption may be claimed to as follows:

> (c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

Cal Code Civ Proc § 704.710(c). This focuses on the residency in the property and that a judgment lien of the person who is residing in the property attaches to that property in which the homestead exemption is claimed.

In Miller and Star California Real Estate, 12 Cal. Real Estate (4th ed.) § 43.16, the following statement is made:

> No requirement that legal title be continuously owned. The statutory definition of "homestead" requires only that the judgment debtor reside in the property claimed to be exempt as his or her principal dwelling at the time the judgment lien attaches to the property, and continuously thereafter.[19] Neither the declared homestead exemption nor the automatic homestead exemption requires that the judgment debtor continuously own legal title to the property, but in any case the judgment debtor must continue to reside at the property as his or her principal dwelling during any period while he or she does not own legal title, at least in the case of the automatic exemption.[20]

20 *Tarlesson v. Broadway Foreclosure Investments, LLC*, 184 Cal. App. 4th 931, 937, 109 Cal. Rptr. 3d 319 (1st Dist. 2010) (automatic exemption); *In re Moffat*, 107 B.R. 255, 260 (Bankr. C.D. Cal. 1989), aff'd, 119 B.R. 201 (B.A.P. 9th Cir. 1990), aff'd, 959 F.2d 740 (9th

Cir. 1992) (automatic exemption). In *Tarlesson*, the court expressly did not address whether an ownership interest is required for the declared homestead.

See § 43:26 (equitable interests).

The discussion in Miller and Starr continues under § 43.26, equitable interests, providing the following analysis:

§ 43:26. Equitable interests

Equitable interests in property may be homesteaded. A party may homestead "any interest in real property."[1] An equitable title that supports a right of occupancy is sufficient to enable the owner to claim a homestead of the premises.[2]
Vendee under installment contract of sale. A vendee in possession of property pursuant to a contract of sale under which the vendor retains legal title can declare a homestead upon his or her equitable interest in the property.[3] This interest is subordinate to the rights of the vendor, but superior to any third-party claim to the property that accrues after the declarant records the declaration of homestead.[4]

1
Civ. Proc. Code, § 704.910. [Declared homestead definitions.]

See Estate or interest in real property to which a homestead claim may attach, 74 A.L.R.2d 1355.

2
Fisch, Spiegler, Ginsburg & Ladner v. Appel, 10 Cal. App. 4th 1810, 1813, 13 Cal. Rptr. 2d 471 (4th Dist. 1992); *Tarlesson v. Broadway Foreclosure Investments, LLC*, 184 Cal. App. 4th 931, 936–937, 109 Cal. Rptr. 3d 319 (1st Dist. 2010) (automatic exemption; referring to prior declared homestead decisions as reflecting rule that "judgment debtors who continuously reside in their dwelling retain a sufficient equitable interest in the property to claim a homestead exemption").

3
Civ. Proc. Code, § 704.910, subd. (c). *Perry v. Ross*, 104 Cal. 15, 19, 37 P. 757 (1894); *In re Reid's Estate*, 26 Cal. App. 2d 362, 366, 367, 79 P.2d 451 (3d Dist. 1938).

But see Snyder v. Pine Grove Lumber Co., 40 Cal. App. 2d 660, 664, 666, 105 P.2d 369 (3d Dist. 1940).

4
Longmaid v. Coulter, 123 Cal. 208, 217, 55 P. 791 (1898); *Alexander v. Jackson*, 92 Cal. 514, 519, 28 P. 593 (1891).

See Snyder v. Pine Grove Lumber Co., 40 Cal. App. 2d 660, 664–666, 105 P.2d 369 (3d Dist. 1940).

Case Example:

Just before the court entered judgment in a lawsuit against the owner of the property, the owner conveyed the property to his son. The transfer was without consideration and pursuant to an agreement that the son would hold the title in trust and it would not be effective until the owner's death. The owner recorded a homestead declaration on the property and then the creditor recovered a judgment against the owner. The court held that the transfer to the son was a fraudulent conveyance,[5] but since the grantor retained a beneficial interest in the property that was subject to the homestead declaration, the creditor's claim was subject to the homestead.[6]

5
See § 43:10 (homestead with intent to defeat existing creditors' claims).

6
Breeden v. Smith, 120 Cal. App. 2d 62, 65, 66, 260 P.2d 185 (4th Dist. 1953).

Trust interest in real property. Although a trustee may be an "owner," he or she is precluded from declaring a homestead on the property held in trust unless he or she also resides on the property.[7] The equitable interest in property of a trustee, or the spouse of a trustee, who resides on the property can be subject to a homestead declaration.[8] However, the declarant whose only interest in the property is as a beneficiary of a trust cannot declare a homestead on trust property on which he or she resides.[9]

Revocable living trust. A homestead declaration may be recorded on property held in a revocable living trust. Because the living trust is revocable, the trustee/trustor has a contingent reversionary interest in the property that is a sufficient property interest to support a homestead. His or her life estate in the trust assets also is sufficient to support a homestead.[10]

Comment:

The basis for the court's decision was the revocability of the trust. Even if a third party were trustee, the property qualifies for the exemption. The property also would qualify for the automatic exemption because any property on which the debtor and/or the debtor's spouse resides qualifies for the exemption without qualification regarding their title interest in the property,[11] although dictum in one case suggests otherwise.[12]

11
Civ. Proc. Code, § 704.710.

See § 43:16 (automatic exemption; residency, ownership, and use).

> *See California Coastal Com'n v. Allen*, 167 Cal. App. 4th 322, 329, 83 Cal. Rptr. 3d 906 (2d Dist. 2008) (asserting that since the automatic exemption applies only to the "dwelling of a natural person" the interest of the grantor of a revocable trust could not qualify for the exemption)

§ 43:26. Equitable interests, 12 Cal. Real Est. § 43:26 (4th ed.) [the court having reorganized the footnotes so that they followed the paragraph in which they are referenced rather than having all of the footnotes at the end of the cited text].

The obvious citation by Miller and Starr above relevant to the bankruptcy case before the court is *Breeden v. Smith*, 120 Cal. App. 2d 62, 65, 66, 260 P.2d 185 (4th Dist. 1953). In Breeden, the California Court of Appeal states:

> In its findings, filed on August 12, 1952, the [trial] court found . . .that on April 9, 1951, Robert Smith conveyed all his right, title and interest in this property to Stanley Smith without consideration and with intent to defraud his creditors; that the property was then worth $ 8,000; that Stanley Smith [*64] accepted and received this deed with the intent [***3] to hold the property "as a secret trust for said Robert Smith"; "that since said conveyance the title to the above described real property has remained in the name of" Stanley Smith; that despite such conveyance Robert Smith and his wife remained in exclusive possession of said property until January 1, 1952, . . . As conclusions of law, it was found that on February 15, 1951, Breeden became a creditor of the senior Smiths; that said conveyance was fraudulent as to creditors, and the senior Smiths became insolvent by reason thereof; and that the plaintiffs were entitled to a judgment decreeing that this conveyance was fraudulent as to Breeden, and should be set aside and annulled "insofar as it affects the rights of" Breeden. Judgment was entered on August 12, 1952, adjudging solely that this conveyance was fraudulent as to Breeden, and "hereby is set aside and annulled insofar as it affects the rights of the plaintiff [***4] Joseph W. Breeden." No appeal was taken from that judgment.

Breeden v. Smith, 120 Cal. App. 2d at 63-64. The Court of Appeal then affirmed the trial court's conclusion that the homestead exemption could be claimed in the transferred property, stating:

> While the court found that all right and title had been conveyed to the son by the deed of April 9, 1951, and that "title" had remained "in the name of" the son, it further found that such title had been thus accepted and received by the son in trust for the father, and there is nothing to indicate that such situation was ever changed. It does not appear, therefore, that the father had no interest in this property which could be homesteaded. The only thing the judgment purported to do was to declare this conveyance fraudulent as to this creditor and to set it aside insofar as it affects his rights. There being no "inadvertent omission," it clearly appears it was intended to do no more. It did not make any adjudication as to whether or not there was a valid homestead on the property, no such issue having been presented, and it did not adjudicate that the property would be subject to sale on an execution to be issued pursuant to that judgment. The practical effect of the findings and judgment was to

> hold that the father had been the real owner of the property since the conveyance to the son. The father had a very substantial interest in the property after the conveyance, in fact the full equitable interest, and the homesteads were filed before any judgment was entered.

Id., at 65-66. Then, in holding the homestead exemption enforceable, the Court of Appeal states:

> Had the appellants filed a homestead before this conveyance was made the respondents would have had no enforceable claim against this property. The judgment in this action did not establish such a claim, and nothing in the findings therein establishes the right to sell the property. The principles involved in the cases setting forth the general rules are not favorable to the only attack here made upon these homesteads. (*Montgomery v. Bullock*, 11 Cal.2d 58 [77 P.2d 846]; *Prudential Ins. Co. v. Beck*, 39 Cal.App.2d 355 [103 P.2d 241].) A homestead was filed shortly after this suit was brought and another one was filed before the judgment became a lien. (*Yager v. Yager*, 7 Cal.2d 213 [60 P.2d 422, 106 A.L.R. 664].) The question of the validity or invalidity of the homestead was not raised or decided at the trial of the action. (*Duhart v. O'Rourke*, 99 Cal.App.2d 277 [221 P.2d 767].)
>
> The court having found that the full interest in this property, other than the bare legal title, was in Robert Smith all the time, nothing appears in the record which would adversely affect the validity of the homesteads filed before judgment was entered. In the absence of any showing that the respondents were entitled to a sale of the property on execution it was error to refuse the restraining order asked for. While the respondents could have proceeded under sections 1245 to 1259 of the Civil Code, if the circumstances warranted, no such procedure is involved in this appeal.

Id., at 66.

Breeden was cited by another California Court of Appeal panel in 2010, *Broadway Foreclosure Investments, LLC v. Tarlesson*, 184 Cal. App. 4th 931 (2010), addressing what interest a judgment debtor must have in the residence. In Broadway the court was addressing a situation where title to the residence was transferred to a third-party for the purported purpose of arranging "mortgage financing." *Broadway Foreclosure Investments, LLC v. Tarlesson*, 184 Cal. App. 4th 93, 935 (2010). In affirming that judgment debtor's right to assert a homestead exemption, the California Court of Appeal states:

> Courts "adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor." *(Amin v. Khazindar*, *supra*, 112 Cal.App.4th at p. 588.) . . .
>
> . . .
>
> Several California cases recognize that judgment debtors who continuously reside in their dwellings retain a sufficient equitable interest in the property to claim a homestead exemption even when they have conveyed title to another. (*Breeden v. Smith* (1953) 120 Cal.App.2d 62, 66; *Putnam Sand & Gravel Co. v. Albers* (1971) 14 Cal.App.3d 722, 726; *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 81.) Such a result is consistent with the purpose of California's homestead exemption to protect one's dwelling against creditors. (*Amin v. Khazindar, supra*, 112 Cal.App.4th at p.

588; *accord, Wells Fargo Financial Leasing, Inc. v. D & M Cabinets*, *supra*, 177 Cal.App.4th at p. 67.)

. . .

(5) Broadway does not dispute that the property was Tarlesson's principal residence when it acquired its judgment lien. Nor does it dispute that she has continuously resided in the home since 1984, and there is no evidence that rebuts Tarlesson's claim that, "At all times I retained the beneficial interest in my home, which was acknowledged by Peola [Lane]." In the circumstances, Tarlesson's continuous occupancy of her home qualifies it as her "homestead" under section 704.710, subdivision (c). We will not also read a requirement into section 703.020 or 704.710 that Tarlesson must have held continuous title to her home to claim the homestead exemption. [6]

6

In its reply brief, Broadway refers to a separate statutory definition of a "declared homestead owner" in section 704.910, subdivision (b)(1). But this case deals solely with an automatic homestead exemption claim rather than a declared homestead. We will not further address an argument raised for the first time in a reply brief. *(Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1372, fn. 11 [131 Cal. Rptr. 2d 524].)

Broadway Foreclosure Investments, LLC v. Tarlesson, 184 Cal. App. 4th 931, 936, 937, 938

Based on the court's basic review of California law, the fact that Debtor and his non-debtor spouse transferred the Property into the LLC as a gift to try and keep it from Creditor is not a bar to the homestead exemption being claimed by Debtor. Debtor has not provided any testimony in opposing the Objection to Claim of Exemption. Rather, Debtor has left it to more general arguments by Debtor's counsel.

The court has the two Grant Deeds which state that there was no documentary transfer taxes paid because the transfers were exempt as gifts.

Based on California Law as identified by the court, the "mere" placing the title to the property in the name of another does not terminate the homestead exemption rights of someone who owned, continues to live in, and has an interest in/control of title to the property. Here, the two Grant Deeds demonstrate such control.

As noted above, Debtor now seeks to dismiss this Chapter 13 Case, seeking is almost absolute right to so do.

At the hearing, **XXXXXXX**

REVIEW OF OBJECTION

Crystal Rista ("Creditor") objects to James D. Walthoff's ("Debtor") claimed homestead exemption under Cal. Code Civ. P. § 704.730 in the property commonly known as 6331 Rushmore Dr., Sacramento, California 95842 ("Property"). Creditor states:

A. Debtor claims to hold title to as a joint tenant and approximate value of $400,000.00. The Debtor further states that the Property is community property. Obj. 2:10-11, Docket 20.

B. Debtor's Schedule C asserts an exemption in the amount of $600,000.00 against the Property pursuant to Cal. Code Civ. Pro. § 704.730.

C. Debtor Schedules Creditor's counsel, Huber Fox, as an unsecured creditor with a claim in the amount of $1,226,052.51. On August 21, 2024, Creditor filed POC 2-1 for $1,446,922.50 ("POC 2-1") on account for her judgment against the Debtor for financial abuse of an elder, inclusive of attorney's fees and costs and interest awarded by the Superior Court. *Id.* at 2:16-18.

D. During its efforts to enforce the Judgment prepetition, Creditor's counsel determined from public records that the Debtor and his spouse had transferred their interest in the to MRDC, LLC, on or about May 13, 2023, and recorded on May 18, 2023—shortly after the bench trial that would result in entry of the Judgment on July 10, 2023. *Id.* at 2:19-22.

E. Property records reveal that, on June 19, 2024, MRDC, LLC, and an individual named Rachelle Carr, executed a grant deed in favor of the Debtor and spouse, which was recorded on June 25, 2024. *Id.* at 2:23-25.

F. Debtor's schedules do not disclose any interest in MRDC, LLC, and a search of California Secretary of State records show no entity operating under that name in California. *Id.* at 2:26-27.

G. Here, the Debtor does not appear to have had either a legal or equitable interest in the Property on the petition date either directly or through MRDC, LLC. In fact, the Debtor appears to have transferred his interest in the Property with the intent to hinder, delay, or defraud the Judgment Creditor in the aftermath of the bench trial that ultimately resulted in the Judgment, only to promptly reverse the transfer postpetition. *Id.* at 3:13-17.

Jonathan Huber, counsel who represented Debtor in the state court proceeding, submitted his Declaration in support. Docket 22. Mr. Huber authenticates the facts alleged in the Objection.

Exhibit B, which is identified as a Title Transfer Report appears to be a report provided by a third party, Data Tree, with the footer on the bottom of the page stating, "2024 First America Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF." Exhibit B; Dckt. 23.

On the last page of Exhibit B is the following disclaimer:

> Disclaimer: This report: (i) is **not an insured product or service or an abstract, legal opinion or a representation of the condition of title to real property**, and (ii) is issued exclusively for the benefit of First American Data Tree LLC (Data Tree) customers and may not be used or relied upon by any other person. Estimated property values are: (i) based on available data; (ii) are not guaranteed or warranted; (iii) do not constitute an appraisal; and (iv) should not be relied upon in lieu of an appraisal. Data Tree does not represent or warrant that the information is complete or free from error, and expressly disclaims any liability to any person or entity for loss or damage caused by errors or omissions in the report. If the "verified" logo {(3t-") is displayed, or a record is designated "verified; Data Tree's algorithm matched fields from two or more data sources to confirm source data.

Id. While it provides information that one would likely follow up and document with the county recorder or testimony from a third-party (likely a title company), this is hearsay concerning purported transactions involving the Property.

DEBTOR'S OPPOSITION

On September 24, 2024, Debtor filed an Opposition. Docket 27. Debtor states the Objection is untimely as it was filed on August 26, 2024, where the 341 Meeting concluded on July 25, 2024. *Id.* at 1:22-2:6. Debtor asserts Fed. R. Bankr. P. 4003(b) provides that a party in interest may object to a debtor's claimed exemptions within 30 days after the conclusion of the Section 341 meeting of creditors. *Id.* at 2:13-15. Therefore, Debtor argues the exemption stands pursuant to *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992).

Debtor does not dispute any of the factual allegations, including the alleged transfers of the Property. Debtor's sole basis for Opposition is alleging that the Objection to Claim of Exemption was not filed.

DISCUSSION

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

Importantly, a debtor may only claim an exemption he was entitled to claim on the Petition Date, pursuant to the so-called "snapshot" rule. *Wilson v. Rigby*, 909 F.3d 306, 308 (9th Cir. 2018).

Fed R. Bankr. P. 4003(b)(1) states:

(b) Objecting to a Claim of Exemptions.

> (1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the

> meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Computation of Deadline For Filing Objection to Exemption

In Debtor's Opposition, the simple computation of thirty days from the July 25, 2024 completion of the 341 is made as follows:

> July 26 - July 31.....6 days
> August 1 - August 24.....24 days
>
> Thirty days expires, by the Debtor's calculation on August 24, 2024.

The computation of time is not left to the discretion of a judge, but have been set by the United States Supreme Court in Federal Rule of Bankruptcy Procedure 9006. In pertinent part, Federal Rule of Bankruptcy Procedure 9006 states:

> Rule 9006. Computing and Extending Time; Time for Motion Papers [Effective until December 1, 2024]
>
> (a) Computing Time. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.
>
> (1) Period stated in days or a longer unit. When the period is stated in days or a longer unit of time:
>
> (A) **exclude the day of the event that triggers the period**;
>
> (B) **count every day**, including intermediate Saturdays, Sundays, and legal holidays; and
>
> (C) **include the last day of the period**, **but if the last day is a Saturday, Sunday**, or legal holiday, **the period continues to run until the end of the next day** <u>that is not a Saturday, Sunday,</u> or legal holiday.
>
> . . .
>
> (4) "Last day" defined. Unless a different time is set by a statute, local rule, or order in the case, the last day ends:
>
> (A) for electronic filing, at midnight in the court's time zone; and
>
> (B) for filing by other means, when the clerk's office is scheduled to close.

> (5) "Next day" defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
> . . . .

July 25, 2024 was a Thursday. Thirty days later, August 24, 2024, was a Saturday, and August 25, 2024 was a Sunday, neither of which is the "last day" in the thirty day period for the filing of an Opposition to Claim of Exemption. Monday August 26, 2024, is the last day that an Objection to Claim of Exemption could be filed in this Bankruptcy Case.

The Objection to Claim of Exemption having been filed on August 26, 2024, it was timely filed and the Opposition based on timeliness is overruled.

ISSUES OUTSTANDING

Both the Objection to Claim of Exemption and the Opposition present the court with "challenges." Some relate to evidence and authentication thereof. Some relate to not denying allegations in the Objection and relying on a "statute of limitations" affirmative defense. Additionally, though admissible, non-hearsay evidence of transfers has not been presented to the court, it can be heard and some say that the Debtor transferred the Property to a third-party (the limited liability company) and did not obtain title back until after the case was filed.

Possible Transfers of Property

In the evidence submitted, Creditor presents to the court that it has been heard that some say that on May 18, 2023, a deed dated June 19, 2023, transferring title to the Property from Debtor and his spouse to an entity identified as MRDC, LLC. Then, on June 25, 2024, a deed dated June 19, 2024, transferring title to Debtor and his spouse from MRDC, LLC was recorded.

The transfer to MRDC, LLC was recorded on May 18, 2023. This Bankruptcy Case was filed on June 17, 2024, which is approximately only thirteen months after the deed to MRDC, LLC was recorded.

Exhibit C; Dckt. 23, is a copy of a Grant Deed by which MRDC, LLC transfers title to the Property to Debtor and his Spouse as joint tenants. This Grant Deed is dated June 19, 2024. On page 1 of the Grant Deed, in the section for the Transfer Tax, it states that the tax is $0.00 because the transfer was a "Gift," referencing California Revenue and Taxation Code § 11930. That Code Section provides:

> § 11930. Transfer by inter vivos gift or by death
>
> Any tax imposed pursuant to this part shall not apply to any deed, instrument, or other writing which purports to grant, assign, transfer, convey, divide, allocate, or vest lands, tenements, or realty, or any interest therein, if by reason of such inter vivos gift or by reason of the death of any person, such lands, tenements, realty, or interests therein are transferred outright to, or in trust for the benefit of, any person or entity.

Cal Rev & Tax Code § 11930. If such a gift were made, presumably the tax reporting of the gift will be consistent therewith.

In response to paragraph 18 of the Statement of Financial Affairs Debtor states under penalty of perjury that within two years before the filing of this Bankruptcy Case the Debtor did not "sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs." Dckt. 13 at 25. The is not consistent with the allegations of Creditor that in May 2023 title to the Property was transferred to MRDC, LLC.

Creditor also alleges (but does not evidence other than counsel's finding) that MRDC, LLC is not an entity registered to do business in California.

The court notes that for the MRDC, LLC Deed to Debtor and Debtor's Spouse, it dated June 19, 2024, but was not recorded until June 25, 2024. Exhibit C; Dckt. 23. Debtor commenced this Chapter 13 Bankruptcy Case on June 17, 2024 - two days before the date of the Grant Deed from MRDC, LLC.

In looking further at the Schedules filed by Debtor, there are no creditors listed on Schedule D as having secured claims. Dckt. 13 at 11.

October 8, 2024 Hearing

At the hearing, the court set a new briefing schedule to allow Creditor to file supplemental opposition pleadings and properly filed, admissible, authenticated evidence in support of the Objection, and for Debtor to file supplemental opposition pleadings and evidence.

The hearing on the Objection to Claimed Exemptions is continued to 2:00 p.m on December 10, 2024. Creditor shall filed and serve supplemental pleadings and evidence on or before November 7, 2024. Debtor shall file supplemental opposition pleadings and evidence on or before November 21, 2024. Replies, if any, shall be filed and served on or before November 27, 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 Objection to Claimed Exemptions filed by Crystal Rista ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Claimed Exemptions is **XXXXXXX**.

10. 24-22526-E-13 DPC-1 | **CYNTHIA JIMENEZ** Nikki Farris | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-14-24 [62]**

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 14, 2024. 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. Cynthia Marie Jimenez ("Debtor") is delinquent in plan payments in the amount of $1,450, one plan payment. Obj. 1:25-2:2, Docket 62.

2. Trustee calculates that there may be up to $157,000 in nonexempt equity / avoidable transfers if the case were in Chapter 7. Therefore, where the Plan proposes to only pay 1% to unsecured claims that total $179,439.16, the Plan may fail the liquidation test. *Id.* at 2:3-14.

3. Debtor has not filed tax returns for the years 2021, 2022, and 2023. *Id.* at 2:15-17.

4. Schedule I reflects Debtor is working as a child care provider for 2 months, and "Will start working at son's daycare," so it is not clear she can afford to make plan payments. *Id.* at 2:18-20.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 64.

DISCUSSION
Delinquency

Debtor is $1,450 delinquent in plan payments, which represents one month of the plan payment. 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).

Liquidation Analysis

Trustee argues that Debtor fails 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 1% distribution, Plan, Docket 40 § 3.12, but Trustee estimates Debtor has up to $157,000 in non-exempt equity in assets of the estate.

At the hearing, **xxxxxxx**

Failure to File Tax Returns

Debtor has not filed state income tax returns for the years 2021, 2022, and 2023. 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.

11. 23-23038-E-13 PLC-3 | **EDWARD LEWIS** | **MOTION TO MODIFY PLAN**
Peter Cianchetta | **10-25-24 [57]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 25, 2024. 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 denied.

The debtor, Edward Harold Lewis ("Debtor") seeks confirmation of the Modified Plan to pay the Internal Revenue Service claim that was recently filed. The Modified Plan provides for 60 monthly payments of $815.66 with Debtor having paid $12,560 through October 25, 2024. Modified Plan, Docket 60. However, in the Nonstandard Provisions, the Modified Plan appears to provide for a step up of $1,813 in monthly payments beginning on November 25, 2024. *Id.* at § 7.

At the hearing, **xxxxxxx**

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 26, 2024. Docket 64. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is slightly paid ahead under the terms of the Modified Plan, so the amount paid through month 14 is $14,130. *Id.* at 1:25-2:3.

B. Debtor's expenses show a monthly net income of $1,576.63 yet propose payments of $1,813 which is not feasible. *Id.* at 2:5-11.

C. Debtor's Declaration states that their monthly expenses are $8,563.17. Yet, Debtor's amended schedule J shows monthly expenses are $8,803.17. *Id.* at 2:12-14.

D. No supplemental Schedule I has been filed to support this motion so the Court may find the debtor has not proven they can afford the payments. *Id.* at 2:16-21.

E. Debtor's Schedule J filed 10-25-2024 (DN 62) are marked amended rather than supplemental, indicating any changes go back to the beginning of the case rather than from this point forward. *Id.* at 2:25-28.

F. The Certificate of Service shows service was accomplished on 10-25-2024 but does not list supplemental schedule J as a document that was served on interested parties in violation of Local Bankruptcy Rule 3015-1(d)(2). *Id.* at 3:1-8.

DISCUSSION
Amended or Supplemental Schedules

Debtor here is checking the box indicating subsequently filed Schedules are "amended" when the Schedules may actually be supplemental, and vice versa. Amended Schedules seek to amend the originally filed Schedules, correcting any information that may have been misreported. Information in the Amended Schedules will date back to the date of the originally filed Schedules. There is no change of circumstances when Amended Schedules are filed as the Amended Schedules seek to correct errors relating to the originally filed Schedules.

Supplemental Schedules on the other hand indicate a later change of circumstances, whether it be Debtor has received new employment or otherwise needs to update the court on new information that has occurred sometime after the original Schedules were filed. Supplemental Schedules do not date back to the originally filed Schedules.

Here, Debtor has checked the box for "amended" regarding the most recently filed Schedules at Docket 62. If the Schedules are actually amended, then any information in the Amended Schedules would relate back to the original Schedules, so information regarding any previous pleadings Debtor filed under penalty of perjury would have been misreported.

If Debtor means for the Schedules to be supplemental, then new information has arisen and the previous pleadings would not be affected by the new information in the Supplemental Schedules.

At the hearing, **XXXXXXX**

Issues with Plan and Schedules

In clarifying the amount paid into the Plan, at the hearing, **xxxxxxx**

Debtor appears to propose a monthly payment that is beyond what the Debtor can afford. Debtor's Supplemental Schedule J shows a monthly net income of 1,576.63, which is less than the proposed payment of $1,813. Supp. Schedule J at 4:23c., Docket 62. There is also a discrepancy between what the costs are listed on Supplemental Schedule J and what the Debtor has testified in his Declaration. At the hearing, **xxxxxxx**

Service of Supplemental Schedules

Local Bankruptcy Rule 3015-1(d)(3) states, in the event of a default in plan payments:

> Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, **amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.**

(Emphasis added). Debtor's Certificate of Service at Docket 111 does not show that the Schedules were served with this Motion. At the hearing, **xxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Edward Harold Lewis ("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.

12. 24-24750-E-13 JEFFREY VAN HEE MOTION TO DISMISS CASE
CDC-1 Joe Laub 11-12-24 [14]

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

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, and all creditors and parties in interest, and Office of the United States Trustee on November 12, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted, and the case is dismissed. The bar to refiling is xxxxxxx

Clement Pimor and Emilie Cappella ("Creditor"), seek dismissal of the case on the basis that:

1. The debtor, Jeffrey Steven Van Hee ("Debtor"), has filed a string of cases this year, this current case being Debtor's third case in 2024. The prior two cases were dismissed for failure to prosecute the cases, and failure to make payments. These cases are being filed for the sole purpose of delaying ongoing litigation with Creditors pending in El Dorado County Superior Court, and so the case should be dismissed as a bad faith filing. Mot. 1:21-28, Docket 14.

2. Creditor seeks a bar to refiling for one year. *Id.* at 1:19-20.

Creditor submitted the Declarations of Alexis C. Holmes and Christopher D. Crowell in support. Decls., Dockets 16 and 18.

Debtor has not filed a response. The court issued an Order to Appear on December 4, 2024, ordering Debtor and his attorney to appear in person, no telephonic appearances permitted. Docket 26.

DISCUSSION

Bad Faith

11 U.S.C. § 1307(c) provides:

> Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including –
>
> > (1)unreasonable delay by the debtor that is prejudicial to creditors.
> > . .

The list of enumerated reasons to dismiss a case does not include a case being filed or prosecuted in bad faith, but courts have decided bad faith is a valid reason to warrant dismissal or conversion. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) ("Although not specifically listed, bad faith is a 'cause' for dismissal under § 1307(c)."); *See also In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) ("A Chapter 13 petition filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."). The following factors are considered in a bad faith analysis:

> (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner,
>
> (2) the debtor's history of filings and dismissals,
>
> (3) whether the debtor only intended to defeat state court litigation,
>
> (4) whether egregious behavior is present.

Leavitt, 171 F.3d at 1224 (internal citations omitted).

The court finds all four factors of bad faith are present here. Debtor's history of filing three cases in this year alone, frustrating the prosecution of the state Court Litigation, amounts to unfairly manipulating the Bankruptcy Code. There have been no realistic efforts to pursue these cases, and yet they have come in close succession all while the State Court Litigation is being frustrated.

The Debtor's history of filings and dismissals clearly points toward this being a bad faith filing for the same reasons mentioned above.

Again, these three cases tend to support a finding that the filings have been intended solely to defeat state court litigation.

Finally, the facts could support a finding that Debtor has been committing egregious behavior by abusing the Bankruptcy Code and filing cases without any real attempt to prosecute these cases.

Bar to Refiling

11 U.S.C. § 109(g) states:

> (g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—
>
> > (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or
> >
> > (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

Creditor makes no mention of this statute, or any statute or case law to support the bar to refiling. 11 U.S.C. § 109(g) does permit such a bar, but only for 180 days, and not for one year as is requested. Furthermore, this section requires specific elements for the court to permit such an Order. Under (g)(1), the court must either find that the case was dismissed for failure of Debtor to appear in court or abide by Orders. Not such specific facts have been alleged in these moving papers. 11 U.S.C. § 109(g)(2) would not be a viable option for such relief, and so Creditor must appeal to 11 U.S.C. § 109(g)(1) if it desires the 180 bar to refiling.

At the hearing, **xxxxxxx**

However, as the court explained in its Order at Docket 25, Congress has provided for another avenue for relief against a Debtor who is filing multiple cases. *See* 11 U.S.C. § 362(c)(4)(stating the automatic stay does not go in place when a Debtor has filed two or more cases within the past year that have been dismissed).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

With respect to the requested bar on refiling, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, Clement Pimor and Emilie Cappella ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

IT IS FURTHER ORDERED that **xxxxxxx**

13. 24-23957-E-13 DPC-2 | **PRITAM SINGH** **Peter Macaluso** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **11-4-24 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 4, 2024. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed, without prejudice to the filing of an Amended Schedule C.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Pritam Singh's ("Debtor") claimed exemptions under California law. Trustee states:

A. Debtor is exempting real property at 3421 Durello Circle, Rancho Cordova, CA 95670 ("Property") valued at $723,000.00 and exempted for $600,000.00, under C.C.P. §704.730. The Trustee reviewed, on Zillow, that homes in Rancho Cordova shows a median price of $521,238.00, as of December 2023, (https://www.zillow.com/home-values/26679/rancho-cordova-ca/). It appears the Debtor may have over-exempted the value by $78,762.00. Obj. 1:22-27, Docket 28.

B. The Debtor has improperly used C.C.P. § 704.070 where Debtor is exempting more that 75% of wage income. Debtor appears he is permitted to exempt $4,670.40 as wage income. *Id.* at 2:1-2.

Debtor filed a Reply on November 25, 2024, notifying the court and parties that he has filed an Amended Schedule C at Docket 38 to address Trustee's concerns. Docket 37.

DISCUSSION

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

Debtor, having filed an Amended Schedule C to address Trustee's concerns has now exempted the Property in the amount of $521,238 and has exempted the wage income in the amount of $4,670.40. At the hearing, **XXXXXXX** .

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed exemptions for real property at 3421 Durello Circle, Rancho Cordova, CA 95670 ("Property") under Cal. Code Civ. P. § 704.730 and for the Savings Account at Golden One CU pursuant to Cal. Code Civ. P. § 704.070 are disallowed in their entirety without prejudice to Debtor filing an Amended Schedule C. *See* Schedule C, Docket 1. Debtor has filed an amended Schedule C (Docket 38) to address these issues.

14. 24-21762-E-13 DPC-1 | **LINDA CATRON** **Peter Macaluso** | **CONTINUED MOTION TO DISMISS CASE** **10-29-24 [59]**

Item 14 thru 15

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 29, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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 to Dismiss is xxxxxxx.

December 10, 2024 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the Motion to Withdraw as Counsel. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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

1. The debtor, Linda Catron ("Debtor"), has failed to provide required documents, including proof of social security or photo identification, no proof of income listed on Schedule I, and no federal tax return. Obj. 1:25-2:2, Docket 59.

2. Debtor has failed to file a Motion to Confirm for the Chapter 13 Plan filed on July 10, 2024. *Id.* at 2:3-5.

Trustee submitted the Declaration of Teryl Wegemer to authenticate the facts alleged in the Motion. Decl., Docket 61.

DISCUSSION

Failure to Provide Social Security Number

Debtor has not provided Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Never Moved to Confirm the Plan

Debtor did not file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for Debtor Motion to Withdraw

Counsel of record for Debtor appeared at the hearing. He reported that the attorney-client relationship with the Debtor has broken down and a Motion to Withdraw as Counsel has been filed. Motion; Dckt. 63. The hearing on that Motion to Withdraw is set for hearing at 2:00 p.m. on December 10, 2024.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on December 10, 2024 (Specially Set Day and Time).

The court orders Debtor to appear in person at the hearing.

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, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Dismiss is **xxxxxxx**.

15. 24-21762-E-13 PGM-1 — LINDA CATRON — Peter Macaluso — MOTION BY PETER G. MACALUSO TO WITHDRAW AS ATTORNEY — 11-4-24 [63]

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 13 Trustee, other parties in interest, and Office of the United States Trustee on November 4, 2024. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Withdraw as Attorney 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 to Withdraw as Attorney is xxxxxxx.

Peter Macaluso ("Movant"), counsel of record for Linda Catron ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e). Communication has broken down, become adversarial and Debtor is unwilling to follow the advice of Counsel going forward in this case, making legal representation ineffective. Mot. 2:14-16, Docket 63.

B. Debtor stated on the record at her continued Meeting of Creditors on October 22, 2024, that she wished to substitute Counsel out of her case and represent herself. *Id.* at 2:16-19.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and

efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3- 700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act or (3) Counsel's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

> (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L. CONDUCT 3-700(c)(1)(d).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that the communication with Debtor has become adversarial, and that Debtor no longer heeds Counsel's advice. Movant states in his declaration:

> Communication has broken down, become adversarial and Debtor is unwilling to follow the advice of Counsel going forward in this case, making legal representation ineffective.

Declaration ¶ 4, Dckt. 65.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. Neither the Chapter 13 Trustee, Debtor, nor any other relevant party has filed an opposition to this Motion, however, which was filed according to Local Bankruptcy Rule 9014-1(f)(1).

Furthermore, under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor's conduct, such as the break down in effective communication between Counsel and Debtor, is hindering Movant's ability to carry out the employment and duties effectively. Those are sufficient reasons for permissive withdrawal.

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 Withdraw as Attorney filed by Peter Macaluso ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for Linda Catron ("Debtor").

16. 24-24173-E-13 BRB-1 | **JESUS/ALISHA GUTIERREZ** Peter Macaluso | **OBJECTION TO CONFIRMATION OF PLAN BY SAMANTHA RYAN** **11-14-24 [36]**

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 November 14, 2024. 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 is sustained, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Contemporaneous to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on November 13, 2024. Dockets 24-28. Filing a new plan is a *de facto* withdrawal of the pending plan.

However, the court would note a few areas of discussion that Creditor Samantha Ryan ("Creditor") would want to consider during the pendency of this case:

1. A Debtor failing to pay pre-petition debts, leading to the filing of bankruptcy, is not a bad faith factor for filing a petition or plan, and is typically the predicate for any filing. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) ("Although not specifically listed, bad faith is a 'cause' for dismissal under § 1307(c)."); *See also In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) ("A Chapter 13 petition filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."). The factors a court would consider in a bad faith filing include (1) whether the debtor misrepresented

facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner, (2) the debtor's history of filings and dismissals, (3) whether the debtor only intended to defeat state court litigation, or (4) whether egregious behavior is present. *Leavitt*, 171 F.3d at 1224 (internal citations omitted).

a. In regard to feasibility, the court will look to Debtor's current plan payments rather than a lack of paying debts pre-petition, because, again, a debtor failing to pay a debt pre-petition is often the predicate for filing.

2. Creditor makes reference that the debt should be deemed nondischargeabe. Such a determination may only be made through an adversary proceeding. *See* Fed. R. Bankr. P. 4007, 7001.

Debtor having filed an amended Plan, the Objection is sustained, and the plan filed on October 1, 2024 is not confirmed.

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

IT IS ORDERED that the Objection is sustained, and the proposed Chapter 13 Plan filed on October 1, 2024 is not confirmed.

17. 23-24590-E-13 DRE-4 | **JON FENTON** **Randall Ensminger** | **MOTION TO VALUE COLLATERAL OF KAPITUS SERVICING, INC. 9-25-24 [97]**

Item 17 thru 18

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

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

Sufficient Notice Provided. The Proof of Service originally neglected to serve all required interested parties. Therefore, Movant filed an *ex parte* Motion to Continue the Hearing to allow Movant time to sufficiently serve the interested parties. Docket 120. The court granted that Motion on November 6, 2024, setting the hearing for December 10, 2024. Docket 125. On November 4, 2024, Debtor filed the Amended Certificate of Service, serving the Chapter 13 Trustee, Office off the U.S. Trustee, Creditor, and other interested parties. Docket 123. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Kapitus Servicing Inc. ("Creditor") is xxxxxxx.

The Motion filed by Jon Wesley Fenton ("Debtor") to value the secured claim of Kapitus servicing Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 99. Debtor is the owner of the following items of tools used in his business, Ultimate Low Voltage, Inc. d/b/a Ultimate Video and Security Systems:

1. Business Tools (A)
   a. Computer $200
   b. Printer $70
   c. Office Supplies $75
   d. Tools $250

e. Ladders $180

f. TV $150

g. Inventory $300

h. Goods/Misc. $100

("Property"). Am. Schedule A/B 8, Docket 114. Debtor seeks to value the Property at a replacement value of $1,325 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).

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, opposes on the following grounds:

1. There are procedural issues that prevent granting this Motion. First, the Certificate of Services filed regarding the Motion to Value includes multiple documents that relate to different docket control numbers. This does not comply with Local Bankruptcy Rules 9004-2(e)(3) where a proof of service is to include documents and pleadings relating to a single docket control number. Opp'n 2:4-7, Docket 130.

2. The Motion to Value, DRE-4, was filed on 09-25-2024 and had no certificate of service until 10-29-24. According to LBR 9014-1(e)(1), service is to be made on or before the date the pleadings are filed with the Court. *Id.* at 2:8-9.

3. Debtor's Declaration in support of the motion, does not clearly state Debtor's opinion of value, does not itemize the property involved, and does not explain why the Debtor believes the property secured by a consensual lien can be exempted and not subject to the consensual lien. *Id.* at 2:18-21.

DISCUSSION
Trustee's Objections

Local Bankruptcy Rule 9004-2(e)(3) states:

> Multiple documents and pleadings related to papers with the same Docket Control Number may be included in one proof of service. Documents and pleadings related to papers with different Docket Control Numbers SHALL NOT be included in the same proof of service.

In reviewing the many Certificates of service under this Docket Control Number, the court does not see where Debtor has attached documents outside this Docket Control Number in violation of Local

Bankruptcy Rule 9004(e)(2), and Trustee does not clarify which documents are included in which Certificates.

At the hearing, **xxxxxxx**

Local Bankruptcy Rule 9014-1(e)(1) states:

> Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.

It is clear service was made well after the pleadings were initially filed, in violation of this rule.

At the hearing, **xxxxxxx**

Trustee would want more in the Declaration to make it clear to parties what is being valued or exempted. However, to the court, it appears clear what Debtor is seeking to value, namely, the Computer, Printer, Office Supplies, Tools, Ladders, TV, Inventory, Goods/Misc. Debtor sufficiently incorporates these items in the Declaration by reference. Decl. ¶ 2, Docket 99.

However, it appears Debtor is also attempting to exempt some of the business assets that are encumbered by the Kapitus lien. Debtor uses language such as "which equates to the value of all unexempt assets owned by my business." *Id.* at ¶ 7. A Motion to Value should include all business assets, not just "unexempt" assets. Moreover, a Debtor may not claim an exemption in assets encumbered by a consensual lien.

At the hearing, **xxxxxxx**

~~Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $1,325, 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 Jon Wesley Fenton ("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 Kapitus Servicing Inc. ("Creditor") secured by an asset described as:~~

~~1. Business Tools (A)~~

~~a. Computer $200~~

b. Printer $70

c. Office Supplies $75

d. Tools $250

e. Ladders $180

f. TV $150

g. Inventory $300

h. Goods/Misc. $100

("Property") is determined to be a secured claim in the amount of $1,325, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $1,325 and is encumbered by a lien securing a claim that exceeds the value of the asset.

18. 23-24590-E-13 DRE-5 | **JON FENTON** Randall Ensminger | **MOTION TO CONFIRM PLAN** 10-28-24 [106]

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 28, 2024. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Jon Wesley Fenton ("Debtor"), seeks confirmation of the now Third Amended Plan. The Third Amended Plan provides for four payments of $1,000 per month for four months, and then a small step up to 6 payments of $1,140 per month, with a final step up to monthly payments of $1,252 for 50 months with no less than 16% going to unsecured creditors. Third Am. Plan, Docket 108. 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 November 26, 2024. Docket 133. Trustee opposes confirmation of the Plan on the basis that:

A. Mercedes-Benz Financial Services is misclassified, still, in Class 4, like with the previous two amended plans. The claim does not appear to be Class 4 because the claim will mature before the end of the Plan, or the Claim is actually an unsecured claim and should not be placed in class 4. *Id.* at 1:27-2:6.

C. Debtor continues to fail to cooperate with the Trustee in the investigation of the assets, debts, income and expenses. Debtor has failed to amended Schedules D and E/F to show the Non-Filing Spouse's, ("NFS"), debt especially the $19,000.00 that the Debtor admitted the NFS owed as of the day he filed this case. Where Schedule J now discloses $500 per month to credit cards and $200 to an auto, (Docket 76, Page 4, Lines 17c & 17d), the amount of these claims needs to be clarified and the creditor's identified. Opp'n 2:7-13, Docket 133.

E. The following bank statements have still not been provided:

b) OE Federal Credit Union for all accounts of both the Debtor and/or the NFS, but more specifically 6 months of statements for account ending 8516.

Id. at 2:14-17.

F. Debtor may fail the liquidation test where the Plan proposes to pay $17,427.74 to the unsecured claims but there may be $47,270.29 in nonexempt equity in a hypothetical Chapter 7 by Trustee's calculations. Opp'n 2:18-3:10, Docket 86.

DISCUSSION

Misclassified Claims

At the previous hearing regarding this portion of Trustee's Objection, Docket 91, counsel for the Debtor reported that the 2018 Mercedes is owned by Debtor's non-filing spouse. Additionally, the debt has been paid by Debtor's brother in law, who now will accept a direct payment of $200 a month. If this is the case, then the claim may not be subject to Class 4 treatment which is only for secured claims that mature after the life of the Plan.

At that hearing, counsel for Debtor reported that Creditor has been paid and Debtor's Brother, Jonny Palacio, has purchased the claim and is being paid at $200 a month in Class 4. However, as Trustee notes, the Claim is not subject to Class 4 treatment if the claim is now an unsecured claim where Mr. Palacio has purchased the debt. This has been an ongoing issue in this case.

At the hearing, **xxxxxxx**

Insufficient Information Scheduled

Debtor has still not scheduled community debts, omitting a $19,000 debt of the NFS, another outstanding issue in this case. Debtor explaining why this debt is not Scheduled, at the hearing, **xxxxxxx**

Moreover, Trustee is unable to perform his job without all necessary information available to him. Trustee is still missing bank statements for the Debtor that are material to this case, the OE Federal Credit Union account.

At the hearing, **xxxxxxx**

Liquidation Analysis

Trustee argues that Debtor fails 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 an 16% distribution in the amount of $17,427.74, Plan, Docket 108 § 3.12, but Trustee estimates Debtor has $47,270.29 in non-exempt equity in assets of the estate. The Plan does not pass the liquidation test and is not confirmable on this basis.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor Jon Wesley Fenton ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

19. 24-24297-E-13 PGM-1 | **LATASHA RICHARDSON** Peter Macaluso | **MOTION TO VALUE COLLATERAL OF WILMINGTON SAVINGS FUND SOCIETY, FSB** 11-4-24 [24]

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, Creditor, creditors, and Office of the United States Trustee on November 4, 2024. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Wilmington Savings Fund Society, FSB ("Creditor") is xxxxxxx.

The Motion to Value filed by Latasha Denell Richardson ("Debtor") to value the secured claim of Wilmington Savings Fund Society, FSB ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 26. Debtor is the owner of the subject real property commonly known as 9980 Wyland Drive, Elk Grove, CA 95624 ("Property"). Debtor seeks to value the Property at a fair market value of $1,002,000.00 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).

The Chapter 13 Trustee filed a Nonopposition on November 26, 2024. Docket 43.

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

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

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

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

OPPOSITION

Creditor filed an Opposition on November 21, 2024. Docket 40. Creditor believes the true valuation is much higher than what Debtor estimates and requests 90 days to obtain an appraiser.

DEBTOR'S REPLY

Debtor filed a Reply on December 3, 2024, requesting the court set a briefing schedule fro an evidentiary hearing on the issue.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $1,040,839.60. Schedule D 12:2.2, Docket 12. Creditor's second in position deed of trust secures a claim with a balance of approximately $192,054.86. *Id*. Therefore, Creditor's claim secured by a junior deed of trust would be under-collateralized if the valuation were correct. However, Creditor requests time to gather evidence of its own to support a higher valuation.

At the hearing, **XXXXXXX**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Latasha Denell Richardson ("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 **XXXXXXX**.

FINAL RULINGS

20. 24-21498-E-13 EJS-2 | **MICHAEL/SUSAN COLE** | **Eric Schwab** | **MOTION TO CONFIRM PLAN** | **10-22-24 [84]**

DEBTORS DISMISSED: 10/25/24

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

The case having previously been dismissed, the Motion is denied as moot without prejudice. Order, Docket 94.

The Motion to Confirm is denied as moot without prejudice, the case having been dismissed on October 25, 2024.

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 having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied as moot without prejudice, the case having been dismissed.

21. 23-20099-E-13 MET-1 ORLANDO GUTIERREZ Mary Ellen Terranella MOTION TO MODIFY PLAN 10-17-24 [20]

Final Ruling: No appearance at the December 10, 2024 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 17, 2024. By the court's calculation, 54 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, Orlando Gutierrez ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 24. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 26, 2024. Docket 26. 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, Orlando Gutierrez ("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 17, 2024, 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. 21-21203-E-13 MOH-2 | **AMY WOODS** **Michael Hays** | **MOTION TO AVOID LIEN OF DEPARTMENT STORES NATIONAL BANK/CITIBANK, NA** **10-24-24 [50]**

Final Ruling: No appearance at the December 10, 2024 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 Creditor, Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on November 8, 2024. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Department Stores National Bank, and now Citibank, N.A. ("Creditor") against property of the debtor, Amy Ranae Woods ("Debtor") commonly known as 1395 Donita Drive, Red Bluff, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,585.88. Exhibit 1, Dckt. 52. An abstract of judgment was recorded with Tehama County on February 4, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $260,000 as of the petition date. Schedule A at 4, Docket 11. There are no unavoidable consensual liens on the

Property. However, Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $300,000 on Schedule C. Schedule C at 22, Docket 11.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Amy Ranae Woods ("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 judgment lien of Department Stores National Bank, and now Citibank, N.A., California Superior Court for Tehama County Case No. 20LC327, recorded on February 4, 2021, Document No. 2021001441, with the Tehama County Recorder, against the real property commonly known as 1395 Donita Drive, Red Bluff, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

23. 24-24204-E-13 DPC-1 | **KUAJI HILL** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK 11-18-24 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on November 18, 2024. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Kuaji Yvette Hill ("Debtor") used the incorrect plan form. Obj. 1:25-26.

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Objection. Decl., Docket 32.

DISCUSSION
Wrong Plan Form

The Plan is based on the plan form for the national form plan, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1(a).

On December 6, 2024, Debtor filed an Amended Chapter 13 Plan and a Motion to Confirm. Dckts. 43, 41.

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.

24. 24-22622-E-13 SLH-3 | **WILLIAM/CHARLENE BARTHOLOME** | **MOTION TO CONFIRM PLAN**
Seth Hanson | **10-17-24 [59]**

Final Ruling: No appearance at the December 10, 2024 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2024. By the court's calculation, 54 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, William Douglas Bartholome and Charlene Denise Bartholome ("Debtor") have provided evidence in support of confirmation. *See* Decl., Docket 61; Exhibits, Docket 62. The Chapter 13 Trustee, David Cusick

("Trustee"), filed a Non-Opposition on November 25, 2024. Docket 66. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, William Douglas Bartholome and Charlene Denise Bartholome ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 17, 2024, 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.

25. 24-22426-E-13 TAA-2 | **JAMALL ROBINSON** | **Richard Kwun** | **MOTION TO CONFIRM PLAN** | **10-8-24 [60]**

DEBTOR DISMISSED: 11/18/24

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

The case having previously been dismissed, the Motion to Confirm Plan is denied as moot without prejudice. Order, Docket 87.

The Motion to Dismiss is denied as moot without prejudice, the case having been dismissed on November 18, 2024. Docket 87.

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 Name of Motion or Objection having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm Plan is denied as moot without prejudice, the case having been dismissed.

26. 24-20140-E-13 MS-3 | **MELANIE PRUITT** **Mark Shmorgon** | **MOTION TO MODIFY PLAN** **10-30-24 [41]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 30, 2024. 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, Melanie Pruitt ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 43; Ex., Docket 44. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 26, 2024. Docket 49. 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 Melanie Pruitt ("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, 2024, 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.

27. 24-24440-E-13 PSB-2 | **TIMOTHY/EVENGELINA HERNANDEZ** | **Pauldeep Bains** | **MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC** | **11-11-24 [24]**

Final Ruling: No appearance at the December 10, 2024 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's attorney, Chapter 13 Trustee, Creditor, other parties in interest, and Office of the United States Trustee on November 11, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Name of Creditor ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $5,000.00.

The Motion filed by Timothy John Hernandez and Evengelina Hernandez ("Debtor") to value the secured claim of OneMain Financial Group, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration ¶ 7, Docket 26. Debtor is the owner of a 2004 Ford F-150 VIN ending in 0075 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,000 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).

The Chapter 13 Trustee filed a Nonopposition on November 26, 2024. Docket 37.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in January of 2022, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $11,068.59. Proof of Claim, No. 12-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $5,000, 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 John Hernandez and Evengelina Hernandez ("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 OneMain Financial Group, LLC ("Creditor") secured by an asset described as 2004 Ford F-150 VIN ending in 0075 ("Vehicle") is determined to be a secured claim in the amount of $5,000, 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 $5,000 and is encumbered by a lien securing a claim that exceeds the value of the asset.

28. 24-24064-E-13 DPC-1 | **MATTHEW MAURICE** **Michael Hays** | **OBJECTION TO DISCHARGE BY DAVID CUSICK** **11-8-24 [25]**

Final Ruling: No appearance at the December 10, 2024 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, other parties in interest, and Office of the United States Trustee on November 8, 2024. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Matthew Darrel Maurice's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 13 bankruptcy case on January 3, 2024. Case No. 24-20025. Debtor received a discharge on October 25, 2024. Case No. 24-20025, Docket 60.

The instant case was filed under Chapter 13 on September 12, 2024.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on October 25, 2024, which is less than four years preceding the date of the filing of the instant case. Case No. 24-20025, Docket 60. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 24-24064), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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 Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 24-24064, the case shall be closed without the entry of a discharge.

29. 24-24264-E-13 DPC-1 | **RACHEL BAGWELL** **Catherine King** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-14-24 [20]**

Item 29 thru 30

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

Local Rule 9014-1(f)(2) Objection—No 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 November 14, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection To Confirmation has been set for hearing on the notice required by Local 9014-1(f)(2). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee ("Trustee") objects to Rachel Leilani Bagwell's proposed Plan on the basis that the Plan relies on a Motion to Value, the business income and expense statement has

not been filed, Debtor does not propose to pay the proper interest rate on secured claims, Debtor has not returned the 11 U.S.C. § 521 documents, and Schedule A/B requires amendments. Docket 20. Debtor filed a Nonopposition on November 26, 2024, indicating she will soon file an Amended Plan and take these objections into account.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Objection is sustained, and the plan is not confirmed.

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 Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

30. 24-24264-E-13 KMM-1 | **RACHEL BAGWELL** **Catherine King** | **OBJECTION TO CONFIRMATION OF PLAN BY FIFTH THIRD BANK** **11-13-24 [16]**

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

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 13, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection To Confirmation has been set for hearing on the notice required by Local 9014-1(f)(2). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Fifth Third Bank ("Creditor") objects to Rachel Leilani Bagwell's proposed Plan on the basis that the Plan relies on a Motion to Value, Debtor does not propose to pay the proper interest rate on its secured claims, and Debtor has insufficient funds to make all plan payments. Docket 16. Debtor filed a Nonopposition on November 26, 2024, indicating she will soon file an Amended Plan and take these objections into account.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Objection is sustained, and the plan is not confirmed.

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 Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, Fifth Third Bank ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

31. 24-21068-E-13 RMP-2 | **DESIREE LEWIS** **Sunita Kapoor** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS, INC.** **5-14-24 [68]**

Item 31 thru 32

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

No appearance is required, the court having continued the hearing on this Objection by the Parties' Stipulation to February 4, 2025. Order, Docket 142.

The hearing on the Objection to Confirmation has been continued to February 4, 2025. Order, Docket 142.

32. 24-21068-E-13 SK-2

DESIREE LEWIS
Sunita Kapoor

CONTINUED MOTION TO CONFIRM PLAN AND/OR MOTION FOR COMPENSATION FOR SUNITA KAPOOR, DEBTORS ATTORNEY(S)
5-10-24 [63]

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

No appearance is required, the court having continued the hearing on this Motion by the Parties' Stipulation to February 4, 2025. Order, Docket 142.

The hearing on the Motion to Confirm Plan is continued to February 4, 2025. Order, Docket 142.

33. 24-23271-E-13 CCR-1

BARBARA DODGE
Eric Schwab

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY KRISTOFER ORRE AND SARAH ORRE
9-12-24 [23]

Item 33 thru 35

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 12, 2024. 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.

By prior order of the court, the hearing on the Objection to Confirmation of Plan has been continued to 2:00 p.m. on January 14, 2025.

REVIEW OF OBJECTION

Kristofer Orre and Sarah Orre ("Creditor") holding a secured claim oppose confirmation of the Plan on the basis that:

1. Debtor Barbara Ann Dodge ("Debtor") did not file this Plan and case in good faith, in violation of 11 U.S.C. § 1325(a)(3) and (7). Debtor has engaged in hiding assets prepetition by transferring money to avoid paying Creditor's claim, as well as misrepresenting costs on Debtor's Schedule J in the present case. Docket 23.

Creditor submits the Declaration of Sarah Orre to authenticate the facts alleged in the Objection. Decl., Docket 25.

DEBTOR'S REPLY

Debtor filed a Reply on October 2, 2024, asking the court continue the hearing on this Objection to November 5, 2024 at 2:00 p.m. to be heard in conjunction with the related Motion to Avoid Judicial Lien. Docket 32.

DISCUSSION

Good Faith Requirement of
11 U.S.C. § 1325(a)(3)

11 U.S.C. § 1325(a)(3) states:

(a) Except as provided in subsection (b), the court shall confirm a plan if—
. . .
(3) the plan has been proposed in good faith and not by any means forbidden by law;

The Ninth Circuit has ruled "[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner" in ruling on whether a Plan was proposed in bad faith. *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

The evidence before the court in this case shows that Debtor owed Creditor $252,581.56 resulting from an arbitration award entered by the Superior Court of California, County of Santa Cruz, case no. 23CV01407. Decl. ¶ 6, Docket 25. Creditor argues that Debtor closed certain accounts prepetition and moved funds from the closed accounts in order to frustrate collection attempts. If true, the court could infer the plan has been filed in bad faith.

At the hearing, the parties requested that the hearing be continued to 2:00 p.m. on November 5, 2024. The hearing on the Debtor's Motion to avoid the judicial lien of Creditor has been continued to that time and date.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 5, 2024.

December 10, 2024 Hearing

The court has continued the hearing on the Objection to December 10, granting Parties' joint motion to continue. Order, Docket 44.

On December 6, 2024 a Joint *Ex Parte* Motion and Stipulation to further continue the hearing to 2:00 p.m. on January 14, 2025. Opposition shall be filed and served on or before and Replies, if any, on or before January 7, 2025. Dckt. 52. The extension is requested to allow additional time for obtaining a valuation of the real property.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on January 14, 2025.

34. 24-23271-E-13 DPC-1 | **BARBARA DODGE** **Eric Schwab** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **9-11-24 [19]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 11, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on January 14, 2025.

REVIEW OF OBJECTION

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

1. Debtor Barbara Ann Dodge's ("Debtor") Plan relies on a Motion to Avoid Judicial Lien, and if the Motion is not granted, the Plan is not confirmable because it will fail the liquidation test. Obj. 2:3-14, Docket 19.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 21.

DISCUSSION
Debtor's Reliance on Motion to Avoid Judicial Lien

Debtor's Plan relies on avoiding the judicial lien of Kristofer Orre and Sarah Orre ("Creditor"). If Debtor succeeds on that Motion and the claim is placed in the general unsecured class of creditors, then Debtor's Plan passes the liquidation test. However, if the Motion does not succeed and Creditor's claim stays secured, Debtor's Plan will not provide unsecured creditors with more than what they would receive under a Chapter 7. 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."

At the hearing, the parties requested that the hearing be continued to 2:00 p.m. on November 5, 2024. The hearing on the Debtor's Motion to avoid the judicial lien of Creditor has been continued to that time and date.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 5, 2024.

November 5, 2024 Hearing

The court continued the two related matters to December 10, 2024. Dockets 43, 44. Therefore, the court continues the hearing on Trustee's Objection to the same time and date to be heard in conjunction with the related matters at 2:00 p.m. on December 10, 2024.

December 10, 2024 Hearing

The court continued the two related matters to January 14, 2025. Therefore, the court continues the hearing on Trustee's Objection to the same time and date to be heard in conjunction with the related matters at 2:00 p.m. on January 14, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of Plan is continued to **2:00 p.m. on January 14, 2025**.

35. 24-23271-E-13 EJS-1 — BARBARA DODGE — Eric Schwab — CONTINUED MOTION TO AVOID LIEN OF KRISTOFER ORRE & SARAH ORRE 8-13-24 [10]

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

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, Creditor, creditors, and Office of the United States Trustee on August 13, 2024. By the court's calculation, more than 70 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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.

By prior order of the court, the hearing on the Motion to Avoid Judicial Lien is continued to 2:00 p.m. on January 14, 2025. Opposition to the Motion shall be filed and served on or before December 31, 2024, and the Replies, if any, shall be filed and served on or before January 7, 2025.

This Motion requests an order avoiding the judicial lien of Kristofer Orre and Sarah Orre ("Creditor") against property of the debtor, Barbara Ann Dodge ("Debtor") commonly known as 9021 Brydon Way, Sacramento, California 95826 ("Property").

The hearing on this Motion had been continued a number of times. See Dockets 29, 43. Upon the most recent continuation, the court set the deadline of November 26, 2024 for Creditor to file an Opposition. Docket 43. No opposition was filed by the deadline.

A judgment was entered against Debtor in favor of Creditor in the amount of $255,416.56. Exhibit D, Dckt. 13. There is no recorder information on the Exhibit of the abstract filed, and so the court does not know when the document was recorded.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $528,100.00 as of the petition date. Schedule A at 11, Docket 1. The are no unavoidable consensual liens on the Property. However, Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $532,000.00 on Schedule C. Schedule C at 17, Docket 1.

December 10, 2024 Hearing

On December 6, 2024 a Joint *Ex Parte* Motion and Stipulation to further continue the hearing to 2:00 p.m. on January 14, 2025. Opposition shall be filed and served on or before and Replies, if any, on or before January 7, 2025. Dckt. 51. The extension is requested to allow additional time for obtaining a valuation of the real property.

The hearing on the Motion to Avoid Judicial Lien is continued to 2:00 p.m. on January 14, 2025. Oppositions shall be filed and served on or before December 31, 2024, and Replies, if any, on or before January 7, 2025.

36. 20-24776-E-13 MRL-5 | **FORREST GARDENS** | **MOTION TO MODIFY PLAN**
Mikalah Liviakis | **10-18-24 [111]**

Final Ruling: No appearance at the December 10, 2024 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's Attorney, Chapter 13 Trustee, creditors, parties in interest, and Office of the United States Trustee on October 18, 2024. By the court's calculation, 53 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, Forrest Sylvan Gardens ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 113, 114; Ex., Docket 116. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 26,

2024. Docket 126. 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, Forrest Sylvan Gardens ("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 18, 2024, 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.

37. 24-22183-E-13 MRL-1 **KIMBERLY GREEN** **Candace Brooks** **MOTION TO CONFIRM PLAN** **10-24-24 [32]**

Final Ruling: No appearance at the December 10, 2024 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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2024. By the court's calculation, 47 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Kimberly Joan Green ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 34; Exhibits, Docket 35. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 26, 2024. Docket 45. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Kimberly Joan Green ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on October 24, 2024, 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.

38. **24-22891-E-13** **LAURA ENGLAND** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Michael Benavides** **8-14-24 [26]**

DEBTOR DISMISSED: 11/19/24

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

The case having previously been dismissed, the Objection is overruled as moot without prejudice. Order, Docket 57.

The Motion to Dismiss is denied as moot without prejudice, the case having been dismissed on November 19, 2024.

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 Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot without prejudice, the case having been dismissed.