

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

December 12, 2023 at 2:00 p.m.

1. [23-23473-E-13](#)
[DPC-1](#)

JOSE GARCIA
Peter Macaluso

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
11-22-23 [27]

1 thru 2

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

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 22, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

1. Trustee was unable to conduct the First Meeting of Creditors because Debtor never uploaded verification of both his Social Security number and his identification.
2. All tax returns may not have been filed, including for the years 2019, 2020, 2021, and 2022.

DISCUSSION

Trustee’s objections are well-taken.

Inability to Conduct the 341 Meeting

Debtor did not submit the necessary documents to enable Trustee to conduct the Meeting of Creditors pursuant to 11 U.S.C. § 341. This meeting is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The meeting has been continued to January 4, 2023.

Failure to File Tax Returns

Trustee reports he was informed by the IRS and California FTB that the federal income tax returns for the 2019, 2020, 2021, and 2022 tax years have not been filed. Filing of these returns is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

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

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, parties requesting special notice, and Office of the United States Trustee on November 9, 2023. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

<p>The Objection to Confirmation of Plan is XXXXX.</p>
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American Credit Acceptance ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The interest rate on its claim secured by a 2011 Toyota Highlander, vin ending in 7686 ("Vehicle"), is not properly provided for.
2. The court should apply the interest rate Debtor agreed to just four days before filing bankruptcy at 27.99%. Alternatively, the court should apply the interest rate authorized by *Till*.

Dckt. 22.

Debtor filed a Response to Creditor's Objection on November 28, 2023, informing the court that a 10.5% interest rate would be appropriate. Dckt. 31.

Creditor filed a Reply to Debtor Response on December 5, 2023, stating that it does not oppose a 10.5% interest rate. Dckt. 33.

DISCUSSION

Creditor's Objection apparently having been resolved, at the hearing, **XXXXXXXXXXXX**.

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 American Credit Acceptance ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on October 27, 2023. By the court’s calculation, 46 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of One Main Financial Group, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$3,500.00.

The Motion filed by Nellie Lares-Romero (“Debtor”) to value the secured claim of One Main Financial Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 12. Debtor is the owner of a 2010 Toyota Corolla (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$3,500.00 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 statement of Non-Opposition on November 14, 2023, requesting the court grant the Motion. Dckt. 19.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on July of 2022 to secure a debt owed to Creditor with a balance of approximately \$12,515.00. Declaration, Dckt. 12. 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 \$3,500.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Nellie Lares-Romero ("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 One Main Financial Group, LLC ("Creditor") secured by an asset described as 2010 Toyota Corolla ("Vehicle") is determined to be a secured claim in the amount of \$3,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$3,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2023. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Incur Debt is XXXXX.
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Milton Raul Perez (“Debtor”) seeks permission to enter into a refinancing agreement of his mortgage loan on his residence commonly known as 717 Auburn Court, Vallejo, California 94589 (“Property”). Dec., Dckt. 140. Debtor has already been approved for the loan refinance. The loan is \$220,000.00 at 12% interest, and Debtor asserts the loan term is 11 months. *Id.* According to debtor, this refinanced loan is enough to pay off the existing first mortgage and a second mortgage, paying off the entire Chapter 13 Plan. The refinanced loan monthly payment will be \$2,280.00, which is less than Debtor’s current monthly mortgage and plan payment.

1 Oak Ventures step Fund (“Creditor”) filed an Opposition to this Motion on December 5, 2023. Dckt. 143. In its Opposition, creditor states it is a secured creditor with a junior lien on Debtor primary residence, the Property. Creditor has a Claim for \$219,614.10 of which \$128,194.64 are arrears, but after Debtor’s plan payments over the years, now is owed only \$113,503.57 on the principal and arrears. POC 5-1. Creditor seems to object on numerous grounds, not citing to any law in the process. Creditor’s main objection appears that it will not be paid out in full from proceeds of the refinancing agreement. Dckt. 143 ¶ 5. Creditor further states the loan is not in the best interest of the Debtor, calling for a balloon payment

in one year, and Debtor would be better off if he refinanced out of his loan with Creditor instead. *Id.* at ¶ 7.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Reasonableness / Best Interest of Debtor

Debtor does not address the reasonableness of incurring debt to refinance his mortgage loan. The loan calls for a substantial interest charge—12%. While it may be true that Debtor would be making smaller monthly payments in the interim, Debtor does not explain to the court how he can afford a massive balloon payment at the end of his 11 month refinance. As such, the transaction may not be in the best interest of Debtor.

At the hearing, **XXXXXXXXXX**

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

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

The Motion to Incur Debt filed by Milton Raul Perez (“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 **XXXXXX**.

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 16, 2023. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

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

1. Debtor Darrell and Elizabeth Keith ("Debtor") are delinquent in plan payments,
2. The Plan depends on a Motion to Avoid lien of US Bank. No such motion is pending on the docket.
3. Debtor has not submitted form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, and so fees should not be paid under Local Bankruptcy Rule 2016-1(c).

4. Debtor has not submitted necessary documents such as pay advices and tax returns. Therefore, the Plan may not be feasible.
5. Debtor's Schedules and supporting forms contain inaccurate or missing information.

Dckt. 16. Trustee submits the Declaration of his attorney, Kristen Koo, to authenticate the facts alleged in the Objection. Dec., Dckt. 18.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$1,050.00 delinquent in plan payments, which represents half of a month's \$2,100.00 payment. Before the hearing, another plan payment of \$2,100.00 will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Motion to Avoid

The Plan in Section 3.08 calls for creditor U.S. Bank NA's lien to be valued at \$0. Plan, Dckt. 11. Debtor is required to file a Motion to Avoid lien in order to reduce the lien to \$0. Without such a Motion on file having been granted by the court, the court cannot confirm the Plan.

Missing Form EDC 3-096

This court's Local Rules permit an attorney to elect compensation by a flat fee without seeking court approval. Local Bankruptcy Rule 2016-1(c). However, in order to be eligible to receive the flat fee, Debtor's counsel must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. No such form has been filed in this case.

Failure to Provide Pay Stubs / Pay Advices

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

Failure to Provide Tax Returns

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

Inaccurate or Missing Information

Debtor's Schedules I and J, Statement of financial Affairs, and Forms 122C-1 and 122C-2 contain outdated or inaccurate information. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6). The incorrect or inaccurate information identified by the Chapter 13 Trustee is:

- i. SCHEDULE I (DKT #10, page 19): Schedule I at Line #13 contains outdated and inaccurate information. The Debtor testified at the §341 hearing that he is currently only employed at Walmart and no longer works with the staffing agency or receives unemployment income.
- ii. SCHEDULE J (DKT #10, page 21): The Debtors testified at the §341 hearing that their mortgage does not contain an escrow account for property taxes and insurance, and they pay these expenses directly. However, no expenses for these items are listed in Schedule J.
- iii. STATEMENT OF FINANCIAL AFFAIRS (SOFA) (DKT #10, page 24): The Debtor testified that he has received income from wages for the current year (2023) prior to filing bankruptcy. This information was omitted from Part 2, #4 of the SOFA.
- iv. FORM 122C-1, 122C-2 (DKT #10, page 31): The Form 122C-1 lists gross income per month at \$0.00 for each of the Debtors. The Debtors both testified that they have each earned income in the 6 months preceding the bankruptcy filing and that income was omitted on the form. It is unclear what the correct income information would be and whether the Debtors would be over the median income and required to fill out the entire form, including Form 122C-2

Objection, p. 3:9-4:2; Dckt. 16.

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

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

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

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

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

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

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

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

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

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

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

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

1. Kristin Vrablick ("Debtor") appears unwilling or unable to make the plan payments.
2. Debtor has not filed all applicable tax returns for the four years prior to filing.
3. Debtor failed to submit proof of her social security number.
4. Debtor must file a Change of Street Address form with the court to correct a typo in her listed street address.

Dckt. 23. Trustee submits the Declaration Teryl Wegemer to authenticate the facts alleged in the Objection.
Dec., Dckt. 25.

DISCUSSION

Trustee's objections are well-taken.

Inability to Make Plan Payments

The Chapter 13 Trustee states that Debtor has failed to meet her burden of showing the Plan complies with 11 U.S.C. § 1325(a)(6). However, Chapter 13 Trustee does not provide the court with any analysis or basis for the court to reach such a conclusion.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2022 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Social Security Number Requires Verification

Federal Rules of Bankruptcy Procedure 4002(b)(1)(B) states “[e]very individual debtor shall bring to the meeting of creditors under §341. . . evidence of social-security number.” Debtor has not complied with this Rule, and this omission is cause to deny confirmation.

Incorrect Street Address

The Voluntary Petition shows the Debtor's street address as 2041 Fir Street, (Dckt. 1 p. 2). The Debtor admitted at the First Meeting of Creditors that her street address is actually 2042 Fir Street. Debtor must file a Change of Address form to correct this error.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on November 22, 2023. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

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

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

1. The debtor, Angela Moench (“Debtor”), appears unwilling or unable to make the plan payments.
2. Debtor has misclassified the following Claims in the proposed Plan:
 - a. Rhonda Burns / 2290 Bohemia Ave is listed in Class 1 of the Plan, (Dckt. 3 p. 3, §3.07(7)(c)). Rhonda Burns attended the Debtor’s First Meeting of Creditors, held on November 16, 2023, and advised the Trustee that the note, which is secured by the Debtor’s real property, has a balloon payment that is due in October 2026. This creditor should be listed in Class 2A of the Plan, not Class 1.

- b. Wilshire Consumer Credit –Toyota Camry, is listed in Section 4. Executory Contracts and Unexpired Leases, (Dckt. 3 p. 5, § 4.02). It appears to the Trustee that the Debtor has also misclassified this creditor. The Debtor advised the Trustee at the First Meeting of Creditors that the debt to Wilshire Consumer Credit was for the purchase of a Toyota Camry and not a lease. The Trustee believes this creditor should be listed in Class 2(A) and paid through the Plan, instead of being listed under the classification of a lease, being paid directly by the Debtor.
3. Debtor's Schedule I contains inaccurate information.
4. Debtor's attorney filed the wrong Form EDC 3-096 and should submit an updated form.

Dckt. 15. Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Dec., Dckt. 18.

Debtor filed a Notice of Withdrawal of this Plan's confirmation hearing on November 30, 2023. Dckt. 19. However, Debtor subsequently filed with the court another Notice of Withdrawal on December 4, 2023 (Dckt. 21), informing the court that its November 30, 2023 Notice was a mistake. Debtor asserts the hearing will be heard as planned.

On December 5, 2023, Debtor filed a statement of Non-Opposition to Trustee's Objection. Dckt. 23. In her statement, Debtor indicates she acknowledges the problems posed by Trustee and agrees that the Plan is not feasible as written. Debtor is heading back to the drawing board to put forward a new Plan.

DISCUSSION

Trustee's objections are well-taken.

Inability to Make Plan Payments

Debtor has failed to meet her burden of showing the Plan complies with 11 U.S.C. § 1325(a)(6). While the Chapter 13 Trustee has stated this conclusion, specific grounds for the court to reach such a conclusion are not stated.

Misclassified Claims

Creditor Rhonda Burns' Claim listed in Class 1 of the Plan is improperly classified because Ms. Burns' has indicated that her Claim will mature before the completion of this Plan, sometime in October of 2026. Furthermore, creditor Wilshire Consumer Credit is likely misclassified because the collateral subject to the Claim, a Toyota Camry, was actually purchased, not leased.

At the hearing, **XXXXXXXXXX**

Inaccurate or Missing Information

Debtor's Schedules I contains outdated or inaccurate information. Debtor admitted at the First Meeting of Creditors that she had employment changes and receives an income that is not properly provided for in her initial Schedule I. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Incorrect Form EDC 3-096

Debtor's attorney stated at the First Meeting of Creditors that he wanted to be paid under the newly adopted Local Bankruptcy Rules for attorneys fees, but Debtor's attorney filed the wrong version of the EDC 3-096 Form and has not uploaded the correct version.

At the hearing, **xxxxxxxxxx**

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, attorneys of record who have appeared in the bankruptcy case, and Office of the United States Trustee on November 6, 2023. By the court's calculation, 36 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 XXXXX.

The debtor, Frankie Hayduk ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan is a 60 month Plan with monthly payments of \$1,945.00. Amended Plan, Dckt. 95 ¶¶ 2.01, 2.03. The Amended Plan contemplates general unsecured creditors will receive no less than a 33% dividend. *Id.* at ¶ 3.14. However, the Motion to Confirm the Amended Plan states that the unsecured creditors will be paid a 100% dividend. Dckt. 91 ¶ 14. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor submits her own Declaration in support of her Motion to Confirm. Dec., Dckt. 93.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 28, 2023. Dckt. 100. Trustee opposes confirmation of the Plan on the basis that:

1. The Trustee cannot assess the feasibility of the plan and the plan may not comply with 11 U.S.C. § 1325(a)(1) or (6).
2. Debtor is \$300.87 delinquent in plan payments to the Trustee.

3. Debtor, in this Motion to Confirm the Amended Plan, repeatedly references the Plan filed back on December 27, 2022 (Dckt. 11). However, Debtor's Declaration mentions confirming the Amended Plan filed on November 5, 2023.
4. The Plan states that unsecured creditors are being paid no less than a 33% dividend, but the Motion to Confirm states that the unsecured creditors will be paid a 100% dividend (Dckt. 91 ¶ 14).
5. Trustee states the Plan is funded to pay 100% to general unsecured creditors. If these issues are resolved, the Amended Plan is confirmable.

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Objection. Dec., Dckt. 101.

DISCUSSION

The Trustee indicates the changes that need be addressed in his Opposition, mostly appearing to the court to be clerical in nature with typographical discrepancies between the Motion and currently proposed Amended Plan. The Amended Plan can result in a 100% repayment to creditors and should be confirmed, so long as the Trustee's concerns are addressed. At the hearing, **XXXXXXXXXX**

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

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 15, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

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

1. The debtor, Angela Moench ("Debtor"), appears unwilling or unable to make the plan payments.
2. Debtor is \$1,718.00 delinquent in plan payments.
3. The Plan relies on a Motion to Value the Collateral of a Claim listed in 2B, but no such motion has been filed to date.
4. The Plan is overextended. By Trustee's calculations, the Plan will either take 84 months or 78 months to complete, both scenarios exceeding the maximum 60 month length.

5. Schedule J contains inaccuracies.

Dckt. 20. Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Dec., Dckt. 22.

DISCUSSION

Trustee's objections are well-taken.

Inability to Make Plan Payments

Debtor has failed to meet her burden of showing the Plan complies with 11 U.S.C. § 1325(a)(6). This is cause to deny confirmation.

Delinquency

Debtor is \$1,718.00 delinquent in plan payments, which represents the first month of the scheduled plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

No Motion to Value

The Plan depends on valuing the collateral of Synco/Kawasa in Class 2B at \$5,500. Plan, Dckt. 3 ¶ 3.08. The collateral is a 2023 Kawasaki Vulcan. To date, no Motion to Value has been filed with the court, and so the Plan is not confirmable on this ground.

Overextended Plan

Without the Motion to Value being filed and granted, the Plan will take 84 months to complete. If the Motion to Value were to be filed and granted, the Plan would take 78 months to complete. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the Objection.

Inaccurate or Missing Information

Debtor's Schedule J contains outdated or inaccurate information. Debtor's current Schedule J shows his monthly net income as \$228.34 (Dckt. 1 p. 34), which is not enough to make the plan payment of \$1,718. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

10. [23-22540-E-13](#)
[RLL-1](#)

SATINDER SINGH
Ryan Wood

**CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS**

10 thru 12

10-12-23 [[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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 12, 2023. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

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

The Objection to Claimed Exemption for \$9,525.00 in the California liquor license pursuant to California Code of Civil Procedure § 703.140(b)(6) is sustained and the claimed exemption of \$9,525.00 is disallowed in its entirety.

Creditor Placerville Investment Group, LLC (“Creditor”), objects to Satinder Singh’s (“Debtor”) claimed exemptions under California law in a liquor license. Creditor argues that a liquor license is not a tool of the trade and should not be exempt under California Code of Civil Procedure § 703.140(b)(6). Debtor has claimed two exemptions in the liquor license:

- A. First, \$29,586.88 exempt pursuant to California Code of Civil Procedure § 703.140(b)(5) [the “Wildcard Exemption”], and
- B. Second, \$9,525.00 exempt pursuant to California Code of Civil Procedure § 703.140(b)(6) [the implements, books, and tools of the trade exemption].

Schedule C, Dckt. 29. Creditor does not object to the \$29,586.88 Wildcard Exemption claimed by Debtor.

In objecting the exemption in the amount of \$9,525.00, Creditor cites the court to California Code of Civil Procedure § 703.140(b)(6) which states:

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

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

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

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

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

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

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

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

Debtor's Initial Opposition

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

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

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

Continued Hearing and Supplemental Pleadings

The court continued the hearing, requesting that the Parties provide supplemental briefing on these issues.

Creditor's Supplemental Briefing

Creditor submitted its supplemental briefing on November 30, 2023. Dckt. 89. In its supplemental brief, Creditor submits:

1. California Code of Civil Procedure § 703.140(b)(6), the "tools of the trade" exemption, does not describe or anticipate being applied to a liquor license.
2. Debtor's own cases he cites to exclude a liquor license from the scope of identically worded exemption statutes.
3. Creditor provides the following quote from a bankruptcy court in Wisconsin to hear this same issue:

Debtors may be right that as the economy becomes more technology-based, the definition of tools may have to expand to accommodate intangibles that a technology worker uses in his business. However, this argument does not advance the position of a liquor license as a tool of the trade. Liquor licenses have been in existence since before the founding of this country. *See, e.g., Sidney and Beatrice Webb, The History of Liquor Licensing in England Principally from 1700 to 1830* (Longmans, Green

and Co. 1903). Even if there are modest intangibles that have become “tools” for the modern worker, a liquor license would not fall into that category.

In re Nikeas, 503 B.R. 453, 457 (Bankr. W.D. Wisc. 2013)) (emphasis added; 11 U.S.C. § 522(d)(5), (6)); *see also In re Caylor*, 31 B.R. 821 (Bankr. W.D. Penn. 1983) (same).

4. A liquor license is not the same as a new tool used in the modern era. Liquor licenses have been around for hundreds of years and have been expressly excluded from the language of California Code of Civil Procedure § 703.140(b)(6). The legislature could have explicitly provided for an intangible license under the tools of the trade exemption if it so desired.
5. California Code of Civil Procedure § 704.060, an alternate tools of the trade exemption, is less restrictive than California Code of Civil Procedure § 703.140(b)(6), the tools of the trade exemption that Debtor has elected. California Code of Civil Procedure § 704.060 includes categories of property such as “equipment, vehicles, vessels,” and even “other personal property,” all of which are absent from § 703.140(b)(6). Debtor is effectively asking the court to impute the phrase “other personal property” from § 704.060 into § 703.140(b)(6), but that would be improper statutory construction as the legislature has clearly chosen to treat those sections differently.

Debtor’s Supplemental Briefing

Debtor filed his supplemental briefing on December 5, 2023. Dckt. 91. In his supplemental brief, Debtor argues:

1. Creditor has provided no evidence or information explaining how a liquor license is not part of “tools of trade of the debtor or dependent of a debtor.” Tools of trade are different depending upon the profession. Creditor has failed to fulfill its burden of proof as to how the exemption is not properly applied.
2. California Code of Civil Procedure § 703.140(b)(6) was purposefully written broadly to encompass many different types of tools of the trade. Excluding a liquor license from these exemptions is inconsistent with this intent.
3. The legislature made no distinction between tangible or intangible tools. “Only humans seeking to interpret the exemption discuss tangible versus intangible.” Dckt. 91 p. 2:17.
4. In today’s new world, people are using online platforms as tools that would fit within the meaning of California Code of Civil Procedure § 703.140(b)(6) but have not been explicitly mentioned in that statute.

5. California Code of Civil Procedure § 703.140(b)(6) indeed covers intangible items as exemptions are to be broadly construed in favor of the Debtor. *See Gill v. Stern (In re Stern)*, 345 F.3d 1036, 1045 (9th Cir. 2003).
6. A liquor license is no different than a hammer. Both tools are purchased to pursue income from a desired trade. Contrary to some courts' opinions, a liquor license is not a mere privilege to transact business.
7. Creditor has ultimately failed to meet its burden of persuasion proving the exemption is not properly claimed.

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.*

The California Legislature has elected to opt out of the federal exemptions provided in 11 U.S.C. § 522(b), and allow a bankruptcy debtor to use the full range of exemptions in Chapter 4, California Code of Civil Procedure §§ 703.010 et. seq. from enforcement of state court judgements in bankruptcy. Cal. C.C.P. § 703.130; 11 U.S.C. § 522(b)(2).

However, California then also provides in California Code of Civil Procedure § 703.140(a) that in addition to the normal set of exemptions that may be claimed in connection with the enforcement of a judgment, a debtor in bankruptcy may elect to claim an alternative set of exemptions in the bankruptcy case. Those alternative exemptions are set forth in California Code of Civil Procedure § 703.140(b). These are in substance a restatement of the federal exemptions (including the bankruptcy Wildcard Exemption) provided in 11 U.S.C. § 522(d).

The court in interpreting the plain language of California Code of Civil Procedure § 703.140(b)(6) does so based on the statute as written by the California Legislature. The court does not have the prerogative to “rewrite” the statute to say what the court thinks that the Legislature should have or intended to say if the Legislature had written the statute “correctly.” It is the court’s “[j]ob to interpret the words consistent with their “ordinary meaning . . . at the time Congress enacted the statute.” *Perrin v. United States*, 444 U. S. 37, . . . (1979). *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018).

Review of California Code of Civil Procedure § 703.140(b)(6) Alternative Bankruptcy Debtor Exemptions

Here, the California Legislature has chosen to expressly state § 703.140(b)(6) that when a person is a debtor in bankruptcy, an exemption may be claimed in:

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

Thus, what may be claimed as exemption are:

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

The Statute does not states “any and all things use in or for the operation of a business by the debtor.” The focus of the arguments presented to the court is on whether the liquor license is an “implement or tool” of the trade.

Tool and Tools of the Trade

Black's Law Dictionary defines “Tools of Trade” as follows: “Tools of Trade, Apparatus of Trade [a]nd like terms under exemption statutes and bankruptcy act cover tools that vary according to the trade, handicraft or art in which they are used. The meaning of the word “tool” dominates the meaning of such terms.” TOOL, Black's Law Dictionary (4th rev. ed. 1968). “Tool” is the operative word in “tools of the trade” and in the same entry, Black's Law Dictionary defines “tool” as “[a]n instrument of manual operation, that is, an instrument to be used and managed by the hand instead of being moved and controlled by machinery.” *Id.* ^{Fn.1.}

FN.1. The court is citing to some older Black's Dictionaries because the research tools state that they are not in the current volumes.

Ballentine's Law Dictionary provides a further definition for the term “Tools of Trade,” stating: tools of trade.

1. Instruments or implements used in the trade, occupation, business, or profession of the owner.

This adds the term “instruments” as tools. As discussed below, the California Legislature has expressly included “instruments” in the non-bankruptcy exemption for things used in a business or profession, but did not include that in California Code of Civil Procedure § 703.140(b)(6) .

Implements

The language of California Code of Civil Procedure § 703.140(b)(6) provides that “implements” are included within the trade exemptions. Implements have been defined by Black's Law Dictionary as:

Such things as are used or employed for a trade, or furniture of a house. Particularly applied to tools, utensils, instruments of labor; as the implements of trade or of farming.

IMPLEMENTS, Black's Law Dictionary (5th ed. 1979).

Further, Merriam-Webster's definition of an implement is "a device used in the performance of a task; one that serves as an instrument or tool." Implements, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/implement>.

The Black Law's definition suggests that the word implement looks to apply to any thing that is used in the performance or to serve to a specific task. Merriam-Webster adds the reference that the device may "serve as an instrument or tool," seeming to reference instrument as a physical device as opposed to an intangible right or license.

If "tool" is the dominant word in the phrase "tools of trade," it follows that the "tool" element of "tools of trade" intends the meaning to be an "instrument of manual operation ... an instrument to be used and managed by the hand." This analysis indicates that tools-of-trade are meant to be conceived as tangible items that are directly involved in the production of goods or service provided by a business.

Comparison to California Code of Civil Procedure § 704.060 Alternative Non-Bankruptcy Specific Exemptions of Business Assets That Debtor Could Have Claimed

In addition to the exemption created for a debtor in bankruptcy, California law has a separate exemption for assets used in a business. California Code of Civil Procedure § 704.060 provides the exemption that can be claimed outside of bankruptcy in personal property used in a trade or business. The personal property assets in which an exemption may be claimed are stated in California Code of Civil Procedure § 704.060(a) as:

the following assets that may be claimed as exempt:

- a. Tools,
- b. Implements,
- c. Instruments,
- d. Materials,
- e. Uniforms,
- f. Furnishings,
- g. Books,
- h. Equipment,
- i. One Commercial Motor Vehicle,
- j. One vessel, and
- k. Other Personal Property,

“if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.” Cal. C.C.P. § 704.060 (a)(1).

On the one hand this would appear to be a much broader scope of exemptions which could be claimed in the nonbankruptcy setting. On the other hand, one can argue that this is merely a broader statement of what constitutes an “implement or tool” of the trade, with the California Legislature merely not repeating it in detail.

The court also notes that the California Legislature appears to be adopting in 11 U.S.C. § 703.140(b)(6) what Congress provides for exemption in 11 U.S.C. § 522(b), notwithstanding the California Legislature voting to opt out of the Federal bankruptcy exemptions.

Economic Realities in Bankruptcy

At this juncture in this hard fought battle between Debtor and Creditor over the exemption, the court steps back to look at the actual dispute. Creditor objects to the exemption being claimed in the amount of \$9,525.00. Debtor fights back hard to keep the claimed exemption of \$9,525.00.

In economic reality, there is “only” \$9,525.00 at issue for an asset the Debtor values at \$86,500.00 after deducting the costs of sale.

Assuming that Creditor’s Counsel and Debtor’s Counsel anticipated being paid for their legal services, and assuming that their billing rates are \$400 an hour, the \$9,525.00 exemption in dispute has a value equal to 23.8 hours of work. If divided over the two attorneys, then once the parties have have spent more than 11.9 hours working on this battle, all of the \$9,525 is exhausted and there is a net loss to both the Debtor and Creditor.

Thus, this battle may be of little economic value to either the Debtor nor the Creditor.

It is also unclear as to how much the additional \$9,525.00 in exemption claimed in the liquor license would flow to Creditor on its secured claim filed in this case. See California Business and Professions Code §§ 24049 (priority to outstanding tax obligations) and 24074 (priority to taxes, wages, secured claims, mechanic’s liens, escrow fees, claims for sales for goods sold for resale by the licensee, landlord claims, and then pro rata distribution with all other claims).

Execution Against a Liquor License

While California Law generally makes licenses exempt from execution by creditors, an exception is made for liquor licenses. With respect to business licenses in general, California Code of Civil Procedure § 695.060 provides:

§ 695.060. License to engage in business

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

Jumping to California Code of Civil Procedure § 708.630, the exception to protecting a license to engage in business from execution in the enforcement of a monetary judgment, it provides:

§ 708.630. Receiver to transfer alcoholic beverage license

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

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

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

Though excluding other licenses necessary to operate a business from any enforcement of judgment (thus no exemption would be relevant, at least outside of bankruptcy), the door is open then as to whether it logically makes sense that such a license may be the subject of an exemption asserted by a judgment debtor who is operating a business.

DECISION

The court in interpreting the plain language of California Code of Civil Procedure § 703.140(b)(6) does so based on the statute as written by the California Legislature. The court does not have the prerogative to “rewrite” the statute to say what the court thinks that the Legislature should have or intended to say if the Legislature had written the statute “correctly.” It is the court’s “[j]ob to interpret the words consistent with their “ordinary meaning . . . at the time Congress enacted the statute.” *Perrin v. United States*, 444 U. S. 37, . . . (1979). *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018). And as stated by the California Supreme Court:

Our first step [in determining legislative intent] is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning. (*California Teachers*

Assn. v. Governing Bd. of Rialto Unified School Dist. (1997) 14 Cal. 4th 627, 633; *Lungren v. Deukmejian* (1988) 45 Cal. 3d 727, 735.) In analyzing statutory language, we seek to give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.*, *supra*, 14 Cal. 4th 627, 634.) Ordinarily, if the statutory language is clear and unambiguous, there is no need for judicial construction. (*California School Employees Assn. v. Governing Board* (1994) 8 Cal. 4th 333, 340; *Ladd v. County of San Mateo* (1996) 12 Cal. 4th 913, 921; *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal. 4th 342, 349.)

Hughes v. Board of Architectural Examiners, 17 Cal. 4th 763, 775 (1998).

Here, the California Legislature has chosen to expressly state that when a person is a debtor in bankruptcy, an exemption may be claimed in:

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

While the language in this section could be narrower than the nonbankruptcy exemption provided in California Code of Civil Procedure § 704.060(a), the bankruptcy exemption provided in California Code of Civil Procedure §703.140(b)(6) does not merely provides for tools as being exempt, but “implements, professional books, or tools of the trade of the debtor.”

While the focus has been on this one asserted exemption, a broader consideration is merited of why Congress provides for exemptions under the Bankruptcy Code. Though the states may choose to opt out of what items and the dollar amounts that may be claimed as exempt, it is Congress who, as a matter of Federal Law, provides that exemptions may be claimed in bankruptcy cases.

Collier on Bankruptcy provides a detailed discussion of exemptions as they apply in bankruptcy cases. With respect to the purpose for allowing them, the discussion includes the following:

¶ 522.01 Overview of Section 522

A fundamental component of an individual debtor’s fresh start in bankruptcy is the debtor’s ability to set aside certain property as exempt from the claims of creditors. Exemption of property, together with the discharge of claims, lets the debtor maintain an appropriate standard of living as he or she goes forward after the bankruptcy case.

4 Collier on Bankruptcy P 522.01. This was discussed by the Supreme Court in the landmark Decision *Schwab v. Reilly*, in which the Supreme Court states:

We agree that “exemptions in bankruptcy cases are part and parcel of the fundamental bankruptcy concept of a ‘fresh start.’” Brief for Respondent 21 (quoting

Rousey, 544 U.S., at 325, 125 S. Ct. 1561, 161 L. Ed. 2d 563); *see Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007). We disagree that this policy required Schwab to object to a facially valid claim of exemption on pain of forfeiting his ability to preserve for the estate any value in Reilly's business equipment beyond the value of the interest she declared exempt. This approach threatens to convert a fresh start into a free pass.

As we emphasized in *Rousey*, “[t]o help the debtor obtain a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as his car or home, up to certain values.” 544 U.S., at 325, 125 S. Ct. 1561, 161 L. Ed. 2d 563 (emphasis added). The Code limits exemptions in this fashion because every asset the Code permits a debtor to withdraw from the estate is an asset that is not available to his creditors. See § 522(b)(1). Congress balanced the difficult choices that exemption limits impose on debtors with the economic harm that exemptions visit on creditors, and it is not for us to alter this balance by requiring trustees to object to claimed exemptions based on form entries beyond those that govern an exemption's validity under the Code. *See Lamie*, 540 U.S., at 534, 538, 124 S. Ct. 1023, 157 L. Ed. 2d 1024; *Hartford*, 530 U.S., at 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1; *United States v. Locke*, 471 U.S. 84, 95, 105 S. Ct. 1785, 85 L. Ed. 2d 64 (1985).

Schwab v. Reilly, 560 U.S. 770, 791-792 (2010).

Collier also includes a discussion of the 11 U.S.C. § 522(d)(6) exemptions for “in any implements, professional books, or tools, of the trade of the debtor:”

Implements of Trade; § 522(d)(6)

Section 522(d)(6) is designed to help preserve the debtor's means of earning a living. The debtor is granted an exemption of up to \$2,525 in value in any implements, professional books or tools of the trade of the debtor or of a dependent. Most states grant this type of exemption. When an exemption is claimed in property as an implement of trade, a factual determination is often required as to whether the property is being put to such use as to warrant an exemption. The same piece of property may be exempt in one case, but not exempt in another, depending upon the use to which it is put.

Debtors often seek to claim an exemption for an automobile as a tool or implement of the trade. If the debtor claims the vehicle as a tool of the trade simply because transportation is necessary to get to a job, the courts will deny the exemption. Tool of the trade status has even been denied in some cases when the debtor is a salesperson who needed the vehicle to make calls on customers. If, however, the vehicle is an integral part of the debtor's business, such as a van used to carry dry wall supplies and tools, the court will find that the vehicle is a tool of the trade. The presence of section 522(d)(2), specifically referring to motor vehicles, undoubtedly

influences the courts' decisions to exclude automobiles generally from the category of tools of the trade. This is significant also because liens on tools of the trade are subject to avoidance in some circumstances under section 522(f), while liens on motor vehicles are not subject to avoidance under that section.

4 Collier on Bankruptcy P 522.09[6].

This is consistent with purpose of California having exemptions for individual judgment debtors and protecting certain assets from enforcement by judgment creditors. As discussed in Witkin California Procedure:

1. [§ 194] Nature and Purpose of Exemption Statutes.
Correlation Table | Tables and Index

(1) In General. The immunity of certain property from enforcement of a money judgment (see *supra*, § 81 et seq.) is based on the theory that some types of property should not be taken to satisfy a judgment. The exemptions available to a judgment debtor (see *infra*, § 213 et seq.) are for the personal benefit of the debtor. The property itself would ordinarily be subject to enforcement, but the debtor is allowed to retain all or part of it for the protection of the debtor and his or her family. Accordingly, the debtor may waive an exemption by failure to make a proper and timely claim. (See *infra*, § 197.) The exemption laws are designed to facilitate the debtor's financial rehabilitation and shift social welfare costs from the community to creditors. (See 16 Cal. Law Rev. Com. Reports, p. 1079.) (On exemptions generally, see C.J.E.R., Judges Benchbook: Civil Proceedings—After Trial § 6.14 et seq.; Rutter Group, 2 Enforcing Judgments and Debts § 6:820 et seq.; C.E.B., 2 Debt Collection Practice 2d, § 9.50 et seq.)

Witkin California Procedure, Sixth Edition, Enforcement of Judgment § 194,

In the California Law Revision Report referenced above, it continues, describing the purpose of the exemption of property from the enforcement of judgments as:

Exempt Property

The substantive exemption provisions should accommodate both the interest of the judgment debtor in maintaining a basic standard of living and the interest of the judgment creditor in satisfying the money judgment. Accordingly, the general approach of the proposed law is to protect income and property needed for the subsistence of the judgment debtor and his or her family.

16 Cal. Law Rev. Com. Reports, p. 180; <http://www.clrc.ca.gov/pub/Printed-Reports/Pub140.pdf>,

At the Parties discovered, there is a dearth of cases addressing whether a liquor license falls within the tools/implements/personal property of a trade exemption.

**Liquor License is Not Within the
California Code of Civil Procedure § 703.140(b)(6) Exemption for
Implements, Professional Books, or Tools of the Trade of the Debtor**

Beginning with the purpose of exemptions under the Bankruptcy Code, they are to allow a debtor to go forward with a “Fresh Start” following the bankruptcy case and make a new life for the debtor and his or her dependants. This Fresh Start is commonly discussed in the concept of a Chapter 7 case in which the debtor is overwhelmed with an avalanche of debt and absent relief via the Federal Bankruptcy Code, the debtor would be forced to live barely a subsistence life. This is consistent with California Law.

The California Legislature has effectively given a “super exemption” to the licenses that are needed for someone to get a Fresh Start or continue to maintain a basic standard of living using their implements, books, vehicles, or other tools of the trade of the debtor, making such licenses beyond the scope of any enforcement of a judgment. Cal. C.C.P. § 695.060. The one exception to this exclusion are liquor licenses.

Personal business licenses from someone to provide a service or engage in a business, profession, or activity personally is what that person needs to maintain a basic standard of living as the individual moves forward with the judgment hanging over their head or with their bankruptcy Fresh Start. It is not carving out some dollars from part of a failed business operation.

The California Legislature has chosen to use the specific words “implements,” “professional books,” and “tools” which are used in Debtor’s trade. The statute does not say, “anything and everything which a debtor would use in operating a business.”

The court concludes that the liquor license is not within the “implements, professional books, or tools of the trade of the debtor” exemption provided in California Code of Civil Procedure § 703.140. The liquor license is an authorization to sell liquor in the Debtor’s pre-petition business. While the concept of “tools” and “implements” in the 21st Century is not limited to hammers, chisels, and the horses to draw the wagon to the next job, a liquor license is not a tool, implement, or other personal property for a debtor (whether as asserted against a judgment in California State Court or as an exemption in Bankruptcy Court) to use in going forward with a trade of the debtor to maintain a basic standard of living. It may be something that a person would want to build a business enterprise, but that it not the exemption that the California Legislature has created.

The dollar limits set for these implements, books, and tools of the trade allow the debtor to keep such basic tools and implements to maintain a post-judgment or post bankruptcy basic standard of living. If the various tools, implements, and the like have a greater value than the dollar value exemptions, then if the creditor or bankruptcy trustee sells those assets in which the exemption exists, the debtor gets back the exempt dollar amount and can replace such implements and tools.

This is the plain language of the State and Federal statutes and the purposes that the exemptions serve. Attempting to carve out a small dollar portion of a high dollar liquor license does not serve that purpose.

The Objection to Claimed Exemption for \$9,525.00 in the California liquor license pursuant to California Code of Civil Procedure § 703.140(b)(6) is sustained and the claimed exemption of \$9,525.00 is disallowed in its entirety.

This is without prejudice to, and does not alter or limit the exemption of \$29,586.88 claimed by the Debtor in the liquor license with the Wildcard Exemption provided in California Code of Civil Procedure § 703.140(b)(5).

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

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

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

IT IS ORDERED that the Objection to Claimed Exemption for \$9,525.00 in the California liquor license pursuant to California Code of Civil Procedure § 703.140(b)(6) [Schedule C; Dckt. 29 at 9] is sustained and the claimed exemption of \$9,525.00 is disallowed in its entirety.

This is without prejudice to, and does not alter or limit the exemption of \$29,586.88 claimed by the Debtor in the liquor license with the Wildcard Exemption provided in California Code of Civil Procedure § 703.140(b)(5).

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, other parties in interest, and Office of the United States Trustee on October 12, 2023. By the court's calculation, 61 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 Plan is denied.

The debtor, Satinder Singh ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly payments of \$3,994 with general unsecured creditors receiving no less than a 7% dividend. Plan, Dckt. 30. 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 20, 2023. Dckt. 80. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor's Plan depends on secured creditor Placerville Investment Group LLC's ("Creditor") claim being valued at \$166,00.00, where Creditor has

asserted its claim in the amount of \$304,310.40 (POC 6-1). The court denied Debtor's previous Motion to Value (Dckt. 61) and no new Motion to Value has since been filed with the court.

2. Debtor's Plan may fail the liquidation test. Depending on whether the court finds that Debtor's liquor license is not properly exempt under the "tools of the trade" exemption (DCN. RLL-1), general unsecured creditors may receive a higher dividend under a Chapter 7 Plan.

Trustee submits the declaration of Neil Enmark to authenticate the facts alleged in Trustee's Opposition. Dckt. 81.

CREDITOR'S OPPOSITION

Creditor also filed an Opposition on November 21, 2023. Dckt. 83. Creditor opposes confirmation of the Plan on the basis that:

1. Like with Trustee's Opposition, Creditor argues the Plan should not be confirmed because its claim has not been properly provided for with the court denying Debtor's Motion to Value (Dckt. 61).
2. Debtor's Plan fails to comply with 11 U.S.C. § 1325(a)(5) because it proposes to pay 0% interest on Creditor's claim.
3. Debtor's Motion to Confirm lacks evidentiary support because Debtor did not submit a supplemental declaration where the court previously advised counsel for Debtor that Debtor's current declaration on file (Dckt. 68) may be deficient.

DISCUSSION

Debtor's Reliance on Motion to Value Secured Claim

Both Trustee and Creditor oppose confirmation on the basis that Debtor's Plan relies on a Motion to Value Creditor's secured claim at \$166,000, but the court denied that Motion to Value by Order on October 5, 2023. Dckt. 61. Debtor has failed to file a new Motion to Value Creditor's secured claim, meaning Creditor's asserted amount of the claim controls. However, Debtor informs the court that he was unable to reach an agreement with creditor Placerville Investment Group, LLC, so he will be filing a new Motion to Value. Dckt. 93. The Plan is not feasible without the Plan properly providing for the full amount of Creditor's secured claim. 11 U.S.C. § 1325(a)(6).

Debtor Potentially Fails Liquidation Analysis

Trustee further opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). This objection depends on the court's ruling

regarding the claimed exemptions, being heard in conjunction with this Motion to Confirm. At the hearing,

XXXXXXXXXX

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 0%. Creditor's claim is secured by a inventory, good will, furniture, fixtures and equipment of Debtor's store, Wheatland 99 Cent & Liquor Store. POC 6-1 p. 2. In *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The Plan cannot be confirmed without the proper interest rate being accounted for on Creditor's claim. See 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

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 persons who have filed a Request for Notice on September 28, 2023. By the court’s calculation, 20 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 XXXXX.

December 12, 2023 Hearing

A review of the Docket on December 8, 2023 reveals that Debtor did not file a supplemental declaration in support of his Motion to Confirm the Plan. However, Debtor filed a supplemental Opposition to Trustee’s Motion. Dckt. 93. In his supplemental Opposition, Debtor states he is in the process of amending the Plan and is waiting on the court’s ruling regarding the “tools of the trade” exemption. Furthermore, Debtor was unable to reach an agreement with creditor Placerville Investment Group, LLC, so he will be filing a new Motion to Value. At the hearing, XXXXXXXXXX

REVIEW OF THE MOTION

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

1. The debtor, Satinder Singh (“Debtor”), has engaged in unreasonable delay that is prejudicial to creditors. Specifically, Debtor filed a Plan, but Debtor did not file the required proof of service with the Plan.

DISCUSSION

Never Noticed Initial Plan

Debtor did not properly serve the Plan on all interested parties and has yet to 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).

On October 12, 2023, a Motion to Confirm Chapter 13 Plan was filed. No Chapter 13 Plan was filed with this Motion. The Motion makes reference to a prior Chapter 13 Plan filed on August 25, 2023, 2023. Motion, p. 1:22-25; Dckt. 66.

At the hearing, counsel for the Trustee reported that Debtor is current with plan payments and now has a motion to confirm, which is set for hearing on December 12, 2023.

The hearing is continued to be conducted in conjunction with the Motion to Confirm the Chapter 13 Plan (Dckt. 66) filed on October 12, 2023.

At the hearing on October 18, 2023, the court noted that the Debtor had not filed a declaration in support of the Motion to Confirm. Debtor’s counsel did file a Declaration (Dckt. 68), some of which appears to be stated on only information and belief (not the personal knowledge as required by Federal Rule of Evidence 602). It is unclear how Debtor’s counsel would have personal, non-hearsay, knowledge of the financial information necessary for confirmation of a Chapter 13 Plan.

The court noted at the hearing that given the above, the Debtor may well want to file a supplemental declaration providing testimony (personal knowledge, not information and belief) evidence to support the Motion to Confirm.

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 Motion to Dismiss is **XXXXX**.

13. [21-23741-E-13](#)
[MRL-2](#)

DORA ROBERTS
Mikalah Liviakis

MOTION TO MODIFY PLAN
11-3-23 [29]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on November 3, 2023. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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The debtor, Dora Lynn Roberts ("Debtor") seeks confirmation of the Modified Plan to adjust the monthly plan payments in consideration of Debtor's updated income and expenses. Declaration, Dckt. 31 ¶ 5. The Modified Plan provides for monthly payments of \$755.00 for 24 months, and then \$325.00 per month for 12 months with unsecured creditors receiving a 9% distribution. Modified Plan, Dckt. 32. Debtor seeks the modification because she is no longer working and is surrendering her vehicle, a 2015 Kia Sorento, to the secured creditor Safe Credit Union. Declaration, Dckt. 31 ¶ 5. Plan, Dckt. 32 ¶ 3.09. 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 28, 2023. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that:

1. The Plan as proposed will complete in 39 months, not 36 months as the Debtor has asserted.
2. Schedules I and J have not been marked as amended or supplemental.
3. Debtor's Certificate of Service (Dckt. 36) shows the incorrect hearing date of December 14, 2023, where the hearing will be held on December 12, 2023.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

Debtor submitted her Reply on November 30, 2023. In her Reply, Debtor states:

1. Debtor agrees to a three month extension for the Plan to complete in 39 months.
2. Debtor is submitting supplemental Schedules, not amended.
3. Debtor has corrected the typographical error on the Certificate of Service, having refiled a new Certificate of Service reflecting the proper hearing date.

DISCUSSION

With the Trustee's concerns apparently resolved, the Plan is confirmable. At the hearing, **XXXXXXXXXXXX**

~~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, Dora Lynn Roberts ("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 November 3, 2023 (Dekt. 32), 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.

14. [23-23545](#)-E-13

FRANK WALKER

Michael Hays

14 thru 15

**OBJECTION TO CONFIRMATION OF
PLAN BY SCHOOLSFIRST FEDERAL
CREDIT UNION**

11-27-23 [\[35\]](#)

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, parties requesting special notice, and Office of the United States Trustee on November 27, 2023. By the court's calculation, 15 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 XXXXX.

Secured creditor Schoolsfirst Federal Credit Union (“Creditor”) opposes confirmation of the Plan on the basis that:

1. Creditor is in possession of a promissory note secured by a deed of trust on debtor, Frank Walker’s (“Debtor”) principal residence. As of October 9, 2023, the amount in default was approximately \$59,241.00. Debtor’s proposed Plan does not address this arrearage or provide for any monthly payments to Creditor’s principal balance.
2. Further, Debtor may be unable to make plan payments as his income is insufficient.

Dckt. 35.

NO DOCKET CONTROL NUMBER

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

CERTIFICATE OF SERVICE IMPROPERLY FILED

Creditor filed the Certificate of Service multiple times and attached with other pleadings. Dckts. 35, 36. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is further cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

At the hearing, **XXXXXXXXXX**

DISCUSSION

Failure to Cure Arrearage of Creditor / Provide for Plan Payments

Creditor asserts it holds a deed of trust secured by Debtor’s residence and there are outstanding arrears in the amount of \$59,241.00 due on the note. Debtor has listed in her Schedule D Creditor’s claim. Schedule D, Dckt. 10 p. 14. On December 6, 2023 Creditor filed a proof of claim stating the amount of arrears as \$63,141.05.

At the hearing, **XXXXXXXXXX**

The Plan must provide for payment in full of arrearage on the secured claim as well as maintenance of the ongoing note installments if it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). ~~The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.~~

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a Plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor's proposed Plan specifies that any information regarding payments can be found in the nonstandard provisions section. Plan, Dckt. 9. However, there are not any nonstandard provisions attached to the Plan. Therefore, the Plan does not comply with 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 secured creditor Schoolsfirst Federal Credit Union ("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 Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on November 22, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

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

1. Debtor cannot make plan payments. Debtor's Schedule I shows income of \$1,800.00 per month, and Schedule J shows expenses of \$4,883.36 per month. Dckt. 10. Debtor improperly included his monthly mortgage payment in Schedule J, but even with this expense removed, Debtor is still left with a negative net income of -\$213.00 per month.
2. Debtor references a nonstandard provisions section in the proposed Plan to address payments, but Debtor failed to attach any nonstandard provisions.

Dckt. 31.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6) because Debtor's Schedules show he has a net negative income and no ability to fund a Plan. An inability to fund the Plan is cause to deny confirmation.

Furthermore, 11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a Plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor's proposed Plan specifies that any information regarding payments can be found in the nonstandard provisions section. Plan, Dckt. 9. However, there are not any nonstandard provisions attached to the Plan. Therefore, the Plan does not comply with 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on October 20, 2023. 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 Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is XXXXX.</p>
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The debtor, Jeremy Wygal (“Debtor”) seeks confirmation of the Modified Plan to catch up on his current delinquency under the initial Plan. Declaration, Dckt. 54 ¶ 6. The Modified Plan provides for a monthly plan payment of \$938.00 from months 18-60 with 0% going to unsecured creditors. Modified Plan, Dckt. 55. This payment amounts to a \$115.00 plan payment increase, the previous Plan calling for monthly payments of \$823.00. Dckt. 3 ¶ 2.01. Debtor requests the court acknowledge as of month 17, Debtor has paid a total of \$10,735.00 into 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 November 21, 2023. Dckt. 59. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor's Plan may not be his best effort or proposed in good faith.
2. Debtor's retirement loan repayment has increased from \$54.14 per month to \$94.98 per month with no explanation.
3. Debtor appears to have increased income with his girlfriend's contributions, but the Plan still calls for 0% to unsecured creditors.

DEBTOR'S REPLY TO TRUSTEE'S OPPOSITION

Debtor filed a supplemental Declaration on November 21, 2023, responding to Trustee's objections. Dckt. 60. In its supplemental Declaration, Debtor states:

1. The retirement repayment amount has gone up because Debtor mistakenly borrowed another \$4,000.00 against his retirement without court permission. Debtor did not know he needed court permission to borrow against his own retirement. Debtor has since discussed with his attorney and been informed he must get court permission for these types of things.
2. Debtor's girlfriend is paying the majority of their household expenses. Without her contribution, he would not be able to fund the Plan.

DISCUSSION

Not Best Effort

Trustee asserts the Plan may not have been proposed in good faith as required by 11 U.S.C. §1325(a)(1) and (3) because Debtor is paying more toward his retirement loan than anticipated, and Debtor may not be committing his disposable income to the Plan. However, Debtor has addressed these concerns, informing the court of his mistake in borrowing more against his retirement without the court's permission. Debtor has also informed the court he is committing his income to the Plan in good faith, his girlfriend's income being used on household expenses to compensate for his reduction in overtime hours.

At the hearing, **XXXXXXXXXX**

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jeremy Wygal ("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 **XXXXX**.

17 thru 19

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 10, 2023. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

**The Motion to Value Collateral and Secured Claim of Ally Financial, Inc.
("Creditor") is **XXXXX**.**

The Motion filed by Joi Gonzalez ("Debtor") to value the secured claim of Ally Financial, Inc. ("Creditor") is accompanied by Debtor's exhibit. Exhibit 1, Dckt. 17. Debtor is the owner of a 2016

Chevrolet Suburban (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$20,211.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on September 25, 2020, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$27,557.00. Exhibit 1, Dckt. 17. 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 \$20,211.00, the value of the collateral. *See* 11 U.S.C. § 506(a).

At the hearing October 24, 2023 hearing, the Parties agreed to continue the hearing to allow the parties to work on a resolution.

December 12, 2023 Hearing

The parties have not reached a resolution, and success of Debtor’s Plan depends on this Motion to Value. 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 Joi Gonzalez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Value Collateral and Secured Claim of Ally Financial, Inc. (“Creditor”) is **xxxxx**.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 8, 2023. By the court’s calculation, 34 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.
--

Ally Bank (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Joi Dennette Gonzalez (“Debtor”) has proposed a Plan that does not pay the full replacement value of Ally Bank’s collateral, that being a 2017 Chevrolet Suburban LT Sport Utility 4D, VIN ending in 8839 (“Vehicle”).
2. The Plan further does not pay the proper interest rate on Creditor’s Claim.

Dckt. 39.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for Full Value of Claim / Interest Rate

Creditor's Claim must be properly accounted for up to the value of the collateral. Creditor has submitted an unauthenticated exhibit (Exhibit C, Dckt. 41), showing the value of the Vehicle is \$22,604 for a private party sale. Debtor's Plan proposes to only pay \$20,211 for Creditor's Claim. Plan, Dckt. 10 ¶ 3.08. However, Debtor has a Motion to Value on file being heard in conjunction with this Objection, seeking to Value Creditor's secured claim at \$20,211 (DCN. MOH-1). At the hearing, **XXXXXXXXXX**

Creditor further objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 7%. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Creditor proposes 8.5% is the current prime rate. The court agrees. Because the Plan calls for less than paying the current prime interest rate, the objection to confirmation of the Plan may be sustained on this basis. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

~~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 Ally Bank ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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 22, 2023. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

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. The Plan does not appear feasible. Debtor Join Gonzalez’s (“Debtor”) Schedule I projects income from her business of \$2,165.00 per month, but Debtor’s Profit and Loss statement for January, 2023 through September, 2023 show the income from the business as -\$117,195.23. Debtor’s Schedule I also does not list her social security income.

2. The Plan depends on the Motion to Value (DCN. MOH-1) being heard in conjunction with this Objection.
3. Debtor has failed to submit required business documents or tax returns for the years 2021 and 2022.
4. The Plan is not properly funded if secured creditor Ally Bank's Objection (DCN. CAS-1) is sustained.

Dckt. 43.

DISCUSSION

Trustee's objections are well-taken.

Inaccurate or Missing Information

Debtor's Schedule I contains outdated or inaccurate information. It is unclear whether Debtor is actually earning income from her business as stated in the Schedules. Schedule I, Dckt. 37 p. 5. Furthermore, Debtor has not updated her Schedules by including the income from social security. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Documents Related to Business

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

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

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

Pending Motion to Value

Trustee objects to the Plan as underfunded if Debtor's Motion to Value is denied, being heard in conjunction with this Objection. At the hearing, **XXXXXXXXXX**

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on November 21, 2023. By the court’s calculation, 21 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 XXXXX.

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

1. Debtor failed to appear at the First Meeting of Creditors.
2. Debtor has not provided documents in support of conversion of this case from Chapter 7 to one under Chapter 13, such as pay advices and tax returns.

3. It is not clear how much counsel for Debtor was paid in connection with this case, and Debtor's counsel may have overcharged.
4. The Trustee requests the court allow Trustee an opportunity to amend his objection after the continued First Meeting of Creditors.

Dckt. 52.

Debtor's Response

Debtor filed a Response to Trustee's Objection on November 30, 2023, addressing some of Trustee's concerns. Dckt. 60. In his Response, Debtor states:

1. Debtor attempted to reschedule the First Meeting of Creditors, informing Trustee's office that Debtor's attorney was unavailable on the original date and the meeting would be rescheduled to December 14, 2023.
2. Debtor has now provided the necessary documents.
3. Debtor's attorney initially charged \$1,500.00 for filing the Chapter 7 case, with Debtor having paid \$1,100.00 of that fee. When the case converted, Debtor opted for the Eastern District's "no-look" rate. Debtor's counsel is fine with receiving whatever that no-look fee may be, whether it is \$8,500 or \$4,000.

DISCUSSION

The Trustee's concerns having been addressed, at the hearing, **XXXXXXXXXX**

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

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

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

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

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 7, 2023. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

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

New Residential Mortgage, LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor has a secured interest in Debtor’s real property commonly known as 3626 Indian Creek Rd, Placerville, California 95667-8923 (“Property”). Debtor is currently in an active forbearance under the terms of the mortgage beginning September 2023, which is expected to end on November, 2023, totaling approximately \$8,768.88 in deferred payments. Debtor proposes to make payments under the forbearance agreement at the end of Debtor’s

mortgage loan. Plan, Dckt. 3 ¶ 7.01. Creditor objects to this provision of the Plan, arguing this modification is improper.

Dckt. 17.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$440,586.77 in this case. POC 4-1. Debtor's Schedule D estimates the amount of Creditor's claim as \$437,625.00 (Schedule D, Dckt. 1 p. 22) and indicates that it is secured by a deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 4 claim, but proposes to pay the Claim at the end of the mortgage loan, not during the life of the Plan.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it does not properly address repayment of the loan forbearance period of its Claim, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

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

Review of Specific Plan Terms for Creditor's Claim

The Chapter 13 Plan is funded by Debtor with monthly payments of \$200. Plan, ¶ 2.0-1; Dckt. 3. The Additional Provisions, Section 7 of the Plan, provide:

7.01 Valon Mortgage Inc, successor to Caliber Home Loans Secured Claim.

Class 4

Valen Mortgage Inc., successor to Caliber Home Loans secured claim shall be treated as a Class 4 Claim as Debtors are current with their mortgage payments pursuant to the terms of a forbearance agreement with Valen Mortgage Inc., successor to Caliber Home Loans.

Valen Mortgage Inc., successor to Caliber Home Loans claim is secured by a first deed of trust recorded against the real property commonly known as 3626 Indian Creek Road, Placerville, CA 95667 ("Collateral").

For the first month of Debtors Chapter 13 plan (November 2023), Debtors shall pay \$00.00 per month to Class 4 Creditor, Valen Mortgage Inc., successor to Caliber

Home Loans, followed by Debtors' contractual mortgage payments of \$2,922.96 per month, commencing in December 2023, and continuing for the remaining duration of the Debtors' Chapter 13 plan.

Debtors mortgage payments for September, October and November 2023 in the amount of \$2,922.96 are suspended pursuant to the terms of the forbearance agreement. The payments under the forbearance agreement shall be applied to the end of Debtors' mortgage loan.

Dckt. 3 at 7.

Creditor states that under the terms of the Forbearance Agreement, “At the end of the forbearance, the arrears are due payable. Debtors have not been approved by New Residential to add the forbearance arrears to the end of the loan as such, the proposed cure is purely speculative.” Objection; p. 2:20-22; Dckt. 17. The Declaration of Monica Hargrove is provided, in which she testifies that the forbearance amounts are due at the end of the forbearance, not the end of the loan.

The court could not identify a copy of the Forbearance Agreement in the record. Under the terms of the Note upon which the claim is based, it states that the last payment is due on this claim in May of 2052. Exhibit 2; Dckt. 19.

At the hearing, **XXXXXXX**

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

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

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

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

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

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

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 New Residential Mortgage, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

FINAL RULINGS

22. [23-23308](#)-E-13
[DPC](#)-1

REBA DANRIDGE
Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK, CHAPTER
13 TRUSTEE
11-9-23 [[22](#)]

22 thru 23

Final Ruling: No appearance at the December 12, 2023 hearing is required.

The Bankruptcy Case having previously been dismissed by this court's Order on November 30, 2023 (Dckt. 44), the Objection is overruled as moot.

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 of Plan 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 without prejudice as moot, the case having been dismissed by this court's Order on November 30, 2023 (Dckt. 44).

23. [23-23308-E-13](#)
[KMM-1](#)

REBA DANRIDGE
Pro Se

**OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR ALLIED FIRST
BANK, SB
11-16-23 [\[35\]](#)**

Final Ruling: No appearance at the December 12, 2023 hearing is required.

The Bankruptcy Case having previously been dismissed by this court's Order on November 30, 2023 (Dckt. 44), the Objection is overruled as moot.

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 of Plan 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 without prejudice as moot, the case having been dismissed by this court's Order on November 30, 2023 (Dckt. 44).

Final Ruling: No appearance at the December 12, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, attorneys of record who have appeared in the bankruptcy case, and Office of the United States Trustee on November 6, 2023. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Gretchen Raine LeBlanc-Wentz and Leilani Margarita Leblanc-Wentz ("Debtor"), has filed evidence in support of confirmation. *See* Dec., Dckt. 20; Exhibits, Dckt. 21. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 28, 2023, explaining that Debtor is current and the Plan appears feasible. Dckt. 27. 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, Gretchen Raine LeBlanc-Wentz and Leilani Margarita Leblanc-Wentz (“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 November 6, 2023 (Dckt. 22), is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the December 12, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on November 8, 2023. By the court’s calculation, 34 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.

<p>The Objection to Discharge is sustained.</p>
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David Cusick, the Chapter 13 Trustee (“Objector”), objects to Tiffany Renee Miller’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 7 bankruptcy case on November 30, 2022. Case No. 22-23098. Debtor received a discharge on March 16, 2023. Case No. 22-23098, Dckt. 32.

The instant case was filed under Chapter 13 on September 13, 2023.

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 March 16, 2023, which is less than four years preceding the date of the filing of the instant case. Case No. 22-23098, Dckt. 32. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

The Objection is sustained. Upon successful completion of the instant case (Case No. 23-23271), 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. 23-23271, the case shall be closed without the entry of a discharge.