

**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**

**Honorable Ronald H. Sargis**  
**Bankruptcy Judge**  
**Sacramento, California**

**December 13, 2022 at 2:00 p.m.**

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<b>1. <a href="#"><u>22-22503</u></a>-E-13 <a href="#"><u>DPC</u></a>-1</b>	<b>ALEJANDRO USI Carl Gustafson</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 11-9-22 <a href="#"><u>13</u></a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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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, and Debtor's Attorney on November 9, 2022. 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 -----.

<b>The Objection to Confirmation of Plan is sustained.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. The Debtor is delinquent (\$2,475) in Plan payments (one month's payment). Debtor has not made any plan payments since this case was filed.
- B. With a claim of (\$68,188) filed by the IRS; of which (\$9,546.95) is priority, the Trustee computes the required period to properly pay the IRS would take at least 71 months, which exceeds the 50 month maximum allowed for a Chapter 13 Plan.
- C. For a family of four (two adults and two children), Debtor's expenses are unreasonable, with the proposed expenses stated on Schedule J totaling (\$2,702.00), and consist of:
  - 1. (\$50) for property insurance;
  - 2. (\$0.00) for home maintenance and repairs during the five years of the Plan;
  - 3. (\$300) for HOA Dues;
  - 4. (\$160) for electricity, heat, natural gas;
  - 5. (\$80) for water, sewer, garbage collection;
  - 6. (\$200) for telephone, cell phone, internet, satellite, and cable service;
  - 7. (\$900) for food and housekeeping supplies;

(Allowing (150) a month for housekeeping supplies, that leaves \$750 a month for food. That is (\$187.50) per person, which in a thirty (30) day month allows for only (\$2.08) per meal.)

- 8. (\$180) for clothing and laundry;
- 9. (\$150) for personal care products and services;
- 10. (\$100) for Medical and dental expenses;
- 11. (\$200) for gas, repairs, maintenance, and registration;

(On Schedule A/B Debtor lists one vehicle a 2000 Mazda Van with 168,000 miles. Allowing (\$10) for registration and (\$80) for repairs and maintenance, that leaves (\$110) for gas, which at (\$4.50) a gallon allows for purchasing only 24.5 gallons a month.)

- 12. (\$92) for charitable contributions and religious donations;
- 13. (\$280) for vehicle insurance; and
- 14. (\$10) for pet care.

The Trustee also states, though not listed on Schedule J, Debtor stated at the First Meeting of Creditors of also providing financial assistance to his cousin in the Philippines.

- D. Debtor has not provided copies of tax returns, and the Proof of Claim filed by the Internal Revenue Service states that tax returns have not been filed for the years 2016 through 2021.
- E. Debtor has not provided pay advices for the 60 days prior to the commencement of this case pursuant to 11 U.S.C. § 521(a)(1)(B)(iv)..
- F. Debtor has not provided the Trustee with the bank states for the 6 months prior to the commencement of this case as required by Federal Rule of Bankruptcy Procedure 4002(b)(2)(B).

## **DISCUSSION**

Trustee's objections are well-taken. Debtor has not provided the basic documents required to prosecute a bankruptcy case and Chapter 13 plan. Looking at the expenses on Schedule J, they appear to be "MAI" (made as instructed) to achieve a preconceived necessary projected income to fund a plan – not to truthfully and accurately state the reasonable and necessary expenses for Debtor and Debtor's family.

Looking at the Statement of Financial Affairs, there is no income for the non-debtor Spouse. Dckt. 1 at 34. For the Debtor, his income consists of Social Security income of \$29,436 in 2020, \$31,125 in 2021, and \$24,615 (this bankruptcy case being filed on September 30, 2022) in 2022.

Debtor discloses other income for those three years, that being gross income gambling winnings (not net after accounting for losses) of \$16,350 in 2020, \$15,222 in 2021, and \$10,000 in 2022.

Debtor does not state any gambling income on Schedule I and has no profit and loss statement showing all of the expenses and losses that go with generating gambling income (which are stated to be 50% of Debtor's only other income, his Social Security income).

Debtor's expenses shown on Schedule J and in computing projected disposable income are unreasonable and do not appear to be accurate. Debtor is driving a twenty-plus year old vehicle with 168,000 miles on it. Such a vehicle, as is universally known, requires substantial repair and maintenance expenses.

The food budget appears not merely unreasonable, but objectively unrealistic and a made up number.

With the substantial Internal Revenue Service claim, the Plan is inadequately funded, and based on the financial information provided by Debtor, Debtor is incapable of funding the Plan.

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.

2. [22-20106-E-13](#)      **BARBAREE JERNIGAN AND**      **CONTINUED STATUS CONFERENCE RE:**  
[CAE-1](#)      **LANCE LIGHTHALL**      **VOLUNTARY PETITION**  
2 thru 3      1-18-22 [[1](#)]

Debtor’s Atty: David Foyil

Notes:

Set on 11/30/22 by order of the court filed 9/14/22 [Dckt 72]

[DEF-6] *Ex Parte* to Continue Status Conference filed 11/22/22 [Dckt 89]; Order granting filed 11/23/22 [Dckt 93]

<b>The Status Conference is XXXXXXXX</b>
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#### **DECEMBER 13, 2022 STATUS CONFERENCE**

On December 13, 2022, the court conducted the confirmation hearing on Debtor’s Motion to Confirm the Amended Chapter 13 Plan and **XXXXXXX** . The court has entered its orders authorizing the employment of a Real Estate Broker and Agent, and approved the sale of the 6075 Ridgeway Property, which sales proceeds will fund the Plan.

At the Status Conference, **XXXXXXX**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 19, 2022. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

<b>The Motion to Confirm the Amended Plan is granted.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Barbaree Anette Jernigan and Lance Hunter Lighthall ("Debtors") have filled their Amended Chapter 13 Plan provided evidence in support of confirmation.

The Chapter 13 Trustee filed a Response (Dckt. 85) stating that the Trustee has received \$169,492.92 in proceeds from the sale of the Ridgeway Drive Property, which exceeds the funding projected in the Amended Plan. Additionally, the court has not yet entered an order (waiting for the Status Conference, which is now being conducted in conjunction with this Motion to Confirm) authorizing the employment of the Realtor for Debtor for the sale of the 6470 Ridgeway Drive Property (Motion DCN: DEF-004; Dckt. 66). The Motion seeks to employ Side, Inc, as the Broker, for which Nathaniel Davis will be the real estate agent.

The court issued an order on November 16, 2022, authorizing the employment of Nathaniel Davis as the real estate agent for the Debtor for the Bankruptcy Estate. This employment is for the sale of the 6470 Ridgeway Drive Property. Order, Dckt. 97; Motion, DCN: DEF-005, Dckt. 80. This Motion requested the

employment of Side, Inc. as the Broker and Nathaniel Davis as the real estate agent. This appears to render the prior Motion (DCN: DEF-004) moot.

At the hearing, **XXXXXXX**

The sale of the 6470 Ridgeway Property having been completed, the proposed Chapter 13 Plan complies with 11 U.S.C. §§ 1325, 1322; the Motion is granted, and the Plan is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Barbaree Anette Jernigan and Lance Hunter Lighthall (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on October 20, 2022, 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).**

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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 and Debtor's Attorney, on September 9, 2022. 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.

<p><b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXX</span>.</b></p>
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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 and the meeting was continued to October 6, 2022, and
2. The Plan is not feasible, nor does Debtor appear to be able to comply with the Plan.
  - a. Debtor's budget is unrealistic. Schedule J does not reflect any expenses for a vehicle or medical insurance;
  - b. Debtor failed to file tax returns;

- c. Debtor fails to provide for the full claims of the Internal Revenue Service (“IRS”) and Franchise Tax Board (“FTB”);
- d. Including the IRS and FTB’s claims would cause completion of the Plan to take approximately 85 months.

## **DISCUSSION**

Trustee’s objections are well-taken.

### **Failure to Appear at 341 Meeting**

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

### **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). Trustee asserts that Debtor is self-employed, earning a net monthly income of \$6,933.00, but Debtor’s Schedule J does not reflect medical insurance or vehicle expenses. Debtor has failed to explain the lack of expense for these items. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

### **Failure to File tax returns**

The IRS and FTB’s claims indicate tax returns were not filed for numerous years prior to filing for bankruptcy. Trustee’s declaration asserts that Trustee has only received Debtor’s 2013 tax return, to date. Declaration, Dckt. 15, filed on September 7, 2022. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Failure to Provide for a Secured Claim**

Debtor’s Plan does not provide for the secured claim of FTB. Additionally, there is no indication Debtor plans to provide for FTB outside of the Plan. FTB may request relief from stay which could impact Debtor’s ability to finance the Plan.

### **Failure to Provide for a Priority Claim**

Trustee asserts that the IRS filed a claim with a priority amount of \$81,063.29 in priority unsecured debt but Debtor only estimated and scheduled the IRS as priority for \$30,000.00, and \$25,544.00 as unsecured nonpriority. Proof of Claim 9-1, filed on August 29, 2022. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).



## **Plan Term is More than 60 Months**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 85 months due to proofs of claims filed by the IRS and Franchise Tax Board. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

## **DECEMBER 13, 2022 HEARING**

The Chapter 13 Trustee filed a Status Report on December 5, 2022. Dckt. 21. The Trustee reports that the Meeting of Creditors has been completed. However, at the December 1, 2022 Meeting of Creditors, the Debtor stated that he had not yet filed his tax returns, and the Meeting of Creditors has been continued to January 26, 2023.

At the hearing, **XXXXXXX**

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

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

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

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

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 21, 2022. 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><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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The debtor, David Robert Glenn ("Debtor") seeks confirmation of the Modified Plan because he was laid off for approximately eight months prior to COVID 19, and now the job he obtained has limited hours. Additionally, claims have come in higher than Debtor Scheduled.

The Modified Plan (Dckt. 24) provides for payments of \$1,650.00 for 60 months 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, 2022. Dckt. 31. Trustee opposes confirmation of the Plan on the basis that:

- A. The Debtor is delinquent \$4,100.00 in plan payments, there being \$14,850.00 that have come due under the Modified Plan through November 2022, but Debtor has paid only \$10.750.

- B. The Motion states that the Modified Plan is to increase the Plan payment from \$1,300.00 to \$1,650.00, but as drafted, it provides for a \$1,650 a month payment from the commencement of this case.
- C. The Trustee notes that while the Plan states that Nonstandard Provisions are attached, there are no attachments to the Modified Plan.

The Chapter 13 Trustee further states, that but for the delinquency, the Trustee would support confirmation.

## **DEBTOR'S RESPONSE**

Debtor filed a response on December 7, 2022. Dckt. 37. Debtor acknowledges that the Modified Plan on file contained a clerical error - the Nonstandard Provisions not being attached – and that a corrected version of the Modified Plan was filed on December 6, 2022 (Dckt. 34). Further, that the Notice of this Correction was served. The corrected version of the Plan, including the Nonstandard Provisions, were served on creditors on December 7, 2022. Cert. of Serv., Dckt. 39.

## **DISCUSSION**

The Non-Standard Provision addresses the monies received and disbursed through the first eight months of the Plan, and further provides that the total payments for months 1-7 of the Plan total \$9,100.00, with the monthly payments increasing to \$1,650.00 for months 8 through 60 of the Plan. The corrected Modified Plan continues to provides for a 100% dividend for creditors holding general unsecured claims.

This addresses the Trustee's Opposition. At the hearing, **XXXXXXX**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, David Robert Glenn ("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 corrected First Modified Chapter 13 Plan filed on December 6, 2022, (Dckt. 34) 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter Trustee, and Office of the United States Trustee on November 2, 2022. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss Case is <span style="color: red;">XXXXX</span>.</b></p>
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On November 2, 2022, Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust, ("Creditor") filed a Motion to Dismiss for Failure to Make Plan Payments. Dckt. 23. In the caption of the Motion, it states that the Confirmation Hearing is set for December 13, 2022. However, there is no Motion to Confirm set in this case.

Creditor states that Debtor's Plan was confirmed on February 24, 2020. Then, on March 5, 2020, Creditor filed its proof of secured claim.

Creditor states that Debtor is delinquent on the post-petition monthly payments due Creditor, with the last being made on June 30, 2022, in the amount of \$1,466. Motion, ¶ 6; Dckt. 23. Creditor states that the Trustee advises Creditor that Debtor has defaulted in Plan payments, and therefore that is why Creditor is not being paid on its claim. *Id.*, ¶ 7.

In violation of the Local Bankruptcy Rules requiring exhibits to be filed as a separate pleading, a payment history has been tacked on to the back of the Motion. Dckt. 23, p. 3-7.

No declaration is filed with the Motion and the Exhibit is not authenticated.

As presented, the Motion does not provide evidence and grounds for dismissing the Case. Additionally, Creditor has specially set a motion to dismiss a Chapter 13 case on a day that is not one for the court hearing motions to dismiss.

From the Proofs of Claim filed, Creditor is the only creditor in this case (there being one other proof of claim filed for \$766).

If the court has a properly authenticated exhibit, the payment report, it appears to show that payments have been made to Creditor through the month of June 2022, for a total of \$41,650.05 disbursed to Creditor.

With monthly Plan payments of \$2,071.00 required to be made by Debtor, and if June 2022 was the last month Debtor made a Plan payment, then it would appear that the Debtor is delinquent for five (5) months, for a total of \$10,355.00.

Though there would appear to be a five figure default over a period of five months, the Chapter 13 Trustee has not addressed the default.

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 dismiss this Chapter 13 Case filed by Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust, ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is **XXXXXXX**.

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on November 10, 2022. 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><b>The Objection to Confirmation of Plan is sustained .</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. The Plan does not provide for payments to be made for at least the required thirty-six (36) month minimum period, 11 U.S.C. § 1325(b), but instead provides that the Plan terminates after a 5% dividend is paid to creditors holding general unsecured claims.
- B. The Plan provides for the "termination" of the Plan. The Trustee states that this may result in an adverse consequence for the Debtor, since it does not provide for completion of the Plan.
- C. The Plan also provides that the Plan may continue for an additional six months, but not to be more than 60 months in length.

- D. Debtor lists a 2015 Honda Civic on Schedule A/B but lists no creditor having a claim secured by the 2015 Honda. However, Debtor's bank records show there being a \$457.37 payment being made for a "Honda Pmt."
- E. Debtor has an adult partner and Debtor's parents living in Debtor's house.

## REVIEW OF PLAN

Debtor's Chapter 13 Plan does not specify the minimum number of months of the Plan. Rather, it merely states the 5% dividend to creditors holding general unsecured claims, citing to *In Re Sisk*, 962 F.3d 1133 (9th Cir. 2020). No quotation is provided or citation to a specific page of the Decision.

The Decision of the Ninth Circuit states:

Absent an objection, Chapter 13 of the Bankruptcy Code establishes no minimum duration for a bankruptcy plan. Debtors are thus free to propose a bankruptcy plan lasting any amount of time up to the statutory maximum period of three or five years. See 11 U.S.C. § 1322(d).<sup>1</sup> In this case, we consider whether the Code allows debtors to confirm a plan with an estimated duration. The Bankruptcy Appellate Panel ("BAP") held that it does not. We disagree.

*In re Sisk*, 962 F.3d at 1138. For the appeal, there was no opposing party. At the trial level, the Bankruptcy Judge refused to confirm the Debtor's Plan, notwithstanding there being no opposition filed by the Trustee or other party in interest. The basis was that the Plan did not specify a minimum term of 36 months.

The Discussion by the Ninth Circuit continues, and includes:

Second, § 1325(b)(4) mandates a fixed minimum duration for confirmation—but only if the plan triggered an objection by the trustee or a creditor. 11 U.S.C. § 1325(b)(1), (b)(4)(A). Under this provision, with few exceptions, a debtor's plan must adhere to a minimum duration of three or five years, depending on the debtor's "applicable commitment period." *Id.*; see *In re Flores*, 735 F.3d 855, 856 (9th Cir. 2013) (en banc) (holding that a Chapter 13 plan under § 1325(b)(1)(B) can be confirmed only if "the length of the proposed plan is at least equal to the applicable commitment period under § 1325(b)(4)"). Like § 1322(d), the "applicable commitment period" is tied to the debtor's income. 11 U.S.C. § 1325(b)(4)(A). Once again, this fixed minimum term applies only if "the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan." 11 U.S.C. § 1325(b)(1). The rest of § 1325, which governs the confirmation of all plans, does not include any fixed duration requirement. See 11 U.S.C. § 1325(a).

In substance, one might conclude that the Ninth Circuit ruling is one in which debtors have an incentive to try and slip by a somnolent trustee or less sophisticated creditors a plan that is shorter than the minimum 26 months that is required so long as someone says, "I object." No other sophisticated legal argument or evidence is required.

Here, the diligent Chapter 13 Trustee is not sleeping in the back, but carefully reviewing the proposed bankruptcy Plans. The Chapter 13 Trustee has objected to confirmation of this Plan, rendering *In re Sisk* inapplicable.

## DISCUSSION

Trustee's objections are well-taken. As noted by the Ninth Circuit, 11 U.S.C. § 1325(b)(1)(B) provides (emphasis added):

(b)

(1) If **the trustee or the holder of an allowed unsecured claim objects** to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the **plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period** beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Clearly, the 5% dividend does not provide for payment in full. Also, the Plan does not provide for payments to be made for the applicable commitment period.

The diligent Chapter 13 Trustee has objected to confirm, and therefore the Plan cannot be confirmed.

It is possible that there can be plans that do not go the length of the applicable commitment period and do not pay the claims in full. Paying creditors a substantial portion of their claim fast, rather than a larger amount spread over at least three years could make financial sense. In such situations, a debtor can buy his or her way out of "Chapter 13 purgatory" and have the bliss of a completed plan and discharge in less than three years. But that will be the unusual case where a Chapter 13 trustee is actively doing his or her duty, and creditor are paying attention to their claims.

In looking at Schedules I and J, it appears that Debtor is including expenses for Debtor and his non-debtor Partner. However, the non-debtor Partner makes no contribution for the non-debtor Partner's share of the expenses of "rent."

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



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

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

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

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

8. [18-22123-E-13](#)      **ROBERT/KATHRYN PETERSON**      **MOTION TO SELL**  
[DEF-011](#)      **David Foyil**      **11-22-22 [194]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2022. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

The Motion to Sell Property 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, -----.

<p><b>The Motion to Sell Property is granted.</b></p>
---

The Bankruptcy Code permits Robert Edward Peterson and Kathryn Martha Peterson, the Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and

1303. Here, Movant proposes to sell the real property commonly known as 3030 Woodleigh Court, Cameron Park, California] (“Property”).

The proposed purchaser of the Property is Bruce Kuhlman, and the terms of the sale are:

- A. \$875,000 sales price, with 60 day close of escrow.
- B. Rent back to Movants to January 17, 2023.
- C. The net proceeds for Debtor and the Estate are projected to be \$309,648.30, which will be paid directly from escrow to the Chapter 13 Trustee.

The Debtor will use the net proceeds to fund the Plan for payments to creditors with secured and unsecured claims.

## DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: ~~XXXXXXXXXXXXXXXXXX~~.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it provides for the liquidation of this asset and providing substantial monies to fund the Plan..

Movant has estimated that a five percent (5%)broker’s commission from the sale of the Property will equal approximately \$43,750.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission, which is to be equally divided between the Buyer’s Broker and the Seller’s Broker.

The Motion is granted and the Debtor is authorized to sell the Property on the terms and conditions of the Purchase Agreement filed as Exhibit A in support of the Motion (Dckt.197).

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 Sell Property filed by Robert Edward Peterson and Kathryn Martha Peterson, the Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Robert Edward Peterson and Kathryn Martha Peterson, the Chapter 13 Debtor, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Bruce Kuhlman or nominee (“Buyer”), the Property commonly known as 3030 Woodleigh Court, Cameron Park, California] (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$875,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 197, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale. The commission shall be divided equally and paid from escrow, with 2.5% paid to the Chapter 13 Debtor's Broker, Anthony Daniel James with Re/Max Gold, and Faith Pace as the real estate agent; and 2.5% paid to Buyer's Real Estate Broker and agent therewith, Prime Real Estate.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2022. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Employ is granted.</b></p>
--

Terry Robert Dasno ("Debtor") seeks to employ David Foyil ("Debtor's Attorney") as "Broker" and Debtor's Attorney's wife, Janelle Louanne Foyil ("Spouse"), as real estate agent pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks their employment to assist with listing, marketing, and selling Debtor's residential real property, commonly known as 34 Westview Drive, Jackson, California ("Property").

Debtor argues that Debtor's Attorney and Spouse's appointment and retention is necessary to sell the Property. Debtor's Attorney and Spouse have agreed to advertise the Property, show it to interested parties, represent the estate as seller in connection with the sale of the Debtor's Property, and advise the Debtor with respect to obtaining the highest and best offers available in the present market for the Debtor's Property.

Debtor's Attorney testifies as to the scope of employment as broker. Declaration, Dckt. 107. Debtor's Attorney testifies they are representing both the buyer and seller in this transaction. *Id.* at ¶ 10. Debtor's Attorney testifies that to any extent a conflict exists, all claims are being paid in full in this case, therefore, there is no prejudice to any party in interest. *Id.* at ¶ 12.

## Trustee's Response

Trustee filed a response on November 22, 2022. Dckt. 124. Trustee states the Motion is vague, incomplete, and contains conflicting terms. The Motion does not state a commission that will be paid to the Spouse, only Debtor's Attorney. It is unclear whether they are going to share the four (4) percent commission.

At the hearing, **XXXXXXXXXX**

## APPLICABLE LAW

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Pursuant to 11 U.S.C. § 328(c), a professional may be denied employment if professional under § 327 is not a disinterested person, or represents or holds an adverse interest to the estate. Here, in seeking such employment, the Debtor's realtor and broker are Debtor's attorney and their spouse. Additionally, the two will be representing both the buyer and seller. The court is presented with clear conflicts of interest.

As broker/agent for the fiduciary in the bankruptcy case, Debtor's Attorney and Spouse's interest is to sell the Property for the highest fair market value, while the buyer's broker's seeking to obtain the purchase for the lowest price possible - less than fair market value if possible. A buyer's broker, therefore, would have a clear adverse interest to the estate, which in violation of 11 U.S.C. § 328(c) both as to Seller's Broker.

Debtor has provided a waiver of any conflict of interest. Exhibit B, Dckt. 110. However, "[t]he requirement that a professional be 'disinterested' cannot be waived or circumvented by agreement or consent among creditors and the debtor. 3 Collier on Bankruptcy P 328.05 (16th 2022) (citing *In re Amdura Corp.*, 121 B.R. 862, 866 (Bankr. D. Colo. 1990) (stating provisions under 11 U.S.C. § 327 are not able to be limited by waiver. The professional must be disinterested and not hold an interest adverse to the estate.)).

Here, it is clear Debtor's Attorney and Spouse are interested persons. Therefore, it is in violation § 328(c). However, Debtor's Attorney and Spouse are accepting a reduced commission at four percent, reduced from the normal six percent. Additionally, this is a one hundred percent dividend case, all claims being paid, therefore, any adverse interest will not affect any rights or prejudice any claimants, but will only be at Debtor's expense.

~~————— Taking into account all of the relevant factors in connection with the employment and compensation of Debtor's Attorney and Spouse, and considering that no conflicts will prejudice parties of~~

interest, the court grants the motion to employ David Foyil (“Debtor’s Attorney”) as “Broker” and Debtor’s Attorney’s wife, Janelle Louanne Foyil (“Spouse”), as real estate agent pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330 for the Chapter 13 Estate on the terms and conditions set forth in the Motion and Listing Agreement filed as Exhibit A, Dekt. 110. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by Terry Robert Dasno (“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 Employ is granted, and Debtor is authorized to employ David Foyil as broker (“Broker”) and Janelle Louanne Foyil as real estate agent (“Agent”) for Debtor on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dekt. 110.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by Broker and Agent in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

**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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Set Hearing for Debtor's Motion to Vacate a Prior Order was served by the Clerk of the Court on Debtor (*pro se*), US Trustee, and Chapter 13 Trustee as stated on the Certificate of Service on October 29 and 30, 2022. The court computes that 9 and 10 days' notice has been provided.

**The Motion to Vacate is ~~XXXXXXX~~**

On October 24, 2022, Debtors Michael Carter and Torrie Conn ("Debtors") filed a pleading stating they "**object to** [the judge's] Order to Lift Automatic Stay (Unlawful Detainer). . . ." Dckt. 117, 1:12-13 (emphasis in original). The Objection continues, stating that the judge had "**no Authority** for said Lift of Automatic Stay." *Id.*, 1:16 (emphasis in original).

The court cannot identify any procedural basis for "Objecting to" an order issued by the court, and such "objection" having any legal effect. However, the court construed this as a motion to vacate a prior order of the court as provided in Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024. The court continued the hearing to December 13, 2022, to afford Debtors the opportunity to file an amended motion and then for the court to evaluate the status of the prosecution of the Motion to Vacate and set a scheduling order as necessary.

#### AMENDED MOTION TO VACATE

The "Objection" focused on earlier challenges that Debtors do not believe that the attorneys who state that they represent the Party named seeking relief from the stay, Federal National Mortgage Association, are really not attorneys for Federal National Mortgage Association, and are officious intermeddler (the court's term) attorneys without a client. <sup>FN.1.</sup>

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FN. 1. As this court has addressed on prior occasions, the United States Supreme Court has made it clear that federal court trial judges determine the correct law and apply it, and are not dependant on and limited by what may be presented by the parties. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). This is contrasted to the presentation of evidence, for which the trial court is limited to the evidence presented by the parties, and the trial court does not conduct independent discovery and introduce its own evidence at trial.

Here, the court notes that the Debtors are in *pro se* (and have been working hard to identify applicable law) and to avoid a situation where Debtors might be surprised at a hearing where the court identifies the correct law (even if the opposing Party does not), the court has used this as an opportunity to survey the Amended Motion and identify some initial principles of law that appear from the text of the Amended Motion.

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On December 8, 2022, Debtors filed their Amended Motion to Vacate (Dckt. 165). The court in previous orders and at prior hearings discussed the scope of motions for relief and the proceedings (traditional complaint and answer lawsuit) required for determination of rights and interests in property either in the State Court, District Court (if a basis exists for federal court jurisdiction), or in the Bankruptcy Court (adversary proceeding, Fed. R. Bank. P. 7001) pursuant to the federal court jurisdiction for matters arising under the Bankruptcy Code, in the bankruptcy case, or related to the bankruptcy case (28 U.S.C. § 1334).

In the prayer for relief, Debtors state that the eviction pursuant to the State Court Unlawful Detainer Judgment is scheduled for 6:00 a.m. on December 14, 2022.

With the Amended Motion being filed, the court can address the scheduling of filing responsive and reply pleadings, and any discovery issues.

The court provides a short, simple summary of the basic grounds asserted in the Amended Motion (which is not to be construed as an exclusive statement of such grounds):

- A. Cause did not exist to grant the relief from the automatic, and Debtors should be allowed time to proceed with their discovery relating hereto (which is being conducted through 2004 examinations).
- B. Fannie Mae has failed to establish that it is a real party in interest.
  - 1. Evidence was not presented in support of the Motion for Relief From the Stay that it had been assigned or had possession of the Note upon which it asserted rights.
  - 2. Citation is made to the Bankruptcy Appellate Panel Decision *Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal)*, 450 B.R. 897 (B.A.P. 9th Cir. 2010), for the legal principal that under Arizona law a mere assignment of a security interest does not assign the underlying obligation, and a purported assignment of only a security interest severing a lien from an obligation is a void transfer (the transfer is void, but it does not void the security interest). This is consistent with this court's ruling in *In re Walker*, 2010 Bankr.LEXIS 3781 (Bankr. E.D. Cal. 2010), an unpublished decision.

On this point, the court notes (and the Debtors may wish to re-review) that the grounds stated in the Motion for Relief from the automatic stay were not based on an obligation due on a promissory note that was secured by real property. Rather, the basis for requesting relief from the stay was that after completing a purported nonjudicial foreclosure under a deed of trust:



A Notice for Possession was served on **11/10/2021**. A copy of said Notice for Possession and Proof of Service is attached hereto marked **Exhibit “2”**. The Summons and Complaint was filed with the court on **12/06/2021**. A copy of filed Summons and Complaint is attached hereto marked **Exhibit “3”**. Defendants’ answer filed on **02/10/2022**. A copy of the filed Verified Answer to the Complaint for Unlawful Detainer is attached hereto marked **Exhibit “4”**. The court issued a Judgment on **05/05/2022** and the Writ was subsequently issued on **05/10/2022**. A copy of said Judgment and Writ is attached hereto marked **Exhibit “5”**. The Debtor’s filed Bankruptcy on **6/21/2022**.

Mtn for Relief, p. 2:17-24; Dckt. 47. The Motion for Relief states that the basis is the Judgment of the State Court, not a note and deed of trust. In the preceding paragraph in the Motion for Relief, it states that Fannie Mae (Debtors dispute that the attorneys in the State Court Action actually represent Fannie Mae) conducted a nonjudicial foreclosure sale and that Fannie Mae received a Trustee’s Deed transferring title to the Property to Fannie Mae.

- C. Debtors assert that Fannie Mae was required to file a proof of claim and the filing of such is required by Federal Rule of Bankruptcy Procedure 3002. Further, that Fannie Mae has not documented its security interest.

At a previous hearing the court discussed the requirements of Federal Rule of Bankruptcy Procedure 3002 and for what purposes a proof of claim must be filed. In pertinent part, Federal Rule of Bankruptcy Procedure 3002 provides (emphasis added):

Rule 3002. Filing Proof of Claim or Interest

(a) Necessity for filing. **A secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed**, except as provided in Rules 1019(3), 3003, 3004, and 3005. **A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.**

As stated above, a secured creditor, and unsecured creditor, or an equity security holder, must file a proof of claim in order to have a claim or interest to be allowed. Congress defines “claim,” “equity security holder” and “interest” in 11 U.S.C. § 101 (5) and ( ), respectively as follows:

(5) The term “claim” means—

(A) **right to payment**, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) **right to an equitable remedy for breach of performance if such breach gives rise to a right to payment**, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

(17) The term “equity security holder” means **holder of an equity security of the debtor.**

(16) The term “equity security” means—

(A) **share in a corporation**, whether or not transferable or denominated “stock”, or similar security;

(B) **interest of a limited partner in a limited partnership**; or

(C) **warrant or right**, other than a right to convert, **to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B)** of this paragraph.

As stated in the Advisory Committee for the 2017 Amendments, this provision requires the proof of claim be filed for the creditor to have an allowed claim (right to payment):

Notes of Advisory Committee on 2017 Amendments.

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. . . .

Even if a creditor with a secured claim fails to file a proof of claim, that does not void the lien, and the debtor, Chapter 11 trustee, or Chapter 7 trustee still have to deal with (pay) the secured claim (defined in 11 U.S.C. § 506(a)) if they want to preserve the property (or any value in excess of the debt secured by the lien) for the bankruptcy estate or debtor.

As noted above, Fannie Mae does not assert a right to payment of monies, but sought relief from the stay to continue in the enforcement of the State Court Unlawful Detainer Judgment saying it had right to possession of the Property which is being occupied by Debtors.

D. Fannie Mae is not a secured creditor, is not a real party in interest, and does not have standing to seek relief from the stay.

E Debtors state that they have filed a proof of claim for (\$2,383,728.00) in their own bankruptcy case and that they create a lien on the Property that is the subject of the asserted Trustee’s Deed. Debtors asserts that equity regards the beneficiary as the true owner (no legal authorities stated) and that rights and interest that are superior to any purported interests of Fannie Mae, but those superior interests will be forfeited in the motion granting relief from the stay so that the unlawful detainer proceedings can proceed (in which Debtors can assert their rights and why such unlawful detainer judgment is void or should be vacated). A legal basis for why any interests of Debtors, which are asserted to be superior to those purported interests of Fannie Mae being asserted, would be forfeited is not apparent from the Amended Motion.

- F. Debtors assert that there are obligations owed to Debtors that can be offset against any rights or interests of Fannie Mae (if the court determines that Fannie May has standing to seek relief from the stay).
- G. On March 9, 1933, Congress passed the Emergency Banking Relief Act, which permits the paying of all obligations with U.S. Dollars (with purported creditors not being allowed to demand gold, silver, or other form of payment). Debtor's then cite to comments made by a U.S. Senator in 1933 in connection with Senate Resolution 62, dated April 18, 1933, that:

**The ultimate ownership of all property is in the State;** individual so-called "ownership" is only by virtue of Government, i.e. law, amounting to mere user; and use must be in accordance with law, and subordinate to the necessities of the State.

Amd. Mtn, p. 16:11-16; Dckt. 165 (emphasis in original).

Debtors then state that "The above Senate declaration placed all property in the State, the Notice to Preserve Interest expresses the trust where the debtors are beneficiaries *nunc pro tunc* from March 2, 1983." *Id.*, p:2:17-20. The court addressed previously with Debtors that the court could not find a record of the Senate Resolution having been passed by the Senate, or passed as a Joint Resolution with the House, or it having been signed into law. The quote provided appears to be the opinion of one Senator, not a law established by Congress and signed into law by the President. Debtors have not provided any federal (with respect to federal land) or state court (with respect to the land of the sovereign States) decision interpreting applicable State law to provide that there is no private right of ownership of property in California (where the Property is located).

- H. Based on comments of a Senator concerning Senate Resolution 62 (which does not appear to have been passed even by the Senate), Debtors conclude that for all property there is a Government Landlord - Tenant relationship between debtors and the government. While using the term "debtor," the proposition is stated for all residents in a state, the District of Columbia, the Commonwealth of Puerto Rico, and other territories of the United States.

Debtors do state that the Emergency Banking Relief Act was held constitutionally valid by the Supreme Court of the United States. However, while stating that, Debtors did not cite to any authority, such as the federal or state courts determining that is the law, that all property is owned by the state and individuals have no right of ownership.

- I. Debtors conclude that since the State of California owns all of the non-federal land in the State of California, it was a necessary party to any litigation concerning a dispute whether Fannie Mae or the Debtors can occupy the Property that is the subject of the dispute.

## **Debtors' Affirmation in Support of the Motion**

Debtors have provided their “Affirmation” as to certain facts and arguments in support of the Amended Motion. In some respects the Affirmation reads like arguments that one would find in a points and authorities. In other respects, it appears to make statements one would find in a declaration or affidavit (written testimony under penalty of perjury). In light of the pro se Debtors prosecuting this Amended Motion, the has reviewed the Affirmation, and to the extent testimony is to be presented by either of the two debtors, that can be properly documented.

The Affirmation begins with a candid acknowledgment of stumbles along the way by *the pro se* debtors. While pro se parties must comply with the law, and rules, the courts recognize that pro se parties who are not lawyers can stumble. While this does not mean that pro se parties can “write their own” law and rules, the judicial process is not a “gotcha game” where one stumble flushes someone from the courthouse. The Affirmation includes a review of the legal and personal faith path of debtor Torrie Gidget Carter in this process.

On page 3 of the Affirmation, Debtors discuss proceedings in State Court in connection with the Unlawful Detainer Action, for which a Unlawful Detainer Judgment has been entered, concerning Debtors seeking a stay pending appeal, changing hearing dates, and having only magistrates in the courthouse when that was considered.

Additionally Debtors state that they “Respectfully request that the court place in the hands of Federal National Mortgage Association and the alleged counsel/Attorneys, McCarthy & Holthus, LLP to be in control of a quick resolve to the matter simply by their answer/production of Documents of 2004 Subpoenas.” Affirmation, p. 3:15-17; Dckt. 166.

#### **DECEMBER 13, 2022 HEARING, EVALUATION, AND SCHEDULING CONFERENCE**

At the December 13, 2022 hearing and conference, **XXXXXXX**

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

The Objection/Motion to Vacate filed by Michael Carter and Torrie Gidget Conn (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that **XXXXXXX**

11 thru 14

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

**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).**

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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 Debtors, and Debtor's Attorney on November 21, 2022. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXX</span> .</b>
--

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

- A. The Plan is based on a valuation of the secured claim filed by Travis Credit Union (POC 9-1), but the court has not yet granted Debtor's Motion to Value (it being continued to December 13, 2022).
- B. At the Meeting of Creditors, Debtor admitted that Mr. King is not working, and is currently out of disability. The wage amount of \$5,137.00 is just a projection of what may be future income when Mr. King is able to work and if he can get the job for which that possible projected income related.

- C. At the Meeting of Creditors Debtor admitted that the two debtors live together in one residence, and the two separate Schedule J's filed represent past expenses when Mr. King was employed and working out of town.
- D. Debtor has failed to provide the Trustee with the required tax returns (the 2020 return has been provided), profit and loss statement, bank records, and proof of insurance.

## DISCUSSION

Trustee's objections are well-taken. In addition to the financial information provided being inaccurate and the documentation incomplete, this information and evidence from the Trustee demonstrates that Debtor, and each of them, knowingly provided false information on their Schedules under penalty of perjury.

Though the court appreciates when people are pushed to the brink of devastating financial catastrophe "anything goes, because what's the cost." As Debtor's counsel well knows, not "anything goes" in Federal Court (or State Court as well) and making statements under penalty of perjury that are false have substantial consequences.

As the court has addressed in connection with Harley-Davidson Credit Corp.'s Objections to Confirmation (DCNs AP-1, AP-2), the Plan as proposed is under funded. With the Trustee advising the court and parties in interest that the income information and the expense information provided under penalty of perjury are false, it appears that the bankruptcy situation for Debtor may be even worse.

The court incorporates the rulings on the Harley-Davidson Credit Corp's Objections to Confirmation (DCN's AP-1 and AP-2) herein and make them part of this ruling.

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

**XXXXXXX**

**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).**

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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 Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 25, 2022. By the court's calculation, 18 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 -----.

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXX</span></b>
--

Harley-Davidson Credit Corp. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Its collateral, a 2016 Harley Davidson FXDB Street Bob has a value of \$12,760.00. Creditor has filed Proof of Claim 7-1 for a (\$8,454.20) secured claim.
- B. Debtor's proposed plan provides for funding only a secured claim of \$4,016.00.
- C. Debtor has not obtained an order from the court valuing Creditor's collateral.
- D. Debtor's Plan provides for a 5.00% interest rate for Creditor's secured claim, which is less than the *Till vs. SCS Credit Corp.* 541 U.S. 465, 124 SCt 1951, 158 L.Ed. 2d 787 (2004), computed amount based on a current Prime Rate of 6.25% and an adjustment of 1.5% to 3%. 11 U.S.C. § 1325(a)(5)(B)(ii).

Creditor asserts for its secured claim with a 50% equity cushion that the proper interest rate should be 9.25% maximum.

- E. While Debtor's Plan would require them to make \$550.00 a month plan payments so as to fund the payments of claims, including only \$4,016.00, plus the 5.00% interest, the \$550 a month is the maximum projected disposable income Debtor computes being able to fund a Plan.

## DISCUSSION

### Amount of Claim

As set forth in ¶ 3.02 of the Plan (Dckt. 3), the amount stated in the proof of claim controls, unless otherwise ordered by the court. Here Debtor has not obtained an order of the court determining the value to be other than as stated in Proof of Claim 7-1. The Class 2 Claim to be paid Creditor is the (\$8,454.20) stated in Proof of Claim 7-1.

### Interest Rate on Secured Claim

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 5.00% (the contract rate being stated to be 10.17% in Proof of Claim 7-1). Creditor's claim is secured by a Harley Davidson motorcycle. 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)).

As noted above, Creditor has a 50% equity cushion protecting it. Here, the motorcycle is a 2016 model, and all of the new vehicle depreciation has already burned off. If the motorcycle is worth \$12,760.00, then Creditor is greatly protected for its (\$8,454.20) secured claim.

However, Creditor offers no grounds for its proposition that it is at a grave risk of loss if Debtor pays its claim through a Plan, and the maximum 3.00% *Till* adjustment should be given to Creditor without any grounds stated by Creditor (other than it wants the 3.00%).

One way to look at Creditor's request for the 3.00% extra interest is that Creditor appears to be admitting either that the motorcycle is not actually worth \$12,000+ or that it is a vehicle that has suffered further rapid depreciation, which would indicate that it would have a much less than \$12,000+ value if taken to an auto auction. Thus, Creditor may be admitting that it is actually under secured and holds only a partially secured claim.

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. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate



in effect at the commencement of the case, 6.25%, plus a 1.25% risk adjustment, for a 7.50% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

With a claim of (\$8,454.20) secured claim amortized over sixty months with an interest rate of 7.5%, the monthly payment is (\$169.40), the Plan payments to Creditor on the Proof of Claim 7-1 secured claim total (\$10,164.00).

#### Plan Not Feasible

Creditor directs the court to the Plan being underfunded based its secured claim as set forth in the Proof of Claim, and that Debtor has no ability to provide any additional funding to the Plan. On Schedule I Debtor states under penalty of perjury that their monthly take home income is \$7,142.00. Dckt. 1 at 37. Though debtor Matthew King states under penalty of perjury that he is unemployed, he then states under penalty of perjury that he has monthly wages of \$5,137. *Id.* at 36.

On Schedule J Debtor computes having only \$550 in monthly net income, which is the projected disposable income based on the financial information provided under penalty of perjury by Debtor. Looking at the Schedule J expenses, it does not appear that there are any obviously overstated discretionary amounts. *Id.* at 38-41.

The financial information provided under penalty of perjury demonstrates that Debtor cannot increase the funding of the Plan.

Though Creditor, in making this argument does not provide any financial analysis, as addressed by the court below, it appears that the Plan is underfunded by (\$3,592.69). Over sixty (60) months, that represents a (\$59.88) monthly shortfall.

#### Review of Plan and Schedules A/B.

On Schedule A/B the two debtors list having the following vehicles:

1. 2006 Ford F-150,
2. 2016 Harley Davidson FXDB,
3. 2018 Harley Davison Iron 1200,
4. 2017 Suzuki RMX 450 Dirtbike,
5. 2013 DRZ Dirbile,
6. 2016 KTM 500EXC Dirtbike
7. 2018 Yamaha Raptor Dirtbike.

Under the proposed Plan (Dckt. 3) Debtor is keeping the 2015 Harley Davidson FXDB, 2018 Harley Davidson Iron 1200, and the 2005 Ford F-150, providing for them as Class 2 secured claims. Plan,

¶ 3.08. The Plan provides for the surrender of the other Dirtbikes. *Id.*, ¶ 3.08. The Plan provides for a 0.00% dividend to creditors holding general unsecured claims. *Id.*, ¶ 3.14.

With monthly plan payments of \$550 for sixty (60) months, the plan is funded with \$33,000. As drafted, the Plan requires (\$12,000) to fund the Class 2 claims. Then there is a (\$16,326.00) projected priority claim for the Internal Revenue Service in the Plan. However Internal Revenue Service Proof of Claim 5-1 lists (\$11,924.40) in priority claims, so it appears that there is some extra plan funding here.

Thus, the cash flow for the Plan as funded, with Creditors claims stated in Proof of Claim 7-1 and 8-1, with 7.5% interest, and the Travis Credit Union secured claim in the amount stated in Proof of Claim 9-1 (and using the Plan 5% interest rate provided for that secured claim in Class 2 of the Plan) is computed as follows:

Plan Funding.....	\$33,000.00
IRS Priority Unsecured.....	(\$11,924.40)
Class 2 Claims	
Creditor's Proof of Claim 7-1.....	(\$10,164.00)
Creditor's Proof of Claim 8-1.....	(\$ 6,004.29) [Plan interest 5%]
Travis Credit Proof of Claim 9-1.....	(\$ 5,302.86)
Trustee Fees.....	(\$ 2,500.00)
Debtor Atty Fees.....	<u>(\$ 3,000.00)</u>
Surplus/(Shortfall) Plan funding.....	(\$3,592.69)

The (\$3,592.69) funding Shortfall in funding the Plan requires an additional \$59.88 a month.

~~\_\_\_\_\_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 Harley-Davidson Credit Corp. ("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  
**XXXXXXX**

**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 Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 30, 2022. By the court's calculation, 13 days' notice was provided. 14 days' notice is required.

Creditor has provided inadequate service for this Objection.

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 XXXXXXX .**

Harley-Davidson Credit Corp. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor has filed Proof of Claim 8-1 asserting a secured claim in the amount of (\$4,945.39), which is secured by a 2018 Harley-Davidson Credit Corp XL1200NS Iron 1200. <sup>FN.1.</sup>

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FN. 1. On Proof of Claim No. 8-1 the vehicle is listed as a 2018 Harley-Davidson XL1200NS Iron 1200, and the creditor is identified as Harley Davison Credit Corp.

- 
- B. The value of the vehicle is stated to be \$9,255.00, providing Creditor with an almost 100% equity cushion.
  - C. The Plan in Class 2 provides that the claim of Creditor is only \$4,016.00.
  - D. The interest rate provided in the Plan is only 5.00%, and Creditor states that using the Till computation of Plan interest, the current Prime Rate is 6.25% and the 1.5% to 3% “risk adjustment” for this almost 100% equity cushion should be 4%, increasing the Plan interest rate to 9.25%.
  - E. Creditor asserts that the Plan is not adequately funded to pay its claim with the additional \$945 stated in Proof of Claim 8-1.

Creditor has asserted the same arguments in connection with it’s separate Objection for Confirmation, DCN: APN-1. The court incorporates by reference the analysis of these objection grounds and determination that as presently funded, the Plan has a \$15,000 surplus.

## DISCUSSION

With the Plan requiring that the amount stating in Proof of Claim 8-1 of (\$4,945.39) the amount to be paid through the Plan, unless otherwise ordered by the court on an objection to claim or 11 U.S.C. § 506(a) claim valuation, and the court determining that an interest rate of 7.5% is proper for Creditor’s substantially oversecured claims (here a 100% equity cushion), then the monthly payment over sixty months of the Plan would be \$99.10. This is \$24.10 more than the \$75.00 listed on the Plan.

Thus, the total plan payments for Creditor’s claim for Proof of Claim 8-1 over sixty months total \$5,406. This is \$906.00 more than what is computed on the \$75.00 amount listed in the Plan (which total \$4,500).

With monthly plan payments of \$550 for sixty (60) months, the plan is funded with \$33,000. As drafted, the Plan requires (\$12,000) to fund the Class 2 claims. Then there is a (\$16,326.00) projected priority claim for the Internal Revenue Service in the Plan. However Internal Revenue Service Proof of Claim 5-1 lists (\$11,924.40) in priority claims, so it appears that there is some extra plan funding here.

Thus, the cash flow for the Plan as funded, with Creditors claims stated in Proof of Claim 7-1 and 8-1, with 7.5% interest, and the Travis Credit Union secured claim in the amount stated in Proof of Claim 9-1 (and using the Plan 5% interest rate provided for that secured claim in Class 2 of the Plan) is computed as follows:

Plan Funding.....	\$33,000.00
IRS Priority Unsecured.....	(\$11,924.40)
Class 2 Claims	
Creditor’s Proof of Claim 7-1.....	(\$10,164.00)

Creditor's Proof of Claim 8-1..... (\$ 6,004.29) [Plan interest 5%]

Travis Credit Proof of Claim 9-1.....(\$ 5,302.86)

Trustee Fees.....(\$ 2,500.00)

Debtor Atty Fees.....(\$ 3,000.00)

Surplus/(Shortfall) Plan funding.....(\$3,592.69)

The (\$3,592.69) funding Shortfall in funding the Plan requires an additional \$59.88 a month.

~~—————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 Harley-Davidson Credit Corp. ("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  
**XXXXXXX**

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on October 31, 2022. By the court's calculation, 22 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 Travis Credit Union  
("Creditor") is XXXXXX.**

The Motion filed by Matthew D. King and Michele E. Prather King ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 18. Debtor is the owner of a 2006 Ford F-150 pickup truck ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$2,500.00 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).

## DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$5,867.00. Declaration, Dckt. 18. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized.

The Parties requested a short continuance to further review the value of the Collateral.

**December 13, 2022 Hearing**

As of the court's December 11, 2022 review of the Docket, nothing further had been filed in connection with this Motion.

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 Matthew D. King and Michele E. Prather King ("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 Travis Credit Union ("Creditor") is **XXXXXXX**.

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 20, 2022. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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><b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXXXX</span> .</b></p>
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The debtor, James Caston and Deborah Clark-Caston ("Debtor") seeks confirmation of the Modified Plan because debtor took legal custody of their grandchildren and subsequently had to move to a bigger house, resulting in increased rent. Declaration, Dckt. 65. The Modified Plan provides Plan payments total \$28,150.00 through and including August 2022 followed by payments of \$730.00 per month starting from September 25, 2022, for 20 months. Modified Plan, Dckt. 64. 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 October 18, 2022. Dckt. 73. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent under the terms of the proposed modified plan
- B. Proposed Plan may not be Debtor's best effort.



## **DEBTOR'S REPLY**

Debtor filed a reply on October 25, 2022. Dckt. 76. Debtor states they intend to be current by the date of the hearing, they paid off their first loan, and Debtor's Counsel requires more time to address the best efforts assertions.

## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$230.00 delinquent in plan payments, which represents less than one month of the \$730.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Not Best Effort**

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

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

The Plan proposes to reduce plan payments from \$950.00 to \$730.00 while continuing to budget monthly retirement loan repayments of \$462.06. Supplemental Schedule J, Dckt. 60. Debtor originally scheduled the retirement loan repayments to be paid off by April 2021. Schedule J, Dckt. 14.

The court is not clear why Debtor is still budgeting retirement loan repayments. If it is a new retirement loan, Debtor has not obtained the court's permission to incur debt. If not, it appears Debtor gave a false statement under penalty of perjury in their previous filings

The court notes that Supplemental Schedule I does not include any contributions or benefits that are being received for Debtor accepting the responsibility of caring for their grandchildren. In Debtor's Declaration in support of the Motion, they testify that they are receiving \$819.00 a month from Cal Works. Dec. ¶ 2; Dckt. 65.

The Trustee reported Debtor is current on the Plan payments and concurs with the Debtor's request for a continuance to allow Debtor to address the other issues.

### **December 13, 2022 Continued Hearing**

On December 6, 2022, Debtor, and each of them, filed a Supplemental Declaration (Dckt. 8). In it, they testify:

- A. The first retirement loan with monthly payments of (\$355.00) a month was paid off in August 2022. Dec. ¶ 2; Dckt. 8.
- B. The second retirement loan with monthly payments of (\$750.00) a month was paid off in April 2021 (approximate 10 months and \$7,500.00 ago). *Id.*
- C. Debtor obtained a court order to take custody of their four grandchildren. *Id.*, ¶ 4.
- D. Debtor describes the issues relating to their needing to obtain custody of their grandchildren. *Id.*, ¶¶ 5-8.
- E. Debtor describes the increase in costs and expenses in taking on the responsibility of raising their grandchildren. *Id.*; ¶¶ 9-11.
- F. Debtor requests that the court not dismiss the case, but confirm the proposed Modified Plan. *Id.*, ¶ 12.

At the hearing, **XXXXXXX**

~~—————The proposed Modified Chapter 13 Plan does not comply/complies with 11 U.S.C. § 1322, § 1325, and § 1329; the Motion is denied/granted and the Plan is not confirmed.~~

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, James W. Caston and Deborah L. Clark-Caston (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~—————**IT IS ORDERED** that the Motion is **XXXXXXX**, and Debtor’s Modified Chapter 13 Plan filed on September 20, 2022, as amended to provide **XXXXXXX**, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, **which states the above amendment**, 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).**

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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, and Debtor's Attorney on November 22, 2022. 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><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor failed to appear at the November 17, 2022, First Meeting of Creditors. Debtor contacted the Trustee that day requesting a continuance, and the Trustee continued the First meeting of Creditors to December 5, 2022.
- B. While the Debtor states he is below median income, the Trustee does not believe that the Means Test calculation has been properly computed. This bankruptcy case was filed on October 5, 2022, and the median income for Debtor's household was \$65,895.00. With income of \$80,440.00 stated on the Means Test Form 122C-1 (Dckt. 16, p. 305), Debtor is over the Median Income threshold.

On the Means Test Form 122C-1, Debtor states having gross income of \$6,358.40 a month. Form 122C-1, ¶ 2; Dckt. 15. Debtor lists no other income for his family unit of one person. Multiplying \$6,358.40 times 12 months yields an annual income of \$76,000.

In response to question 16c., Debtor states that the Median Family Income for a family of 1 in California is \$80,440. Going to the U.S. Trustee website for the Median Income information for a bankruptcy case filed between May 15, 2022 and October 31, 2022 <sup>FN.1.</sup> is \$67,010.

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FN. 1. <https://www.justice.gov/ust/means-testing/20220515>  
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- C. The Debtor has not provided the US Trustee with the required:
  - 1. Employer Payment Advices, and
  - 2. Tax Returns
- D. The Plan does not specify the interest rate to be paid for the Steven Cantrell, CPA claim, but states that is “TBD” (which the court construes to mean, to be determined).
- E. The claim of Wells Fargo Bank, listed having a (\$150,000) claim, is not provided for in the Plan and Wells Fargo Bank is not listed on the Master Mailing Matrix by Debtor.
- F. No minimum dividend percentage is stated for creditors with general unsecured claims.
- G. The Plan provides for \$1,500 a month plan payments, which the Trustee computes Debtor’s projected disposable income to be \$5,244.36.
- H. The information provided in the Schedules is not reliable:
  - 1. Schedule A/B lists a 2010 Dodge Charger with a value of \$27,000.00 but Debtor having only a \$3,000 interest in the vehicle. No creditor is listed on Schedule D having a lien against the vehicle.
  - 2. On Schedule C, Debtor lists only one asset as exempt, identifying it as “Single Family,” with a value of \$100,000. The Trustee cannot tie this to any asset listed on Schedule A.B.
  - 3. The Trustee questions whether Schedules D and E/F list all creditors, as they are inconsistent with the parties in interest listed on the Master Mailing List.
  - 4. On Schedule H (two identical ones having been filed) and state that there are no co-debtors. The reason for filing the second one, and if there was a correction to be made, have not been explained to the Trustee.

5. On Schedule J, it appears that Debtor has failed to list many necessary and reasonable expenses of a person, with only home maintenance listed as a (\$500) a month expense.
- I. On the Statement of Financial Affairs, Debtor states that he has had no income from employment for the current year and the prior two years, and on Schedule I Debtor does not state how long he has been employed.
- J. While on the Statement of Financial Affairs Debtor states that he has not consulted with an attorney or had an attorney prepare a bankruptcy petition, the Trustee notes that the documents filed state that Debtor is being represented by Noel Knight, of The Knight Law Group, citing the court to the Bankruptcy Petition (Dckt. 1, p. 8) in which Noel Knight states that he is the attorney for the Debtor and it has Mr. Knights typed signature.
- K. The Plan states that Debtor's attorney has opted out of the no look fees and will be seeking approval from the court. The monthly amount to be provided for in the Plan is states as "TBD."
- L. On Schedule A/B Debtor lists the following assets, in which no exemptions are taken:
  1. Live Oak Property.....\$400,000 value, Debtor's Interest \$100,000
  2. 2010 Dodge Charger.....\$27,000 value
  3. Household Goods.....\$ 1,000 value
  4. Electronics.....\$ 2,000 value
  5. Clothing.....\$ 500 value
  6. Deposits.....\$ 3,000 value

Objection to Confirmation; Dckt. 22.

## DISCUSSION

Trustee's objections are well-taken. Debtor's Plan is incomplete with many required amounts and information left blank of "TBD." Some "creditors" as just identified as "Others." The Class 2, Class3, Class 4, Class 6, and Class 7 sections are just left blank (not even stating "None"). Dckt. 17.

Looking at Schedule J, Debtor has no expenses for: (1) Food and Housekeeping Supplies, (2) Clothing, (3) Personal Care Products and Services, or (4) Medical and Dental Expenses. Dckt. 16 at 9-10. It states that property taxes and insurance are "inc.," but there is no mortgage payment listed on Schedule J or provided for in the Plan.

On Schedule I, Debtor states that his monthly income is even higher than on the Means Test Form. Debtor states having \$6,358.40 for wages and \$3,996.64 for overtime income, with his total monthly

wage income being \$10,355. Dckt. 16 at 7-8. Debtor's net income after withholdings is stated to be \$7,144.36. *Id.*

A review of the court's files does not disclose any other bankruptcy case having been filed by Debtor. It appears that Debtor is making gross *pro se* (self-represented) kinds of mistakes that can be very costly.

At the hearing, **XXXXXXX**

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

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

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

The Objection to the Chapter 13 Plan filed by 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.

17 thru 18

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

-----

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

**No Certificate of Service has been filed with the court.** However, oppositions to the Motion have been filed by the Chapter 13 Trustee and a creditor, indicating that at least some service was made.

~~Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on **xxxx, 202x**. By the court's calculation, **xx** 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><b>The Motion to Confirm the Fourth Modified Plan, as amended, is granted.</b></p>
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The debtors, Robin Arlene Harland and Thomas Scott Harland ("Debtors") seek confirmation of the Fourth Amended Plan (Dckt. 135). The basic terms of the Fourth Modified Plan are to have Debtor continue to make \$2,500 a month payments and sell the family home within six months of confirmation. This would allow for paying all secured and unsecured claims in full. The Nonstandard Provisions of the Fourth Modified Plan provide:

7.01. Payments through December 13, 2022, in the amount of \$59,089.00 are hereby ratified. Payments for the remaining term of the Plan shall be \$2,550 plus the proceeds from the sale of Debtor's residence in an amount sufficient to pay all claims in full. Such sale shall be completed no later than June 30, 2023.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on November 28, 2022. Dckt. 139. The Trustee opposes confirmation of the Plan on the basis that:

- A. Based on Debtor’s statement that the amount through December 13, 2022, paid into the Plan is \$59,089.00, there is a default of \$650.00.
- B. Neither the Motion or supporting declaration provide information about the marketing and sale of the property.
- C. The Modified Plan does not provide for the cure of existing defaults in post-petition installments on the Wells Fargo Bank secured claim (other than a lump sum payment from the sale of the property).
- D. The \$4,000 amount of attorney’s fees allowed Debtor’s counsel appear to be overpaid through the Plan, with counsel having received \$50 prior to filing the bankruptcy and the Plan providing for paying counsel an additional \$4,000.
- E. Debtor’s counsel has not submitted an order confirming the prior Modified Plan, the confirmation of which was ordered by the court.

## **CREDITOR’S OPPOSITION**

Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-3, Asset-Banked Certificates, Series 2006-3, (“Creditor”) has also filed a Response to the Motion. Dckt. 42. Creditor opposes confirmation, asserting:

- A. Creditor does not oppose Debtor proceeding with a commercially reasonable sale of the property. Creditor requests that the Plan provide Creditor with relief from the stay if the sale has not been consummated by June 30, 2023, or if Debtor defaults in the monthly adequate protection payments provided for in the Fourth Amended Plan.

## **DEBTOR’S LATE REPLY**

(Request for Late Reply Filed, Dckt. 145)

On December 7, 2022, a Reply to the Opposition and the Response to the Motion to Confirm was filed by Debtor. Dckt. 144. In the request for leave to file the late Reply, Debtor’s counsel notes that the Certificate of Service did not have the docket control number and that the Debtor’s Reply dated December 6, 2022, did not appear on the Docket.. Debtor’s counsel advances the conclusion that human error by counsel, and not blaming it on Apple, Dell, HP, HAL, or WBW (Wayne Blackwelder).

In the Reply, Debtor states:

- 1. The additional provisions requested by Creditor are acceptable and may be stated in the Order confirming the Fourth Modified Plan.



2. Debtor has sent the \$650.00 in certified funds to the Trustee, should have them by December 13, 2022.
3. In January 2023, after the holidays, Debtor will mover forward with the marketing and sale of the property. Debtor recognizes that the fourth quarter, with all the holidays, is not the better season to try and sell property if someone can wait until after the first of the year.
4. Debtor's counsel did not receive a \$50 attorney fee payment before filing, and counsel's scrivener's error can be corrected in the order confirming the Fourth Modified Plan.,
5. Counsel will correct the error and send to the Trustee a corrected Order Confirming the Third Modified Plan.

## DISCUSSION

Debtor's Reply and actions stated to being taken by counsel and Debtor appear to address the issues and concerns raised by the Trustee and the Creditor.

At the hearing, **XXXXXXX**

The Fourth Modified Plan, as amended, 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 debtors, Robin Arlene Harland and Thomas Scott Harland ("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 Fourth Modified Chapter 13 Plan filed on October 29, 2022, as amended to provide for the granting of relief from the automatic stay for creditor Deutsche Bank National Trust Company, as Trustee, and for correcting the amount of attorney's fees paid to counsel for Debtor, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which shall state the forgoing amendments, 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.

DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on September 21, 2022. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

**The the Motion for Relief from the Automatic Stay is removed from the Calendar,** the confirmed Fourth Modified Chapter 13 Plan stating terms upon which the stay is terminated in the further and by which Creditor may obtain an order from this court, as may be necessary, to document the termination of the Stay.

Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-3, Asset-Backed Certificates, Series 2006-3 ("Movant") seeks relief from the automatic stay with respect to Thomas Scott Harland as co-debtor and Successor-in-interest to deceased Debtor Robin Arlene Harland's, collectively, "Debtor", real property commonly known as 2263 Casa Dulce Way, Plumas Lake, California ("Property"). Movant has provided the Declaration of Rachel Marcella Cathcart Love to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made four post-petition payments, with a total of \$9,364.72 in post-petition payments past due. Declaration, Dckt. 122. Movant also provides evidence that there are twelve pre-petition payments in default, with a pre-petition arrearage of \$26,457.90. Movant's Information Sheet, Dckt. 123.

**TERMS FOR TERMINATION OF STAY  
INCLUDED IN DEBTOR'S FOURTH MODIFIED PLAN**

Debtor's Fourth Modified Plan provides that the automatic stay in this case terminates as to Creditor so that it may conduct a nonjudicial foreclosure sale and the purchaser obtain possession of the Property in the event that:

1. The Property is not sold by June 30, 2023; or
2. Debtor defaults in the monthly adequate protection payments to be made to Creditor under the confirmed Fourth Modified Plan.

This Motion for Relief From the Stay is removed from the Calendar, the terms and conditions for relief from the stay provided in Debtor's confirmed Fourth Modified Plan.

In the event that the automatic stay is terminated under the terms of the Fourth Modified Plan, Creditor may seek an order from this court documenting that such termination has occurred as may be necessary for Creditor to exercise its rights to foreclose on the Property and the purchaser to obtain possession of the Property.

Additionally, in the event that some other grounds were to arise for which immediate relief from the stay were warranted (say, an illegal gambling operation was being operated on the Property), creditor may seek relief through this Contested Matter by a supplemental motion.

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

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

The Motion for Relief from the Automatic Stay filed by Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-3, Asset-Backed Certificates, Series 2006-3 ("Movant") having been presented to the court, the Debtor having filed a proposed Modified Plan and Motion to Confirm, Movant having concurred with the continuance of the hearing on this Motion for Relief, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief from the Automatic Stay is removed from the Calendar, the terms and conditions for relief from the stay provided in Debtor's confirmed Fourth Modified Plan.

In the event that the automatic stay is terminated under the terms of the Fourth Modified Plan, Creditor may seek an order from this court documenting that such termination has occurred as may be necessary for Creditor to exercise its rights to foreclose on the Property and the purchaser to obtain possession of the Property.

Additionally, in the event that some other grounds were to arise for which immediate relief from the stay were warranted, creditor may seek relief through this Contested Matter by a supplemental motion.

19. [22-22443](#)-E-13  
[DPC-1](#)

RANDOLPH CARPADUS  
Gabriel Liberman

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-10-22 [\[17\]](#)

19 thru 20

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

**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, and Debtor's Attorney on November 10, 2022. 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 -----.

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXX</span> .</b>
--

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

- A. Debtor's classification of the Shellpoint Mortgage Servicing claim (first deed of trust secured claim) as a Class 2(A) claim is improper. Shellpoint has filed an objection to plan, including that it has a claim that will not be paid until November 2034, well after the Plan term has concluded.

- B. The Plan provides for Debtor refinancing or selling property before month 6 of the Plan. No evidence has been provided as to the conduction of the property or steps being taken to promptly prosecute a refinance or sale by month 6 of the Plan.

Dckt. 17.

## DISCUSSION

Trustee's objections are well-taken.

The Plan provides for Debtor to make a \$500.00 a month Plan payment. Plan, ¶ 2.01; Dckt. 3. For creditors and other payments under the Plan, it provides:

- A. Trustee Fees.....(\$ 45) [estimated by court]
- B. Debtor's Counsel.....(\$4,000) [in addition to the \$3,000 paid prior to this case being filed]
- C. Class 1.....None
- D. Class 2.....None [all payments from sale of property proceeds]
- E. Class 3.....None
- F. Class 4.....None
- G. Class 5 [priority].....(\$ 150)
- H. Class 7 .....(\$9,872)

Dckt. 3.

Looking at Schedule I, \$3,385 in income, but anticipates losing \$1,800 of unemployment benefits November 30, 2022. That would leave just \$1,585.00 of Social Security benefits a month as Debtor's income. Dckt. 1 at 27-28. On Schedule J, Debtor lists having a Domestic Partner as a dependent. *Id.* At 29. However, no income is shown as being contributed for the household expenses on Schedule I from the Domestic Partner.

On Schedule J, it appears that Debtor has some generous, and some unrealistic "necessary" and "reasonable" expenses. These include:

- 1. No home maintenance, repair or upkeep expenses.
- 2. \$1,000 a month for food and housekeeping supplies.
- 3. No clothing expense.

4. \$200 a month for car maintenance, repair, registration and gas.
5. \$400 for pet expense.

*Id.*, p. 29-30.

On Schedule J it states that Debtor's Domestic Partner does not work or provide any income/contribution to household and is disabled. This does not say that the Domestic Partner does not have disability benefits, Social Security benefits, annuities, trust income, stock dividends, or other income to pay a fair share of expenses.

In reviewing Schedule A/B, the property to be sold is listed on Schedule A/B as having a value of \$400,000. Dckt. 1 at 11. On Schedule D Shellpoint Mortgage Servicing is listed as having a deed of trust encumbering the property to secure a debt of (\$264,896.84). *Id.*, at 21. This is consistent with the amount stated in Proof of Claim 4-1.

There is also a judgment lien listed on Schedule encumbering this Property for a (\$5,709.00) claim of Capital One. *Id.* at 20.

At the hearing, **XXXXXXX**

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

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

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

~~\_\_\_\_\_ The Objection to the Chapter 13 Plan filed by 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.~~

~~\_\_\_\_\_ **IT IS ORDERED** that the Objection is overruled, and Randolph Michael Carpadus' ("Debtor") Chapter 13 Plan filed on September 28, 2022, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 12, 2022. By the court’s calculation, 62 days’ notice was provided. 14 days’ notice is required.

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

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXX</span></b>
--

The Bank of New York Mellon fka The Bank of New York as Trustee for the Certificate holders of CWABS Inc., Asset-Backed Certificates, Series 2004-11 as serviced by NewRez LLC d/b/a Shellpoint Mortgage Servicing (“Creditor”) holding a claim secured by a deed of trust against Debtor’s residence opposes confirmation of the Plan on the basis that:

- A. As drafted, the Plan states that the arrearage on Creditor’s claim is \$0, but Creditor computes it to be (\$35,558.94).
- B. The Plan does not provide for “curing” the default (but does provide for paying the claim in full through the sale of the Property securing Creditor’s claim).
- C. Debtor’s Plan providing for payments of \$500 a month for sixty (60) months is not feasible. Debtor’s Schedules I and J show monthly net income of \$636, which will not

be sufficient to cure Creditor's arrearage (though paying the claim in full, including the arrearage, through the sale of the Property).

Objection, Dckt. 12.

## DISCUSSION

Debtor's Plan is a bit loosey-goosey, expenses do not appear to be reasonable or realistic, and Debtor appears to be not disclosing income of his Domestic Partner. However, this Plan requires the immediate liquidation sale of the Property securing Creditor's claim, with it to be completed by April 2023.

Creditor appears to be making a formalistic, not tied to the actual Plan terms objection to confirmation. It appears that it is Creditor's desire that the Plan not be confirmed and the creditors be in limbo while Debtor, outside of a plan, is moving forward to sell the Property, without any requirements and creditor guardrails put in place through a plan.

In Creditor's Proof of Claim 4-1, under penalty of perjury it states that its claim is (\$268,360.86), which is consistent with the amount stated by Debtor. Interestingly, Creditor "neglected to state the value of its collateral in Proof of Claim 4-1 ¶ 9. It appears that the Bank of New York Mellon does not have the ability to evaluate the collateral that secures the debts it seeks to have paid.

Bank of New York Mellon, Creditor, being "unable" to state a value of its collateral, the court uses the value of \$400,000 stated by Debtor on Schedule A/B. Dckt. 1 at 11. <sup>Fn.1.</sup> Using the \$400,000 value, Creditor has a \$132,000 equity cushion protecting it.

-----  
FN. 1. Though not evidence of value, it is interesting to note that the Zillow.com website lists a value of \$471,500 for the Property, which includes 5.54 acres (according to Zillow.com).  
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In an unrelated case, the court notes that another creditor faced with a debtor having a plan for the prompt (within six months) liquidation of property to pay its claim used the opportunity to have termination of stay provisions build into the Plan as well as adequate protection payments (which were already being offered by that debtor). Here, Debtor's finances look so skinny that a substantial adequate payment may not be feasible, but Creditor does have a 49% equity cushion protecting it.

At the hearing, **XXXXXXX**

~~----- The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled/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 Bank of New York Mellon fka The Bank of New York as Trustee for the Certificate holders of CWABS~~



~~Inc., Asset-Backed Certificates, Series 2004-11 as serviced by NewRez LLC d/b/a Shellpoint Mortgage Servicing (“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.~~

~~IT IS ORDERED that the Objection is overruled, and Randolph Michael Carpadus’s (“Debtor”) Chapter 13 Plan filed on September 28, 2022, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

21. [18-25851-E-13](#)  
[PGM-4](#)

ROBERT HUNTER  
Peter Macaluso

MOTION TO MODIFY PLAN  
10-20-22 [\[138\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 20, 2022. By the court’s calculation, 54 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXX</span>.</b>
---

The debtor, Robert Paul Hunter (“Debtor”) seeks confirmation of the Modified Plan because of changes in his financial situation and the cannot afford the step up in payment. The Debtor is prosecuting two adversary proceedings to clear title to his property so that he can refinance or obtain a reverse mortgage to complete the Plan. Motion, Dckt. 138. Debtor seeks to have the defaulted payments waived and that plan payments of \$1,900 a month commence October 2022 and continue for the remainder of the Plan.

## CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on November 22, 2022. Dckt. 147. Trustee opposes confirmation of the Plan on the basis that:

- a. The Modified Plan states that the Plan payments made through September 2022 (the 48<sup>th</sup> month of the Plan) total \$84,982.09. No approval of a refinance or reverse mortgage has been approved by the court.
- b. The Trustee shows that the mortgage arrearage has increased due to the defaults.
- c. Debtor has not included an updated statement of business income and expenses. The income and expense information relating to Debtor’s business are conflicting.

Dckt. 147.

### Debtor’s Reply

Debtor’s Reply, Dckt. 154, states that the reason the current reverse mortgage could not close because of the two heretofore unknown deeds of trust (which Debtor is asserting in the adversary proceedings have forged signatures) that popped up on the title report. All post-petition arrearages, when Plan payments to the Trustee or Trustee disbursements to creditors with secured claims through the prior confirmed Plan are to be paid through the refinance or reverse mortgage.

Debtor states that the Business Income and Expense attachment was filed on December 6, 2022.

## DISCUSSION

Debtor is presented with an unusual situation, allege title fraud. In the Adversary Proceedings Debtor has presented to the court that the commercial business identified as the trustee under the two deeds of trust denies having any involvement with such loans and has no files relating to those deeds of trust.

At the hearing, **XXXXXXX**

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

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

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on October 20, 2022, 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.~~

22. [20-24862](#)-E-13  
[PSB-3](#)

LEVESTER/JENNIFER JACKSON  
Paul Bains

MOTION TO MODIFY PLAN  
11-4-22 [\[46\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2022. By the court’s calculation, 35 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).

<b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXXXX</span> .</b>
--

The debtors, Levester Jackson, Sr. and Jennifer Renee Jackson (“Debtors”) seek confirmation of the Modified Plan because of illnesses, moving, and changes in income. Motion, ¶¶ 6-9, Dckt. 46; Declaration, Dckt. 48. The Modified Plan provides \$23,000.00 paid through September 2022, and further payments of \$1,077.00 for Plan months 37-60. Modified Plan, Dckt. 51. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Modified Plan provides for the payments on the secured claims, for Wells Fargo Bank’s secured claim to be provided for in Class 3 (surrender) and there to be not less a 3.00% dividend for general unsecured claims.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on November 29, 2022. Dckt. 54. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan does not clearly state what the Plan payments are to be from November 2022, month 26 of the Plan and October 2023, month 36 of the Plan. The \$1,077.00 payments do not begin until month 37 of the Plan.
- B. The Trustee’s records show that Debtor has paid \$23,000.00 into the Plan through the month of September 2022. Additionally, TFS records show a \$1,000 payment is pending.
- C. If Debtor proposes to make no payments for months 24-36 of the Plan, then the Plan is overextended to 64 months.

## **RESPONSE BY DEBTOR**

On December 2, 2022, Debtor filed a Response to the Trustee’s Opposition. Dckt. 57. First, the Debtor notes a typo in the Modified Plan, with the \$1,007.00 a month Plan payment to commenced in month 24 of the Plan and continue through month 60 of the Plan.

Debtors have scheduled a payment of \$154 to make up the October and November 2022 delinquencies, and have modified their TFS payments to be \$1,077.00 a month going forward.

With the Plan payments of \$1,007.00 beginning in month 24 of the Plan (not month 37), the Class 2 secured claim payments are properly funded for a 60 month plan.

## **DISCUSSION**

At the hearing, **XXXXXXX**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Levester Jackson, Sr. and Jennifer Renee Jackson ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on November 4, 2022, 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 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 Debtors, Debtor's Attorney, Chapter 13 Trustee, Creditor's Attorney, and Office of the United States Trustee on November 18, 2022. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Motion for Consent to Enter Into Loan Modification Agreement 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, -----.

<p><b>The Motion to Authorize Loan Modification Trial Payments is granted.</b></p>
--

The Motion to Approve Loan Modification filed by Audie Pierre Lauser Cruz and Abigail Limquiaco Dy-Cruz ("Debtor") seeks court approval for Debtor to incur post-petition credit through a Loan Modification with Rocket Mortgage, LLC f/k/a/ Quicken Loans, LLC ("Creditor"). The basic terms of the Loan Modification (Agreement, Exhibit A; Dckt. 59), are:

1. Modification Period.....30 Years
2. Trial Monthly Payment.....\$3,268.50.

The Modification Agreement does not provide any more information, such as the interest rate, the principal amount, or other terms.

No declaration of Debtor is provided explaining the modification or that Debtor understands what Debtor is committing to, even if on just a trial basis. However, an employee of Rocket Mortgage, LaTasha Calvert, provides her Declaration, whose testimony includes:

- A. She testifies that Rocket Mortgage is a “Movant of the Debtors with respect to a certain mortgage upon real estate, with a common address of 1524 Bailey Dr, Fairfield, California 94522, with a total outstanding balance of \$411,899.27.” Dec., ¶ 8; Dckt. 58.
- B. The Debtor is obligated on a Note dated October 15, 2018, with an outstanding balance of (\$411,899.27). She further testifies that the original note amount was (\$406,491.00). *Id.*, ¶ 8, 9.
- C. No testimony is provided as to the terms of the Loan Modification, just the amount of the trial loan payments.

Rocket Mortgage has filed Proof of Claim 6-2, stating that the secured claim is (\$394,017.49) and fails to provide the required information about what the creditor states is the value of the collateral. POC 6-2, ¶ 9. The principal balance is stated to be (\$394,017.49) on the attachment to Proof of Claim 6-1, with the monthly payment being (\$3,152.12). POC 6-1, p. 4.

The court is at somewhat of a loss of knowing what possible loan modification the trial payments of \$3,268.50 are requesting to be authorized. However, this is just a trial payment authorization, and if Debtor seeks to enter into a binding loan modification, that will have to be authorized by court pursuant to a subsequent motion and order.

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

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

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

The Motion to Approve a Trial Loan Modification and Authorize Trial Loan Modification payments filed by Rocket Mortgage, (“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 court authorizes Audie Pierre Lauser Cruz and Abigail Limquiaco Dy-Cruz., the Debtors in this case, to make trial loan modification payments in the amount of \$. \$3,268.50 a month, for the months of November 2022 through February 2023, to Rocket Mortgage, LLC f/k/a Quicken Loans, LLC (“Creditor”), on its secured claim that is the subject of Proof of Claim 6-

1 in this case. The payments are authorized pursuant to the Loan Modification Agreement filed as Exhibit A, Dckt. 59, in support of the Motion.

For the monthly trial loan modification payments, Debtor is authorized to make them directly to Creditor during the months November 2022 through February 2023.

Authorization to enter into the Loan Modification must be obtained through a separate motion and further order of this court.

24. [18-20567](#)-E-13      **JOYCE BILYEU**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Lucas Garcia**      **7-27-22 [57]**

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed this Motion on July 27, 2022 requesting that the court seeks dismissal of the case on the basis that:

1. the debtor, Joyce Ann Bilyeu (“Debtor”), is delinquent in Plan payments.

Debtor was determined to be \$2,799.00 delinquent in plan payments, which represents multiple months of the \$700.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, the court dismissed the case. Order, Dckt. 62.

#### **VACATING DISMISSAL AND RESETTING HEARING ON MOTION TO DISMISS**

On November 9, 2022, this court entered an order vacating the dismissal. Dckt. 83. The court’s detailed findings in vacating the dismissal order and the recitation of the Debtor’s “mistakes” is set forth in the Civil Minutes from the hearing on the Motion to Dismiss. Dckt. 82.

#### **DECEMBER 13, 2022 RESET HEARING ON MOTION TO DISMISS**

On December 6, 2022, the Trustee provided the court with a Supplemental Pleading (titled Status Report), Dckt. 86, asserting the following:

- A. Debtor’s Plan payments are currently delinquent \$4,899.00, and no Plan payment has been made since September 1, 2022.
- B. The delinquency includes the \$3,500.00 that Debtor’s counsel was ordered to disburse from his Trust Account to the Chapter 13 Trustee.



C. The Debtor is now in month 58 of a 60 month Plan. While 57 payments totaling \$41,241.00 are required under the Plan, Debtor has made payments totaling only \$36,342.00.

D. Debtor has taken no action to prosecute this case since the court vacated the dismissal.

Based on the Debtor's further defaults, the Trustee renews the request that this case be dismissed.

As was clear in the court addressing the Motion to Vacate, the monetary defaults were caused by the Debtor incorrectly terminating the Plan payments. From the Trustee's report, Debtor (though presumably having the excess funds by not having made the Plan payments) is not prosecuting this case.

Cause exists to dismiss this case. While unfortunate that Debtor is not making the Plan payments or addressing the defaults in the last six months of the Plan, Debtor is substantially defaulting in payments.

The Motion is granted and the case is dismissed.

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

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 granted, and the case is dismissed.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on November 22, 2022. 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><b>The Objection to Confirmation of Plan is sustained and the Chapter 13 Plan is not confirmed.</b></p>
--

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

- A. The proposed Plan does not provide for the Debtor's best efforts in funding the Plan. As proposed, it provides for a \$385.00 a month Plan payment for sixty (60) months, with at least a 2.48% dividend for creditors with general unsecured claims.
- B. On Schedule I, the Trustee has identified significant discrepancies in the income information provided by Debtor under penalty of perjury. These include:
  - 1. Debtor Terrance Hall lists his monthly gross income to be \$10,922.090 and his monthly net income to be \$6,181.42.

2. Mr. Hall pay advices disclose this income and are consistent with the information on Schedule I.
  3. However, on the April 26, 2022 pay advice, it stated that Mr. Hall's 2022 year to date income was \$122,389.27 – which averages \$35,597 a month when averaged over the first four months of 2022.
  4. The Trustee states that at the November 17, 2022 First Meeting of Creditors Debtor admitted to receiving an annual incentive bonus in March of every year.
  5. Based on gross wages of \$10,922.00, the Trustee computes the Debtor's March 2022 bonus to have been approximately \$111,476.27.
- C. Debtor fails to provide the undisclosed bonus income of \$111,476.28 in his statement of income and computation of projected disposable income, and is not making his projected disposable income available to fund the Plan.
- D. The Debtor has an additional \$3,902.74 of non-exempt equity in assets.
- E. The Debtor made two payments to a "Greg Hall," in the amount of \$3,500.00, one on August 24, 2022, and the other on August 25, 2022. These are undisclosed avoidable preference transfers that Debtor did not disclose on the Statement of Financial Affairs.

Objection to Confirmation, Dckt. 20.

## **DEBTOR'S REPLY**

On December 6, 2022, Debtor's counsel filed a Reply. Dckt. 24. Debtor's counsel and Debtor "acknowledge" that the Bankruptcy Code requires that the undisclosed bonus income "would be proper for turnover to the Trustee to fund this Plan." Reply, p. 1:25-25, p. 2:1; Dckt. 24.

With the previously undisclosed bonus income being disclosed and paid into the Plan, Debtor can provide for a 100% dividend bankruptcy Plan.

The Debtor also "acknowledges" that "the liquidation is 15%."

Debtor does not "oppose" the \$7,000.00 preference payment being included in the liquidation analysis. On this point, Debtor appears to ignore his fiduciary duty to recover such an avoidable preference.

## **DISCUSSION**

The court first reviews the Debtor's Schedules and the information provided therein under penalty of perjury.

On schedule I the two debtors, and each of them, state under penalty of perjury that Terrance Hall's monthly gross income is \$10,922.00 and Sach Hall's monthly gross income is \$2,191.00. Dckt. 1 at 30-31. Debtors then state under penalty of perjury that neither of them have any overtime or other income.

Going to Schedule J, Debtor states that their reasonable and necessary monthly expenses for two adults and three adolescent children include:

- A. Food and Housekeeping Supplies.....\$1,545
- B. Childcare and Education Costs.....\$ 600
- C. Clothing and Dry Cleaning.....\$ 500
- D. Transportation.....\$ 750
- E. Entertainment.....\$ 200
- F. Asurion Ins (which appears to be phone insurance).....\$ 195

Debtor's financial distress, leading to filing the proposed Plan which could be funded with only \$385.00 of (misstated) projected disposable income and a 2.48% dividend for general unsecured claims is not reflected in Debtor's "reasonable" and "necessary" expenses shown on Schedule J.

With debtor Terrance Hall having a 2022 bonus of \$111,476.27, and similar bonuses in other years, it appears that bankruptcy relief is unnecessary for Debtor. Rather, the bonus money can substantially pay down the Debtor's outstanding obligation, and leave Debtor with still \$144,000 in gross annual income.

On the Statement of Financial Affairs, in response to ¶ 4, in which all gross wage, commissions, bonuses, and tips are each expressly identified and must be disclosed, Debtor, and each of them, under penalty of perjury state:

Year	Terrance Hall	Sacha Cadell Hall
2022 : January - August 2022	\$34,059	\$15,621
2021	\$165,883	\$0
2020	\$147,753	\$0

Dckt. 1 at 35-36.

In providing the required other income information for the filing year and two prior years, it is stated that for Terrance Hall there was a \$9,483 tax refund in 2021 and a \$9,561 tax refund in 2020. It is not clear that this almost \$10,000 a year refund for over-withholding is included in Debtor's projected disposable income.

On Amended Schedule I, the two debtors, the only legal age drivers in their home, have three vehicles. Dckt. 17 at 5.

The court also notes that while Debtor rushed in on November 11, 2022 to file Amended Schedule A/B and C (Dckts. 17, 18, and 19), no effort has been made to file and amended Schedule I and

the Statement of Financial Affairs, which both the Debtor and Debtor's counsel know hold grossly inaccurate statements under penalty of perjury.

Debtor's Plan fails to comply with 11 U.S.C. § 1322 and § 1325. Debtor is not funding it with the required projected disposable income. 11 U.S.C. § 1325(b)(1), which provides:

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

As shown in Debtor's Reply, Debtor does not seek to properly fund the Plan with Debtor's actual income, but tries to set a lower amount not based on Debtor's actual income. Debtor will not recover a preference, but allow "Greg Hall," possibly a buddy or insider family member, to keep the money while Debtor tries to short his disfavored creditors.

Additionally, Debtor, and each of them, have clearly established that they have not filed this bankruptcy case in good faith, did not file the plan in good faith, and are not seeking confirmation of a plan in good faith. Debtor, and each of them have made clear false statements under penalty of perjury. They have knowingly placed inaccurate financial information on the Schedules and Statement of Financial Affairs under penalty of perjury.

At this juncture, Debtor lack of good faith, which is otherwise known as bad faith, so permeates the federal bankruptcy court process that confirming a Chapter 13 Plan in this case, or any other case that involves the current creditors may be impossible.

Debtor may just have to use the \$268,832 of annual gross income (Terrance Hall \$10,922 a month, Sacha Cadell Hall \$2,191 a month, and Terrance Hall \$111,476 annual bonus) to pay their creditors outside of bankruptcy.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). In addition to the failure to provide the projected disposable income, other financial faults, and breaching Debtor's fiduciary duties in not recovering preferential transfers, the Debtors have not filed this case or this Plan, and have not prosecuted this case and confirmation of the Plan in good faith. 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.

26. [20-23971](#)-E-13  
[TLA-2](#)

**FARRIS/ALISA COLLIER**  
Thomas Amberg

**MOTION TO INCUR DEBT**  
11-15-22 [\[32\]](#)

**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.

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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 Debtors, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 15, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt 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.

<b>The Motion to Incur Debt is <span style="color: red;">XXXXX</span>.</b>
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Farris M Collier and Alisa A. Melendez-Collier ("Debtors") seeks permission to obtain a loan to purchase real property commonly known as 7682 Detroit Boulevard, Sacramento, California, for a total purchase price of \$350,000. Debtor's will make a \$50,000 down payment with a gift from family, and pay the balance with a \$300,000 loan, with a fixed interest rate of 6.875% and monthly payments (including insurance and taxes) of (\$2,657.95) for 30 years. The loan is an FHA loan offered by Ginnie Mae.

The Borrower Summary for the Loan and Purchase Agreement are provided as Exhibit A, Dckt. 34.

### **Trustee's Opposition**

The Trustee filed an Opposition to the Motion to Incur Debt. Dckt. 38. The Trustee reports that Debtor is \$3,550.00 delinquent in Plan payments, which are \$750.00 a month. multiple months in default. However, in the order confirming the Plan (October 28, 2020 Order, Dckt. 22), the monthly Plan payment was increased to \$1,000.00 beginning in Month 19 of the Plan, which appears to be March of 2022.

Debtor's Schedules I and J reflect that they will not be able to afford the increased Plan payment. Additionally, though now reporting more income, Debtors have reduced their tax withholding by \$218.00 a month.

With respect to the purchase, there are \$21,250.93 in closing costs, and Debtor has not provided information as to how those will be funded.

### **Debtor's Response**

On December 6, 2022, Debtor filed a Response (Dckt. 41) to Trustee's Opposition. With respect to the defaults, Debtor states that Debtor "forgot" that their Plan had the stepped up payment. Debtor is filing a modified plan to address the default.

Debtor also addresses the Trustee's concerns about the closing costs, as they are receiving a "seller credit" for the closing costs. This "credit" is a gift because they are purchasing the house from a family member.

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).

### **DISCUSSION**

The Trustee raises some concerns with respect to this Motion that may well have greater effect in connection with the Motion to Modify the Plan or a motion to dismiss. What Debtor's projected disposable income is and can they fund the plan will be a relevant discussion.

Here, they have family members working an multi-generational transfer of the property within the family. No one has questioned the value of the Property and whether \$350,000 is a reasonable purchase price. Debtor has obtained an number of "concessions" from the Seller, including a credit for the closing costs.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion 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 Incur Debt filed by Farris M Collier and Alisa A Melendez-Collier (“Debtors”) 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 Farris M Collier and Alisa A Melendez-Collier is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 34 at 4-14.

27. [19-26495-E-13](#)  
[MB-2](#)

**ESTHER LAGUNA**  
**Mario Blanco**

**MOTION TO APPROVE LOAN  
MODIFICATION**  
**11-22-22 [32]**

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, Creditor’s Attorney and Office of the United States Trustee on November 22, 2022. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Motion to Approve Loan Modification 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, -----

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**The Motion to Approve Loan Modification is XXXXX.**

The Motion to Approve Loan Modification filed by Esther Laguna (“Debtor”) seeks court approval for Debtor to incur post-petition credit in the form of a Loan Modification to address defaults that arose during the COVID pandemic. The Motion clearly lays out the grounds for the relief requested, as well as the relief itself.



Debtor fell behind in her mortgage payments to MidFirst Bank (“Creditor”), whose claim is secured by the real property commonly known as 7918 Deer Lake Drive, Sacramento, California. The default is (\$8,684.71). The loan modification, which will allow Debtor to save her home from foreclosure, cures the default by the Secretary of Housing and Urban Development (“HUD”) giving Debtor a non-interest bearing loan for the amount in default, which will be secured by a deed of trust on the Property that is subordinate to the Creditor’s deed of trust.

The HUD note matures the earlier of October 1, 2045 (when the last payment is due on Creditor’s note) or sooner if Debtor sells the property.

The Motion is supported by the Declaration of Esther Laguna. Dckt. 34. The Declaration affirms Debtor’s desire to obtain the post-petition financing and provides evidence of Debtor’s ability to pay this claim on the modified terms.

The HUD Note and Partial Claims Mortgage (securing the HUD Note) are filed as Exhibit A, Dckt. 35, in support of the Motion.

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

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

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

The Motion to Approve Loan Modification filed by Esther Laguna (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Esther Laguna to obtain creditor from the Secretary of Housing and Urban Development (“HUD”), which is secured by the real property commonly known as 7918 Deer Lake Drive, Sacramento, California, by a Partial Claims Mortgage on such terms as stated in the HUD Note and Partial Claims Mortgage filed as Exhibit A in support of the Motion (Dckt. 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 4, 2022 and November 8, 2022. By the court’s calculation, 39 and 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXX</span>.</b></p>
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The debtor, Melanie Francis Walker (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for a \$3,430.00 monthly plan payment for 60 months. The treatment of the Claims provided in the Amended Plan are summarized as follows:

- A. Class 1.....No Claims
- B. Class 2
  - 1. Car loan, monthly payment.....(\$384.28)
- C. Class 3.....No Claims
- D. Class 4.....No Claims
- E. Class 5 priority (\$102,638.180) monthly payment.....(\$1,710.64)  
(IRS Proof of Claim 5-2)

- F. Class 7 Unsecured.....0.00% Dividend
- G. Chapter 13 Trustee.....(\$ 222.95) Estimated
- H. Debtor's Counsel Fees (\$3,000) monthly.....(\$ 50.00)

Amended Plan, Dckt. 27. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

From these numbers, it appears that the Plan would required funding of \$2,367.87, leaving about \$1,000 a month that should drop into the Class 7 General Unsecured Claim pot. Over 60 months that will be \$60,000 for the (\$101,809) unsecured claim amount listed in the Plan and the (\$39,831) general unsecured claim of the Internal Revenue Service stated on Proof of Claim 5-2 - approximately a 42% dividend not that the Internal Revenue Service has reduced it's priority claim.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 28, 2022. Dckt. 31. Trustee opposes confirmation of the Plan on the basis that:

- A. On Amended Schedule I Debtor increased her net monthly business income from \$10,048 to \$12,848.
- B. Based on the Debtor's latest Profit and Loss statement (Dckt. 23) Debtor for the period January through July 2022, Debtor reports \$852,026.55 in gross income, costs of goods sold of (\$239,493.32), and expenses of (\$511,894.42); resulting in a net income of \$100,648.81 for the first seven months of the year.
- C. Based on the January through July 2022 financial information, Debtor's monthly net income is \$14,378.40.
- D. On Schedule J Debtor has increase her rent by \$1,160, childcare by \$200, and charity by \$200, but has not provided any explanation for these increases.

## DEBTOR'S REPLY

On December 6, 2022, Debtor filed a Reply to the Trustee's Opposition. Dckt. 34. Debtor states that some of the Trustee's concerns are addressed in the Debtor's Declaration that was filed on November 4, 2022.

Additionally, the Profit and Loss statement does not include Debtor's \$3,200.00 in estimated tax payments, which are listed on Schedule J.

The "increases" shown on Amended Schedule J are to correct errors on the original schedule J.

## DISCUSSION

At the hearing, **XXXXXXX**

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Melanie Francis Walker (“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 4, 2022, 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.

# FINAL RULINGS

29. [22-22603](#)-E-13  
[DPC-1](#)

RYAN BREWER  
Robert Gimblin

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
11-22-22 [19]

**Final Ruling:** No appearance at the December 13, 2022 hearing is required.  
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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, and Debtor's Attorney on November 22, 2022. 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. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

**The Objection is sustained**, Debtor having filed a new Amended Plan, which functionally constitutes a dismissal of the Plan that it the subject of this Objection, and the proposed Chapter 13 Plan is not confirmed.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on November 18, 2022. Dckts. 14, 16. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

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

**IT IS ORDERED** that the Objection is sustained, and the proposed Chapter 13 Plan (Dckt. 3) is not confirmed.

30 thru 31

**Final Ruling: No appearance at the December 13, 2022 Hearing is required.**

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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, and Debtor’s Attorney on November 22, 2022. 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. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

**The Objection to Confirmation of Plan is sustained, and the Chapter 13 Plan is not confirmed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan. On November 29, 2022, Debtor filed a response stating the Objection can be sustained and the Debtor will file an Amended Plan and 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 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.

**Final Ruling: No appearance at the December 13, 2022 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 27, 2022. By the court's calculation, 47 days' notice was provided. 14 days' notice is required.

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

**The Objection to Confirmation of Plan is sustained, without prejudice.**

Citigroup Mortgage Loan Trust Inc., Mortgage Pass-Through Certificates, Series 2007-AR8, U.S. Bank National Association, as Trustee as serviced by Specialized Loan Servicing LLC ("Creditor") holding a secured claim opposes confirmation of the Plan. On November 29, 2022, Debtor filed a statement not opposing the Trustee's Objection to Confirmation, stating that the Trustee's Objection should be sustained. Further, the Debtor will be filing an amended plan and motion to confirm.

While not directly stating the same as to the Creditor's Objection, the court sustains it without prejudice in light of the grounds stated and the Debtor pursuing an amended plan.

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

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

The Objection to the Chapter 13 Plan filed by Citigroup Mortgage Loan Trust Inc., Mortgage Pass-Through Certificates, Series 2007-AR8, U.S. Bank National Association, as Trustee as serviced by Specialized Loan Servicing LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, without prejudice, and the proposed Chapter 13 Plan is not confirmed.

32. [22-21839-E-13](#)  
[CRG-1](#)

**DEVIN WILDMAN**  
**Carl Gustafson**

**MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF LINCOLN LAW, LLP  
FOR CARL R GUSTAFSON, DEBTORS  
ATTORNEY(S)  
11-9-22 [\[42\]](#)**

**Final Ruling:** No appearance at the December 13, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2022. By the court’s calculation, 34 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

<p><b>The Motion for Allowance of Professional Fees is granted</b></p>
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Carl R. Gustafson, the Attorney (“Applicant”) for Devin Gregory Wildman, (“Client”), makes an Application for Allowance of Additional fees as counsel for the Chapter 13 Debtor in this case.

Fees are requested for the period May 9, 2022 through September 1, 2022. Applicant requests fees in the amount of \$7,978.00.

Applicant is counsel for the Chapter 13 Debtor and has opted-out of the no-look fee option, and is proceeding to seek the allowance of fees by the standards as provided in 11 U.S.C. § 330.



The Chapter 13 Trustee has filed a statement of non-opposition to the allowance of fees. Dckt. 49.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include Summary of Services. The court finds the services were beneficial to Client and the Estate, and are reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

<b>Summary of Services</b>	<b>Time</b>	<b>Time</b>	<b>Amount Billed</b>
Preparation and Filing of Case			
Attorney Carl Gustafson at \$475/hr	10.00		\$4,750.00
Paralegal at \$185/hr		0.20	\$37.00
Preparation for Meeting of Creditors			
Attorney at \$475/hr	1.90		\$902.50
Paralegal (Raul Ruiz, Adrian Villatoro, Victor Preza, Alan Gonzalez, Karen Vargas, George Silva, Omar Martinez, and Richard Suh) at \$185/hr		0.60	\$111.00
Confirmation of Plan			
Attorney at \$475/hr	3.70		\$1,757.50
Paralegal at \$185/hr		1.00	\$185.00
Claims Audit/Review			

Attorney at \$475/hr	0.10		\$47.50
Paralegal at \$185/hr		0.90	\$166.50
Resolve Mortgage Creditor's Objection to Confirmation			
Attorney at \$475/hr	2.60		
Paralegal at \$185/hr		0.20	\$37.00
Total Attorney Time Billed and Total Attorney Fees	18.3		\$8,692.50
Total Paralegal Time Billed and Total Paralegal Fees		\$2.90	\$536.50
			-----
		Total Fees	\$9,229.00
Of this, \$1,251.00 was paid pre-petition for Pre-petition Services			(\$1,251.00)
			=====
Bankruptcy Case Fees to Be Allowed and Paid Through the Plan			\$7,978.00

## FEES AND COSTS & EXPENSES ALLOWED

### Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of \$ 7,978.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$ 7,978.00
Costs and Expenses	\$ 0.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330. This is without prejudice to Applicant seeking further fees for additional services as may be required in this bankruptcy case in representing the Chapter 13 Debtor.

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

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

The Motion for Allowance of Fees and Expenses filed by Carl R. Gustafson (“Applicant”), Attorney for Devin Gregory Wildman, the Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Carl R. Gustafson is allowed the following fees and expenses as a professional of the Estate:

Carl R. Gustafson, Professional employed by the Chapter 13 Debtor

Fees in the amount of \$7,978.00

Expenses in the amount of \$0.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 for services rendered through September 1, 2022, as counsel for the Chapter 13 Debtor.

**IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

**Final Ruling:** No appearance at the December 13, 2022 hearing is required.

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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, Creditor, and Office of the United States Trustee on November 15, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of Onemain Financial Group, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$3,571.00.**

The Motion filed by John Fiorica and Kristen Fiorica (“Debtors”) to value the secured claim of Onemain Financial Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 10. Debtor is the owner of a 2013 Fiat 500 Sport Hatchback 2D (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$3,571.00 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 refinance loan incurred in November 2021, to secure a debt owed to Creditor with a balance of approximately (\$11,773.00). Declaration, Dckt. 10; and stated to be (\$12,374.58), of which (\$7,425.00) is stated to be the secured claim in Proof of Claim, No. 1-1.

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *Id.* Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Debtor's Declaration states "I believe and assert that the reasonable, fair market value of the ASSET is \$7,500.00." Dec., Dckt. 10, at ¶ 5(emphasis in original). Debtor's Declaration presents a mere conclusion, not supported by financial information or factual arguments. *In re Austin*, 583 B.R. at p. 483. Therefore, Debtor did not present substantial evidence to rebut Credit's Proof of Claim.

While Proof of Claim No. 1 is prima facie evidence of a claim, the Creditor has the actual burden of proof on the claim if that prima facie evidence is rebutted. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

"Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

*Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Proof of Claim No. 1 in which it is asserted that the claim is a secured claim in the amount of \$9,950.00 is based upon that amount being stated in the Proof of Claim. The Proof of Claim is signed by Mandy Youngblood, an Assistant Vice-President of AmeriCredit Financial Services, Inc. As opposed to the books and records of AmeriCredit Financial Services, Inc. in which the amount of the debt and the

various transactions are maintained, there is nothing to indicate a high probative value as to the statement of the value of this six model year old 2013 Nissan Murano.

Debtor, as the owner of the vehicle, states her opinion as to value, concluding that it is \$7,500. Declaration, Dckt. 16. As the owner, the 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). While Debtor could have made more of an effort in her testimony to describe the condition of the vehicle, any deferred maintenance, damage, required clean-up, such lack of attention to her testimony does not render it irrelevant or not probative. It is akin to Creditor not bothering to include a KBB or NADA authenticated valuation with the Proof of Claim, which would enhance the probative value to be overcome.

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 (\$3,571.00), 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 John Fiorica and Kristen Fiorica ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Onemain Financial Group, LLC ("Creditor") secured by an asset described as 2013 Fiat 500 Sport Hatchback 2D ("Vehicle") is determined to be a secured claim in the amount of (\$3,571.00), 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 \$3,571.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Final Ruling: No appearance at the December 13, 2022 Hearing is required.**

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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 and Debtor’s Attorney on October 12, 2022. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

**The Objection to Confirmation of Plan is dismissed without prejudice, the Order confirming the Plan having been entered on December 5, 2022.**

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

- A. Debtor is delinquent in Plan payments to the Trustee,
- B. Debtor failed to provide proof of Debtor’s social security number to the Trustee at the First Meeting of Creditors, which was continued to November 3, 2022, and
- C. Debtor’s Schedules filed are inaccurate or missing information because Debtor admitted at the First Meeting of Creditors to having a Venmo account.

## DISCUSSION

The court continued the hearing. On December 9, 2022, the court entered the Order confirming the Plan. The order was lodge with the court by the Trustee and is approved by the Trustee’s Counsel. Dckt. 46.



This documents that all of Trustee's objections have been resolved and the Objection may be dismissed.

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

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

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

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

**Final Ruling: No appearance at the December 13, 2022 Hearing is required.**

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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 and Debtor’s attorney on October 17, 2022. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

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

**The Trustee having dismissed the Objection (Dckt. 29), the matter is removed from the Calendar.**

The Chapter 13 Trustee, David Cusick (“Trustee”) filed a Federal Rule of Civil Procedure 41(a)(1)(A)(i) Notice of Dismissal on November 18, 2022. Dckt. 29.

**Final Ruling:** No appearance at the December 13, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 13, 2022. 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 Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Kathryn Franklin (“Debtor”) has provided evidence in support of confirmation. A Statement of Non-Opposition has been filed by Chapter 13 Trustee David Cusick (Dckt. 25) and no opposition to the Motion has been filed by any other party in interest. . The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on October 13, 2022, 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.

37. [22-21735-E-13](#)  
[JBR-1](#)

**JERRY LOPEZ**  
Jennifer Reichhoff

**MOTION TO CONFIRM PLAN**  
11-2-22 [\[26\]](#)

**Final Ruling: No appearance at the December 13, 2022 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 2, 2022. By the court's calculation, 41 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).

<p><b>The Motion to Confirm the Amended Plan is dismissed without prejudice.</b></p>
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The debtor, Jerry Richard Lopez ("Debtor"), seeks confirmation of the Second Amended Plan. The Amended Plan provides for Brief Summary of Proposed Plan. Amended Plan, Dckt. 24. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Opposition to confirmation of the Second Amended Plan have been filed by Chapter 13 Trustee David Cusick (Dckt. 33) and Nationstar Mortgage, LLC (Dckt. 30).

On November 21, 2022, Debtor filed a "Withdrawal" of the Motion to Confirm the Second Amended Plan (Dckt. 37). Though there is not an ability of a party to "withdraw" a matter from the court, Federal Rule of Civil Procedure 41(a)(2), as incorporated into Federal Rule of Bankruptcy Procedure 7041 and 9014(c), allows a moving party to file a motion for the dismissal of a motion by the court after oppositions have been filed.

On November 22, 2022, Debtor filed a Third Amended Complaint, Motion to Confirm, and supporting pleadings. Dckts. 41, 39, 40, 42.

The court construes the “Withdrawal” as an ex parte motion to dismiss without prejudice the Motion to Confirm Second Amended Plan. The court grants that ex parte motion, and dismisses the Motion without prejudice.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Jerry Richard Lopez (“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 Second Amended Plan is dismissed without prejudice.