

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Sacramento, California

**January 9, 2024 at 2:00 p.m.**

1. **20-23896-E-13**  
**MET-5**

**MILTON PEREZ**  
**Mary Ellen Terranella**

**CONTINUED MOTION TO INCUR DEBT**  
**11-27-23 [137]**

**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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2023. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

**The Motion to Incur Debt is XXXX.**

**January 9, 2024 Hearing**

A review of the Docket on January 5, 2024 reveals that no new documents have been filed. At the hearing, XXXXXXXXXX

## REVIEW OF THE MOTION

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

1 Oak Ventures step Fund (“Creditor”) filed an Opposition to this Motion on December 5, 2023. Dckt. 143. In its Opposition, creditor states it is a secured creditor with a junior lien on Debtor primary residence, the Property. Creditor has a Claim for \$219,614.10 of which \$128,194.64 are arrears, but after Debtor’s plan payments over the years, now is owed only \$113,503.57 on the principal and arrears. POC 5-1. Creditor seems to object on numerous grounds, not citing to any law in the process. Creditor’s main objection appears that it will not be paid out in full from proceeds of the refinancing agreement. Dckt. 143 ¶ 5. Creditor further states the loan is not in the best interest of the Debtor, calling for a balloon payment in one year, and Debtor would be better off if he refinanced out of his loan with Creditor instead. *Id.* at ¶ 7.

## DISCUSSION

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

### Reasonableness / Best Interest of Debtor

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

At the hearing, counsel for Debtor explained the economic rationale for Debtor doing this short-term refinance, getting the Plan fully funded from the loan proceeds and creditors paid, and then pursuing a refinance outside of bankruptcy.

Demand amounts are still being computed and some additional information is required, and the Parties requested a short continuance.

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

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

The Motion to Incur Debt filed by Milton Raul Perez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Incur Debt is **xxxx**.

2. <a href="#">23-23696-E-13</a> <a href="#">DPC-1</a>	<b>JARED GOODREAU</b> Eric Wood	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> 12-13-23 <a href="#">[16]</a>
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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, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on December 13, 2023. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

<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:

1. While Debtor has filed all tax returns required as of the petition date, Debtor admitted at the Meeting of Creditors that he did not file the 2022 tax returns, which appears to violate 11 U.S.C. § 1325(a)(3).
2. The Plan is overextended as proposed, with the Trustee calculating the Plan will run 85 months.
3. The Plan proposes an attorney fee payment that is too high and is not authorized by Local Bankruptcy Rule 2016-1(c). The payments should be made in equal monthly installments over the term of the Plan, but the Plan calls for \$1,232.50 payments to pay the \$7,000 attorney fee balance.

Docket 16.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Failure to Provide Tax Returns**

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

### **Overextended Plan**

The Plan pays \$97,500.00, (\$1625 x 60), but proposes to pay no less than 25% to unsecured creditors estimated at \$401,992.87. 25% of unsecured creditors would total \$100,498.22, more than what the Plan calls for, and this is before Trustee compensation, \$15,000 of priority, \$7,000 of attorney fees, and \$11,897 at 6% interest for a car. Therefore, as proposed, the Plan will extend beyond 60 months. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

### **Attorney's Fees**

The Plan cannot be confirmed without the discrepancy in attorney's fees resolved. Furthermore, Local Bankruptcy Rule 2016-1(c)(4)(B) states, "[a]fter confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received." Where the Plan proposes to pay \$250 per month, the Plan violates this rule because it will front load plan payments, thereby not paying attorney's fees in equal monthly installments over the term of the most recently confirmed Plan.

### **Amended Plan Filed**

The court notes Debtor filed an Amended Plan on December 20, 2023 (Docket 22), likely signaling it agrees to this Objection regarding the previous Plan filed on October 18, 2023 (Docket 3). However, no Motion to Confirm Amended Plan has been filed.

**January 9, 2024 Hearing**

At the hearing, **xxxxxxxxxx**

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

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

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

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

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

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

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

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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, parties requesting special notice, and Office of the United States Trustee on December 13, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<p><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:

1. Debtor is delinquent in plan payments.
2. Debtor's plan payment is \$300 per month with \$200 of that payment going toward attorney's fees, and car payments do not begin under the Plan until month 10. Trustee is uncertain whether the Plan complies with 11 U.S.C. § 1325(a)(1) where the Plan proposes to pay nothing for 10 months on cars older than 10 years old.
3. The plan may not be put forward in Debtor's best effort, violating 11 U.S.C. § 1325(b).

Docket 19.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Delinquency**

Debtor is \$300 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Attorney's Fees and Adequate Protection Payments**

The Plan may not comply with 11 U.S.C. § 1325(a)(1) where the majority of the plan payment goes to attorney's fees, and car payments do not begin until month 10.

Here, the Chapter 13 Plan is for the Debtor to continue in possession of and use two vehicles for ten months, protected by the Bankruptcy Code, and no payments are made on the secured claims. 11 U.S.C. § 1325(b)(b)(iii) provides that there are to be equal monthly plan payments to the creditor with the secured claim and that the monthly payments must provide adequate protection.

Here, the monthly payments are \$0.00 for the first ten months and provide \$0.00 in adequate protection.

At the hearing, **xxxxxxx**

### **Failure to Provide Disposable Income / Not Best Effort**

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

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

Debtor's Schedule I does not reflect Lisa Ravalli's current employer, and the petition does not reflect that Richard Ravvi is also known as Richard Ravalli, Jr. Furthermore, Debtor's Form 122C-2 shows calculated monthly disposable income of \$296.38 and where the Plan proposes 0% to unsecured creditors, the Plan is likely not in Debtor's best efforts. Thus, the court may not approve 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.

4. <a href="#">23-23714-E-13</a> <a href="#">CAS-1</a>  2 thru 3	<b>EARL MOORE</b> <b>Mary Ellen Terranella</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE</b> <b>12-13-23 [15]</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, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 13, 2023. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
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Capital One Auto Finance (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- a. Creditor has a security interest in a vehicle identified as a 2013 Ford Expedition Utility 4D XLT 5.4L V8, VIN # 1FMJU1H54DEF17952 (“Collateral”). Debtor’s Plan fails to properly pay Creditor’s secured claim.
- b. The Plan fails to pay the proper interest rate on Creditor’s secured claim.

## DISCUSSION

Creditor’s objections are well-taken.

### Improper Modification of Creditor’s Secured Interest

According to the hanging paragraph of 11 U.S.C. § 1325(a)(9),

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

Creditor alleges its collateral is the type described in this statute, as the Collateral was purchased within the 910-day period preceding filing, and the Collateral is a vehicle acquired for personal use.

The proposed Plan provides in Class 2 (B) that Creditor’s claim is to be reduced from \$14,000.00 to \$7,035. No order valuing Creditor’s secure claim has been entered.

Therefore, the court agrees that the Plan improperly limits the value of Creditor’s secured claim. At the hearing, **xxxxxxx**

### Interest Rate

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

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.5%, plus a 1% risk adjustment, for a 9.5%

interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

The Objection to the Chapter 13 Plan filed by Capital One Auto Finance (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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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, parties requesting special notice, and Office of the United States Trustee on December 13, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

<p><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:

1. Debtor failed to appear at the First Meeting of Creditors held on December 7, 2023, due to technical difficulties with Zoom.
2. Debtor is delinquent in plan payments.
3. Debtor has not provided Trustee with the tax returns or the requisite business documents.
4. Debtor's Plan relies on a Motion to Value that has not been filed.
5. Debtor's Plan will take longer than 60 months to complete as proposed.

## **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).

### **Delinquency**

Debtor is \$4,500 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Failure to Provide Tax Returns**

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

### **Failure to File Documents Related to Business**

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

- A. Description of Assets,
- B. Two years of tax returns for 2021 and 2022,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists, and
- F. Business license.

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

### **No Motion to Value**

Without the Motion to Value being filed and granted, the Plan cannot be completed as the Plan would be underfunded. A review of the Docket on January 2, 2024 reveals no Motion to Value has been filed.

### **Overextended Plan**

11 U.S.C. § 1322(d)(1)(C) states, “the plan may not provide for payments over a period that is longer than 5 years.” The proposed Plan would extend beyond this statutory time period as written. Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

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

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

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

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

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

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

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

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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, parties requesting special notice, and Office of the United States Trustee on December 6, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

<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:

1. Debtor is delinquent in plan payments.
2. Not all tax returns have been filed.

Dckt. 26.

## DISCUSSION

Trustee's objections are well taken.

## Delinquency

Debtor is \$3,480 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Failure to File Tax Returns**

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2021 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on December 6, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

<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:

1. Debtor has not filed all tax returns.

## DISCUSSION

Trustee's objections are well-taken.

### Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2020, 2021, and 2022 tax years have not been filed still. Filing of the returns is required. 11 U.S.C. §§ 1308,



1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). Declaration of Teryl Wegemer, ¶ 5; Dckt. 16.

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States November 16, 2023. 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).

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

The debtor, William McCulloch (“Debtor”) seeks confirmation of the Modified Plan to increase the monthly payment from \$320.94 per month to \$343.70 per month, beginning in January, 2024 and continuing through the Plan’s term. Motion, Docket 38. Debtor seeks this modification to make sure unsecured creditors will be paid no less than a dividend of 22%, thereby ensuring creditors receive at least what they would in a Chapter 7 case. Declaration, Dckt. 40. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE’S CONDITIONAL OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a response indicating conditional opposition on December 20, 2023. Dckt. 44. Trustee states:

1. Debtor’s Schedules reflect he should be able to afford the plan payment increase.

2. The Certificate of Service may not comply with LBR 7005-1(d) where the Clerk's Matrix appended as Attachment 6B2 (should likely be marked Attachment 6B1), indicates it was downloaded on 5-8-23, which is more than 7 days prior to the date the pleadings were served on 11-16-23. However, Trustee notes no claims, special notice requests or address changes since that date, so service should be satisfactory.
3. Trustee, due to a processing error, has overpaid Debtor's attorney \$1,479, having paid \$2,099.00 total where only \$620 was to be paid. The Trustee does not believe the modified plan attempts to change this, (Docket 41 p. 2, § 3.05), but the Trustee would oppose the modification if it did so.

## DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. Declaration, Docket 40. The Chapter 13 Trustee filed a response indicating conditional opposition on December 20, 2023, explaining the Plan is likely confirmable as things stand, with just a few caveats. Dckt. 44. At the hearing, **XXXXXXXXXX**

~~The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

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

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

---

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on November 16, 2023, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2023. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Georgene Hicks and Ricardo Esparza, Jr. ("Debtor") seeks confirmation of the Amended Plan. The Amended Plan provides for plan payments of \$3,000.00 starting December 25, 2023 for 1 month and payments of \$6,900.00 commencing January 25, 2024 for 56 months to complete the Plan within the maximum term allowed by law. Amended Plan, Dckt. 81. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 21, 2023. Dckt. 89. Trustee opposes confirmation of the Plan on the basis that:

1. Trustee requires clarification of attorney's fees. Debtor's Amended Plan states Debtor's attorney will be paid a total of \$7,500.00, but the Disclosure of Compensation of Attorney for Debtor (Docket 32) states the attorney will be paid \$8,500.00.

2. The plan proposes to pay \$250.00 each month to Debtor's attorney toward the balance of his attorney's fees of \$6,000.00 under the "no look" fee of LBR 2016-1(c.) Where the rule requires payment of the fee in "equal monthly installments over the term" of the plan, and the plan has a 60-month term, the monthly payment is too high.

## DISCUSSION

### Attorney's Fees

The Plan cannot be confirmed without the discrepancy in the amount of attorney's fees resolved. Additionally, Local Bankruptcy Rule 2016-1(c)(4)(B) states, "[a]fter confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received." Where the Plan proposes to pay \$250 per month, the Plan violates this rule because it will front load attorney's fees in plan payments, thereby not paying attorney's fees in equal monthly installments over the term of the most recently confirmed Plan. At the hearing, **XXXXXXXXXXXX**

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 17, 2023. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is denied.</b></p>
--

The debtor, David and Donna Windmiller (“Debtor”) seeks confirmation of the Modified Plan to adjust for Debtor’s decreased income and make up for a missing payment. Motion, Dckt. 49 ¶ 4. The Modified Plan provides proposes to pay the allowed unsecured claims 29.03%. Modified Plan, Dckt. 52. 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 December 19, 2023. Dckt. 54. Trustee opposes confirmation of the Plan on the basis that:

1. The Plan is overextended, likely completing in 72 months. Debtor would need to increase the plan payment from the proposed \$1,420.00 to \$1,470.16 to be feasible with 29% to unsecured creditors.
2. The Plan fails to specify a cure to correct the missed payment under the previous Plan.

3. Trustee cannot assess the feasibility of the Modified Plan without supplemental Schedules I and J, which Debtor has not filed.
4. Debtor's attorney is still to be paid \$2,169.20 under the Plan, but Debtor proposes a \$0.00 monthly dividend for attorney's fees in the Modified Plan.
5. Debtor does not cite to authority for the basis of its Modification.

Docket 54.

## **DISCUSSION**

### **Overextended Plan**

Under the proposed Plan's payment scheme, the Plan will take 72 months to complete. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection. Furthermore, Debtor must explain how the Modified Plan will cure the delinquency resulting under the previous Plan to be confirmable.

### **Inaccurate or Missing Information**

Debtor has not filed supplemental Schedules I and J with this Motion, so Trustee cannot assess feasibility of the Modified Plan. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6). The court also agrees with Trustee regarding clarification of the payments of attorney's fees.

At the hearing, **XXXXXXXXXX**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, David and Donna Windmiller ("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.

11 thru 13

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

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

-----

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

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

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

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

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

1. Debtor Allen Gamble ("Debtor") failed to appear and be examined at the First Meeting of Creditors held on December 7, 2023.
2. Debtor is delinquent in plan payments.

Docket 36.

## 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).

### **Delinquency**

Debtor is \$6,334.36 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 30, 2023. By the court’s calculation, 40 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>
---

Flagstar Bank, N.A. (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Plan cannot be confirmed as proposed because it fails to cure Creditor’s pre-petition arrears.
2. The Plan is not feasible as proposed because when Creditor’s proper arrearage payment is taken into account, Debtor is left with insufficient disposable income to fund a Plan.

Docket 30.

## DISCUSSION

Creditor’s objections are well-taken.

### **Failure to Cure Arrearage of Creditor**

Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$297,497.26 in pre-petition arrearage. POC 3-1. The Plan does not propose to cure those arrears. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrears.

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's disposable income is listed as \$6,601.91 with Debtor committing \$6,600.00 per month to plan payments. Schedule I and J, Docket 18; Plan, Docket 19 ¶ 2.01. However, if Creditor's arrears are properly accounted for, then the plan payment would exceed Debtor's disposable income. Therefore, the Plan may not be feasible and cannot be confirmed.

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 30, 2023. By the court's calculation, 40 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 overruled without prejudice.</b></p>
---

Bridgecrest Credit Company, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor holds a security interest in the vehicle identified as a 2017 Volkswagen Tiguan 2.0T S Sport Utility 4D, VIN # WVGAU7AXXHK034579 ("Collateral"). The Collateral was acquired by Allen Gamble ("Debtor") for personal use. Debtor does not list Creditor in his proposed Chapter 13 Plan.
2. The Plan does not properly account for the interest to be paid on the Collateral.

3. The Plan does not make equal monthly payments to Creditor, and Creditor objects to the Plan to the extent it provides for pro rata distributions.
4. The Plan is likely not feasible because it does not account for Creditor's secured interest in property of the bankruptcy estate.

Docket 26.

## **DISCUSSION**

Creditor has filed a set of unauthenticated exhibits with the Objection to Confirmation. No Declaration has been filed to provide the court with evidence to support the allegations in the Objection.

On Schedule A/B the Debtor does not list a Volkswagen Tiguan as being a vehicle in which he has an interest. Dckt. 18 at 3-4.

### **Infeasible Plan**

Creditor alleges that the Plan is not feasible because the Plan entirely omits its secured claim. 11 U.S.C. § 1325(a)(6). Because the Plan does not account for Creditor's claim, it is likely underfunded as written, so the Plan may not be confirmed.

At this point in time, the court has not been presented with evidence that Creditor has a claim in this case.

The Objection is overruled 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 Objection to the Chapter 13 Plan filed by Bridgecrest Credit Company, 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 overruled without prejudice.

14 thru 16

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 8, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

### January 9, 2023 Hearing

A review of the Docket on January 5, 2024 reveals that no new documents have been uploaded, although the Trustee filed his report of the 341 meeting on December 14, 2023. At the hearing, xxxxxxxxxx

### REVIEW OF THE OBJECTION

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

1. Debtor Joi Dennette Gonzalez ("Debtor") has proposed a Plan that does not pay the full replacement value of Ally Bank's collateral, that being a 2017 Chevrolet Suburban LT Sport Utility 4D, VIN ending in 8839 ("Vehicle").

2. The Plan further does not pay the proper interest rate on Creditor's Claim.

Dckt. 39.

## DISCUSSION

Creditor's objections are well-taken.

### Failure to Provide for Full Value of Claim / Interest Rate

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

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

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

### December 12, 2023 Hearing

The parties have not reached a resolution, and success of Debtor's Plan depends on this Motion to Value. At the hearing, counsel for Ally Bank states that an agreement has been reached as to the value and the interest rate.

The Parties requested a continuance to get the agreement documented and the amendments to the Plan clearly stated.

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

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

The Objection to the Chapter 13 Plan filed by Ally Bank (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

15. [23-23465-E-13](#)  
[DPC-1](#)

**JOI GONZALEZ**  
**Michael Hays**

**CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
11-22-23 [43]**

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

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

-----

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

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

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

<p><b>The Objection to Confirmation of Plan is <b>xxxx</b>.</b></p>
---

### **January 9, 2023 Hearing**

A review of the Docket on January 5, 2024 reveals that no new documents have been uploaded, although the Trustee filed his report of the 341 meeting on December 14, 2023. At the hearing, **xxxxxxxxxx**

### **REVIEW OF THE OBJECTION**

**Tuesday, January 9, 2024 at 2:00 p.m.**  
**Page 32 of 76**



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

1. The Plan does not appear feasible. Debtor Join Gonzalez’s (“Debtor”) Schedule I projects income from her business of \$2,165.00 per month, but Debtor’s Profit and Loss statement for January, 2023 through September, 2023 show the income from the business as -\$117,195.23. Debtor’s Schedule I also does not list her social security income.
2. The Plan depends on the Motion to Value (DCN. MOH-1) being heard in conjunction with this Objection.
3. Debtor has failed to submit required business documents or tax returns for the years 2021 and 2022.
4. The Plan is not properly funded if secured creditor Ally Bank’s Objection (DCN. CAS-1) is sustained.

Dckt. 43.

## **DISCUSSION**

Trustee’s objections are well-taken.

### **Inaccurate or Missing Information**

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

### **Failure to File Documents Related to Business**

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

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

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

## **Pending Motion to Value**

Trustee objects to the Plan as underfunded if Debtor's Motion to Value is denied, being heard in conjunction with this Objection. At the hearing, counsel for the Trustee states his objections still are outstanding.

In light of the advances made between the Debtor and Creditor Ally Bank on treatment of that creditor's secured claim, the Trustee agreed to a continuance to afford Debtor the opportunity to address the Trustee's other issues.

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

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

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

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

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

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

-----

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

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

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

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

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

### January 9, 2023 Hearing

A review of the Docket on January 5, 2024 reveals that no new documents have been uploaded, although the Trustee filed his report of the 341 meeting on December 14, 2023. At the hearing, **XXXXXXXXXX**

## REVIEW OF THE MOTION

The Motion filed by Joi Gonzalez (“Debtor”) to value the secured claim of Ally Financial, Inc. (“Creditor”) is accompanied by Debtor’s exhibit. Exhibit 1, Dckt. 17. Debtor is the owner of a 2016 Chevrolet Suburban (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$20,211.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## DISCUSSION

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

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

### December 12, 2023 Hearing

The parties have not reached a resolution, and success of Debtor’s Plan depends on this Motion to Value. At the hearing, counsel for Ally Bank states that an agreement has been reached as to the value and the interest rate.

The Parties requested a continuance to get the agreement documented and the amendments to the Plan clearly stated.

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

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

The Motion to Value Collateral and Secured Claim filed by Joi Gonzalez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on December 6, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

**The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on xxxxxxx, 2024, to allow the Chapter 13 Trustee to conduct the First Meeting of Creditors.**

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

1. Debtor's Plan relies on a Motion to Value the secured claim of Siskiyou County CU for \$21,113.00, reducing the secured claim substantially from \$32,078.00. However, debtor has not filed such Motion to date.
2. The Plan is underfunded as proposed. Without the Motion to Value on file and being granted, Trustee calculates a total of \$103,908.06 in plan payments, not the asserted \$90,600.

3. There are problems with Debtor's Schedules I and J. Specifically, Debtor lists income from employment and unemployment, lists income from rent or business but does not attach gross receipts, and has failed to properly provide for creditor PMGI Financial, LLC. Debtor also failed to disclose on her petition that she may be known by other names.
4. Trustee requests a continuance of this matter three weeks beyond the continued Meeting of Creditors to either dismiss the objection or amend it.

Dckt. 14.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Debtor's Reliance on Motion to Value Secured Claim**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Siskiyou County CU. Debtor has failed to file a Motion to Value the Secured Claim of Siskiyou County CU, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

### **Insufficient Plan Payments / Infeasible Plan**

Trustee alleges that the Plan is underfunded as proposed. 11 U.S.C. § 1325(a)(1). The Plan proposes a total of \$90,600 in payments, (60 x \$1,510.00). Plan, Docket 8 ¶ 2.01. Trustee fees are at 7.2%, (\$6,523.20), attorney fees are \$8,000.00, Selene Finance is \$15,000.00 for the arrears and \$45,960.00 for the ongoing payments, the Trustee calculates Siskiyou County CU at \$25,988.97 with 8.5% interest, and unsecured are \$2,435.89 to be paid their 8.55% dividend. That totals \$103,908.06 which is more than the Plan proposes to pay. Thus, the Plan may not be confirmed.

### **Inaccurate or Missing Information**

Debtor's Schedules I and J contain discrepancies or inaccurate information. It is unclear how Debtor can earn money from employment and unemployment. Further, Debtor lists income from businesses but provides no evidence of any business operations, whether is be gross receipts or rental agreements with any purported tenants. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

The Trustee has requested a continuance beyond the continued Meeting of Creditors to amend or withdraw the objection. The Chapter 13 Trustee's November 30, 2023, Docket Entry Report states that the First Meeting of Creditors has been concluded.

At the hearing, **xxxxxxxx**

~~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 hearing on the Objection to Confirmation of the Plan is continued to **xxxx**.

18. [23-24568](#)-E-13      **SUNDREA GORDON-HACKLEY**      **MOTION TO EXTEND AUTOMATIC STAY**  
[CRG-1](#)      **Carl Gustafson**      **12-22-23 [9]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 26, 2023. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

<b>The Motion to Extend the Automatic Stay is granted.</b>
--

Sundrea Gordon-Hackley (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 20-40392) was dismissed on September 27, 2023, after Debtor failed to make payments. The court notes this case was filed in the Norther District of California, not with this court. Nonetheless, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed due to a period of unemployment. Declaration, Docket 11 ¶¶ 3, 11. Debtor now explains that she and her husband are employed and able to fund a viable Plan. Specifically, in the previous case, she and her husband took home \$8,515 monthly, but in the instant case, they will take home \$11,892 monthly. *Id.* at ¶¶ 5-6.

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

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

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently demonstrated the case was filed in good under the facts of this case and the prior case for the court to extend the automatic stay. Debtor testifies to her ability to make plan payments in her supporting Declaration. Docket 11. Moreover, Debtor submits to the court proof of income on Schedules I and J attached as exhibits to this Motion, verifying her actual ability to pay. Exhibit A, Docket 12. The court finds Debtor has rebutted any presumption of bad faith in this filing, thus warranting an extension of the stay.



The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by Sundrea Gordon-Hackley (“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 the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 12, 2023. By the court's calculation, 28 days' notice was provided. 28 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 Christian and Macie Kiefer, 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 11214 Redhawk Court, Auburn, California 95602 ("Property").

The proposed purchaser of the Property is David and Tara Crabill, and the terms of the sale are summarized as follows:

1. The purchase price will be for \$830,000.00.
2. Debtor has claimed an exemption of \$100,000 in the Property.
3. After the sale and paying Debtor's exemption in full, there will be ample funds to pay the Chapter 13 Trustee's fees, the single mortgage on the Property serviced by Dovenmuhle Mortgage, and all other creditors in full.

Motion, Docket 57 ¶¶ 3-8. The full terms of the sale are included as Exhibits A and B, Docket 60. Debtor submits its own Declaration in support, authenticating the facts alleged in the Motion. Declaration, Docket 59. Debtor testifies it wishes to sell the Property to pay off all creditors and net \$100,000, which will assist in paying moving expenses and obtaining a fresh start.

## **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: **XXXXXXX** .

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will generate enough funds to pay the mortgagee and all creditors in full. Debtor will also be able to retain its exempt equity from proceeds of the sale.

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately \$41,500, with 20,750.00 to be paid to Lyon Real Estate and \$20,750.00 to be paid to Allison James Estates and Homes. 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.

## **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court to allow the Chapter 13 Trustee to quickly effectuate the sale.

The court permits waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h) in this case to promote a speedy sale, and this part of the requested relief 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 Sell Property filed by Christian and Macie Kiefer, 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 Christian and Macie Kiefer, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to David and Tara Crabill or nominee ("Buyer"), the Property commonly known as 11214 Redhawk Court, Auburn, California 95602("Property"), on the terms set forth in the Proposed Sales Agreement and Estimated Closing Statement filed with this court as Exhibits A and B, Docket 60.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

**IT IS FURTHER ORDERED** that David Cusick, the Chapter 13 Trustee, is authorized to distribute proceeds from the sale in accordance with distributions in a Chapter 13 case pursuant to 11 U.S.C. § 507.

20. [23-21670-E-13](#)  
[DPC-1](#)

**LESLIE MACHADO**  
**Richard Baum**

**CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
11-21-23 [52]**

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

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

-----

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

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

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

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

### **January 9, 2023 Hearing**

A review of the Docket on January 3, 2024 reveals that Debtor has filed a Statement Regarding Domestic Support Obligations (Docket 66) and a Rights and Responsibilities form (Docket 67) on December 19, 2023, in prosecuting this case. At the hearing, XXXXXXXXXX

## **REVIEW OF THE OBJECTION**

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

1. Debtor failed to appear at the First Meeting of Creditors.
2. Debtor has not provided documents in support of conversion of this case from Chapter 7 to one under Chapter 13, such as pay advices and tax returns.
3. It is not clear how much counsel for Debtor was paid in connection with this case, and Debtor’s counsel may have overcharged.
4. The Trustee requests the court allow Trustee an opportunity to amend his objection after the continued First Meeting of Creditors.

Dckt. 52.

### **Debtor’s Response**

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

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

## **DISCUSSION**

Counsel for the Trustee reported that Debtor is now current and the tax advices have been provided. However, the First Meeting has not been completed. The Parties agreed to a continuance to allow the Debtor to continue in the prosecution of the proposed Chapter 13 Plan.

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

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

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

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

21. [23-23576-E-13](#)  
[DPC-2](#)

**ROSALINDA RIVERA**  
**Mikalah Liviakis**

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK**  
**12-6-23 [21]**

21 thru 23

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on December 6, 2023. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

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

<p><b>The Objection to Confirmation of Plan is overruled, and the proposed Plan, as amended, is confirmed.</b></p>
--

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

1. The Plan may exceed 60 months in length as proposed. Trustee calculates the Plan will run 65 month if the Franchise Tax Board's ("FTB") claim is filed as estimated. The governmental bar date to file is not until April 8, 2024. If debtor Rosalinda Rivera ("Debtor") pays an extra \$85 per month beginning in February of 2024, the Plan will finish in 60 months.

Debtor filed a Response and accompanying Declaration on December 19, 2023, assenting to Trustee's suggestion of increasing the plan payment to account for the FTB claim. Decl., Docket 32 ¶ 2. Debtor can afford the plan payment increase because she will receive a pay raise from her second job at Best Buy in February, 2024. *Id.*

## DISCUSSION

At the hearing, the Debtor stated the following amendments to the Chapter 13 Plan:

1. To increase the monthly plan payment to by \$1,185.00 a month commencing with the February 2024 monthly Plan payment and continuing thereafter for the term of the Plan.
2. **Xxxx**

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

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

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

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

**IT IS ORDERED** that the Objection is overruled, and Rosalinda Rivera's ("Debtor") Chapter 13 Plan filed on October 11, 2023, as amended **to increase the monthly plan payments to \$1,185.00 a month commencing with the February 2024 Plan payment and continuing for the term of the Plan**, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, which order shall state the forgoing amendments, 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).**

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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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 7, 2023. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

<p><b>The Objection to Confirmation of Plan is overruled.</b></p>
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AmeriCredit Financial Services, Inc. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor entered into a Retail Installment Sales Contract with Creditor to purchase a 2016 Hyundai Elantra, vin ending in 9267 ("Vehicle"). Creditor submitted a Proof of Claim on November 2, 2023, for a secured claim of \$5,000 in the Vehicle. POC 2-1.
2. Creditor objects that Debtor's Plan does not propose to pay the claim in full, and Debtor's Plan does not include language that Creditor will retain its lien until the underlying debt has been paid in full. The Plan cannot be confirmed until such language is added.



3. Debtor also objects based on the grounds that on Debtor has obtained a discharge in a prior case and that the Chapter 13 Trustee's Objection to Discharge in this case is set for hearing on January 9, 2023 (the same time and date as the hearing on this Objection to Confirmation).

If Debtor is not granted a discharge in this case, Creditors argues that it should not have to release its lien until the Claim is paid in full.

Obj., Docket 25.

### **Debtor's Response**

Debtor filed a Response on December 19, 2023. Dckt. 34. Debtor states that Creditor's Claim is provided for as a Class 2(A) secured claim. CH 13 Plan, ¶ 3.08; Dckt. 3. Debtor then identified Plan ¶ 3.08 which provides for retention of a creditor's lien for Class 2 Claims, which states:

(d) Lien retention. Each Class 2 creditor shall retain its existing lien until completion of the plan and, unless not required by Bankruptcy Court, entry of Debtor's discharge.

Plan; Dckt. 3.

### **DISCUSSION**

Creditor objects on the basis that the Plan does not provide for retention of its lien unless the Claim is paid in full. However, ¶ 3.08(d) of the Plan explicitly states, "[e]ach Class 2 creditor (which this Creditor is provided for in Class 2(A)) shall retain its existing lien until completion of the plan and, unless not required by Bankruptcy Court, entry of Debtor's discharge." *Id.* Thus, Creditor's lien is protected until the Claim is paid in full.

With respect to entry a discharge, the provisions of Plan ¶ 3.08(d) expressly requires that the Plan be fully completed and (in the conjunctive) the discharge is entered, unless not otherwise required by the Bankruptcy Code. Creditor's lien remains in full force and effect until the Class 2(A) secured claim is paid in full.

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

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

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

The Objection to the Chapter 13 Plan filed by AmeriCredit Financial Services, Inc. ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, and Rosalinda Rivera's ("Debtor") Chapter 13 Plan filed on October 11, 2023, as amended at the January 4, 2024 hearing on the Trustee's Objection to Confirmation to increase the Monthly Plan Payments (DCN: DPC-2), is confirmed. .

23. [23-23576-E-13](#)  
[DPC-1](#)

**ROSALINDA RIVERA**  
**Mikalah Liviakis**

**OBJECTION TO DISCHARGE BY DAVID**  
**P. CUSICK**  
**11-28-23 [17]**

**Final Ruling:** No appearance at the January 9, 2023 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, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on November 28, 2023. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

<p><b>The Objection to Discharge is sustained.</b></p>
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David P. Cusick, the Chapter 13 Trustee, ("Objector") objects to Rosalinda Rivera's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 13 bankruptcy case on February 14, 2023. Case No. 23-20449. Debtor then converted that case to one under Chapter 7 on July 26, 2023, and received a discharge in that case on October 31, 2023. Case No. 23-20449, Dckt. 54.

The instant case was filed under Chapter 13 on October 11, 2023.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on October 31, 2023, which is less than four years preceding the date of the filing of the instant case. Case No. 23-20449, Dckt. 54. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 23-23576), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

**IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 23-23576, the case shall be closed without the entry of a discharge.

**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 October 18, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is <del>sustained</del>.</b>
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#### **January 9, 2024 Hearing**

Trustee filed a Status Report (Docket 44) on January 2, 2024, informing the court that Debtor remains \$2,506.73 delinquent in plan payments. Trustee recommends the Objection be sustained without credible evidence showing the Plan will be brought current. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **xxxxxxxxxx**

#### **REVIEW OF THE OBJECTION**

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

- A. Romy Oster (“Debtor”) and Donald Oster (“Spouse”) filed a Waiver of Exemptions on August 7, 2023, waiving the normal California exemptions other than CCP §703.140(b). Waiver of Exemptions, Dckt. 8. However, Debtor claimed the same exemptions they waived when they filed their petition on September 5, 2023. Because the waiver was signed before the existence of this bankruptcy case, it may not be effective and Debtor must present testimony of Spouse disavowing the waiver. If the Debtor and Spouse do not disavow the waiver, the Trustee will need to object to the claimed exemptions. Additionally, the confirmation of the Plan with these exemptions may be contrary to 11 U.S.C. §1325(a)(1) and (3) without Spouse’s testimony.
- B. Debtor shows year-to-date income for an “AirBnB” on the Statement of Financial Affairs, Statement of Financial Affairs, Dckt. 1, p. 29, Question 5, but does not show this income on Schedule I. Dckt. 1, p. 25-26. Debtor also shows a single family home as real property with a separate listing for “Arrears.” Dckt. 1, p. 11-12, 1.1 and 1.2. Debtor only shows two (2) claims, both on their residence, although four (4) unsecured claims and a claim for the residence have been filed. The information is unreliable, and the Trustee cannot determine if Debtor can make the plan payments. 11 U.S.C. §1325(a)(6).
- C. Debtor’s attorney seeks a flat fee of \$2,000 in the Plan where \$2,000 has already been paid prior to filing. Trustee opposes the flat fee unless Debtor provides sufficient information to confirm the Plan.

Dckt. 21

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

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

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

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

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

## **DISCUSSION**

### **December 5, 2023 Hearing**

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

At the December 5, 2023 hearing, Debtor's counsel reported that the cure payment was being made. The Trustee requested that the hearing be continued to early January 2024 so that timely payment of the December 2023 payment could be documented. Debtor's counsel did not oppose such a continuance.

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 ~~sustained~~.

**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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2023. By the court’s calculation, 54 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Motion to Confirm the Amended Plan is denied.</b></p>
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The debtor, John Adams (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for selling his home (commonly known as 4119 Stone Valley Ct, Chico, CA 95973-9413) to pay his two secured creditors in full no later than April 1, 2024. Amended Plan, Dckt. 32. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 20, 2023. Dckt. 46. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor does not propose to make adequate protection payments to secured creditors while Debtor goes through the process of selling his home. Debtor expects Trustee to wait seven months to receive any payment in administering this case, only making payments after the potential sale of the home.

2. Trustee cannot determine if the Plan is feasible. Debtor has failed to amend Schedule E/F, and currently the Schedule E/F does not identify any creditors, so all creditors still may not be listed in this case. Debtor also has not identified his non-filing spouse's creditors.
3. Debtor has failed to provide the Trustee with copies of the 2021 and 2022 tax returns.

## **CREDITOR'S OPPOSITION**

JPMorgan Chase Bank, N.A. ("Creditor") holding a secured claim filed an Opposition on December 13, 2023. Dckt. 41. Creditor opposes confirmation of the Plan on the basis that:

1. Creditor holds a promissory note secured by a deed of trust on Debtor's home. Creditor is entitled to receive payments on the promissory note.
2. Creditor does not object to the sale of Debtor's home, but Creditor does object to any delayed payments of or non-payment of its arrearages.
3. The Plan fails to offer an alternative solution if Debtor fails to sell his home.

## **DISCUSSION**

### **No Plan Payments / Failure to Cure Arrearage of Creditor**

Creditor and Trustee object on the basis that the Plan fails to provide for any payments to secured creditors until any potential sale of Debtor's home. Objecting Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$12,597.38 in pre-petition arrearages. POC 4-1. The Plan does not propose to make payments toward those arrearages until the home is sold. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for payments on the note and arrearages until the home is sold. It appears it would be acceptable to secured creditors to sell the home to pay off liens in full; however, Debtor must provide for payments until any sale of the home occurs.

### **Insufficient Information**

Debtor has supplied insufficient information relating to his potential creditors and non-filing spouse. The Chapter 13 Trustee cannot determine whether the Plan is feasible because Trustee cannot be sure there are not other creditors who may have a claim in this case. Debtor failed to file amended Schedules E/F, and Debtor has failed to provide information regarding his non-filing spouse's address or creditors. The Plan cannot be accurately assessed without this information.

### **Failure to Provide Tax Returns**



The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the tax years 2021 and 2022. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcripts. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

26 thru 28

**Final Ruling:** No appearance at the January 9, 2023 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, creditors, parties in interest, and Office of the United States Trustee on November 20, 2023. By the court’s calculation, 50 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Allied Trustee Services (“Creditor”) against property of the debtor, Karen and Wardy Joubert (“Debtor”) commonly known as 2492 Del Monte Dr. Fairfield, California 94534 (“Property”). The Chapter 13 Trustee, David Cusick, filed a statement of non-opposition on December 21, 2023. Docket 46.

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,071.44. Exhibit B, Dckt. 37. An abstract of judgment was recorded with Solano County on October 21, 2022, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$820,900 as of the petition date. Dckt. 1 p. 11. The unavoidable consensual liens that total \$1,016,527.03 as of the commencement of this case are stated on Debtor’s Amended Schedule D. Dckt. 30. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$230,000 on Amended Schedule C. Dckt. 32.

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

#### **ISSUANCE OF A COURT-DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Karen and Wardy Joubert ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Allied Trustee Services, California Superior Court for Solano County Case No. FSC062225, recorded on October 21, 2022, Document No. 202200067775, with the Solano County Recorder, against the real property commonly known as 2492 Del Monte Dr. Fairfield, California 94534, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the January 9, 2023 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, creditors, parties in interest, and Office of the United States Trustee on November 20, 2023. By the court’s calculation, 50 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
---

This Motion requests an order avoiding the judicial lien of Allied Trustee Services (“Creditor”) against property of the debtor, Karen and Wardy Joubert (“Debtor”) commonly known as 2492 Del Monte Dr. Fairfield, California 94534 (“Property”). The Chapter 13 Trustee, David Cusick, filed a statement of non-opposition on December 21, 2023. Docket 48.

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,275. Exhibit B, Dckt. 42. An abstract of judgment was recorded with Solano County on May 24, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$820,900 as of the petition date. Dckt. 1 p. 11. The unavoidable consensual liens that total \$1,016,527.03 as of the commencement of this case are stated on Debtor’s Amended Schedule D. Dckt. 30. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$230,000 on Amended Schedule C. Dckt. 32.

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

## **ISSUANCE OF A COURT-DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Karen and Wardy Joubert (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Allied Trustee Services, California Superior Court for Solano County Case No. FSC062668, recorded on October 21, 2022, Document No. 202100057009, with the Solano County Recorder, against the real property commonly known as 2492 Del Monte Dr. Fairfield, California 94534, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**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, and Office of the United States Trustee on November 8, 2023. By the court’s calculation, 62 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;">XXXXX</span>.</b></p>
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The debtor, Karen and Wardy Joubert (“Debtor”) seeks confirmation of the Modified Plan to address delinquencies under the prior Plan related to temporary loss of income and emergency home repairs. Declaration, Dckt. 25 p. 1:24-27 . The Modified Plan increases the percentage paid to general unsecured creditors from 40% to 52%, and Arranges for Debtors’ HOA claim numbers 4, 5 and 11 to be paid at 8.5% interest for a total of \$315.00 per month. Modified Plan, Dckt. 22. 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 December 21, 2023. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent \$223.45 under the terms of the Modified Plan, where \$53,356.20 has come due through November 2023, and Debtor has paid to date a total of \$53,132.75.
2. Debtor proposes to increase the percentage to unsecured Creditors from 40% under the confirmed plan to 52%. Trustee calculates that the proposed plan will pay unsecured creditors approximately 81.238%, so Trustee requests the court clarify in its Order confirming the Modified Plan that the percentage to unsecureds is 81.238%.
3. Debtor has not filed supplemental Schedules I and J, so Trustee cannot assess whether Debtor can afford the payments.
4. Debtor's Plan relies on two separate Motions to Avoid, being heard in conjunction with this Motion, and if they are not granted, the Modified Plan is underfunded.
5. Trustee notes some procedural issues, such as Debtor's Certificate of Service form not listing the Modified Plan as being served, and Debtor's Declaration contains legal analysis.

### Debtor Response

Debtor filed a Response to Trustee's Opposition on January 2, 2024. Docket 56. Debtor states it has paid \$446.90 to cure the small delinquency. Debtor also agrees to change the language in the Order confirming to 81.23% to unsecured creditors. Debtor filed its supplemental Schedules I and J on January 2, 2023. Docket 54. The Schedules depict a monthly net income of \$7,750, while the Modified Plan proposes a monthly payment of \$7,750. Schedule J, Docket 54 ¶ 23; Modified Plan, Docket 22 ¶ 2.01.

Regarding the procedural issues, Debtor informs the court the Modified Plan was served on November 9, 2023. Debtor uploaded an amended Certificate of Service on January 2, 2024. Docket 53. Debtor's attorney apologizes for legal conclusions in Debtor's Declaration and informs the court he is updating his declaration form to not contain legal conclusions.

### DISCUSSION

Trustee's concerns appear to have been resolved. Debtor has cured the delinquency, filed supplemental Schedules I and J depicting it can afford payments, and resolved the procedural issues. The court ~~has granted the Motions to Avoid Judicial Liens~~ (DCNs. SLH-2 and SLH-3) on which this Motion depends.

At the hearing, Debtor amended the First Modified Plan to state that the percentage dividend for Class 7 General Unsecured Claims **shall not be less than 81%**.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Karen and Wardy Jourbet ("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 First Modified Chapter 13 Plan filed on November 1, 2023 (Docket 22), as amended to increase the **Class 7 unsecured claim dividend to not less than 81%**, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which shall state the forgoing 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.



# FINAL RULINGS

29. [21-20917-E-13](#)  
[PGM-3](#)

LORAIN DIXON  
Peter Macaluso

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTORS  
ATTORNEY(S)  
11-15-23 [\[122\]](#)

**Final Ruling: No appearance at the January 9, 2024 Hearing is required.**

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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, parties requesting special notice, and Office of the United States Trustee on November 15, 2023. By the court's calculation, 55 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). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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Peter Macaluso, the Attorney ("Applicant") for debtor Loraine Dixon ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for post confirmation work related to the sale of Client's real property. The order of the court confirming the Plan was entered on November 10, 2021. Dckt. 89. Applicant requests fees in the amount of \$1,740 for the additional work and no costs. In her Declaration, Client informs the court that she agreed with additional attorney fees for this post confirmation work, provided the amount does not exceed \$2,500. Decl., Docket 125 ¶ 2.

David Cusick, the Chapter 13 Trustee, filed a statement of nonopposition on December 18, 2023, informing the court that the fees are necessary and reasonable. Docket 129.

## APPLICABLE LAW

### Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **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)).

### **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 working with realtors, preparing and filing a Motion to Sell, and communicating with the Client. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. 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). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (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)).

## **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.

Motion to Sell: Applicant spent 5.8 hours in this category.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Peter Macaluso, Attorney	5.8	\$300.00	\$1,740.00
<b>Total Fees for Period of Application</b>			\$1,740.00

## **FEES ALLOWED**

The unique facts surrounding the case, including gaining approval to sell Client’s real property, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,740 is approved pursuant to 11 U.S.C.

§ 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case 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	\$1,740
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pursuant to this Application as additional fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso, the Attorney (“Applicant”) for debtor Loraine Dixon (“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 Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Professional employed by debtor Loraine Dixon

Fees in the amount of \$1,740

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that David Cusick (“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 in a Chapter 13 case under the confirmed Plan.

**CASE CONVERTED: 12/13/23**

**Final Ruling:** No appearance at the January 9, 2023 hearing is required.  
-----

Local Rule 9014-1(f)(2) Objection.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2023. By the court's calculation, 48 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 Motion to Confirm Plan is denied as moot, the case having been converted to one under Chapter 7 by this court's order on December 13, 2023, Docket 82.**

Benjamin Verma ("Debtor") filed his Modified Chapter 13 Plan on November 22, 2023 (Docket 70), with confirmation to be considered on January 9, 2023. However, this court ordered the case converted to one under Chapter 7 on December 13, 2023, granting the Chapter 13 Trustee David Cusick's Motion to Dismiss or Convert. Dckt. 82. Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on December 14, 2023. *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984).

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 Plan filed by Benjamin Verma ("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 denied as moot, the case having been converted to one under Chapter 7 by this court's order on December 13, 2023, Docket 82.

**Final Ruling:** No appearance at the January 9, 2023 Hearing is required.

-----

**The Objection to Confirmation is dismissed without prejudice.**

#### NO DOCKET CONTROL NUMBER

Objecting Creditor is reminded that the Local Bankruptcy Rules require the use of a Docket Control Number with each motion or objection. LOCAL BANKR. R. 9014-1(c). Here, the objecting creditor failed to use the Docket Control Number. That is not correct. Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny a motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

#### DISCUSSION

U.S. Bank Nation Association (“Creditor”) having filed a Notice of Withdrawal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Objection on December 28, 2023, Dckt. 24; no prejudice to the responding party appearing by the dismissal of the Objection; Creditor having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the debtor, Jon and Tray McLinn (“Debtor”); **the Ex Parte Motion is granted, Creditor’s Objection is dismissed 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 Objection to Confirmation filed by U.S. Bank National Association (“Creditor”) having been set for hearing, Debtor having filed a Response to the Objection, Creditor having filed a “Withdrawal of Objection” (Dckt. 24), the court deeming the Withdrawal being an *Ex Parte* Motion to Dismiss the Objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 7041 and 9014 (given that a responsive pleading to the Objection has been filed) and good cause appearing;

**IT IS ORDERED** that the Objection to Confirmation is dismissed without prejudice. 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.

32. [23-22666-E-13](#)  
[BLG-1](#)

MANUEL MARAVILLA  
Chad Johnson

**MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF BANKRUPTCY LAW  
GROUP, PC FOR CHAD M JOHNSON,  
DEBTORS ATTORNEY(S)  
11-20-23 [21]**

**Final Ruling:** No appearance at the January 9, 2023 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 that have filed claims, and Office of the United States Trustee on November 20, 2023. By the court's calculation, 50 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.

<b>The Motion for Allowance of Professional Fees is granted.</b>
--

Chad M. Johnson, the Attorney ("Applicant") for Manuel Maravilla, Debtor in this case ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case. The Confirmation Order provides for Debtor's counsel to seek the allowance of fees pursuant to 11 U.S.C. § 330, Applicant having opted out of the no-look Chapter 13 fee provisions. Order, Dckt. 18.

Fees are requested for the period August 8, 2023, through January 9, 2024. Applicant requests fees in the amount of \$2,440 and costs in the amount of \$11.76. David Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on December 19, 2023. Docket 26.



## 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 generally representing Debtor in this case, preparing a Chapter 13 Plan, and having that Plan confirmed. The court finds the services were beneficial to Client and the Estate and were 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.

Case Preparation: Applicant spent 3 hours in this category. Applicant evaluated the option of a bankruptcy filing, collected necessary documents for a bankruptcy case as well as the prepared, reviewed and filed all of the required bankruptcy documents.

General Case Administration: Applicant spent 2 hours in this category. Applicant organized and sent required documents to the trustee, attended the Meeting of Creditors, and reviewed proofs of claims.

Fee Motion: Applicant spent 1.1 hours in this category. Applicant prepared this motion for fees.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Chad M. Johnson, Attorney	6.1	\$400.00	\$2,440.00
<b>Total Fees for Period of Application</b>			<b>\$2,440.00</b>

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$11.76 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	-----	\$7.56
Printing and Envelopes		\$4.20
<b>Total Costs Requested in Application</b>		<b>\$11.76</b>

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$2,440 are approved pursuant to 11 U.S.C. § 331, and subject to final review 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 in a Chapter 13 case under the confirmed Plan.

### **Costs & Expenses**

First Interim Costs in the amount of \$11.76 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case 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	\$2,440
Costs and Expenses	\$11.76

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Chad M. Johnson, the Attorney (“Applicant”) for Manuel Maravilla, Debtor in this case (“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 Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Professional employed by the Chapter 13 Debtor

Fees in the amount of \$2,440

Expenses in the amount of \$11.76,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.