

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

February 25, 2025 at 2:00 p.m.

1. [24-25676-E-13](#)  
[GDC-1](#)

DANA ANDERSON  
Catherine King

**MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF KING LAW OFFICE  
A.P.C. FOR GUY D. CHISM,  
DEBTORS ATTORNEY(S)  
2-10-25 [12]**

**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 not 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 February 10, 2025. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00). Movant is six days late of the required notice period.

At the hearing, **XXXXXXX**

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

**The Motion for Fees is granted.**

Movant Guy D. Chism ("Movant"), attorney for Debtor Dana Dean Anderson ("Debtor"), moves this court to authorize his fees pursuant to 11 U.S.C. § 329, 330. The Motion is brought as an application

for fees, but Movant is alerting the parties that when the Plan was filed, Movant inadvertently failed to check the box stating that fees were being paid pursuant to Local Bankruptcy Rule 2016-1(c). Mot. 1:22-28. Movant explains that he and his firm are moving toward a new case management system, and in that process, the Plan was filed without the proper box for fees being checked. *Id.* at 2:1-7. Movant has accepted fees in accordance with Local Bankruptcy Rule 2016-1(c), accepting a retainer of \$2,000 and having \$6,000 paid over the life of the Plan. Movant seeks authorization of these fees having failed to properly check the box.

## **TRUSTEE’S REPLY**

The Chapter 13 Trustee, David Cusick (“Trustee”) filed a Reply indicating non-opposition on February 11, 2025. Docket 17. Trustee does not oppose the Motion but requests the Motion be deemed to be:

a motion to reconsider under 2016-1(e) pursuant to FRCP 60 & FRBP 9024, and FRBP 1001-1(f), although not pled, where no order shortening time has been requested,

*Id.*, p. 1:21-23.

At the hearing, **XXXXXXX**

## **DISCUSSION**

This District’s Local Rules provide that election for fees much be made with the filing of the first Chapter 13 Plan. Local Bankruptcy Rule 2016-1(e). Our rules states explicitly:

Debtor’s counsel shall elect compensation under subdivision (b) or subdivision (c) in the first Chapter 13 plan filed, i.e., Chapter 13 plan § 3.05, EDC 3-080. Any failure to elect compensation in the first Chapter 13 plan filed shall be deemed an election to seek compensation and expenses under subdivision (b). Except as provided in Rule 60, that election, or failure to elect, is irrevocable. Fed. R. Civ. P. 60, incorporated by Fed. R. Bankr. P. 9024.

Local Bankruptcy Rule 2016-1(e). Therefore, as Movant failed to check a box, Movant was either compelled to move for fees in accordance with 11 U.S.C. §§ 329 and 330, or file a Motion to Vacate pursuant to Fed. R. Civ. P. 60. Movant has elected to move for the fees in accordance with 11 U.S.C. §§ 329 and 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)).

### **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 filing all necessary documents and schedules, including a Chapter 13 Plan, to prosecute this case. The fees requested are within limits authorized under our no-look fee provision. The court finds the services were beneficial to Client and the Estate and were reasonable.

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

### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$8,000 are approved pursuant to 11 U.S.C. § 330. Movant is authorized to apply the \$2,000 retainer paid prepetition toward this award amount, and the Chapter 13 Trustee is authorized to pay the remaining \$6,000 from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case or under the confirmed Plan.

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

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

The Motion for Allowance of Fees and Expenses filed by Guy D. Chism (“Movant”), attorney for Debtor Dana Dean Anderson (“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 Guy D. Chism is allowed the following fees and expenses as a professional of the Estate:

Guy D. Chism, attorney for the Debtor:

Fees in the amount of \$8,000,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.

**IT IS FURTHER ORDERED** that Movant is authorized to apply the \$2,000 retainer paid prepetition toward this award amount, and the Chapter 13 Trustee is authorized to pay the remaining \$6,000 from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case or under the confirmed Plan.

**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)(3) Motion—Hearing Required.

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on February 12, 2025. By the court’s calculation, 13 days’ notice was provided. The court set the hearing for February 25, 2025. Docket 47.

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

<b>The Motion to Incur Debt is <span style="color: red;">XXXXXXX</span>.</b>
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John Joseph Villaroman (“Debtor”) seeks permission to purchase real property commonly known as 55 S Ville Franche Circle, St. George, UT, 84770, with a total purchase price of \$552,500 with a down payment of \$129,848.41. Debtor states:

The funds are coming from my fiancé’s trust account. It is not a loan or gift, so there are no repayment terms.

Decl. ¶ 4, Docket 41. , Debtor testifies that the loan is in Debtor’s name and Debtor’s fiancé’s name, Dana Rich. *Id.* at ¶ 2.

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).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by John Joseph Villaroman (“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 John Joseph Villaroman is authorized to incur debt pursuant to the terms of the agreement, New Construction Real Estate Purchase Contract, Docket 43.

3. [22-20007-E-13](#)      **WANDA MOORE**      **MOTION TO MODIFY PLAN**  
[PGM-3](#)      **Peter Macaluso**      **1-16-25 [93]**

**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, and Office of the United States Trustee on January 16, 2025. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<b>The Motion to Confirm the Modified Plan is granted.</b>
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The debtor, Wanda Lynette Moore (“Debtor”) seeks confirmation of the Modified Plan to address plan delinquency. Debtor explains that expenses came up causing the delinquency, including because her daughter lost her job and Debtor’s heater/ AC system broke. Declaration ¶ 3, Docket 97. The Modified Plan provides Debtor having paid of total of \$83,653.95 through November 2024 with plan payments of \$2,800.00 per month to commence December 25, 2024 for 25 months. Modified Plan, Docket 95. 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 February 11, 2025. Docket 103. Trustee opposes confirmation of the Plan on the basis that:

- A. The Modified Plan attempts to address and cure the post-petition arrearage, but the Plan does not specify the correct months that the Debtor is trying to rectify the post-petition delinquency. Consequently, the Trustee is unable to fully comply with § 3.07(b) of the plan. *Id.* at 2:3-6.

Debtor filed a Reply on February 13, 2025, requesting the parties determine the arrearage amount and put the correct amount in the Order confirming. Docket 106.

## DISCUSSION

According to Trustee, it appears the Plan is feasible and will cure the post-petition arrearage; however, as Debtor missed the months of February 2025 and January 2025, Trustee seeks clarification as to which months the arrearage will be cured.

At the hearing, **XXXXXXX**

~~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, Wanda Lynette Moore (“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 January 16, 2025, as amended to state the following months’ post-petition arrearage will be cured: **XXXXXXX**, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, including the forgoing stated amendments, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**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 Office of the United States Trustee on January 29, 2025. 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 Mary Susan Murphy (“Debtor”) failed to appear and was not examined at the First Meeting of Creditors held on January 23, 2025. Obj. 2:1-4.
2. Debtor failed to make the first Plan payment timely and is \$1,801.00 delinquent in payments to the Trustee. *Id.* at 2:6-7.
3. Debtor failed to submit proof of her social security number, or a government issued photo identification to the Trustee prior to the Meeting of Creditors, held on January 23, 2025. *Id.* at 2:13-15.
4. Debtor failed to provide the Trustee with proof of income. *Id.* at 2:17-18.



5. Debtor has failed to provide the Trustee with a tax transcript or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required. *Id.* at 2:22-24.

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

## **DISCUSSION**

### **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 \$1,801 delinquent in plan payments, which represents one month of the plan payment. On the date of the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Failure to Authenticate Identification Prior to Meeting of Creditors**

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court she did not provide the required identification. That is cause for dismissal.

### **Failure to Provide Pay Advices**

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

## **Failure to Provide Tax Returns**

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

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.

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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 January 8, 2025. 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 Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Modified Plan is granted.**

The debtor, Michele Louise Davenport ("Debtor") seeks confirmation of the Modified Plan to cure plan delinquency. Debtor testifies she fell behind on plan payments due to veterinary expenses. Declaration 2:7-13, Docket 67. The Modified Plan provides for debtor having paid \$21,194.10 through December of 2024 with monthly payments of \$2,225 to commence in months 15-60. Modified Plan, Docket 70. 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 February 11, 2025. Docket 76. Trustee opposes confirmation of the Plan on the basis that:

- A. The Modified Plan attempts to address and cure the post-petition arrearage, but the Plan does not specify the correct months that the Debtor is trying to rectify the post-petition delinquency. Consequently, the Trustee is unable to fully comply with § 3.07(b) of the plan. *Id.* at 2:1-11.
- B. Moreover, the Plan provides for no less than a dividend of 0% to general unsecured creditors, but Trustee estimated unsecured creditors will be paid a 100% dividend. *Id.* at 2:12-16.

## DISCUSSION

According to Trustee, it appears the Plan is feasible and will cure the post-petition arrearage; however, as Debtor missed the months of April, August, and November of 2024, Trustee seeks clarification as to which months the arrearage will be cured.

At the hearing, **XXXXXXX**

In clarifying the distribution dividend to general unsecured creditors, at the hearing, **XXXXXXX**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Michele Louise Davenport (“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 January 8, 2025, as amended to state the following months’ post-petition arrearage will be cured: **XXXXXXX**, is confirmed. The Plan is also amended to state that general unsecured creditors will be paid a **XXXXXXX** dividend. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which includes the forgoing amendments, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**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, and Office of the United States Trustee on February 8, 2025. By the court’s calculation, 17 days’ notice was provided. 14 days’ notice is required.

The Motion to Impose 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, -----  
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<p><b>The Motion to Impose the Automatic Stay is granted.</b></p>
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Masaru Jackson (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor’s third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor’s prior bankruptcy cases (Nos. 23-22603 and 24-23945) were dismissed on August 14, 2024, and January 28, 2025, respectively. *See* Order, Bankr. E.D. Cal. No. 23-22603, Dckt. 55, August 14, 2024; Order, Bankr. E.D. Cal. No. 24-23945, Dckt. 33, January 28, 2025. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor submits his declaration in support. Decl., Docket 10. Debtor explains why the previous cases were dismissed. *Id.* at 2:8-18. Debtor testifies he has also had some medical issues making it difficult to prosecute his case. However, Debtor testifies he now has sufficient stable income and help from his son to diligently prosecute this case. *Id.* at 2:19-26.

#### APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions

or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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.

## DISCUSSION

Both of Debtor's prior cases were dismissed due to delinquency in plan payments. In this case, debtor has presented evidence how he can prosecute this case, having sufficient income to fund a plan.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

The Motion is granted, and the automatic stay is imposed 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 Impose the Automatic Stay filed by Masaru Jackson (“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 imposed pursuant to 11 U.S.C. § 362(c)(4)(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 Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 29, 2025. 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 is delinquent in the amount of \$3,800 plan payments to the Trustee. Obj. 1:28, 2:1-5, Docket 72.
2. Debtor failed to submit proof of their social security numbers and copies of government identification to the Trustee before the First Meeting of Creditors held on January 23, 2025. Obj. 2:7-13, Docket 72.
3. Debtor failed to provide 521 documents such as their pay advices and their Federal Income Tax Return with attachments for the most recent pre-petition tax year. Obj. 2:15-25, Docket 72.
4. Debtor failed to disclose a previous bankruptcy filing. Obj. 3:5-9, Docket 72.



5. Debtor lists TD Auto Finance as a creditor, but claims that the vehicle was repossessed at the First Meeting of Creditors. Obj. 3:10-15, Docket 72,

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 74.

## **DISCUSSION**

### **Delinquency**

Debtor is \$3,800.00 delinquent in plan payments, which represents multiple months of the \$1,900.00 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 Authenticate Identity**

Further Debtor failed to provide identification under 11 U.S.C. § 521(h)(1) and (2), which states:

(h) If requested by the United States trustee or by the trustee, the debtor shall provide—

(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor;  
or

(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.

Here, Trustee has requested such documentation and Debtor has not complied. This is cause to sustain the Objection.

### **Failure to Provide Pay Advices**

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

### **Inaccurate Information**

Debtor did not disclose pertinent information in compliance with 11 U.S.C. § 1325(a)(6). For instance, Debtor did not disclose a previous bankruptcy (#24-25700) filing on his petition. And Debtor lists TD Auto Finance as a creditor in Class 1, but stated at the First Meeting of Creditors on January 23, 2025, that the vehicle financed with TD Auto Finance was repossessed.

With respect to the repossession of a car, that does not terminate a persons ownership of the car or extinguishes the debt. If the car has not been sold by the creditor, the Debtor still owns it. Debtor could be using the bankruptcy to recover the vehicle from the Creditor and pay the secured debt.

Other than the asserted the vehicle repossession, the other reasons are cause to deny confirmation. 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 (as appearing in *pro se* prior to her attorney joining), Chapter 13 Trustee, and Office of the United States Trustee on January 8, 2025. 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. 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>
---

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

1. Debtor Taishawn Khairi Mitchell and Catherean Bobbie Cheronn Mitchell’s (“Debtor”) proposed Plan does not pay its claim in full nor propose to cure the arrearage. Obj. 2:16-23.

## DISCUSSION

### Improper Treatment of Creditor’s Secured Claim

Creditor has filed a Proof of Claim (POC 8-1) where it asserts a secured claim in the amount of \$35,824.53. According to this District’s standard Plan Form, EDC 003-080, “[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court’s disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.” Plan Form EDC 003-080, § 3.02. Debtor has not complied with this language, submitting a Plan that provides it will make payments of \$1,900 per month, but also that it will make payments of \$3,490.27

per month to Class 1 creditors. Plan § 3.07, Docket 6. Such treatment is impermissible where the Plan contains conflicting provisions.

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 TD 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.

Item 9 thru 10

**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, Creditor, and Office of the United States Trustee on February 5, 2025. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

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**The Motion to Value Collateral and Secured Claim of Consumer Portfolio Services (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$6,405.**

The Motion filed by Russel Sage (“Debtor”) to value the secured claim of Consumer Portfolio Services (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Docket 10. Debtor is the owner of a 2013 Tesla Model S Sedan 4D (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$6,405.00 as of the petition filing date. Decl. ¶ 5, Docket 10. 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 June 29, 2021, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$22,832.41. POC 1-1. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$6,405.00, the value of

the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Consumer Portfolio Services (“Creditor”) secured by an asset described as 2013 Tesla Model S Sedan 4D (“Vehicle”) is determined to be a secured claim in the amount of \$6,405.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,405.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 11, 2025. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion for Turnover 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 for Turnover is <span style="color: red;">XXXXXXX</span> .</b></p>
---

Russel Sage, the Debtor in this case, (“Movant”) seeks an order for turnover as to a vehicle identified as a 2016 Land Rover Range Rover Supercharged LWB Sport Utility 4D, VIN ending in 1156. Debtor asserts that he earns income through a rideshare business, and he requires this Vehicle for the business. Mot. 2:18-25, Docket 15. Creditor Excel Motors (“Creditor”) repossessed the Vehicle prior to Debtor filing bankruptcy and will not turn it over to Movant. Decl. at 2:7-10. Debtor, using the powers of a trustee while prosecuting this bankruptcy case, moves the court for an order compelling Creditor to turn the Vehicle over to the Debtor.

Creditor’s claim is provided for in full in Debtor’s Plan in Class 2A. Plan, Docket 3.

## DISCUSSION

11 U.S.C. § 1303, titled “Rights and Powers of Debtor,” provides:

Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title.

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a trustee to obtain an order for turnover of property of the estate if the an entity fails and refuses to turnover an asset voluntarily, and the asset is of some value or benefit to the estate. 11 U.S.C. § 542(a) states:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

Importantly, this Code Section does not explicitly permit turn over by motion. Therefore, the court must consult Federal Rule of Bankruptcy Procedure 7001(1) to determine the proper avenue to compel turnover, which states:

(1) a proceeding to recover money or property, **other than a proceeding to compel the debtor to deliver property to the trustee**, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

Therefore, turnover must be effectuated through an adversary proceeding, unless the motion seeks to compel a debtor to turnover estate property.

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” If a creditor has an equitable or legal interest in property from the filing date, then that property falls within the debtor’s bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor’s estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from an entity. Most notably, pursuant to 11 U.S.C. § 521(a)(4), it appears Creditor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 13 Debtor.

However, it appears Debtor may not seek the requested relief through Motion as Federal Rule of Bankruptcy Procedure 7001(1) explicitly states that this relief must be sought through an adversary proceeding.

At the hearing, **XXXXXXX**

The court would note that Creditor, in failing to turn over property of the estate that is of benefit to the estate, may be committing actions that amount to tortious interference with property of the estate. It is true that merely keeping possession of the Vehicle on its premises with no further action does not constitute a willful violation of the automatic stay. *See City of Chicago, Illinois v. Fulton*, 592 U.S. 154, 161 (2021). However, failing to turn the vehicle over for Debtor’s valid business purposes may be seen to violate 11 U.S.C. § 542(a).



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 Turnover of Property filed by Russel Sage, 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 the Motion for Turnover of Property is **XXXXXXX**.

11. [24-25523](#)-E-13  
[AB-1](#)

**PATRICK ROGERS**  
**August Bullock**

**MOTION TO VALUE COLLATERAL OF  
FORD MOTOR COMPANY CREDIT, LLC**  
**2-10-25 [27]**

Item 11 thru 12

**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, Creditor, and Office of the United States Trustee on February 10, 2025. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of Ford Motor Company Credit, LLC (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$23,125.**

The Motion filed by Patrick Michael Rogers (“Debtor”) to value the secured claim of Ford Motor Company Credit, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Docket 29. Debtor is the owner of a 2019 Ford Expedition Max XLT Sport (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$23,125 as of the petition filing date. Decl. ¶ 4, Docket 29. 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 June 11, 2022, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$39,640.63. Proof of Claim, No. 9-1. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$23,125, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ford Motor Company Credit, LLC (“Creditor”) secured by an asset described as a 2019 Ford Expedition Max XLT Sport (“Vehicle”) is determined to be a secured claim in the amount of \$23,125, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$23,125 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 29, 2025. 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 overruled.</b></p>
---

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

1. Debtor cannot afford to make the payments or comply with the plan because Debtor failed to file a Motion to Value Collateral. Obj. 1:25-28, 2:1-3, Docket 21.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 23.

## DISCUSSION

### 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 Ford Motor Company Credit, LLC. However, Debtor filed a Motion to Value the Secured Claim of Ford Motor Company Credit, LLC on February 10, 2025, being heard in conjunction with this Objection. Debtor, in his

Motion, requests the court to reduce the value of the security interest to \$23,125.00. Mot. 2:1-5, Docket 27. The court intends to grant that Motion.

At the hearing, **XXXXXXX**.

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

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

The 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.

13. <a href="#">24-24730</a> -E-13 <a href="#">BLG-4</a>	<b>LIZBETH/DANIEL ALARCON</b> <b>Chad Johnson</b>	<b>MOTION TO CONFIRM PLAN</b> <b>12-9-24 [22]</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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Chapter 13 Trustee, creditors and parties in interest, and Office of the United States Trustee on December 9, 2024. By the court’s calculation, more than 70 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).

<b>The Motion to Confirm the Amended Plan is <b>XXXXXXX</b>.</b>
--

The debtor, Lizbeth Navar Alarcon and Daniel Alarcon (“Debtor”), seek confirmation of the Amended Plan. The Amended Plan provides for 60 monthly payments of \$15,700. Amended Plan, Docket 26. 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 February 14, 2025. Docket 71. Trustee does not recommend confirmation at this time, estimating the Plan is slightly overextended. The overextension results from creditor Rosa Franco filing her amended proof of claim, Claim 16-2, asserting a priority claim in the amount of \$15,150.

## DISCUSSION

By Trustee’s calculations, the Plan would complete in 63 months as proposed, taking into account Ms. Franco’s priority claim. 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.” Trustee has indicated it appears that some expenses can be shuffled to make this Plan work and complete within 60 months while taking into account the priority claim.

At the hearing, **XXXXXXX**

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

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

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

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

~~**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on December 9, 2024, is confirmed as amended to state **XXXXXXX**. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on October 20, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

**The Motion to Value Collateral and Secured Claim of Real Time Resolutions  
("Creditor") is XXXXXXX.**

#### **February 25, 2025 Hearing**

The court continued the hearing on this Motion, the Parties having a dispute as to the value of the Property. Supplemental pleadings were to be filed and served on or before January 17, 2025, and Opposition pleadings were to be filed and served on or before January 31, 2025. Reply pleadings, if any, were to be filed and served on or before February 7, 2025. On December 31, 2024, the Parties filed a Stipulation with the court that settles Creditor's objection to this Motion. Docket 37. The terms of the Stipulation are summarized as follows:

1. Creditor agrees that the value of the Property, as of the date of filing, was \$800,000.00, and that the senior lienholder to Creditor is owed an amount

in excess of that sum based on the claim filed by PHH Mortgage Corporation. Stip. 2:22-25.

2. Creditor agrees to be paid on its Proof of Claim filed as Claim No. 6-1 (the “RTR POC”) herein as a general unsecured creditor under the Plan as a Class 7 creditor pursuant to the treatment under Class 2(C) of the Plan, and at the same rate and pro-rata amounts as the other similarly situated general unsecured creditors. *Id.* at 2:26-3:2.
3. The avoidance of Creditor’s remaining balance under the Note and Deed of Trust herein is contingent upon Debtors’ completion of a Chapter 13 Plan in the instant bankruptcy case. *Id.* at 3:3-4.
4. Creditor will retain the its lien for the full amount due under the corresponding note and deed of trust, mortgage or lien if the Debtors’ chapter 13 case is dismissed or converted to any other chapter under the Bankruptcy Code even if later converted back to a chapter 13 case, or if Debtors obtain a “hardship” discharge or early discharge, or any other event that fails to provide payment to Creditor for the entire amount as an unsecured creditor under the terms of this Stipulation. *Id.* at 3:6-11.
5. In the event that the holder of any other lien on the Property forecloses on its interest and extinguishes Creditor’s lien rights prior to the Lien Avoidance Effective Date, Creditor’s lien shall attach to any proceeds greater than necessary to pay the senior lien(s) from the sale under the terms and conditions of Creditor’s Note and Deed of Trust as a secured creditor. *Id.* at 3:12-15.
6. In the event the Property is destroyed or damaged prior to the Lien Avoidance Effective Date, Creditor shall be entitled to its full rights and compensation as a loss payee as a secured creditor with respect to any insurance proceeds, up to the entire balance due and owing under the Note and Deed of Trust at time of loss, without further Court order. *Id.* at 4:4-7.
7. In the event Debtors sell, transfer, convey, assign, or otherwise changes ownership of the Property prior to the Lien Avoidance Effective Date, whether in part or in whole, this Stipulation is null and void, and Creditor shall be entitled to payment of its lien and security interest as a secured creditor for the full amount owed under the terms of the original Note and Deed of Trust upon closing of escrow or at time of transfer. *Id.* at 4:8-12.

At the hearing, **XXXXXXX**

### **REVIEW OF MOTION**

The Motion to Value filed by Michael James Hickey and Mercedes Velasquez Hickey (“Debtor”) to value the secured claim of Real Time Resolutions (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Docket 19. Debtor is the owner of the subject real property commonly known as House at 2303

Wasabe Drive, South Lake Tahoe, CA (“Property”). Debtor seeks to value the Property at a fair market value of \$800,000 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a Nonopposition on November 5, 2024. Docket 23.

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

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

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

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

## OPPOSITION

Creditor filed an Opposition. Docket 21. Creditor requests time to obtain an appraisal, arguing that the home is worth more than \$800,000 and at least partially secures its claim, so the claim should not be reduced to \$0.

## DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$809,396. Schedule D 20, Docket 1. Creditor’s deed of trust secures a claim with a balance of approximately \$128,095. *Id.* at 21. Therefore, Creditor’s claim secured by a junior deed of trust is completely under-collateralized, if Debtor’s valuation is correct. However, Creditor has a right to obtain its own independent appraisal (conduct discovery) of the Property.

At the hearing, counsel for the Creditor needing about 90 days to having the appraisal completed. There have been some communication challenges with communications with the Debtor.

## Correction of Name of Creditor



At the hearing, Debtor and Creditor Real Time Resolutions, Inc., as named in the Motion agreed that the full name of the Creditor, as will be stated on the proof of claim Creditor files in this Case is:

Real Time Resolutions, Inc., as agent for Wilmington Trust National Association, Successor Indenture Trustee to Citibank, N.A., as Indenture Trustee for the Greenpoint Mortgage Funding Trust 2007-HE1.

The Parties agreed on the record that the court shall enter an order clearly identifying the Creditor by its full name and showing to whom it is an agent for.

The Parties agreed to the following briefing schedule and continued hearing so that they both may obtain appraisals:

The Debtor shall file and serve supplemental Motion pleadings on or before January 17, 2025.

Creditor shall file and serve Opposition pleadings on or before January 31, 2025.

Reply pleadings, if any, shall be filed and served on or before February 7, 2025.

The hearing on the Motion to Value Collateral and Secured Claim of Real Time Resolutions, Inc., as agent for Wilmington Trust National Association, Successor Indenture Trustee to Citibank, N.A., as Indenture Trustee for the Greenpoint Mortgage Funding Trust 2007-HE1 is continued to 2:00 p.m. on February 25, 2025.

**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 7 13 Trustee, creditors, and Office of the United States Trustee on February 4, 2025. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Withdraw as Attorney is granted.**

Yuhua Song (“Movant”), counsel of record for Thomas Stephen McGee (“Debtor”), filed a Motion to Withdraw as Attorney as Debtor’s counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to California Rules of Professional Responsibility Rule 1.16.
- B. Counsel cannot effectively represent Debtor due to inconsistency of and lack of communication. Mot. 2:2-4.

#### **APPLICABLE LAW**

District Court Rule 182(d) governs the withdrawal of counsel. LOCALBANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

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

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

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

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

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

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

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

(B) The client

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

CAL. R. PROF'L CONDUCT 1.16(b)(4).

## DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that the Attorney-Client relationship has deteriorated to the point that Attorney is no longer able to represent this debtor effectively. Decl. 2:1-7, Docket 31.

Neither the Chapter 13 Trustee, Debtor, nor any other relevant party has filed an opposition to this Motion.

At the hearing, **XXXXXXX**

Under CAL. R. PROF'L CONDUCT 1.16(b)(4), Debtor's conduct, such as the lack of response to correspondence from the Movant is hindering Movant's ability to carry out her employment and duties effectively. Those are sufficient reasons for permissive withdrawal.

#### **Attorney's Fees For Withdrawing Counsel**

On the Disclosure of Compensation of Attorney for Debtor (Dckt. 22), counsel states that \$4,995.00 was received pre-petition for legal services provided in connection with this Chapter 13 Case. Dckt. 22. It states that Debtor's counsel shall file a Motion for allowance of compensation.

This Bankruptcy Case was filed on January 7, 2025. Dckt. 1. No Chapter 13 Plan has been filed in this Case. No Schedules or Statement of Financial Affairs has been filed in this Case.

With respect to the fees that counsel will be paid in this Case and what will be refunded to the Debtor, at the hearing **XXXXXXX**

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

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

The Motion to Withdraw as Attorney filed by Yuhua Song ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for Thomas Stephen McGee ("Debtor").

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 15, 2025. 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.

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXX</span>.</b>
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### February 25, 2025 Hearing

The Parties agreed to a continuance so that Debtor could attend the continued 341 Meeting, having been ill and missing the prior 341 Meeting. The Trustee reports that the Debtor attended the continued 341 Meeting and that it has been concluded. Trustee's February 20, 2025 Docket Entry Report.

At the hearing, XXXXXXX

### REVIEW OF OBJECTION

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

1. Debtor Susan Mary Hanrahan ("Debtor") failed to appear and be examined at the First Meeting of Creditors held at 11:00 a.m., on January 9, 2025. Obj. 2:3-4.

2. There appears to be a clerical error regarding Debtor's social security number as reported in her Petition. *Id.* at 2:9-20.
  - a. This issue was corrected on January 6, 2025, when Debtor filed an Amended Statement of Social Security Numbers. Docket 13.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 16.

## **DISCUSSION**

### **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).

At the hearing, counsel for the Debtor reported that the clerical error on the Social Security Number has been corrected. The 341 Meeting was missed due to Debtor's counsel illness.

Under these facts and circumstances, the Parties agreed to continue the hearing on the Objection to Confirmation.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on February 25, 2025.

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

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

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

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

DEBTOR DISMISSED: 01/06/25

Item 17 thru 19

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

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

**NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED**

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

**The Motion to Vacate is **XXXXXXX** .**

Linda Catron ("Debtor") filed the instant case on April 29, 2024. Docket 1. No Plan was ever confirmed in the case, and the court sustained Trustee's Motion to Dismiss for various reasons, including failing to get a Plan on file and failure to provide documents related to the case. Order, Docket 84.

On January 21, 2025, Debtor filed this instant Motion to Vacate, claiming the following:

1. Creditor Shellpoint Mortgage ("Creditor") broke into her home and damaged it and did not rectify the damage.
2. Without the residence fixed, Debtor has been unable to prosecute state court litigation or the bankruptcy case.
3. Debtor is attempting to prosecute various other avenues of litigation.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

The Chapter 13 Trustee filed an Opposition on February 11, 2025. Docket 88. Trustee argues Debtor has not met her burden in requesting the court vacate its order, and Debtor has not prosecuted the case in any other meaningful way.

## APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., *FEDERAL PRACTICE AND PROCEDURE* § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., *MOORE’S FEDERAL PRACTICE* ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

## DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere*



*Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Debtor has not presented any facts or argument that would permit the court to vacate its order dismissing the case. Debtor has explained some issues she is experiencing in prosecuting the case, including trying to work out various related lawsuits with Creditor. However, Debtor has not presented the court with any facts that would apply to Fed. R. Civ. P. 60(b). There is no evidence of any mistakes, no new evidence uncovered, no fraud by any opposing party, etc. ~~The court is unable to grant the requested relief.~~

~~—————Therefore, in light of the foregoing, the Motion is denied.~~

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 Vacate filed by Linda Catron (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

18. [24-21762-E-13](#)  
[LC-8](#)

**LINDA CATRON**  
Pro Se

**CONTINUED MOTION TO SET ASIDE**  
**7-29-24** [\[40\]](#)

**DEBTOR DISMISSED: 01/06/25**

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

<b>The Motion to Vacate is <b>XXXXXXX</b>.</b>
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**February 25, 2025 Hearing**

The court continued the hearing on this Motion to allow Debtor time to obtain counsel. Since then, Debtor obtained the counsel of Peter Macaluso, who shortly thereafter withdrew as counsel, which the court granted. Order, Docket 81. Debtor has not obtained replacement counsel. At the hearing, **XXXXXX**

### **REVIEW OF MOTION**

Linda Catron (“Debtor”) files this Motion seeking an order of this court vacating the court’s prior order issued on July 21, 2024, at Docket 36. The court’s July 21, 2024 order confirmed that the automatic stay was not in effect in this case pursuant to 11 U.S.C. § 362(c)(4) and also granted creditor NewRez LLC d/b/a Shellpoint Mortgage Servicing (“Creditor”) relief from stay pursuant to 11 U.S.C. § 362(d)(4). That order also granted relief from the co-debtor stay of 11 U.S.C. § 1301(a), and waived the fourteen-day stay of enforcement.

On July 29, 2024, Debtor filed this instant Motion to Vacate, realleging many of the same facts and arguments put forward in her Opposition to the Motion for Relief. *See* Opp’n, Docket 24. Debtor seeks to vacate the portion of the July 21, 2024 pertaining to relief granted pursuant to 11 U.S.C. § 362(d)(4).

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b). Debtor filed this Motion in pro se. The court summarizes the grounds upon which the relief is based as follows:

- A. Debtor is an elder and Shellpoint has inflicted harm upon her. Motion, p. 2; Dckt. 40.
- B. The judge was unable to have the Debtor explain the stress and confusion from being an elder and Debtor’s medical condition. *Id.*
- C. Debtor has demanded that the bank fix the vandalism they caused. *Id.*
- D. Lender Bank of New York Mellon is part of a scheme that was conducting espionage on Debtor and violated bankruptcy stay orders. *Id.*
- E. Lender has also been involved in hacking and stealing trade secrets and tampering with legal proceedings. *Id.*
- F. Lender has been framing people after they violated the automatic stay, and then attempt to retroactively seek relief. *Id.*
- G. Lender’s misconduct includes violation of the Espionage Act, theft of trade secrets, and violation of privacy through illegal hacking and monitoring in violation of Computer fraud abuse act. *Id.*
- H. The Attorney General is investigating this issue, which led to a murder to cover of the Lender’s scheme. Debtor is a victim in this matter. *Id.*
- I. If the order granting relief is not set aside, it will violate Debtor’s settlement agreement, and put Debtor in violation of the agreement. *Id.*
- J. Debtor is working on obtaining a loan modification. *Id.*

- K. Debtor's loan was paid off in 2023 through a loan modification. *Id.*; p. 3.
- L. The asset management company and its attorneys are framing and misrepresenting the trusts as coverup of crimes dating back 17 years which were uncovered. *Id.*
- M. The Lender is part of an asset management company that has been fraudulently concealing their intentions and part of a conspiracy to cover up their crimes of violation of the bankruptcy automatic stay. *Id.*; p. 3-4. This includes using tactics as tools to conduct espionage and elder abuse and framing partners for the lender scheme to conduct crimes and illegal conversion of assets and equity using these methods through the bankruptcy court. *Id.*
- N. The court should deny the for relied. *Id.*; p. 4.

### **Court's Prior Order**

On July 21, 2024, the court entered an order granting relief from the automatic stay determining that there is no automatic stay in effect in this Bankruptcy Case pursuant to 11 U.S.C. § 362(c)(4). Order; Dckt. 36. 11 U.S.C. § 362(c)(4)(A) is the statutory provision enacted by Congress which provides that if an individual has had pending and dismissed two prior bankruptcy cases in the one year preceding the bankruptcy case subsequently filed, then no automatic stay goes into effect in the subsequently filed case.

Prior to the current case before the court filed on April 29, 2024, Debtor had pending and dismissed the following cases:

1. Case 23-22522.....Dismissed October 19, 2023
2. Case 24-21762.....Dismissed April 11, 2024

These dismissals are within the one-year period preceding the filing of the current Bankruptcy Case on April 29, 2024.

It is Congress which has written the law to state that no automatic stay has gone into effect in this Bankruptcy Case. Congress also provides in 11 U.S.C. § 362(c)(4)(B), that a debtor may seek to impose (create) an automatic stay in a case where 11 U.S.C. § 362(c)(4)(A) prevents it from automatically going into effect.

The court also impose relief pursuant to 11 U.S.C. § 362(d)(4)(A), providing that no automatic stay would go into effect for a two year period after the entry of the above over in this case. However, such does not preclude a debtor from requesting that the stay be imposed in a subsequently filed case, as provided in 11 U.S.C. § 362(d)(4)(B).

### **CREDITOR'S OPPOSITION**

Creditor filed an Opposition on September 9, 2024. Docket 46. Creditor recounts the facts of this case and the facts surrounding their Motion for Relief, then states:

1. All of the arguments set forth by the Debtor in her instant Motion can and should be disregarded as they all could have been alleged in Debtor's Opposition to Relief Motion and/or at the time of the hearing on the relief Motion as such arguments are based on documents, theories or events that existed and/or occurred prior to the entry of the In Rem Order. *Id.* at 9:20-23.
2. Debtor's attempt to re-hash these arguments here simply cannot stand as Debtor is well aware that these arguments failed to pose any challenge to the Motion for Relief. *Id.* at 9:25-26.

## **DEBTOR'S REPLY**

Debtor filed a Reply to the Opposition on October 15, 2024. Docket 52. Debtor makes no legal arguments and cites not law in support of the Reply. Debtor states:

1. Here, while not objecting to the relief as to Bruce Chadbourne, Mohammad Mahmood Khan, and Ayesha Khan, the Debtor seeks one last chance of redemption, be it a Loan Modification which was unjustly denied, or monthly payments. *Id.* at 3:7-10.

Debtor then states: "Debtor requests that the Trustee's Motion be granted." *Id.* at 3:11-12.

Debtor filed an additional Declaration on October 16, 2024. Docket 55. Debtor states she requests a continuance, stating she has recently relieved Mr. Macaluso as her counsel in this case. Debtor states she will have new counsel by November 15, 2024.

## **APPLICABLE LAW**

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

## DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

In this case, Debtor has not offered any justifiable grounds to vacate the July 21, 2024 order. Debtor has not presented any facts that would justify Federal Rule of Civil Procedure Rule 60(b) relief. Instead, Debtor is rehashing the arguments that were used during the prosecution of the Motion for Relief. For example, Debtor again states Creditor engaged in vandalism of the Property, Creditor has engaged in espionage, and Creditor has violated the automatic stay. Those arguments were extensively addressed by the court in the Civil Minutes at Docket 34 and will not be readdressed in this present Motion.

At the October 22, 2024 hearing, the court addressed with the Debtor the legal issues presented relating to 11 U.S.C. § 362(c)(4) and there being no automatic stay. The Debtor noted that she is interviewing counsel and would be seeking to engage counsel.

The court continued the hearing in light of Debtor not having yet obtained counsel.

The hearing on the Motion to Vacate is continued to 2:00 p.m. on December 17, 2024.

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

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

The Motion to Vacate filed by Linda Catron (“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 Vacate is **XXXXXXX**.

19. [24-21762](#)-E-13  
[LC-9](#)

**LINDA CATRON**  
**Pro Se**

**MOTION TO CONFIRM PLAN**  
**12-10-24 [77]**

**DEBTOR DISMISSED: 01/06/25**

**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.

**NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED**

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

**The Motion to Confirm the Modified Plan is denied.**

The debtor, Linda Catron (“Debtor”), moves this court for an Order confirming her Plan. There is no reference in the Motion as to which Plan Debtor seeks to confirm, so the court assumes it is the only Plan on the Docket at Docket 26. There is no evidence filed in support of the Plan. The Plan contains unclear provisions, such as the payment provisions. The record does not reflect Debtor can afford to make the payments described in the Motion, Debtor’s Amended Schedule I at Docket 73 reflecting income of \$1,272 and Debtor’s Schedule J at Docket 25 showing expenses of \$6,500.

At the hearing, **XXXXXXX**

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor Linda Catron (“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.

20. [23-24065](#)-E-13  
[HAW-4](#)

**MICHAEL MASTROMATTEO**  
**Helga White**

**MOTION TO SELL**  
**1-17-25 [101]**

**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 January 17, 2025. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits Michael Mastromatteo, 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 1109 Southbridge Circle, Lincoln, CA 95648 (“Property”).

The proposed purchaser of the Property is John Vu and Stella Chung (“Buyer”). The purchase price is for \$675,000. According to Debtor’s calculations, it appears the sale will net \$213,000 in equity.

Debtor requests that the equity from the sale be deposited into Debtor’s divorce attorney’s trust account, Paul Cass. The court permitted state court divorce litigation to proceed. Order, Docket 91. That litigation has concluded, authorizing Debtor to sell the residence with instructions that the equity go into Mr. Cass’ trust account as part of the divorce settlement agreement, pending further orders as to distribution. Decl. ¶ 4, Docket 103.

The court would note that the state court order requiring the proceeds from the sale be placed into Mr. Cass' account has not been filed as an Exhibit in support of this Motion.

At the hearing, **XXXXXXX**

### **Creditor Matrix Financial Services Conditional Non-Opposition**

Creditor filed a Conditional Non-Opposition on January 28, 2025. Docket 109. Creditor does not oppose the sale, so long as its secured claim is paid in full. Creditor requests the following language be added in the order confirming:

1. Secured Creditor's Claim shall be paid off in full before satisfying any other lien on the Real Property;
2. Secured Creditor shall be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale so that Secured Creditor's Claim is paid in full at the time the sale of the Real Property is finalized.
3. In the event that the sale of the Property does not take place, Secured Creditor shall retain its Lien for the full amount due under the Subject Loan; and
4. To the extent that the Debtor disputes any amounts which Secured Creditor claims are owed on the Subject Loan, that the undisputed amount of Secured Creditor's Claim be paid at the close of the sale and for the disputed amount of Secured Creditor's claim to be segregated in an interest bearing account with an additional \$10,000 in sale proceeds pending further Order of the bankruptcy court to allow for Secured Creditor's potential recovery of any of its reasonable attorney's fees and costs incurred to the extent that Secured Creditor successfully establishes its right to the disputed amount due on its Claim.

*Id.* at 2:9-23.

### **Sale Free and Clear of Liens**

The Motion seeks to sell the Property free and clear of liens. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;



(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant states:

“The debtor, by and through his counsel Helga White, requests Bankruptcy Court approval for the sale of the Lincoln House free and clear of liens as stated above. .  
.”

Upon reviewing the Motion, no liens or creditors are identified. There is no appeal to any section of 11 U.S.C. § 363(f), either. The court cannot grant a blanket ruling extinguishing all potential liens to unknown creditors.

At the hearing, **XXXXXXX**

## **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 it helps bring an end to the pending divorce litigation that has been ongoing over a number of years, while also generating equity to pay creditors in the case.

Movant has estimated that a 5.5% broker’s commission from the sale of the Property will equal approximately \$37,125. The commission is to be split with Broker Better Home and Garden RE to receive \$20,250 and Broker One Source Capital Group, Inc. to receive \$16,875. 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 5.5% commission.

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 Michael Mastromatteo, 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 the Motion is granted, and Michael Mastromatteo, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to John Vu and Stella Chung or nominee (“Buyer”), the Property commonly known as 1109 Southbridge Circle, Lincoln, CA 95648 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$675,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit, Dckt. 107, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to pay a real estate broker’s commission in an amount not more than 5.5 percent of the actual purchase price upon consummation of the sale. The commission is to be split with Broker Better Home and Garden RE to receive \$20,250 and Broker One Source Capital Group, Inc. to receive \$16,875.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee’s demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.

- F. After payment of the amounts provided above, including the disbursement to the Chapter 13 Trustee directly from escrow, any remaining net sale proceeds may be disbursed directly from escrow to the Chapter 13 Debtor.
- G. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement.

**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 all creditors and parties in interest on February 6, 2025. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

**The Motion to Employ is granted.**

Wanda Kay Baeta ("Debtor") seeks to employ Keller Williams Realty Chico Area ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to market and sell the real property commonly known as 25295 Josephine St, Los Molinos, CA 96055.

Samuel Ayala, a Broker of firm, testifies that he will assist Debtor in selling the real property. Mr. Ayala testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl. ¶ 10, Docket 48.

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

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee,

or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Keller Williams Realty Chico Area as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 47. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Wanda Kay Baeta (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, effective February 25, 2025, and Debtor is authorized to employ Keller Williams Realty Chico Area (“Broker”) for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 47.

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

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

**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 Office of the United States Trustee on January 29, 2025. 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 <span style="color: red;">xxxxxxx</span>.</b>
---

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

1. Debtor may not have the mental comprehension to understand that he was signing a Uniform Statutory Form Power of Attorney, as he signed it two months after signing a letter that stated he has dementia. Obj. 2:8-12, Docket 13. Debtor's spouse, Georgina McCall, legally represents Debtor pursuant to the power of attorney.
2. Debtor failed to appear at the First Meeting of Creditors on January 23, 2025. Obj. 2:13-15, Docket 13. Georgina McCall, Debtor's legal representative, appeared on behalf of Debtor and advised the Trustee that the Debtor has dementia. *Id.* at 18-21.
3. Debtor failed to provide his tax returns. Obj. 3:3-11, Docket 13.
4. Debtor's schedules may be inaccurate. Obj. 3:13-28, Docket 13. Trustee is unsure why assets listed on Schedule A/B are located at a Los Angeles

address. *Id.* at 17-18. Trustee is further concerned that Debtor is including expenses that will be paid by the Trustee through the plan and the Debtor can contribute substantially more than 10% to unsecured creditors. *Id.* at 25-28.

5. Debtor failed to provide proof of income. Obj. 4:7-10, Docket 13.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 15.

## **DISCUSSION**

### **Debtor's Ability to Comprehend the Power of Attorney**

Debtor signed a Uniform Statutory Form Power of Attorney, authorizing his spouse, Georgina McCall, to act on his behalf in this bankruptcy proceeding. *See* Fed. Rules Bankr. Proc. Rule 9010(a). Under Rule 1004.1, a representative “may file a voluntary petition on behalf of . . . [an] incompetent person.” Fed. Rules. Bankr. Proc. Rule 1004.1. But such rules are not without limitations. Courts have required a “failsafe” requirement in the case that a debtor signs a general power of attorney when competency is at issue. *See In re Nakano*, No. 2:19-11179, 2019 WL 2896199 at \* 14 (Bankr. C.D. Cal. June 26, 2019) (finding that the sparse case law across the nation suggests that a failsafe is required to “prevent abuse where a bankruptcy case is filed for another individual through the use of a power of attorney”). The bankruptcy court in the Central District of California held that a general power of attorney may be used to file a bankruptcy case for another individual so long as the debtor was informed about, and consented to, the filing of the bankruptcy case. *Id.*

Here, the court does not have enough information to determine whether Georgina McCall has the authority to file a bankruptcy petition on behalf of Debtor. The court needs more information on whether Debtor was informed about, and consented to, the filing of the bankruptcy.

At the hearing, **XXXXXXX** .

### **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)

### **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 Provide Pay Stubs**

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

### **Inaccurate Information**

Debtor identifies assets located at a Los Angeles address, and to date, does not appear that an amendment to the schedule has been filed. The Trustee is unclear on why the assets are located in Los Angeles. Further, Debtor's Schedule J shows an expense for mortgage or rent and an installment or lease payment for a total of \$2,330.06. But Class 1 of the Plan shows two secure claims with identical payments as to the ones on Schedule J as an expense. Obj. 3:17-24, Docket 13. These are cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

At the hearing, **XXXXXXX**.

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

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

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

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

Item 23 thru 25

**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)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 12, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

<p><b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXX</span>.</b></p>
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### February 25, 2025 Hearing

The court continued the hearing on this Objection by order granting the *Ex Parte* Motion for a continuance. Docket 67. A review of the Docket on February 21, 2025 reveals nothing new has been filed with the court.

As part of the court continuing this matter, opposition was to be filed by February 11, 2025, and replies were to be filed and served on or before February 18, 2025.

At the hearing, XXXXXXX

### REVIEW OF OBJECTION

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

1. Debtor Barbara Ann Dodge ("Debtor") did not file this Plan and case in good faith, in violation of 11 U.S.C. § 1325(a)(3) and (7). Debtor has engaged in hiding assets prepetition by transferring money to avoid paying



Creditor's claim, as well as misrepresenting costs on Debtor's Schedule J in the present case. Docket 23.

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

## **DEBTOR'S REPLY**

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

## **DISCUSSION**

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

11 U.S.C. § 1325(a)(3) states:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

...

(3) the plan has been proposed in good faith and not by any means forbidden by law;

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

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

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

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

### **November 5, 0224 Hearing**

By prior Order of the Court, Dckt. 44, the hearing has been continued to 2:00 p.m. on December 10, 2024.

### **January 14, 2025 Hearing**

The court continued the hearing on this Objection by order granting the *Ex Parte* Motion for a continuance. Docket 54. A review of the Docket on January 9, 2025 reveals nothing new has been filed with the court.

On January 10, 2025, Creditor and Debtor filed an *Ex Parte* Joint Motion to continue the hearing to 2:00 p.m. on February 25, 2025.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on February 25, 2025, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

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

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

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

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

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

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

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

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

**The Objection to Confirmation of Plan is XXXXXXX.**

### February 25, 2025 Hearing

The court continued the hearing on this Objection to be heard with the related Creditor's Objection to Confirmation and Motion to Avoid Lien. As part of the court continuing this matter, opposition was to be filed by February 11, 2025, and replies were to be filed and served on or before February 18, 2025. A review of the Docket on February 21, 2025 reveals nothing new has been filed with the court.

At the hearing, XXXXXXX

### REVIEW OF OBJECTION

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

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

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

## **DISCUSSION**

### **Debtor's Reliance on Motion to Avoid Judicial Lien**

Debtor's Plan relies on avoiding the judicial lien of Kristofer Orre and Sarah Orre ("Creditor"). If Debtor succeeds on that Motion and the claim is placed in the general unsecured class of creditors, then Debtor's Plan passes the liquidation test. However, if the Motion does not succeed and Creditor's claim stays secured, Debtor's Plan will not provide unsecured creditors with more than what they would receive under a Chapter 7. 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date."

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

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

### **November 5, 2024 Hearing**

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

### **January 14, 2025 Hearing**

The court continued the hearing on this Objection to be heard with the related Objection and Motion to Avoid Lien. A review of the Docket on January 9, 2025 reveals nothing new has been filed with the court.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditor and parties in interest, and Office of the United States Trustee on August 13, 2024. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Avoid Judicial Lien is <span style="color: red;">XXXXXXX</span>.</b>
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### February 25, 2025 Hearing

The court continued the hearing on this Motion to be heard with the related Objections to Confirmation. As part of the court continuing this matter, opposition was to be filed by February 11, 2025, and replies were to be filed and served on or before February 18, 2025. A review of the Docket on February 21, 2025 reveals nothing new has been filed with the court.

At the hearing, XXXXXXX

### REVIEW OF THE MOTION

The Motion was continued multiple times. In the most recent continuance, the court granted a Stipulation filed by the parties requesting the continuance. Order, Docket 53. In the Order, creditors Kristofer Orre and Sarah Orre were to obtain a valuation and file opposition to the Motion on or before December 31, 2024. No oppositions were ever filed.

This Motion requests an order avoiding the judicial lien of Creditor against property of the debtor, Barbara Ann Dodge ("Debtor") commonly known as 9021 Braden Way, Sacramento, Ca 95826 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$255,416.56. Exhibit D, Dckt. 13. Debtor has not properly filed the Abstract of Judgment with the court as it lacks recorder information. The court is unable to determine where and when the judgment was recorded.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$528,100 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$0 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 20, Docket 1. However, Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$532,000 on Schedule C. Schedule C at 17, Docket 1.

### **JANUARY 14, 2025 HEARING**

On January 10, 2025, the Debtor and Creditors Kristofer and Sarah Orre filed an *Ex Parte* Joint Motion requesting that the hearing be continued to 2:00 p.m. on February 25, 2025, with opposition to be filed by February 11, 2025, and replies filed and served on or before February 18, 2025.

### **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 Barbara Ann Dodge ("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 Avoid Judicial Lien is **XXXXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 17, 2025. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXXX</span>.</b></p>
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The debtor, Darren James SooHoo (“Debtor”) seeks confirmation of the Modified Plan as Debtor has been laid off from his job and can no longer perform under the previously confirmed Plan. Declaration 1:25-27, Docket 42. Debtor further requests through this proposed Modified Plan that plan payments be suspended for three months so Debtor may find a new job. *Id.* at 2:1-2. The Modified Plan provides for payments of \$0 for months 5, 6, and 7, and then monthly payments of \$1,400 from month 8 to the end of the 60 month Plan. Modified Plan, Docket 44. 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 February 11, 2025. Docket 55. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s Plan relies on future speculative income, Debtor not currently having a job. *Id.* at 1:24-7. There is currently no additional evidence indicating that the debtor will secure employment within the next three months to support the proposed plan payments.

- B. There have been no supplemental Schedules I and J filed in support, so the court and Trustee are unable to determine if Debtor can afford the Plan. *Id.* at 2:12-19.
- C. The original plan as confirmed provided that the Debtor submits all tax refunds exceeding \$2,000.00 to the Trustee. The Modified plan does not contain any provisions requiring the Debtor to remit any tax refunds that exceed \$2,000.00. Where 2023 tax refunds were \$12,613, and 2024 tax returns may be filed or soon be filed, this omission appears significant. *Id.* at 2:20-25.
- D. Debtor makes no citation to legal authority in bringing this Motion. *Id.* at 2:26-3:3. The court would note this error has been rectified, Debtor directing the parties to 11 U.S.C. § 1329 in support of confirmation.

Debtor filed a Reply on February 19, 2025. Docket 58. Debtor acknowledges the Plan relies on speculative future income. As such, there is no need for Supplemental Schedules I and J as Debtor has not yet obtained new employment. As for the tax refunds, Debtor states that given his situation, he is requesting that he be allowed to keep his 2024 tax refunds; all tax refunds following the 2024 tax year over \$2,000.00 to be pledged to his plan. *Id.* at 2:4-8.

## DISCUSSION

The issue in confirming this Plan is that Debtor does not actually have regular monthly income to fund a Plan. Only an individual with regular income can be in Chapter 13. 11 U.S.C. § 109(e). Individual with regular income is a defined statutory term, the Code stating:

The term “individual with regular income” means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker.

In this case, Debtor admits he is unemployed, and the record reflects he does not have regular monthly income to fund a Plan. The Plan admits as much, even removing tax returns from plan payments as well as requesting three months go by without Debtor making a single payment. The court is told that Debtor will then hope to find a job and resume plan payments. However, there is no evidence on the record showing Debtor’s efforts in finding employment, the court only being presented with evidence that Debtor is not an individual with regular income.

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, Darren James SooHoo (“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.

27. [24-24297](#)-E-13  
[PGM-1](#)

**LATASHA RICHARDSON**  
**Peter Macaluso**

**CONTINUED MOTION TO VALUE  
COLLATERAL OF WILMINGTON  
SAVINGS FUND SOCIETY, FSB  
11-4-24 [\[24\]](#)**

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

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

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

**The Motion to Value Collateral and Secured Claim of Wilmington Savings Fund Society, FSB (“Creditor”) is **XXXXXXX**.**

**February 25, 2025 Hearing**

The court continued the hearing on this Motion, the Parties having a dispute as to the value of the Property. Opposition pleadings were to be filed and served on or before February 17, 2025, and Reply pleadings, if any, were to be filed and served on or before February 24, 2025.

On February 17, 2025, the Parties filed a Stipulation with the court that settles Creditor’s objection to this Motion. Docket 81. The terms of the Stipulation are summarized as follows:

1. The Parties hereby consent to an Order issued by the Court which provides that for the purposes of Debtor's Chapter 13 proceeding, Creditor shall hold an unsecured claim of \$192,054.86. Stip. 2:9-11.
2. Creditor shall release its secured interest in the second deed of trust upon Debtor's timely and successful completion of the Chapter 13 Plan, and the Debtor's receipt of a discharge in this Chapter 13 case. *Id.* at 2:12-14.

On this point, there are statutory and contractual obligations for reconveyance of the deed of trust and well established Ninth Circuit law requiring such reconveyance upon the completion of the Plan when a secured claim has been valued pursuant to 11 U.S.C. § 506(a).

3. If the case is dismissed or converted or Debtor does not receive a discharge, such lien shall be retained by Creditor in an amount based on the full balance of the underlying promissory note ("Note"), plus all accrued interest, fees and costs, including advances, less any credits for monies paid to Creditor since the Debtor filed their bankruptcy petition. *Id.* at 2:15-19.
4. In the event the Debtor fails to make any of the payments required under this Stipulation during the pendency of this Chapter 13 case, the full Claim Amount shall be reinstated, plus any interest, fees, costs and advances which would have ordinarily accrued but for the Parties' entry into this Stipulation, minus any payments received from Debtor by Creditor. *Id.* at 2:20-23.

By this Stipulation the Parties appear to be trying to have a "piecemeal" Chapter 13 Plan confirmed.

5. In the event that the first lienholder obtains relief from the automatic stay under 11 U.S.C. § 362 and §1301, Creditor shall also have relief from the automatic stay without further order of this Court. *Id.* at 3:1-3.

While Debtor and Creditor may agree that if a senior lienholder gets relief from the stay then Creditor may have relief, the court does not issue orders stating that the stay is terminated in the future. The parties can agree to have a simple *ex parte* relief from stay process.

6. In the event that any entity, including the holder of the first lien on the Property, forecloses on its security interest and extinguishes Creditor's Deed of Trust prior to the Debtor's completion of her Chapter 13 Plan and receipt of a Chapter 13 discharge, Creditor's lien shall attach to the surplus proceeds of the foreclosure sale for the full amount of the loan balance at the time of the sale. *Id.* at 3:4-7.

This court has long ago written, and was affirmed, on this point, determining that the 11 U.S.C. § 506(a) valuation and completion of the Chapter 13 Plan was all that was required for the secured claim amount to be fixed at the lower amount, and the lien released, no discharge required. *In re Frazier*, 448 B.R. 803 (Bankr. E.D. Cal. 2011); *affirm.* 469 B.R. 889 (E.D. Cal. 2012). *See also, HSBC Bank USA, N.A.*

*Blendheim (In re Blendheim)*, 803 F.3d 447 (Cir. 9 2015), providing a detailed discussion why no discharge is required for 11 U.S.C. § 506(a) secured claim valuation and the “lien stripping” occurring upon completion of the Chapter 13 plan.

It is not clear why, if the property were sold and the proceeds in excess of the senior lien were held until the Plan was completed, why Creditor would get those monies.

7. In the event the Property is destroyed or damaged prior to the entry of a discharge order and the amount of damage to the Property is greater than the then existing balance on the first mortgage secured by the Property, then Creditor shall be entitled to its full rights and compensation as loss payee with respect to any insurance proceeds, up to the entire balance due on the loan at the time of the loss. *Id.* at 3:11-15.

It is not clear that the Debtor’s rights to use the proceeds to rebuild the home are also protected. Additionally, if the Plan is completed, it is not clear why Creditor would get the proceeds in excess of the senior lien.

8. In the event the Debtor sells the Property or refinances prior to a successful completion of the Chapter 13 Plan or discharge, the amount due and owing shall not be affected by the terms of this Stipulation. The Creditor shall be paid in full under the original terms of the Note and Deed of Trust. *Id.* at 3:16-19.

The prior comments of the court are equally relevant to this provision.

At the hearing, **XXXXXXX**

### **REVIEW OF THE MOTION**

The Motion to Value filed by Latasha Denell Richardson (“Debtor”) to value the secured claim of Wilmington Savings Fund Society, FSB (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Docket 26. Debtor is the owner of the subject real property commonly known as 9980 Wyland Drive, Elk Grove, CA 95624 (“Property”). Debtor seeks to value the Property at a fair market value of \$1,002,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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

## **OPPOSITION**

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

## **DEBTOR'S REPLY**

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

## **DISCUSSION**

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

To allow for Discovery, the hearing on the Motion to Value Collateral and Secured Claim of Wilmington Savings Fund Society, FSB ("Creditor") is continued to 2:00 p.m. on February 25, 2025. Opposition pleadings shall be filed and served on or before February 14, 2025, and Reply pleadings, if any, will be filed and served on or before February 21, 2025.

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

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

The Motion to Value Collateral and Secured Claim filed by Latasha Denell Richardson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Value Collateral and Secured Claim of Wilmington Savings Fund Society, FSB ("Creditor") is **XXXXXXX**.

# FINAL RULINGS

28. [24-25011-E-13](#)  
[THN-2](#)

DENNIS MCCAFFERTY  
Teresa Hung-Nguyen

MOTION TO CONFIRM PLAN  
1-6-25 [\[37\]](#)

**Final Ruling:** No appearance at the February 25, 2025 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, parties requesting special notice, attorneys of record, and Office of the United States Trustee on January 6, 2025. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Dennis Michael McCafferty ("Debtor"), has filed evidence in support of confirmation. *See Decl.*, Docket 39. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on February 11, 2025. Docket 51. 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, Dennis Michael McCafferty ("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 January 6, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

29. [24-25017-E-13](#)  
[SMJ-1](#)

**DANIEL ROBERTSON**  
**Scott Johnson**

**MOTION TO CONFIRM PLAN**  
**1-16-25 [13]**

**Final Ruling:** No appearance at the February 25, 2025 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 13 Trustee, creditors, and Office of the United States Trustee on January 16, 2025. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Daniel William Robertson ("Debtor"), has filed evidence in support of confirmation. *See Decl.*, Dockets 15, 16. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on February 11, 2025. Docket 19. 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, Daniel William Robertson (“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 January 16, 2025, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

30. [24-20343-E-13](#)                      **RHONDA ROBERTS**                      **MOTION TO MODIFY PLAN**  
[PGM-2](#)                                      **Peter Macaluso**                      **1-17-25 [53]**

**Final Ruling:** No appearance at the February 25, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 17, 2025. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Rhonda Faye Roberts (“Debtor”), has filed evidence in support of confirmation. *See* Decl., Docket 56; Ex., Docket 57. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on February 11, 2025. Docket 63. 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, Rhonda Faye Roberts (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on January 17, 2025, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

31. [24-24151](#)-E-13      **ERICK/DANIELLE HUTTON**      **MOTION TO MODIFY PLAN**  
[SLH-2](#)      **Seth Hanson**      **1-9-25 [35]**

**Final Ruling:** No appearance at the February 25, 2025 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 all creditors and parties in interest on January 11, 2025. By the court’s calculation, 45 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p><b>The hearing on the Motion to Confirm the Modified Plan is continued to 2:00 p.m. on April 8, 2025, as Noticed by Debtor (Dckt. 44).</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Erick Hernan Hutton and Danielle Hutton (“Debtor”), has filed evidence in support of confirmation. *See* Decl., Docket 37; Ex., Docket 38.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on February 11, 2025. Docket 40. Trustee states he does not oppose confirmation, but it appears Debtor did not serve the Plan as an independent document on the interested parties.

Trustee notes that Debtor did serve the Plan as an Exhibit to the Motion on interested parties. Debtor has noticed the hearing for April 8, 2025, to allow time to serve the Plan as independent document.

Debtor having provided notice of the April 8, 2025 hearing and notifying Creditors that they can file written opposition to the Motion to Confirm up to 14 days before April 8, 2025, the hearing is continued.

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, Erick Hernan Hutton and Danielle Hutton (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion is continued to **2:00 p.m. on April 8, 2025** as Noticed by the Debtor (Dckt. 44).

**Final Ruling:** No appearance at the February 25, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 14, 2025. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Toni Y. Hamilton ("Debtor"), has filed evidence in support of confirmation. *See Decl.*, Dockets 37 and 40. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on February 11, 2025. Docket 52. 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, Toni Y. Hamilton ("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 January 13, 2025, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

33. [24-23957](#)-E-13

**PRITAM SINGH**  
**Peter Macaluso**

**CONTINUED ORDER TO SHOW CAUSE**  
**- FAILURE TO PAY FEES**  
**1-6-25 [50]**

Item 33 thru 34

**Final Ruling: No appearance at the February January 25, 2025 Hearing is required.**  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 8, 2025. The court computes that 14 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$78 due on January 2, 2025.

**The Order to Show Cause is discharged, with no sanctions ordered.**

### **February 25, 2025 Hearing**

The court continued the hearing on this Order to allow Debtor time to cure the default. A review of the Docket on February 23, 2025 reveals that the Final Installment Payment was received by the Clerk on February 20, 2025. Clerk’s February 20, 2025 Docket Entry Report.

The Order to Show Cause is discharged.

### **REVIEW OF ORDER**

The court’s docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.

### **January 28, 2025 Hearing**

The court continued the hearing on this Order to allow Debtor time to cure the default. A review of the Docket on January 27, 2025 reveals that the default has not yet been cured.

The court has issued an Order continuing the hearing on this Order to Show Cause to February 25, 2025 at 2:00 p.m.

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 Order to Show Cause 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 Order to Show Cause is discharge and no sanctions ordered.

34. [24-23957](#)-E-13  
[PGM-1](#)

**PRITAM SINGH**  
**Peter Macaluso**

**MOTION TO CONFIRM PLAN**  
**1-17-25 [\[57\]](#)**

### **Final Ruling**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 17, 2025. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

The debtor, Pritam Singh (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid of total of \$750.00 through January 2025 with plan payments of \$375.00 per month to commence January 25, 2025 for 33 months. Amended Plan, Docket 59. 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 February 11, 2025. Docket 78. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is currently delinquent \$125.00 in Plan payments to the Trustee. *Id.* at 2:1-2.

- B. Debtor still has not provided two (2) years of tax returns for the corporation, six (6) months of financial statements, (i.e. bank statements, credit union statements, etc.), for any corporate accounts, and six (6) months of profit and loss statements for the corporation. *Id.* at 2:4-7.
- C. It is also not clear to the Trustee whether the non-filing spouse has any bank or financial accounts for which statements have not been provided or whether or not they have income. *Id.* at 2:8-10.
- D. Amended Schedule A/B still does not identify any financial accounts that are an asset for the corporation. *Id.* at 2:20-21.
- E. Supplemental Schedule I does not show any disability income for the NFS, as previously disclosed, at the First Meeting of Creditors. *Id.* at 2:26-27.
- F. The Plan contains unclear payment terms where the Plan suggests there are Nonstandard Provisions, but there are not any Nonstandard Provisions. *Id.* at 3:4-9.

## **CREDITOR’S OPPOSITION**

Wilmington Saving Fund Society, FSB, not in its individual capacity, but solely as Owner Trustee on Behalf of CSMC 2018-RPL12 Trust (“Creditor”) holding a secured claim] filed an Opposition on February 10, 2025. Docket 76. Creditor opposes confirmation of the Plan on the basis that:

- A. The Plan cannot be confirmed as proposed as it fails to properly provide for the cure of Creditor’s pre-petition arrears. *Id.* at 2:19-20.

## **DISCUSSION**

Debtor filed a Response on February 18, 2025. Docket 81. Debtor acknowledges the defects with the Motion and requests the Motion be denied.

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, Pritam Singh (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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