

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

Honorable Christopher D. Jaime  
1200 I Street, Suite 200  
Modesto, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: March 1, 2022**

**CALENDAR: 1:00 P.M. CHAPTER 13**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
**Modesto, California**

**March 1, 2022 at 1:00 p.m.**

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1.	<a href="#"><u>18-90506</u></a> -B-13	ROBIN HAMADE-GAMMON	CONTINUED MOTION TO CONFIRM
	<a href="#"><u>BHS</u></a> -9	Brian S. Haddix	PLAN
			12-2-21 [ <a href="#"><u>170</u></a> ]

**Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed a new modified plan on February 15, 2022. The confirmation hearing for the modified plan is scheduled for March 22, 2022. The earlier plan filed December 2, 2022, is not confirmed.

The motion is ORDERED DENIED AS MOOT and the objection ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

**March 1, 2022 at 1:00 p.m.**

2. [19-91108](#)-B-13 BENJAMIN JENKINS AND AMY MOTION TO MODIFY PLAN  
[MSN](#)-1 ORIGEL-JENKINS 1-20-22 [[30](#)]  
Mark S. Nelson

### **Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

### **Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 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). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the first amended plan.

First, Debtor has failed to provide evidence that the plan is feasible. Debtor's plan provides for US Bank Trust NA ("US Bank") as a Class 1 creditor with pre-petition arrears of \$3,245.93 to be paid at 0% interest a monthly dividend of \$54.10 and a post-petition monthly payment of \$1,615.31. However, US Bank has filed a proof of claim listing pre-petition arrears of \$8,348.44 and a post-petition monthly payment of \$1,679.04. In order to comply with the terms of the plan, including US Bank's proof of claim, the arrearage monthly dividend must be \$139.14. The plan currently proposes a monthly dividend of \$54.10 and accordingly is not feasible. 11 U.S.C. §1325(a)(6).

Second, the plan payment for months one through five in the amount of \$4,902.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts for months one through five plus Trustee's fees is \$5,121.65. The plan does not comply with Section 5.02 of the mandatory form plan. 11 U.S.C. § 1325(a)(6).

Third, the plan payment past month five in the amount of \$5,143.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts after month five plus Trustee's fees is \$5,218.59. The plan does not comply with Section 5.02 of the mandatory form plan. 11 U.S.C. § 1325(a)(6).

Fourth, the Debtor has failed to provide evidence that the plan is mathematically feasible. The plan provides an average monthly payment of \$5,122.92 and a 0% dividend to general unsecured creditors. Based on the claims that have been filed to date, the Debtor's monthly plan payment will need to be at least \$5,483.00 in order for the plan to be feasible as proposed paying unsecured creditors 0%. 11 U.S.C. § 1325(a)(6).

Fifth, the Debtor has not provided the Trustee with requested copies of bank statements for the time period of August 2021 through January 2022. Without these documents, it cannot be determined whether Debtor's plan is feasible and pays for all the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and 1325(b)(1).

Sixth, Trustee has objected to Debtor's exemptions. The hearing on Trustee's objection to Debtor's exemptions is set for hearing on March 15, 2022. If that objection is sustained, Debtor's exemptions will be disallowed, and Debtor's plan will fail the liquidation test, as there would be non-exempt assets available for distribution to unsecured creditors in a Chapter 7 proceeding, exceeding the 0% distribution to general unsecured creditors provided for in Debtor's plan. 11 U.S.C. § 1325(a)(4).

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

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

4. [19-90616](#)-B-13 ORLANDO/CHELSEA MOYA  
[TLC-2](#) Tamie L. Cummins  
**Thru #5**

MOTION TO INCUR DEBT AND/OR  
MOTION TO APPROVE TRANSFER OF  
2009 NISSAN MURANO  
2-4-22 [[26](#)]

### **Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to incur debt and approve transfer of the 2009 Nissan Murano and continue the matter to March 8, 2022, at 1:00 p.m.**

The motion seeks permission to purchase a 2014 Buick Enclave ("Buick"), and trade in their 2009 Nissan Murano ("Nissan"). Debtors will trade in the Nissan and receive \$3,880.00 in trade-in value which will be applied as a down payment for the Buick. The total amount to be financed is \$17,164.12, with monthly payments of \$365.00. In the past year, Debtors have had several mechanical issues and repairs for the Nissan, which has over 143,000 miles on it. As the Nissan has aged, it has become more expensive for Debtors to maintain it. Debtors spent \$4,004.56 in repairs between both of their vehicles, from oil, coolant and radiator leaks, replacement of ignition coil parts, and a water pump among other smaller repairs. Co-Debtor Chelsea Moya requires a reliable vehicle to commute to work and take Debtors' children to school and doctor's appointments. Debtors have filed a modified plan which is set for hearing on March 15, 2022. Dkt. 40. The proposed plan pays Trustee a total of \$36,901.98 through month 31. Beginning in month 32, plan payments shall be \$1,635.00 in months 32-60. Debtors have filed amended Schedules I and J to reflect current income and expenses. Dkt. 36.

### **Discussion**

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

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 motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

### **Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, March 4, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on March 8, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on March 8, 2022, at 1:00 p.m.

The court will issue an order.

5. [19-90616](#)-B-13 ORLANDO/CHELSEA MOYA MOTION TO INCUR DEBT AND/OR  
[TLC](#)-3 Tamie L. Cummins MOTION TO APPROVE TRANSFER OF  
2008 NISSAN ALTIMA  
2-4-22 [[31](#)]

### **Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to conditionally grant the motion to incur debt and approve transfer of the 2008 Nissan Altima and continue the matter to March 8, 2022, at 1:00 p.m.

The motion seeks permission to purchase a 2015 Nissan Altima ("2015 Nissan"), and trade in their 2008 Nissan Altima ("2008 Nissan"). Debtors will trade in the 2008 Nissan and receive \$2,000.00 in trade-in value which will be applied as a down payment for the 2015 Nissan. The total amount to be financed is \$16,627.94, with monthly payments of \$388.89. In the past year, Debtors have had several mechanical issues and repairs for the 2008 Nissan, which has over 179,000 miles on it. As the 2008 Nissan has aged, it has become more expensive for Debtors to maintain it. Debtors spent \$4,004.56 in repairs between both of their vehicles, from oil, coolant and radiator leaks, replacement of ignition coil parts, and a water pump among other smaller repairs. Co-Debtor Orlando Moya requires a reliable vehicle to commute to work. Debtors have filed a modified plan which is set for hearing on March 15, 2022. Dkt. 40. The proposed plan pays Trustee a total of \$36,901.98 through month 31. Beginning in month 32, plan payments shall be \$1,635.00 in months 32-60. Debtors have filed amended Schedules I and J to reflect current income and expenses. Dkt. 36.

### **Discussion**

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

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 motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

**Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, March 4, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on March 8, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on March 8, 2022, at 1:00 p.m.

The court will issue an order.



6. [21-90422](#)-B-13 JAMES RIDDLE  
[JNV](#)-6 Jason N. Vogelpohl

MOTION TO VALUE COLLATERAL OF  
LENDMARK FINANCIAL SERVICES,  
LLC  
1-26-22 [[69](#)]

DEBTOR DISMISSED: 2/4/22

**Final Ruling**

The case was dismissed on February 4, 2022. Therefore, the Motion to Value Collateral of Lendmark Financial Services, LLC, is denied as moot.

The court will issue an order.

7.     [21-90434](#)-B-13     EDWARD BRUNNER AND     MOTION TO CONFIRM PLAN  
          [EJV](#)-3             KATHERINA COGGINS         1-17-22 [[59](#)]  
                          Eric J. Gravel

**Final Ruling**

The Chapter 13 Trustee having filed a notice of dismissal of its opposition to Debtors' motion to confirm, the opposition is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed January 17, 2022, will be confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

8. [18-90644](#)-B-13 CARRIE FLORES  
[JBA](#)-10 Joseph Angelo  
DEBTOR DISMISSED: 01/17/2022

MOTION TO MODIFY PLAN  
1-18-22 [[183](#)]

**Final Ruling**

The case was dismissed on January 17, 2022, for failure to make plan payments. Dkt. 181. The motion to modify plan is denied as moot.<sup>1</sup>

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

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<sup>1</sup>The motion to modify and the modified plan were also filed after the case was dismissed. The order dismissing the case was filed on January 17, 2022. Dkt. 181. The motion to modify and the modified plan were filed on January 18, 2022. Dkts. 183, 185.

9. [19-90755](#)-B-13 MICHAEL LAVELLE AND MOTION TO VACATE DISMISSAL OF  
[MMS](#)-3 KIMBERLY ANGEL CASE  
Matthew M. Spielberg 2-1-22 [[112](#)]  
DEBTOR DISMISSED:  
11/20/2019  
JOINT DEBTOR DISMISSED:  
01/17/2022

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The court has reviewed the motion. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case. The court has determined that oral argument will not assist in the decision-making process or resolution of the amended motion. See Local Bankr. R. 9014-1(h); *Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, \*1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). The court therefore issues these findings of fact and conclusions as a Final Ruling. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

The court's decision is to grant the motion to vacate dismissal.

Debtor moves to vacate the order dismissing this Chapter 13 case. The Chapter 13 case was dismissed on January 17, 2022, for failure to make plan payments. The Trustee filed a notice of default and intent to dismiss the Debtor's case on December 7, 2021. At that time, the amount needed to cure the default was two monthly payments, totaling \$1,500.00, and the Trustee's motion gave Debtor 30 days to cure this default. Debtor misunderstood that any cure would have to include amounts due on or before December 20, 2021, and as a result the cure payment was insufficient in the amount due after the notice of default had been sent, totaling \$750.00. Debtor attempted to submit this cure payment on January 10, 2022 but due to computer problems the payment was not made until January 11, 2022. Debtor has sent her attorney the funds necessary to bring the case current, and states that if the dismissal is vacated, she can make all future payments.

### **Discussion**

Federal Rule of Civil Procedure 60(b)(1), applicable by Federal Rule of Bankruptcy Procedure 9024, permits the court to relieve a party from a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect[.]" Fed. R. Civ. P. 60(b)(1); Fed. R. Bankr. P. 9024. Relief for excusable neglect is governed by the *Pioneer-Briones* factors, i.e., (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

Danger of prejudice to creditors is minimal. The motion to vacate dismissal was filed fourteen days after the case was dismissed. Vacating dismissal will not delay these proceedings since Debtor is prepared to bring the case current, and resume making monthly plan payments. Dismissal also resulted from excusable neglect on the part of Debtor, who misunderstood that the payment to cure the default referenced in Trustee's motion would require including the amount due after Trustee's motion had been filed. And there is no indication of any bad faith by the Debtor.

Therefore, the Debtor's motion to vacate the order dismissing this Chapter 13 case will be granted, the dismissal order at dkt. 109 vacated, and this case ordered reinstated.

The Debtors shall be current on all plan payments by March 8, 2022, or the case may be dismissed on the Chapter 13 Trustee's ex parte application. The Debtors shall also remain current on all plan payments due in and after March 2022 for a period of six (6) months or the case may be dismissed on the Chapter 13 Trustee's ex parte application.

Further, by vacating the dismissal order which caused the automatic stay of 11 U.S.C. § 362(a) to terminate, upon entry of the order vacating the dismissal order the automatic stay of § 362(a) is revived for all purposes and as to all parties in interest. *State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-1080 and n.8 (10th Cir. 1996); *Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) ("Occasionally, it might suffice to revive the stay by way of motion for reconsideration under Federal Rules of Civil Procedure 59(e) or 60(b), which are applicable in bankruptcy by virtue of Federal Rules of Bankruptcy Procedure 9021 and 9023 [sic].") (Klein, J., concurring)

The court will prepare a minute order.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

10. [21-90158](#)-B-13 JILL MURPHY  
[LBF](#)-1 Lauren Franzella

CONTINUED MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH FCA US LLC  
2-1-22 [[22](#)]

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion.

Debtor requests that the court approve a compromise and settle competing claims and defenses with FCA US LLC ("FCA"). The claims and disputes to be resolved by the proposed settlement are related to a 2018 Dodge Ram ("Vehicle") which Debtor purchased from the dealership known as FCA. Debtor had experienced many issues with the Vehicle and consulted with a lemon law attorney in August, 2021 to consider her options. After months of communication, FCA has agreed to purchase the Vehicle back from the Debtor in exchange for the Debtor's release and discharge of FCA from all known and unknown claims, damages, costs, attorneys' fees, expense and loss of services related to the Vehicle. Additionally, Debtor will transfer possession of the Vehicle with clear title to FCA. The terms of the cash settlement reflect that Debtor will receive a net profit of \$22,828.41, in addition to attorney's fees included in the settlement totaling \$8,500.00. Debtor has filed amended schedules to disclose and exempt the proceeds from the sell back of the Vehicle. Once the settlement is received, Debtor intends to use the net proceeds to purchase a vehicle, and Debtor will file a motion to incur for the purchase at that time. The Chapter 13 Trustee has been made aware of the plan to sell back the Vehicle and the Debtor will file a modified plan prior to the February 15th meeting. Dkt. 22.

Debtor and FCA have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at dkt. 25.

### **Discussion**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Debtor argues that the four factors have been met.

**Probability of Success**

This factor weighs in favor of the settlement compromise. Trustee did not object to approval of the settlement compromise. FCA has entered into the settlement compromise whereby acknowledging the unreliability of Debtor's previous vehicle and need to compensate Debtor for such vehicle without the need for further and costly litigation.

**Difficulties in Collection**

There are no difficulties in collection, Debtor's Lemon Law counsel has already received the settlement funds and is holding them in trust pending the court's ruling on the present motion.

**Expense, Inconvenience and Delay of Continued Litigation**

This factor weighs in favor of the settlement compromise. Any litigation regarding the tort claim between Debtor and FCA would add significant time, expense and uncertainty. The settlement compromise avoids any further expenses and delay of unnecessary litigation.

**Paramount Interest of Creditors**

This factor weighs in favor of the settlement compromise. The settlement provides the debtor with sufficient funds to purchase a new car to commute to work, allowing Debtor to continue funding her plan and is of minimal impact to creditors.

Upon weighing the factors outlined in *A & C Properties* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the estate. The motion is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

11. [17-90164](#)-B-13 EDWARD/ROBERTA VASQUEZ MOTION TO WAIVE SECTION 1328  
[LBF](#)-1 Lauren Franzella CERTIFICATE REQUIREMENT, AS TO  
DEBTOR  
1-31-22 [[28](#)]

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to substitute Joint Debtor to continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Joint Debtor Roberta Vasquez moves to act as the representative of the deceased debtor, Edward Vasquez, who passed away on June 9, 2021, in this bankruptcy proceeding. Roberta Vasquez is the wife of the deceased debtor. Joint Debtor Roberta Vasquez further moves to excuse the 11 U.S.C. § 1328 certificate or Section 522(q) exemption certificate requirements.

### **Discussion**

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Joint Debtor Roberta Vasquez as the representative for deceased Debtor Edward Vasquez and to excuse Roberta Vasquez from completing the 11 U.S.C. § 1328 certificate or Section 522(q) exemption certificate requirements. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

The motion is ORDERED GRANTED for reasons stated in the minutes.



The court will issue an order.

12. [19-90571](#)-B-13 LATONA BOWERS  
[LBF](#)-8 Lauren Franzella

CONTINUED MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH GRANT BISHOP  
MOTORS, INC.  
1-25-22 [[128](#)]

### Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion.

Debtor requests that the court approve a compromise and settle competing claims and defenses with Mercedes Benz of Modesto ("Mercedes"). The claims and disputes to be resolved by the proposed settlement are related to tort claim filed by Debtor against Mercedes. Debtor brought the tort claim against Mercedes alleging (1) violation of California Civil Code §§ 51, 51.5, 51.7, 52; (2) violation of 15 U.S.C. § 1691, et seq.; (3) infliction of emotional distress; and (4) unfair business practices. Debtor and Mercedes have agreed to a settlement wherein Debtor will receive \$66,500.00 in full satisfaction of all claims Debtor may have for alleged economic and non-economic damages. The terms of the settlement reflect that Debtor will receive net proceeds of \$49,583.48, in addition to attorney's fees included in the settlement totaling \$16,525.00, and costs incurred in the amount of \$291.52. Debtor's plan provides that she turn over non-exempt proceeds to the Trustee in order to pay 100% to all creditors. Debtor's attorney in her civil case will write a check to the Trustee. Any proceeds beyond the amount sufficient to satisfy creditors' claims will be issued to Debtor. The Trustee has filed a statement of non-opposition to Debtor's motion at dkt. 133.

Debtor and Mercedes have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at dkt. 131.

### Discussion

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Debtor argues that the four factors have been met.

**Probability of Success**

This factor weighs in favor of the settlement compromise. Trustee has filed a statement of non-opposition to Debtor's motion to approve the settlement compromise. Settlement would allow debtor to pay her creditors 100% through the plan and end her case at a much earlier time, without the need for further litigation and expense.

**Difficulties in Collection**

There are no difficulties in collection, Debtor's counsel has already received the settlement funds and is holding them in trust pending the court's ruling on the present motion.

**Expense, Inconvenience and Delay of Continued Litigation**

This factor weighs in favor of the settlement compromise. Any litigation regarding the tort claim between Debtor and Mercedes would add significant time, expense and uncertainty. The settlement compromise avoids any further expenses and delay of unnecessary litigation.

**Paramount Interest of Creditors**

This factor weighs in favor of the settlement compromise. Debtor argues that settlement is in the paramount interests of creditors since the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

Upon weighing the factors outlined in *A & C Properties* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the estate. The motion is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

13. [21-90583](#)-B-13 ANTONIO GONZALEZ MEJIA OBJECTION TO CONFIRMATION OF  
[RDG](#)-1 Lauren Franzella PLAN BY RUSSELL D. GREER  
2-9-22 [[22](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on February 10, 2022. The confirmation hearing for the amended plan is scheduled for April 5, 2022. The earlier plan filed January 5, 2022, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

14. [21-90585](#)-B-13 MICHELLE PIMENTEL-MONTEZ OBJECTION TO CONFIRMATION OF  
[RDG](#)-1 David C. Johnston PLAN BY RUSSELL D. GREER  
2-4-22 [[16](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, Debtor cannot afford to make the payments or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on a motion to value collateral being filed for Ally Financial. To date, Debtor has failed to file a motion to value collateral. If the motion to value is not filed and granted, Debtor's plan does not have sufficient monies to pay the claim in full.

Second, Debtor cannot afford to make the payments or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Debtor's Schedule I includes other monthly income of \$450.00 as reimbursement of child's expenses. Dkt. 9. Debtor admits the reimbursement amount received will be reduced to \$225.00 as of May 2022.

The plan filed January 4, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

15. [21-90089](#)-B-13 LEONARD MOJICA  
[AP-1](#) Richard Kwun

MOTION FOR COURT APPROVAL OF  
PAYMENT DEFERRAL AGREEMENT  
1-19-22 [[43](#)]

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to deny the motion without prejudice.

Before the court is a Motion for Court Approval of Payment Deferral Agreement filed by Wells Fargo Bank, N.A. ("Movant"). The motion "requests that [the] Court provide consent for Leonard Pineda Mojica, Jr.... and Movant to enter into and finalize a Payment Deferral Agreement... with respect to the first deed of trust on the real property located at 1309 Eugene Ave., Modesto, California, 95351-5053[.]" Dkt. 43, p. 1. The deferral agreement appears to be beneficial to the debtor insofar as it provides for the deferral of eighteen payments and other unpaid amounts. Wells Fargo apparently filed the current motion because Debtor's attorney, Richard Kwun, has failed to adequately represent his client with regard to what appears to be an otherwise beneficial agreement. See *Id.* at n.1.

The payment deferral agreement is a form of new debt. Under the local bankruptcy rules the debtor must request authorization to incur new debt. See e.g., Local Bankr. R. 3015-1(b)(2), 3015-1(h)(1)(E). The problem here is that the request is made by the secured creditor and there is no evidence, declaration or otherwise, that the debtor consents to the relief requested or otherwise joins in the secured creditor's motion. The motion will therefore be denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

16. [21-90345](#)-B-13 BALJEET SINGH  
[RDG](#)-2 David C. Johnston

CONTINUED MOTION TO DISMISS  
CASE  
2-8-22 [[56](#)]

**Final Ruling**

This matter was continued from February 22, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 25, 2022. Therefore, the court's conditional ruling, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 1, 2022, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.