

**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: May 6, 2025**

**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**

**May 6, 2025 at 1:00 p.m.**

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1. [25-90109](#)-B-13 CHRISTINE AURAN OBJECTION TO CONFIRMATION OF  
[LGT](#)-1 Melanie Tavare PLAN BY LILIAN G. TSANG  
4-9-25 [[22](#)]

**Final Ruling**

The objection to confirmation 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 Chapter 13 Trustee filing its objection, Debtor filed an amended plan on April 24, 2025. The confirmation hearing for the amended plan must still be set for hearing. Nonetheless, the earlier plan filed February 28, 2025, is not confirmed.

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

The court will issue an order.

**May 6, 2025 at 1:00 p.m.**

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2. [25-90144](#)-B-13 TIMOTHY/COREENA BUTOW OBJECTION TO CONFIRMATION OF  
[LGT-1](#) Nicholas Wajda PLAN BY LILIAN G. TSANG  
**Thru #3** 4-7-25 [[16](#)]

### **Final Ruling**

The *initial* Chapter 13 Plan filed February 27, 2025, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to May 13, 2025, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

Debtors' current plan provides for LoanCare in Class 1. However, no pre-petition arrears or arrearage dividend is listed. At the meeting of creditors on April 2, 2025, the Debtors testified that they were behind on their mortgage at the time of filing and the approximate amount of arrears was around \$26,000.00. Even if LoanCare were to file a claim, the Trustee cannot simply increase the arrears dividend from \$0.00 without delaying payment to the Class 2 creditor. Therefore, the plan must be amended to include pre-petition arrears and an appropriate monthly dividend. The current plan, not including any pre-petition arrears, is taking 61.92 months to fund therefore any amount of arrears will further deepen this deficit.

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

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

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on May 9, 2025, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtors, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained 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 May 13, 2025, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on May 13, 2025, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to May 13, 2025 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

3. [25-90144](#)-B-13 TIMOTHY/COREENA BUTOW OBJECTION TO CONFIRMATION OF  
[NLG-1](#) Nicholas Wajda PLAN BY LAKEVIEW LOAN  
SERVICING, LLC  
4-9-25 [[20](#)]

### **Final Ruling**

The *initial* Chapter 13 Plan filed February 27, 2025, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #2, LGT-1.

Objecting creditor Lakeview Loan Servicing, LLC holds a deed of trust secured by the Debtors' residence. The creditor asserts \$21,978.64 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #2, LGT-1. The objection is overruled.

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

The court will issue an order.

4. [24-90060](#)-B-13 LUIS/ANGELA OLIVEIRA  
[DCJ-1](#) David C. Johnston

MOTION FOR COMPENSATION FOR  
DAVID C. JOHNSTON, DEBTORS  
ATTORNEY(S)  
4-13-25 [[82](#)]

DEBTORS DISMISSED: 08/29/24

### 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 for compensation and continue the matter to May 13, 2025, at 1:00 p.m.**

### Fees and Costs Requested

David Johnston ("Movant"), the attorney to Chapter 13 Debtors, moves for an allowance of compensation for services provided to the Debtors in the sum of \$7,640. Movant was retained to file a Chapter 13 petition to deal with foreclosures against two properties owned by the Debtors and to deal with disputed tax obligations. The Debtors paid Movant \$5,000 prior to the petition date, but \$313 was used to pay the filing fee. The sum of \$4,687 remains available for payment of attorney's fees as allowed by the court. In the Debtors' Chapter 13 plan, Movant "opted out" of the "no-look fee" and agreed to file a motion for allowance of attorney's fees. Movant's exhibits show that at least 19.1 hours of legal services were performed on behalf of Debtor at a rate of \$400 per hour, thus totaling \$7,640. Based on the prior payment and adjustment of \$5,000, the amount now due is \$2,953.00

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

Here, Movant's services included: (1) meeting with Debtors to discuss foreclosures against their home and a duplex, substantial disputed tax claims, and four years of unfiled income tax returns; (2) explaining the advantages and disadvantages of bankruptcy chapters 7, 11, and 13; (3) filing the chapter 13 petition and advising foreclosure companies of the automatic stay; and (4) appearing at five meetings of creditors, reviewing proofs of claim, helping to file the missing income tax returns, reviewing objections to confirmation, reviewing a motion to dismiss case, and communicating with Debtors regarding the importance of making plan payments and providing documents to the Chapter 13 Trustee. The court finds that the compensation sought is reasonable, actual, and necessary, and the court will approve the motion.

Movant is allowed the following amounts as compensation to this professional in this case:

Fees and expenses	\$7,953
Prior payments and adjustments	\$5,000
Total due	\$2,953

### 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, May 9, 2025, 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.

**May 6, 2025 at 1:00 p.m.**  
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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 May 13, 2025, 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 May 13, 2025, at 1:00 p.m.

5. [19-90874](#)-B-13 DENNIS/MICHELLE PAYNE MOTION TO WAIVE SECTION 1328  
[LBF-2](#) Lauren Franzella CERTIFICATE  
REQUIREMENT, CONTINUE CASE  
ADMINISTRATION, AND DENNIS KING  
PAYNE BE APPOINTED SOLE  
REPRESENTATIVE FOR MICHELLE  
LYNN PAYNE AS TO JOINT DEBTOR  
3-26-25 [[55](#)]

### **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 Debtor Dennis Payne to continue administration of the case and waive the deceased Joint Debtor's certification otherwise required for entry of a discharge.

Debtor Dennis Payne gives notice of the death of his spouse Michelle Payne, requests the court to substitute Dennis Payne in place of Michelle Payne for all purposes within this Chapter 13 proceeding, and to waive Michelle Payne's certification requirements for entry of discharge.

### **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 Joint 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." Local Bankr. R. 1016-1(b)(4).

Based on the evidence submitted, the court will grant the request for substitution and to waive the § 1328 requirements for Joint Debtor. 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.