

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

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

**June 7, 2022 at 2:00 PM**

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<b>1.</b>	<a href="#"><u>20-24563-E-13</u></a> <a href="#"><u>RLC-2</u></a>	<b>JOURDON SLONE</b> Stephen Reynolds	<b>OBJECTION TO CLAIM OF CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, CLAIM NUMBER 10 4-25-22 [48]</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.

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Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor and Chapter 13 Trustee on April 25, 2022. By the court’s calculation, 43 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

Under the facts and circumstances of this Motion, the court shortens the time to the 43 days given.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<b>The Objection to Proof of Claim Number 10 of California Department of Motor Vehicles is sustained, and the claim is disallowed in its entirety.</b>
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Jourdon Soonie Slone, Chapter 13 Debtor, (“Objector”) requests that the court disallow the claim of California Department of Motor Vehicles (“Creditor”), Proof of Claim No. 10 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$5,214.00. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is March 29, 2021. Notice of Bankruptcy Filing and Deadlines, Dckt. 12.

## **TRUSTEE’S NONOPPOSITION**

Trustee filed a nonopposition on May 23, 2022 (Dckt. 53) stating Creditor’s claim was filed late and should be disallowed in its entirety.

## **DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter, for governmental units, was March 29, 2021. Creditor’s Proof of Claim was filed on February 4, 2022. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, Creditor’s claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

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 Claim of California Department of Motor Vehicles (“Creditor”) filed in this case by Jourdon Soonie Slone, the Chapter 13 Debtor, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 10 of California Department of Motor Vehicles is sustained, and the claim is disallowed in its entirety.

Attorney’s fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.



collateral at \$5,274.00, not \$0.00. However, Class 2(B) are “claims reduced based on value of collateral.” Therefore, it appears Debtor inadvertently listed this claim under Class 2(C), when it should be Class 2(B).

## CREDITOR’S OPPOSITION

On May 9, 2022, Creditor filed an opposition to Debtor’s motion stating the fair market value is \$9,350.00. Creditor states they are in the process of procuring an appraisal or expert evaluation of the Vehicle. Creditor requests the Motion be denied or a continuance to allow Secured Creditor to procure an appraisal.

## DISCUSSION

While Proof of Claim No. 7-1 is prima facie evidence of a claim, the Creditor has the actual burden of proof on the claim if that prima facie evidence is rebutted. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor’s proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

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

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

Proof of Claim No. 7-1 asserts Creditor’s claim is secured in the amount of \$9,350.00. The Proof of Claim is signed by Natalie E. Lea, an Authorized Agent for Global Lending Services LLC. As opposed to the books and records of Global Lending Services LLC, Inc. in which the amount of the debt and the various transactions are maintained, there is nothing to indicate a high probative value as to the statement of the value of this five model year old 2017 Kia Rio.

Debtor, as the owner of the vehicle, states their opinion as to value, concluding that it is \$5,274.00. Declaration, Dckt. 24. As the owner, the Debtor’s opinion of value is evidence of the asset’s

value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). While Debtor could have made more of an effort in their testimony to describe the condition of the vehicle, any deferred maintenance, damage, required clean-up, such lack of attention to their testimony does not render it irrelevant or not probative.

It appears there may be genuine dispute of the value of the collateral. Creditor appears to be actively seeking evidence to rebut Debtor's claim of the Vehicle's value. The court allows a thirty (30) day continuance for Creditor to obtain an appraisal or expert evaluation Vehicle.

### **May 24, 2022 Hearing**

Debtor's Counsel appeared stating them and Creditor came to an agreement to value the collateral. The agreement has not been reduced to writing. Debtor's Counsel requests a short continuance to draft and file the stipulation. The court continues the hearing to June 7, 2022 at 2 pm.

### **Status of Case**

On June 3, 2022, Debtor and Creditor filed a Stipulation resolving Debtor's Motion to Value Creditor's Secured claim, with the Stipulation providing:

- A. The value of Creditor's collateral, a 2017 Kia Rio, is \$8,500.00. (This is a compromise between Debtor's asserted value of \$5,274.00 and Creditor's asserted value of \$9,350.00.)
- B. Creditor's Class 2 Secured Claim is \$8,500.00, to be paid as a Class 2(B) claim.
  - 1. Debtor's proposed Plan provides for a 5.50% interest rate for the Class 2 secured claim. Using the Microsoft Excel Simple Loan Calculator, for a 60 month plan, this requires monthly payments of \$162.36.
- C. The unsecured portion of Creditor's Claim shall be a Class 7 unsecured claim.

The Motion is granted and Creditor's secured claim is determine to have a value of \$8,500.00, with the balance of Creditor's allowed claim to be a general unsecured claim.

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 of Global Lending Services ("Creditor") filed David Alan Halford and Kathleen Louise Halford ("Debtor") having been presented to the court, the Parties having filed a Stipulation resolving all issues in this Contested Matter (Dckt. 47), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



Creditor's objections are well-taken.

### **Failure To Provide Evidence**

Creditor's counsel filed an Objection making several factual assertions. However, no declaration of the Creditor or other evidence was filed to support those assertions.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

### **Labeling as a Class 2-C**

Upon the court's review of the Plan, Creditor is listed as Class 2-C. However, Debtor still lists the collateral is \$5,274.00. Therefore, Creditor appears to be improperly listed as Class 2-C and should be 2-B. The Plan should be amended to properly list Creditor. Additionally, the value of the collateral has been contested. Docket Control No. MJD-1. Debtor's Plan should reflect the agreed upon value of the collateral that was stipulated to by Creditor and Debtor. See Civil Minutes, Dckt. 43.

### **Lack of Adequate Protection Under the Plan**

The objecting Creditor, who holds a security interest in personal property, alleges that the Plan violates 11 U.S.C. § 1325(a)(5)(B) because the amount of the periodic payments it proposes to pay Creditor are insufficient to provide it with adequate protection during the period of the Plan.

Adequate protection is intended to protect creditors from depreciation in value of their collateral during the bankruptcy case. *See United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.* 484 U.S. 365, 377 (1988); *see also First Fed. Bank v. Weinstein (In re Weinstein)*, 227 B.R. 284, 296 (B.A.P. 9th Cir. 1998).

*Timbers* interprets the meaning of the phrase “adequate protection” for purposes of 11 U.S.C. § 362, however. 484 U.S. at 369–70. 11 U.S.C. § 361 provides that:

[w]hen adequate protection is required under section 362, 363, or 364 . . . of this title of an interest of an entity in property, such adequate protection may be provided by (1) requiring the trustee to make a cash payment or periodic cash payments, to the extent that the stay under section 362 of this title . . . results in a decrease in the value of such entity's interest in such property.

11 U.S.C. § 361 says nothing about “adequate protection” for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See, e.g., Diaz v. Davis (In re Digimarc Corp. Derivative Litigation)*, 549 F.3d 1223, 1233 (9th Cir. 2008) (“Accordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act.”).

Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase “adequate protection” as it is used in 11 U.S.C. § 1325 (perhaps unsurprisingly because the phrase was only added to the section by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). Several bankruptcy courts that have considered the issue, however, have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. *See, e.g., In re Sanchez*, 384 B.R. 574, 576 (Bankr. D. Or. 2008); *Royals v. Massey (In re Denton)*, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

Creditor does not allege the rate at which the collateral declines each month. Creditor asserts \$102.00 per month does not adequately protect them. Creditor does not provide evidence in the form of a Declaration to support its allegation regarding insufficient protection.

## **STIPULATION RE MOTION TO VALUE**

On June 3, 2022, Debtor and Creditor filed a Stipulation resolving Debtor’s Motion to Value Creditor’s Secured claim, with the Stipulation providing:

- A. The value of Creditor’s collateral, a 2017 Kia Rio, is \$8,500.00. (This is a compromise between Debtor’s asserted value of \$5,274.00 and Creditor’s asserted value of \$9,350.00.)
- B. Creditor’s Class 2 Secured Claim is \$8,500.00, to be paid as a Class 2(B) claim.
  - 1. Debtor’s proposed Plan provides for a 5.50% interest rate for the Class 2 secured claim. Using the Microsoft Excel Simple Loan Calculator, for a 60 month plan, this requires monthly payments of \$162.36.
- C. The unsecured portion of Creditor’s Claim shall be a Class 7 unsecured claim.

At the hearing, **XXXXXXXXXXXX**

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 Global Lending Services LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 11, 2022. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

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

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

- A. Debtor has failed to cooperate with Trustee as necessary by failing to submit proof of their social security numbers.
- B. Debtor’s plan relies on a Motion to Value Secured Claim
- C. Debtor cannot make payments or comply with the Plan.

**TRUSTEE’S STATUS REPORT**

On May 26, 2022, Trustee filed a status report (Dckt. 44) stating both debtors provided verification of their social security number at the Meeting of Creditors on May 19, 2022. Trustee states

Debtor testified their daughter is responsible for the cows and yaks feed and care. However, Debtor admitted to having two (2) horses which are not indicated on Schedule A/B.

## **DISCUSSION**

Trustee's objections are well-taken.

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

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Global Lending Services. At the May 24, 2022 hearing, Debtor's Counsel stated that they had come to an agreement with Creditor to value the collateral. The Stipulation has now been filed, Dckt. 47, with Creditor to be allowed a secured claim of \$8,500.00, which the court computes to require a monthly secured claim dividend of \$162.36.

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

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, Debtor admits to having five (5) cows and two (2) yaks as well as two (2) horses. However, Schedule B only lists seven (7) cows. Schedule J fails to list any expenses for farm animals or pets. Dckt. 11. Debtor testifies their daughter is responsible for their feed and care. It is not clear to the court whether the daughter is solely responsible for the expenses required for the animals' feed and care. Debtor's Schedule J indicates their daughter is a Dependent and twenty-nine (29) years old. If Debtor assists with any expenses, this should be listed on their schedules.

Trustee also indicates Debtor has two (2) horses which is not listed as expenses. At the hearing, **XXXXXXXXXX**

Second, the Debtors admitted at the Meeting of Creditors that their household size has increased to include another adult and three (3) additional minors, and yet the budget filed with the court does not reflect those additional expenses.

Debtor's Schedule J indicates only one dependent. It is not clear to the court whether the additional household members are dependents or whether they cover their own expenses. At the hearing, **XXXXXXXXXX**

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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.



Fees are requested for the period October 2, 2021, through May 10, 2022. Applicant requests fees in the amount of \$4,257.50.

## **APPLICABLE LAW**

### **Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

## Reasonable Fees

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

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

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

## Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). 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 [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 is obligated to consider:

- (a) Is the burden of the probable cost of legal 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 for the Estate include work preparing, filing, and responding to communications related to a Motion to Modify Debtor’s Chapter 13 Plan After Confirmation, as well as preparing and filing a Motion to Incur Debt. The court finds the services were

beneficial to Client and the Estate and were reasonable.

### **“No-Look” Fees**

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 15. Applicant prepared the order confirming the Plan.

## Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## FEES REQUESTED

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant’s raw time and billing records, which have not been organized into categories. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

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 FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than twenty years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number, the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report that separates the activities into the different tasks.  
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Applicant provides raw billing records and supporting evidence for the services provided. Applicant does not breakdown their time into categories, however, the court can discern from the Motion that Applicant’s additional fees are for modifying Debtor’s Plan, preparing and prosecuting a first motion to incur debt, and successfully preparing and prosecuting a second motion to incur debt. Applicant, however, only breaks down the records by “Additional non flat fee” and “Additional non flat fee - forgiven.” Applicant informs the court they are not requesting fees for the unsuccessful first motion to incur debt, which applicant spent approximately 6.0 hours on. Therefore, the court presumes the remaining 13.1 hours requested were for the successful preparation and prosecution of the Motion to Modify Plan and the Second Motion to Incur Debt.

Although Applicant failed to provide a task billing analysis, the court finds these fees reasonable for the type of services provided. However, in the future, the court finds it necessary for Applicant to provide a clear breakdown of the categories and hours of services provided.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Candace Y. Brooks	13.10	\$325.00	\$4,257.50
<b>Total Fees for Period of Application</b>			\$4,257.50

**FEES ALLOWED**

The unique facts surrounding the case, including the Modified Plan and two motions to incur debt, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$4,257.50 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts



as compensation to this professional in this case:

Fees	\$4,257.50
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Candace Y. Brooks (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Candace Y. Brooks is allowed the following fees and expenses as a professional of the Estate:

Candace Y. Brooks, Professional Employed by Marc A. Wilkie  
 (“Debtor”)

Fees in the amount of \$4,257.50

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

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

**Final Ruling: No appearance at the June 7, 2022 hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 28, 2022. 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.

**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, Marc A. Wilkie ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 24, 2022. Dckt. 62. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Marc A. Wilkie ("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 April 28, 2022, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

7. [21-24167-E-13](#) **RONALD/ANGELA CUSTODIO** **MOTION TO CONFIRM PLAN**  
[PGM-1](#) **Peter Macaluso** **4-26-22 [47]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 26, 2022. By the court’s calculation, 42 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).

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

The debtors, Ronald Gene Custodio and Angela Alvarado Custodio (“Debtors”), seek confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$850.00 for sixty (60) months, and a 0% dividend to unsecured claims totaling \$156,975.00. Amended Plan, Dckt. 50. 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”), an Opposition on May 23, 2022. Dckt. 57. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor failed to explain the transfer of ownership of LLC's to insider.
- B. Debtor failed to provide business documents.

## **DISCUSSION**

### **Transfer of Ownership to Insider**

Trustee states Debtors have still not addressed the transfer of the forty (40) percent interest in their LLCs to insiders. This could be indication of Debtors' failure to cooperate which is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3); *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

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

#### **Q Street Dogs**

Debtor has failed to timely provide the Chapter 13 Trustee with business documents for Q Street Dogs including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Documents related to the transfer of ownership of LLC's

#### **Chitas Taqueria, LLC**

Debtor has failed to timely provide the Chapter 13 Trustee with business documents for Chitas Taqueria, LLC including:

- A. Questionnaire,
- B. One year of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Documents related to the transfer of ownership of LLC's

### **Business Financial Statements**

Debtor has failed to timely provide the Chapter 13 Trustee with financial statements including:

- 1. Sutton Bank (account ending 1757) - from 6/17/21 - 12/17/21,
- 2. Sutton Bank (account ending 1281) - from 6/17/21 - 12/17/21,
- 3. Fidelity (account ending 4375) - from 6/17/21 - 12/17/21,
- 4. Voyager (Crypto account) - from 6/17/21 - 12/17/21,
- 5. Coinbase (Crypto account) - from 6/17/21 - 12/17/21,

6. Robinhood (account ending 2111) - from 11/1/21 - 12/17/21, and
7. Cash App (for Angelo Custodio, ending ita1) - from 11/1/21 - 12/17/21

### **Business Bank Statements**

Debtor has failed to timely provide the Chapter 13 Trustee with bank statements including:

1. Bank of the West (account ending 7959) - from 10/19/21 - 12/17/21,
2. Bank of the West (account ending 8337) - from 10/19/21 - 12/17/21,
3. Travis Credit Union (Member #1004) - from 10/1/21 - 12/17/21,
4. Patelco Credit Union (member #7439-00) - from 10/1/22 - 12/17/21,
5. Patelco Credit Union (member #7439-10) - from 10/1/22 - 12/17/21, and
6. US Bank (account ending 6702) - from 10/20/21 - 12/17/22

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

### **Debtor's Response**

On May 31, 2022, Debtor filed a Response to this Opposition. It is asserted that the documents have been provided and the transfer explained in a Supplemental Declaration. Response, Dckt. 60.

The two debtors in their joint Declaration (Dckt. 61) provide testimony under penalty of perjury which includes (that is summarized by the court unless stated with "quotation marks"):

1. 2019 and 2020 tax returns, associated business questionnaire, and profit and loss for Chitas Taqeria, LLC. This includes the "dba" of "Q Street Dogs." "'Q Street Dogs' was a name arising from serving food on the go after the COVID-19 hit the restaurant, and there was limited to no indoor eating."
2. There is no "stock" for the dba Q Street Dogs.
3. One of the two debtors is still gathering additional documents for the Trustee.
4. Debtor intends to provide such additional documents, consisting of "the Sutton Accounts #1757, #1281, Fidelity, Voyager, Coinbase, Patelco, before the date of this hearing to the trustee's satisfaction."

5. With respect to the “business,” it was (indicating in the past tense) “owned by Sara, the oldest sister. She then gave the business to Virginia and Angela (Debtor) at 50% interest each.”

6. Angela (debtor) “always had issues between sisters,” and when the business was losing money due to COVID “we” (not identifying the “we”) decided that Angela only wanted a job. Now Angela gets a paycheck, with none of the management or risk.

6. The business has not made a profit since COVID hit and is not profitable yet.

7. The “ ‘transfer’ ” (why stated in quotation marks in the Declaration is not clear) was effective in 2019 and at the end of 2019 Angela was a 50% owner.

7. Sometime in 2020 “we” (not identifying who constituted the “we”) decided to do 15-85%, because Angela no longer wanted the risks from the lease and other claims.

Declaration, Dckt. 61 (identified by paragraph number used in the Declaration).

In looking at this testimony, the court notes that Debtor chooses to not say when the purported transfer of a portion of her ownership interest (35% points of her 50% ownership interest) to Angela’s sister.

#### **Prior Pleadings and Statements Under Penalty of Perjury Made by Debtor**

On the Petition, Debtor states under penalty of perjury that a business name used by Debtor in the eight years prior to the bankruptcy case was “FDDB Chitas Taqueria, LLC.” Petition, § 4; Dckt. 1. First, it appears that the “FDDB” is not part of the business name as stated, but is intended to mean “Formerly Doing Business As.” Additionally, Debtor states that as an individual Debtor improperly identified herself as a limited liability company.

Then, in response to Question 12, Debtor states that they are a sole proprietorship with the name “Chitas Taqueria, LLC - Q Street Dogs.” *Id.*, § 12. Again, Debtor states under penalty of perjury that they are a sole proprietorship identifying Debtor as being a limited liability company.

The above statements under penalty of perjury indicate that Debtor is a 100% owner of Chitas Taqueria, LLC.

However, on Schedule A/B, Debtor stated under penalty of perjury being a 50% owner of “Q Street Dogs, Chitas Taqueria, LLC [sic]” as of the December 17, 2021 commencement of this bankruptcy case.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed. Schedule A/B, Question 1; *Id.* Debtor also states being an 8.75% owner of a lease for location for Chitas Taqueria, LLC. *Id.*

On Schedule I, debtor Angela states that she is employed as a manager of “Chita’s Taqueria” [sic] and has been so employed for 16 years. *Id.* at 35. Debtor lists \$4,831.67 in monthly income from being employed as a manger.

On the Statement of Financial Affairs, Debtor states under penalty of perjury that there were no transfers of any property outside the ordinary course of business (Question 18) and that there were no gifts made to anyone with a value of more than \$600 to any person (Question 14) in the two years preceding the filing of this bankruptcy case on December 17, 2021.

Debtor continues, stating under penalty of perjury that Debtor is a member of Chitas Taqueria, LLC - Q Street Dogs, and has been from June 1, 2019 to the filing of the bankruptcy case on December 17, 2021. Stmt of Fin Affairs, Question 27; *Id.*

Additionally, on the Statement of Financial Affairs, Question 4, Debtor states under penalty of perjury that debtor Angela had the following gross income, which is identified on Schedule I being wages from employment by Chitas Taqueria, LLC:

January 1 - November 30, 2021.....	\$49,300(\$4,482 per month)
2020.....	\$63,400(\$5,283 per month)
2019.....	\$56,400 (\$4,700 per month)

*Id.* at 40-41. It appears that during the COVID “disruption” years, the LLC was profitable for Debtor, being able to continue in the payment of her “wages.”

Subsequent to the filing of this case, Debtor filed an Amended Schedule A/B, stating under penalty of perjury that Debtor’s interest in Q Street Dogs, Chitas Taqueria, LLC, was 10%, which is different than the prior percentages under penalty of perjury. Amd. Sch. A/B, Question 19; Dckt. 20.

Debtor has chosen to provide conflicting testimony under penalty of perjury. Debtor still states under penalty of perjury that there were no transfers of any property (such as an interest in an LLC) outside of the ordinary course of business in the two years preceding the filing of this case. Debtor still states under penalty of perjury that there were no gifts in excess of \$600 in the two years preceding the filing of this case.

But Debtor now testifies that the 50% ownership in the LLC as of the filing of this case stated under penalty of perjury was only 10% with the Amended Schedule A/B.

But then, in the latest Declaration states under penalty of perjury that Debtor has yet another ownership interest in Chitas Taqueria, LLC, a 15% interest. Dec., ¶ 7; Dckt. 61.

Debtor offers no documentation of the purported transfer away of 35% or 40% of the 50% ownership interest. Debtor offers only, “believe me this time under penalty of perjury.”

While professing that Chitas Taqueria, LLC is a valueless entity, debtor Angela was paid \$56,400 in 2019, \$63,400 in the depths of the COVID shutdowns, and then \$53,784 (computing the 11 months average over 12 months) in 2021. It appears that Chitas Taqueria, LLC is able to deliver a very

significant payment to even a “mere” employee. <sup>Fn.1.</sup>

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FN. 1. Even if the 2020 earnings were funded with PPP payments, that was still monies obtained by debtor Angela from the LLC. And then in 2021, the annual earnings were even greater.  
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Though Debtor has \$12,780 a month in gross income, Debtor can only fund the Amended Plan with \$850 a month. Amd. Sch. I; Dekt. 51. This is just enough to pay Debtor’s two car loans, \$27,915.50 in priority tax claims, and Debtor’s attorney’s fees through the amended plan. No dividend is made for creditors with general unsecured claims.

It appears that part of Debtor’s financial struggles that they have two adult children (ages 21 and 22) which Debtor states are their dependants. Amd. Sch. J; *Id.* No contribution to the family expenses are shown for these two adult children.

The two debtors in this case, Ronald Custodio and Angela Custodio, have presented this court with multiple conflicting states and information under penalty of perjury. Though they admit a 50% interest in Chitas Taqueria, LLC, state that they had a 50% interest when the case was filed, state that no transfers were made during the two years prior, Debtor then states there being various reduced ownership percentages in that LLC.

Debtor offers no evidence of any interests being transferred.

The financial information provided by Debtor in the Schedules and in their testimony is not credible testimony and information under penalty of perjury. Debtor, and each of them, have demonstrated that testimony and information provided under penalty of perjury is only such “information” and “testimony” which Debtor, and each of them, think is to their financial advantage. Then, when it appears not to be to Debtor’s advantage, Debtor, and each of them, change the information, making conflicting testimony and providing conflicting information under penalty of perjury. Debtor offers no explanation as to how, in good faith, their testimony and information under penalty of perjury in effort and they are making a mere correction.

Debtor, and each of them have demonstrated that they have not filed this case, are not prosecution this case, did not file the Amended Plan, and are not prosecuting confirmation of this Amended Plan in good faith. With such lack of credibility, the court cannot conclude that this plan is feasible.

The Motion is denied 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 Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Ronald Gene Custodio and Angela Alvarado Custodio (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence,





D. Debtor has failed to provide Trustee with business documents.

## **DISCUSSION**

Trustee's objections are well-taken.

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

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

The First Meeting of Creditors was held on May 12, 2022 at 10:00 AM, and Trustee's Report indicates Debtor accidentally attended an incorrect meeting room and therefore failed to appear at the proper meeting room before the Hearing Officer called the matter and continued the meeting to June 9, 2022 at 1:00 PM.

### **Delinquency**

Debtor is \$3,156.44 delinquent in plan payments, which represents one month of the \$3,156.44 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

- A. Questionnaire,
- B. Six months of profit and loss statements,
- C. Proof of license and insurance or written statement that no such documentation exists.

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

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

and the Plan is not confirmed.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 12, 2022. 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. At the hearing -----

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

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

- A. Debtor has failed to appear at the First Meeting of Creditors.
- B. Debtor is delinquent in plan payments.
- C. Debtor will not be able to complete the Plan in sixty months as proposed.
- D. Debtor has failed to provide business documents.

**DISCUSSION**

Trustee’s objections are well-taken.

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

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

The First Meeting of Creditors was held on May 5, 2022, and Trustee's Report indicates Debtor failed to appear.

### **Delinquency**

Debtor is \$460.00 delinquent in plan payments, which represents one month of the \$460.00 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).

### **Plan Term is More Than 60 Months / Failure to Provide for Priority Claim**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 189 months because the plan currently provides for \$0.00 to be paid to priority claims and a 0% dividend to unsecured creditors over 60 months. To pay out Debtor's priority claims under this plan would require additional time past those 60 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Internal Revenue Service has a claim for \$57,323.94 in priority unsecured debt and \$6,293.52 in general unsecured debt. Proof of Claim 6-1, filed on April 27, 2022. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

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

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

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

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

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.

10. [22-20711-E-13](#) **TIMOTHY/SHERYL COSETTI** **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#) **Mohammad Mokarram** **PLAN BY DAVID P. CUSICK**  
**5-12-22 [27]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 12, 2022. 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.

**The hearing on the Objection to Confirmation of the Plan is continued to 2:00 p.m. on July 26, 2022**

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

- A. Debtors’ Plan was not proposed in good faith.

## **DEBTOR’S RESPONSE**

Debtors Timothy Alan Cosetti and Sheryl Ann Cosetti (collectively, “Debtors”) filed a response on May 31, 2022. Dckt. 32. Debtors state they were married but separated two years ago. Debtor Timothy Alan Cosetti has been living in Folsom since the case was filed and remains there. Debtor Sheryl Ann Cosetti moved to Iowa two years ago when they separated and works there. Debtors’ Change of Address (Dckt. 12) filed April 11, 2022 (indicating residency in Iowa), was for the purpose of all the mail going to one place. Debtors state they do not own any real property and have minimum assets. They are trying to pay their creditors 100%, including years of joint tax returns.

Debtors are okay with transferring the case to another district if necessary, but requests the court overrule the objection.

## **DISCUSSION**

Trustee’s objections are well-taken.

### **Asserted Lack of Good Faith**

In the Objection to Confirmation Trustee states the following reasons as grounds Debtors have not filed in good faith:

#### **Improper Jurisdiction**

Trustee has provided evidence that Debtors are and have been domiciled in Iowa since July 2020. Pursuant to 28 U.S.C. § 1408, venue is proper in the district in which the domicile or residence of the individual has been located for one hundred eighty (180) days immediately proceeding the commencement of the case. Venue, therefore, is proper in Iowa, not the Eastern District of California.

#### **Inaccurate or Omitted Information in Petition and Schedules**

In their petition, Debtors states their residence is in Folsom, California, and have been domiciled there for the last one hundred eighty (180) days. However, at the First Meeting of Creditors, both Debtors confirmed they live in Iowa and Debtor Timothy Alan Cosetti only travels to Folsom occasionally for work.

Debtors’ Statement of Financial Affairs does not disclose any previous addresses.

#### **Improper Use of California Exemptions**

Debtors are claiming California exemptions. Pursuant to 11 U.S.C. § 522(b)(3), the state exemption laws applicable are those in which the Debtors have been domiciled for the seven hundred thirty (730) days (or two years) prior to the filing of the bankruptcy case. If Debtors have not been domiciled in the same state for the prior two (2) years, the state exemption laws applicable are those in the six (6) months immediately preceding the two (2) year period.

From the evidence provided, it appears Debtors have not lived in California for the two years prior to the filing of the Bankruptcy Case, as they moved to Iowa in July of 2020. It is unclear to the court where Debtors were residing prior to July 2020.

The evidence in support the Objection is the Declaration of Kristen A. Koo, Esq., counsel for the Chapter 13 Trustee, which testimony includes the following:

6. The First Meeting of Creditors was held on May 5, 2022, where the Debtors admitted that they both have lived in Iowa since 2020 and he travels back and forth to Folsom, California occasionally for work.

7. It appears the Debtors have been domiciled more than 91 days, six months, prior to filing this case, in Iowa. The Debtors may have filed this case in the wrong jurisdiction.

8. My review of the Debtors' pay advices, provided to the Trustee, both show their address at 711 North 1st Street, Apt H-102, Elridge, IA 52748.

9. My review of a copy of the Debtor's Internal Revenue Service tax return, provided to the Trustee, shows them, as married filing jointly, with a home address of 711 North 1st Street, Apt H-102, Elridge, IA 52748.

10. My review of the Voluntary Petition states the Debtor lives at 1003 Rivage Circle, Folsom, CA 95630, (DN 1, Page 2, #5), and he claims he has been domiciled in this jurisdiction for the greater part of the last 180 days, (#6).

11. My review of the Court's docket shows the Debtors filed a Change of Address on April 11, 2022, eighteen (18) days after filing this case, which identifies their address as 711 North 1st Street, Apt H-102, Elridge, IA 52748, (DN 12).

12. I conducted the Debtors' First Meeting of Creditors where the Joint Debtor admitted that she has exclusively lived in Iowa for the last two years and Debtor admitted that he lives in Iowa and only travels back and forth to Folsom, California as needed for work.

...

16. It is my understanding, from the Debtor's testimony at the First Meeting of Creditors, that the Debtor has not resided in California for at least 2 years prior to filing the petition or the plurality of the 6 months prior to that date.

Declaration; Dckt. 29.



On Debtor's Petition, the two debtors state under penalty of perjury that they currently live at 1003 Rivage Circle, Folsom, California. Petition, § 5; Dckt. 1. Further, the two debtors state under penalty of perjury that they have lived in the Eastern District of California in the 180 days prior to filing longer than in any other district. *Id.*, § 6.

On Schedule I debtor Timothy Cosetti, Jr. states that his employer is in Plano, Texas, and Debtor Sheryl Cosetti states that her employer is located in Janesville, Wisconsin. *Id.* at 29.

On Schedule J, Debtor states having a monthly rental expense of (\$3,000), however, no lease is listed on Schedule I. *Id.* at 28, 32. There is only one rental expense and nothing to indicate a separate Iowa residence.

The two debtors have provided their Declaration in Opposition. Their joint testimony under penalty of perjury includes (identified by paragraph number in the Declaration):

¶ 2. The two debtors have been separated two years, and debtor Sheryl Cosetti moved to Iowa two years ago. This conflicts with debtor Sheryl Cosetti's statement under penalty of perjury on the Petition that she lives at the Folsom address.

¶ 2. Debtor Timothy Cosetti, Jr. lives at the Folsom address, and has lived there since the separation two years ago. However, he recently obtained a new job which requires him to travel extensively state to state.

¶ 3. Debtor Timothy Cosetti, Jr. and debtor Sheryl Cosetti filed a change of address after filing this case to give the Iowa address of Sheryl Cosetti so that all of the documents would be sent to one address. They testify that debtor Sheryl Cosetti "now" lives in Iowa and debtor Timothy Cosetti, Jr. is on the road most of the time, and only returns to Folsom when he is not working.

¶ 4. The two debtors state that they "thought" that since debtor Timothy Cosetti, Jr. is asserted to live at the Folsom address, then they could state that they both lived there, and did not need to accurately state that debtor Sheryl Cosetti has lived in Iowa for two years.

Dckt. 33.

It appears, that while not presented with this Objection, the Trustee has clear, objective evidence documenting that both of these two debtors have represented to the world that they live in Iowa. This evidence includes, as stated by counsel for the Trustee:

6. The First Meeting of Creditors was held on May 5, 2022, where the Debtors admitted that they both have lived in Iowa since 2020 and he travels back and forth to Folsom, California occasionally for work.

8. My review of the Debtors' pay advices, provided to the Trustee, both show their address at 711 North 1st Street, Apt H-102, Elridge, IA 52748.

9. My review of a copy of the Debtor's Internal Revenue Service tax return, provided to the Trustee, shows them, as married filing jointly, with a home address of 711 North 1st Street, Apt H-102, Elridge, IA 52748.

11. My review of the Court's docket shows the Debtors filed a Change of Address on April 11, 2022, eighteen (18) days after filing this case, which identifies their address as 711 North 1st Street, Apt H-102, Elridge, IA 52748, (DN 12).

12. I conducted the Debtors' First Meeting of Creditors where the Joint Debtor admitted that she has exclusively lived in Iowa for the last two years and Debtor admitted that he lives in Iowa and only travels back and forth to Folsom, California as needed for work.

The pay advices, the tax return, and a transcript of the First Meeting of Creditors can provide the court with evidence for the court to determine whether the information provided in the Petition under penalty of perjury was true or false.

Giving the asserted disturbing disclosure of possible false information under penalty of perjury, the court is not inclined to just transfer this case to Iowa. The court is not inclined to just dismiss the case to let Debtor just file another case.

Rather, with such information, the court presumes that the Chapter 13 Trustee and the U.S. Trustee would move promptly to get such evidence in front of the court and an motion seeking appropriate relief.

Until the court has such evidence, it cannot determine whether the plan should be confirmed.

Therefore, the court continues the hearing to 2:00 p.m. on July 26, 2022. That should allow the parties to file supplemental pleadings in connection with this Objection. That should also allow the Chapter 13 Trustee and the U.S. Trustee to take appropriate action if they believe they have evidence documenting false information being provided under penalty of perjury to this Federal 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 hearing on the Objection to Confirmation of the Plan is continued to **2:00 p.m. on July 26, 2022.**

**IT IS FURTHER ORDERED** that on or before June 21, 2022, the Chapter 13 Trustee shall file supplemental pleadings, if any, in support of the Objection. Debtor shall file supplemental pleadings in opposition to the

Objection, if any, on or before July 6, 2022; and Replies, if any, filed and served on or before July 13, 2022.

11. [22-20815-E-13](#)      **JAMES JOHNSON**      **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#)                      **Candace Brooks**                      **PLAN BY DAVID P. CUSICK**  
5-18-22 [[15](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 18, 2022. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

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

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

- A. Debtor failed to submit adequate proof of their social security number.
- B. Debtor has failed to file federal tax returns for 2017, 2018, and 2019.
- C. Debtor may be unable to make payments under the plan.

**DISCUSSION**

Trustee's objections are well-taken.

### **Failure to Provide Social Security Number**

Debtor has failed to submit proof of their social security number to Trustee as required by Federal Rules of Bankruptcy Procedure 4002(b)(1)(B). Attempting to confirm a plan while failing to provide proof of identification 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 File Tax Returns**

Debtor provided Trustee a "tax transcript for the 2020 year." It is not clear to the court whether this tax transcript confirms Debtor filed their 2020 tax returns. However, Debtor admitted at the Meeting of Creditors that they have not filed federal income tax returns for the four years prior to filing. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Although Debtor lists Home Energy Renovation Opportunity Loan on Schedule D (Dckt. 1, Page 19, Item 2.1), they have not provided for this debt in the Plan, and there is no expense listed on Schedule J (Dckt. 1, Pages 27-28) to provide for payment of this claim. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2022. By the court's calculation, 49 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).

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

The debtor, Severo Solilap Simundo ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,136.60 for a period of sixty (60) months, and a 100% dividend to unsecured claims totaling \$63,145.87. Amended Plan, Dckt. 34. 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 May 18, 2022. Dckt. 38. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payments.
- B. Debtor has not filed supplemental Schedules I and J to show ability to make plan payments.

The court notes Amended Schedule J was filed on June 1, 2022 to indicate a monthly net income of \$2,150.03. Dckt. 41. Plan payments are in the amount of \$2,136.60. Therefore, Debtor now

appears to have sufficient monthly income.

## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$1,909.80 delinquent in plan payments, which represents one month of the \$2,136.60 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 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).

Debtor's counsel filed a response arguing that the arrearage had been cured. Response, Dckt. 42. No evidence of such cure has been provided.

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, Severo Solilap Simundo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 18, 2022. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

The Motion for Entry of Hardship Discharge 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 Hearing on the Motion for Entry of Hardship Discharge is XXXXXXXXXXXXXXXXXX**

Tiazjanae Imani Wilridge (“Debtor”) moves for entry of a hardship discharge on the grounds that she lost her job after her car was totaled and therefore cannot afford to continue making her plan payments. Debtor argues that the unsecured creditors have received at least what they would have received if Debtor had filed a Chapter 7 bankruptcy based on what Debtor has already paid into the plan. Debtor additionally argues that modification of her plan is not feasible because her monthly expenses now surpass her monthly income.

**TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee David P. Cusick (“Trustee”) filed an opposition to Debtor’s Motion for Hardship Discharge on April 4, 2022. Dckt. 87. Trustee opposes on the following grounds:

- A. The Trustee does not show an amended budget was filed. A current (supplemental Schedule I & J, is probably needed so the Court can determine if modification of the plan is practicable.
- B. Plan modification may be practicable.

## APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

- (1) the debtor’s failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g., In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden of proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). “Unsubstantiated and conclusory statements” about a debtor’s inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g., In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a “debtor is justly accountable for the plan’s failure.” *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

- A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;
- B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;
- C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;
- D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;
- E. Whether the debtor had control, direct or indirect, of the intervening event or events; and



- F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

*Id.*

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event “such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments.” *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) “requires that the circumstances leading to the debtor’s failure to make payments be beyond the debtor’s control.” *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be “truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability.” *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the “best interests” test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan “is not ‘practicable’ if there is no source of income to fund the modified plan.” *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that “[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan.” *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, “the availability of case closure does not eliminate a bankruptcy court’s duty to ensure that a debtor complies with the Bankruptcy Code’s ‘best interests of creditors’ test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan.” *Id.* The Ninth Circuit found explicitly that a “bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter.” *Id.*

## **DISCUSSION**

### **Missing Amended Budget**

Debtor states she filed an amended budget showing her inability to afford the remaining plan payments to Trustee. Dckt. 83 at 2:4-5. However, Trustee notes that no amended budget was filed. Dckt. 87 at 1:25. The court also does not see an amended budget in the docket. Trustee states that a supplemental Schedule I & J may be needed to determine whether modification of the plan is possible. *Id.*

### **Plan Modification May be Practicable**

Trustee cites *In re Sunahara*, 362 B.R. 768, 783 (9<sup>th</sup> Cir. BAP 2005) to explain that the Bankruptcy Code permits debtors to modify a chapter 13 plan “so as to conclude it in fewer than 36 months, without payment of all claims in full.” *Id.* at 2:8-10. While this may be the case, the court still requires Debtor to first file an amended budget to determine whether modification is even a possible. Debtor’s Declaration states that her current sources of income are unemployment and cash aid. Dckt. 85 at ¶ 4. Debtor further states that their monthly income decreased to \$2,345.00 and that their monthly expenses increased to \$2,658.00. *Id.* Based on this, it is unclear whether modification is even feasible. Nevertheless, Debtor’s current supplemental Schedule I & J is needed to make such a determination.

At the hearing, counsel for Debtor reported that he had some challenges with e-filing. However, Supplemental Schedule I and J have been filed. The Trustee reported that upon review of those Supplemental Schedules the Trustee does not oppose the granting of the Motion, but there remains the issue of the surplus insurance proceeds, approximately \$3,000, that remain to be distributed under the Plan.

A review of the court’s file discloses that Debtor did not claim any exemptions in this case. The Debtor can claim an exemption that would exhaust all of the surplus insurance proceeds.

In this case there remains to pay Debtor’s counsel \$2,000+ in attorney’s fees. The Debtor was in attendance at the hearing. To conclude this case and granting this Motion:

- A. Debtor shall promptly file an Amended Schedule C;
- B. Thereafter the Chapter 13 Trustee shall pay the balance due on Debtor’s counsel’s attorney’s fees; and
- C. The Trustee shall disburse the remaining monies of the surplus insurance proceeds to Debtor up to the amount of the exemption claimed therein (which remaining surplus amount is represented to be well less than the amount of Debtor’s available homestead exemption).

### **Amended Schedule C April 22, 2022**

On April 22, 2022, Debtor filed an Amended Schedule C (Dckt. 95), complying with the April 20, 2022 Court Order (Dckt. 94).

### **Status of Case**

The Trustee has not yet filed a status report indicating they completed the disbursements of the proceeds from the car insurance policy. Additionally, the court has not received a proposed order to grant this Motion which would indicate Trustee completed the foregoing.

### **May 24, 2022 Hearing**

At the May 24, 2022 hearing, Trustee indicated an Amended C was filed but no order was received so they have not been able to disburse the funds yet. Trustee requests a further continuance.

The court further continues the hearing to June 7, 2022, at 2 pm in Courtroom 33 for the Trustee to receive Debtor's order.

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 Hardship Discharge filed by Tiazjanae Imani Wilridge ("Debtor") having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion for Entry of Hardship Discharge is **xxxxxxxxxxxxxxxx**

14. [21-23439-E-13](#) **JOLIE/MICHAEL BARKALOW**  
[SLH-1](#) **Seth Hanson**

**MOTION TO WAIVE FINANCIAL  
MANAGEMENT COURSE  
REQUIREMENT, CONTINUE CASE  
ADMINISTRATION, SUBSTITUTE  
PARTY, AS TO BOTH DEBTORS  
5-16-22 [43]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 16, 2022. By the court's calculation, 22 days' notice was provided. 28 days' notice is required.

Under the facts and circumstances of this Motion, the court shortens the time to the 22 days given.

The Motion to Substitute 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 Substitute is granted.**

Sean Percival, brother of deceased Debtor Jolie Ann Barkalow, seeks an order approving the motion to substitute as Debtor for the deceased Debtors, Jolie Ann Barkalow and Michael Allen Barkalow. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016 and Federal Rules of Civil Procedure 25 as incorporated into Federal Rules of Bankruptcy Procedure 7025.

Deceased Debtors filed for relief under Chapter 13 on September 30, 2021. Debtors filed their First Amended Plan on December 1, 2021. Deceased Debtor Jolie Ann Barkalow died on December 29, 2021 and deceased Debtor Michael Allen Barkalow died on December 30, 2021. Deceased Debtors did not file a motion or hearing to confirm the Amended Plan prior to their deaths.

On February 3, 2022, deceased Debtors' Attorney filed a Notice of Death. Dckt. 23. Deceased Debtors' Attorney filed what appears to be a duplicate Notice of Death on February 17, 2022. Dckt. 30. On May 16, 2022, Deceased Debtors' Attorney filed this Motion to Substitute. Dckt. 43. In Mr. Percival's Declaration in Support of this Motion, he asserts that he retained deceased Debtors'

Attorney as his counsel and that Mr. Percival is the lawful successor and representative of both Debtors. Dckt. 46.

Pursuant to Federal Rule of Bankruptcy Procedure 1016 and Federal Rules of Civil Procedure 25 as incorporated into the Federal Rules of Bankruptcy Procedure 7025, Mr. Percival requests authorization to be substituted in for the deceased Debtors and to perform the obligations and duties of the deceased parties. A Notice of Death was filed on February 3, 2022. Dckt. 23. Mr. Percival is the brother of deceased Debtor Jolie Barkalow and brother-in-law of deceased Debtor Michael Allen Barkalow and is the both deceased Debtors' successor and lawful representative. Mr. Percival that he will continue to prosecute this case in a timely and reasonable manner.

## APPLICABLE LAW

### Request for Substitution

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event debtors pass away in a case “pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when debtors in Chapter 13 die. *Id.*

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Hawkins v. Eads*, 135 B.R. at 384.

Federal Rules of Bankruptcy Procedure 7025 applies in contested matters, including motions, through Federal Rules of Bankruptcy Procedure 9014. Here, although Mr. Percival is filing a Motion under Federal Rules of Bankruptcy Procedure 9013, which would make applicable Federal Rules of Civil Procedure 25 as incorporated in Federal Rules of Bankruptcy Procedure 7025, the court does not find that substituting as Debtor qualifies as a “claim ... not extinguished.” Therefore, for purposes of Federal Rules of Bankruptcy Procedure 7025 as incorporated into Federal Rules of Civil Procedure 25, the court does not find a ninety day deadline applicable.

Even if substitution for were a claim, pursuant to Federal Rules of Bankruptcy Procedure 9006, the ninety-day period is subject to enlargement by the court. The application of Rule 25, Rule 7025, and Rule 9006 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party. **There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record.** In other

words, procedurally, a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005 and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

**The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run.** In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. **However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b).** Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. However, the court may not act upon the motion until a suggestion of death is actually served and filed.

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .

(emphasis added); *see also Hawkins v. Eads, supra.*

### **Request for Waiver of Post-Petition Education Requirement**

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

The court allows the waiver of the post-petition education requirement pursuant to the local rules.

### **DISCUSSION**

Here, Sean Percival has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the deceased Debtors.

Therefore, pursuant to Federal Rules of Bankruptcy Procedure 1016, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Mr. Percival as the brother of deceased Debtor Jolie Barkalow and brother-in-law of deceased Debtor Michael Allen Barkalow and both deceased Debtors' successor and lawful representative, may continue to administer the case on behalf of the deceased Debtors.

The court further notes that although the Motion was filed on May 16, 2022, over ninety days after the Notice of Death of Debtors, which was filed on February 3, 2022 (Dckt. 23), pursuant to Federal Rules of Bankruptcy Procedure 9006(b), even if Federal Rules of Bankruptcy Procedure 7025 applies, with the unfortunate circumstances of the case, the court enlarges the ninety-day period to allow the substitution to occur.

The court grants the Motion to Substitute Party.

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 Substitute After Death filed by deceased Debtors' Counsel 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 Sean Percival, brother of deceased Debtor Jolie Ann Barkalow and brother in law of deceased Debtor Michael Allen Barkalow is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

**IT IS FURTHER ORDERED** that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor Jolie Ann Barkalow and deceased Debtor Michael Allen Barkalow is granted pursuant to 1016-1.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 21, 2022. By the court’s calculation, 17 days’ notice was provided. 14 days’ notice is required.

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

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**The Motion to Extend the Automatic Stay is granted.**

Aeron Lynnell Wallace (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 20-23442) was dismissed on May 15, 2022, for Debtor’s delinquency in Plan payments. *See* Order, Bankr. E.D. Cal. No. 20-23442, Dckt. 89, May 15, 2022. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because they were unable to propose terms that would cure the delinquency. However, the Debtor claims they have been able to secure additional employment since then, and that this new income will allow them to afford their newly filed Plan.

Upon motion of a party in interest and after notice and hearing, the court may order the



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

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

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

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

Debtor has sufficiently demonstrated the case was filed in good under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

The Motion to Extend the Automatic Stay filed by Aeron Lynnell Wallace (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2022. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

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

The debtor, Judy Marie Sypnieski ("Debtor") seeks confirmation of the Modified Plan because Debtor's mortgage, water, and garbage expenses have increased. Debtor states their income is less than the median income which allows them to reduce the plan term from sixty (60) months to forty-eight (48) months. Declaration, Dckt. 64. The Modified Plan provides \$150.00 to be paid through forty-eight (48) months, and a 10 percent dividend to unsecured claims totaling \$17,248.00. Modified Plan, Dckt. 65. 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 May 24, 2022. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that Debtor's Motion (Dckt. 57), Declaration (Dckt. 64), and proposed Modified Plan (Dckt. 65), states unsecured claims have received a dividend of approximately eighteen (18) percent. However, Debtor's proposed Modified Plan proposes a dividend of no less than ten (10) percent.

Trustee states unsecured claims have received a 17.81% dividend and requests the Order

Confirming states an unsecured percentage of no less than eighteen (18) percent.

## **DEBTOR'S REPLY**

Debtor filed a reply on May 26, 2022 (Dckt. 70) stating they stipulate to Trustee's request that the Order Confirming states an unsecured percentage of no less than eighteen (18) percent. Debtor filed a proposed order as an exhibit (Dckt. 71) and requests the court grant the Motion to Modify.

Debtor's reply appears to resolve Trustee's concerns and the order confirming shall include unsecured claims shall receive a dividend of eighteen (18) percent.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Name of Debtor ("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 April 14, 2022, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**IT IS FURTHER ORDERED** that the dividend allowed to unsecured creditors shall be no less than eighteen (18) percent.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 12, 2022. 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. At the hearing -----

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

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

- A. Debtor is delinquent in plan payments.
- B. The plan may not be feasible because it is overextended.

## DISCUSSION

Trustee's objections are well-taken.

### Delinquency

Debtor is \$900.00 delinquent in plan payments, which represents one month of the \$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).

**Plan Term is Fewer Greater Than 60 months /  
Failure to Afford Plan Payment**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 89 months due to the filing claims being filed in amounts higher than the Debtor scheduled. The Plan exceeds the maximum sixty (60) months allowed under 11 U.S.C. § 1322(d).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor may have a net income insufficient to fund the Plan as shown in Schedules I and J. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 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, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 9, 2022. By the court’s calculation, 29 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

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**The Motion for Order Approving Retroactive Sale is granted.**

The Bankruptcy Code permits Ernest Fermen Cruz, the Chapter 13 Debtor (“Movant”), to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. The Debtor is required to give notice of any proposed sale to provide opportunity for objections and for a hearing if there are objections. Here, Movant owned the real property commonly known as 470 Lampass Avenue, Sacramento CA 95815 (“Property”). The Property was held in escrow to be sold at the time the petition was filed. However, the title company failed to record title until after the bankruptcy case commenced.

The purchaser of the Property is Ayana Vann, and the terms of the sale are:

- A. Purchase Price: \$355,000.00
- B. Close of Escrow: Fifteen (15) days after acceptance

C. Deposit Amount: \$2,500.00

D. Down Payment: \$9,925.00

## **TRUSTEE'S NONOPPOSITION**

David P. Cusick, the Chapter 13 Trustee ("Trustee"), filed a non-opposition to the Motion for Order Approving Retroactive Sale of Real Property on May 23, 2022. Dckt. 49.

## **DISCUSSION**

"The debtor in possession or trustee must ensure 'parties in interest' adequate notice and opportunity to be heard before their interests may be adversely affected." *W. Auto Supply Co. v. Savage Arms* (In re Savage Indus.), 43 F.3d 714, 720 (1st Cir. 1994) (citing 11 U.S.C. § 363(b)). Additionally, Federal Rules of Bankruptcy Procedure 6004(a) requires notice of a proposed sale of property, other than cash collateral, not in the ordinary course of business, pursuant to Federal Rules of Bankruptcy Procedure 2002(a)(2), which requires 21 days' notice by mail to parties in interest. Approval of a proposed sale should be denied if necessary parties were not notified. 10 Collier on Bankruptcy P 6004.02 (16th 2022).

It appears the Debtor unilaterally sold the property at 470 Lampass Avenue, in Sacramento, California. This is in clear violation of rules 11 U.S.C. § 363; 1303 and Federal Rules of Bankruptcy Procedure 2002; 6004. However, pursuant to the court's civil minutes on April 12, 2022, Dckt. 35, the court would consider retroactive approval of the sale.

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor's estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in "exceptional circumstances." *Atkins*, 69 F.3d at 974.

Debtor correctly states the law by seeking such relief pursuant to section 105(a) of the Bankruptcy Code which allows the court to "issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a).

Here, Debtor argues the failure to seek court approval was due to the Property being held in escrow at the time the petition was filed and the title company's failure to record title until after the bankruptcy case commenced.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the proceeds will allow Debtor to pay off the case early and pay one hundred percent of all creditors.

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 Order Approving Retroactive Sale filed by Ernest Fremen Cruz, 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 Ernest Fermen Cruz, Chapter 13 Debtor, is retroactively authorized to have sold pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Ayana Vann or nominee (“Buyer”), the Property commonly known as 470 Lampass Avenue, Sacramento CA 95815 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$355,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 42, and as further provided in this Order.
- B. The sale proceeds are authorized to have been first be applied to closing costs and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The net sales proceeds shall be disbursed to the Chapter 13 Trustee, as determined by the Chapter 13 Trustee, to fully fund the Chapter 13 Plan in this case to provide for payment of all fees, expenses, and claims (including a 100% dividend to creditors holding general unsecured claims).



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 26, 2022. By the court’s calculation, 42 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).

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

The debtors, Richard David Roberts and Lori Ann Roberts (“Debtor”), seek confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$950.00 for two (2) months and \$1,202.00 for fifty-eight (58) months. Amended Plan, Dckt. 22. 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”), an Opposition on May 17, 2022. Dckt. 28. Trustee opposes confirmation of the Plan on the basis that:

- A. Amended Schedule I - Debtor has failed to include amendment cover sheets for Amended Schedules D, E/F, and I/J as well as Debtor’s Amended Statement of Financial Affairs. Dckt. 28.
- B. Debtor has failed to file business documents required by Schedule I.

## **DISCUSSION**

### **Amended Cover Sheets**

Pursuant to Form EDC 2-015, each amended document shall be attached to the Amendment Cover Sheet. Debtor should refile their Amendments to include the cover sheet to properly document what is being filed.

### **Failure to File Business Documents Required by Schedule I**

The Chapter 13 Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to “[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.” Debtor is required to submit that statement and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

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 debtors, Richard David Roberts and Lori Ann Robert (“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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 12, 2022. 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. At the hearing -----

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

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

- A. Debtor is delinquent in plan payments.
- B. Debtor is delinquent in mortgage payments.
- C. Debtor has had four (4) prior Chapter 13 bankruptcy cases dismissed in part for delinquency in plan payments since 2018.
- D. Debtor relies on the valuation of a claim, but no Motion to Value the Secured Claim has been filed.

- E. Debtor's Plan provides for attorney's fees in excess of the maximum allowed fee.
- F. Debtor has failed to disclose all assets.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Delinquency**

Debtor is \$2,300.00 delinquent in plan payments, which represents one month of the \$2,300.00 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. Additionally, Debtor has had four (4) prior Chapter 13 cases since 2018. All were dismissed in part because of delinquency. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Default in Adequate Protection Payments**

Debtor has not remitted an adequate protection payment of \$1,302.19, as required by the court's April 14, 2022 order. Dckt. 29. Debtor's delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Insufficient Plan Payments**

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Under the nonstandard provisions, there are fifteen (15) proposed payments of \$100.00 which would be insufficient to pay even the \$1,302.19 monthly contract installment on the Class 1 claim. Thus, the Plan may not be confirmed.

### **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 Exeter Finance Corp. Debtor has failed to file a Motion to Value the Secured Claim of Exeter Finance Corp., however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

### **"No Look" Fee**

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of Chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. A "No Look" Fee in a Chapter 13 nonbusiness case is \$4,000.00. Debtor's Attorney requests \$4,500.00, which is not in compliance with the Local Rules. Thus, the Plan cannot be confirmed.

### **Debtor's Failure to Disclose Assets**

Trustee indicates Debtor has a "Venmo electronic payment account" that was not listed on Debtor's Schedules. Without an accurate picture of Debtor's financial reality, the court cannot

determine whether the Plan is confirmable. This raises question to whether the debtor filing the petition was in good faith. 11 U.S.C. § 1325(a)(7).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 11, 2022. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

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

Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust I (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s Plan fails to provide for Creditor’s secured claim.
- B. Debtor’s Plan fails to cure Creditor’s pre-petition arrearages and ongoing post-petition installments.
- C. Debtor’s plan is not feasible.
- D. Debtor has already filed two other bankruptcy cases within the last year, each of which have been dismissed for delinquent Plan payments.

## DISCUSSION

Creditor's objections are well-taken.

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

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$37,960.64 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). With the higher pre-petition arrears, the plan is not feasible. Additionally, Debtor's Schedules I and J put Debtor on an extremely tight budget which also puts into question the feasibility of the Plan. Additionally, Debtor has had four (4) prior Chapter 13 cases since 2018. All were dismissed in part because of delinquency. Thus, the Plan may not be confirmed.

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

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

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

The Objection to the Chapter 13 Plan filed by Wilmington Savings Fun Society, FSB, as Trustee of Stanwich Mortgage Loan Trust I ("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.

# FINAL RULINGS

22. [22-20605-E-13](#)      **LESLIE VAN SYCKEL**      **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#)                      **Mary Anderson**                      **PLAN BY DAVID P. CUSICK**  
**DEBTOR DISMISSED: 5/15/2022**                      **5-12-22 [23]**

**Final Ruling:** No appearance at the June 7, 2022 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Objection to Confirmation of Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.



23. [22-20605](#)-E-13      **LESLIE VAN SYCKEL**  
[KSR-1](#)                      **Mary Anderson**

**OBJECTION TO CONFIRMATION OF  
PLAN BY FREDERICK K. THOMPSON  
TRUST**  
**5-11-22 [20]**

**DEBTOR DISMISSED: 5/15/2022**

**Final Ruling:** No appearance at the June 7, 2022 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Objection to Confirmation of Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

**Final Ruling:** No appearance at the June 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2022. By the court’s calculation, 38 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, Suzanne Flemons (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on May 27, 2022. Dckt. 59. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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



## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 24, 2022. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor and Debtor's Attorney have failed to appear at the two Meeting of Creditors held on February 10, 2022, and March 10, 2022. Debtor's Attorney contacted Trustee's office on February 9, 2022, informing them he had a conflict and need to appear in Woodland at 9:00 a.m. Trustee continued the hearing to 1:00 p.m. on March 10, 2022, Debtor's Attorney was notified of the continuance on February 10, 2022. On March 10, 2022, at 11:10 a.m., Debtor's Attorney informed the Trustee's office he was in Woodland for a trial and would not be appearing.
- B. The Debtor is delinquent the first two Plan payments to the Trustee, in the amount of \$1,050.00. The next scheduled payment of \$525.00 is due on April 25, 2022.
- C. The Plan provision states, "2.01 Plan shall be considered as of February 2022." The Trustee is uncertain what is to be "considered." If the proposal is that no plan payments will be due until February 25, 2022, the Trustee is not certain if this also modifies the plan length of 60 months to start from the same date, a one month difference.
- D. The Debtor has failed to file "The Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" identifying what fees have been charged and what fees were paid prior to filing this case.
- E. Debtor filed FRBP 2016(b), which identifies Debtor's Attorney agreed to accept \$4,000.00 for Chapter 13, and \$1,495.00 was paid prior to filing the case, leaving a balance of \$2,505.00. The Plan states Debtor's Attorney agreed to \$4,000.00 and \$0.00 was paid prior to filing. Section 3.06 also shows Debtor's Attorney will receive \$4,000.00 each month as an administrative expense. The Trustee is uncertain what amount the attorney has received prior to filing the case and if there will be sufficient funds to pay the Debtor's Attorney \$4,000.00 if the Plan is confirmed with the next nine months.

## 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 the Chapter 13 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).

The Continued Meeting of Creditors was held on February 10, 2022, and March 10, 2022, and the Chapter 13 Trustee's Report indicates Debtor did not appear. The Meeting of Creditors has been continued for a third time to April 14, 2022, at 1:00 p.m.

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$1,050.00 delinquent in plan payments, which represents multiple months of the \$525.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 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 Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan provision states, "2.01 Plan shall be considered as of February 2022." The Trustee is uncertain what is to be "considered." If the proposal is that no plan payments will be due until February 25, 2022, the Trustee is not certain if this also modifies the plan length of 60 months to start from the same date, a one month difference.

Debtor filed FRBP 2016(b), which identifies Debtor's Attorney agreed to accept \$4,000.00 for Chapter 13, and \$1,495.00 was paid prior to filing the case, leaving a balance of \$2,505.00. The Plan states Debtor's Attorney agreed to \$4,000.00 and \$0.00 was paid prior to filing. Section 3.06 also shows Debtor's Attorney will receive \$4,000.00 each month as an administrative expense. The Debtor has failed to file "The Statement of Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" identifying what fees have been charged and what fees were paid prior to filing this case.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Trustee's Status Report**

The Trustee filed a status report on May 23, 2022. Dckt. 79. Trustee states Debtor is now current in Plan payments. Additionally, the First Meeting of Creditors is continued again to 1:00 pm on June 9, 2022. Trustee believes the Plan can be confirmable once the following outstanding issues are resolved:

1. Debtor appears at the First Meeting of Creditors.
2. The Order Confirming Plan clarifies Debtor's nonstandard provisions to state the following:
  - a. "The Plan effective date is December 1, 2021, the date of conversion. The Plan payments are as follows: The Debtor has paid \$1,575.00 through April 2022 (month 4). Plan payments will be \$525.00 for 56 months for a total Plan length of 60 months."
3. The Order Confirming Plan clarifies procedure for payment of attorney's fees to state the following:

- a. “[A]ll attorney fees will be subject to Court approval by filing, and serving, a motion in accordance with 11 U.S.C. §§329 and 330, Fed R. Bankr. P. 2002, 2016, and 2017.”

Trustee requests the court continue the hearing until after the First Meeting of Creditors, which is to be held on June 9, 2022.

The court continues the hearing on the Motion to Confirm to 2:00 p.m. on July 26, 2022, which is the first available hearing date sufficiently after the continued First Meeting of Creditors to allow the parties to address any shortcomings and file supplemental pleadings, if any.

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 Chapter 13 Plan filed by the debtor, Jeanie Ream (“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 to Confirm the Plan is continued to **2:00 p.m. on July 26, 2022**.



- B. It is unclear if Debtor's income stated on the Supplemental Schedule I (Dckt. 52) gives an accurate picture of Debtor's monthly income.

## **DISCUSSION**

### **Failure to Complete Plan Within Allotted Time**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 89 months due to claims being filed for amounts higher than the Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee references Debtor's Supplemental Schedule I filed on October 18, 2021 (Dckt. 52) and states that the Supplemental Schedule I no longer provides a Social Security Income in the amount of \$4,700.00 which had been in the Debtor's original Schedule I filed on May 25, 2021 (Dckt. 19). Opposition, Dckt. 88 at 2:4-6. The court notes that Debtor's most recent Supplemental Schedule I was actually filed on January 27, 2022, the same day Debtor filed their Motion to Confirm Second Amended Plan. See Supplemental Schedule I, Dckt. 74.

Debtor's most recent Supplemental Schedule (Docket 74) includes Debtor's Social Security income in the amount of \$5,205.90 in total. *Id.* at 4. Based on this, it appears that Debtor's Social Security income has actually increased since Debtor's previous Supplemental Schedule I filed on October 18, 2021 (Dckt. 52) which listed their Social Security income in the total amount of \$4,876.00, which was also an increase from Debtor's Social Security income of \$4,700.00 as listed in their original Schedule I filed on May 25, 2021 (Dckt. 19). On original Schedule I Debtor listed Social Security income under "Other Income," Sch. I, ¶ 8h, Dckt. 19, and not in the paragraph for Social Security Income on Schedule I (¶ 8e). Thus, Trustee's concerns over why Debtor's Social Security income has stopped or whether it was accidentally omitted are resolved, there appearing to be a clerical error in how it was listed on the various Schedules I in this case.

At the hearing, the Trustee confirmed that the income issue has been resolved by the supplemental schedules.

The court notes, however, that Debtor's proposed Plan is still noncompliant as it will exceed the maximum sixty (60) months allowed under 11 U.S.C. § 1322(d).

With respect to the Plan term, this is a problem. Counsel for the Debtor reported that to address this the plan is amended the Chapter 13 Plan to move the student loan debt to Class 4.

Debtor requested a continuance so that such amendment can be filed and documentation that moving the student loan obligations to Class 4 does not result in a financial loss to creditors with general unsecured claims. Looking at the claim and payment numbers, it appears that paying the student loan debt through Class 4 under the contract terms results in a financial betterment for the other creditors with general unsecured claims. The Trustee did not oppose the request for a continuance.



## **April 4, 2022 Status Report**

On April 4, 2022, Trustee filed a status report stating the “Corrected Plan” filed on March 24, 2022 is missing the signature page and nonstandard provisions.

Upon the court’s review, Debtor filed a “Corrected Second Amended Chapter 13 Plan” on March 24, 2022. Dckt. 97. Section 2.01 indicates there are additional provisions that have not been attached. Also, the signature pages have been omitted.

## **May 10, 2022 Hearing**

At the hearing, counsel for Debtor reported that he is aware that the last two pages of the Plan were not scanned, were not filed, and were not served.

The Debtor will file and serve the complete Second Amended Plan on or before May 13, 2022, with the hearing continued to 2:00 p.m. on June 7, 2022, opposition on or before May 31, 2022.

## **Trustee’s Nonopposition**

On May 18, 2022, Trustee filed a nonopposition stating Debtor has filed a supplemental corrected Second Amended Plan. The corrected Plan includes the nonstandard provisions, resolving the discrepancies noted at the May 10, 2022 hearing. Trustee now does not object to confirmation of the 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 to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael Roland Stanford and Carol Ann Stanford (“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 May 10, 2022, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the June 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 27, 2022. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Eileen Leona Hecht (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on May 23, 2022. Dckt. 68. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Eileen Leona Hecht (“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 April 15, 2022, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. [19-27175-E-13](#)      **ADAM/SHERRI NEWLAND**      **MOTION TO MODIFY PLAN**  
[PGM-3](#)                      **Peter Macaluso**                      **4-28-22 [87]**

**Final Ruling:** No appearance at the June 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 28, 2022. 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.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Adam Scott Newland and Sherri Ann Newland (“Debtor”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on May 24, 2022. Dckt. 97. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Adam Scott Newland and Sherri Ann Newland (“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 April 28, 2022, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

29. [20-22181-E-13](#)      **MELINDA TAORMINA**      **MOTION TO INCUR DEBT**  
[PSB-1](#)                      **Paul Bains**                      **4-28-22 [28]**

**Final Ruling: No appearance at the June 7, 2022 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 28, 2022. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

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

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

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

The Motion to Incur Debt filed by Melinda Benner Taormina (“Debtor”) seeks court approval for Debtor to incur post-petition credit. USAA Federal Savings Bank (“Creditor”), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$2,846.91 per month to \$2,585.66 per month. The modification will not change the interest rate of 4.5%.

The Motion is supported by the Declaration of Melinda Benner Taormina. Dckt. 30. The Declaration affirms Debtor’s desire to obtain the post-petition financing and provides evidence of Debtor’s ability to pay this claim on the modified terms.

### **TRUSTEE’S NON-OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on May 23, 2022. Dckt. 36. Trustee states the proposed loan modification reduces Debtor’s monthly payment from \$2,846.91 to \$2,585.66 for a reduction of \$261.25. Trustee states Debtor must file a supplemental Schedule J to assess Debtor’s ability to make her plan payments.

### **DEBTOR’S RESPONSE**

The Chapter 13 Debtor, Melinda Benner Taormina (“Debtor”), filed a Response to Trustee’s Opposition on May 26, 2022. Dckt. 39. Debtor states Supplemental Schedules I and J, and Exhibit in support of supplemental Schedules I and J were filed on May 23, 2022. Dckt. 33, 34, and 35. Debtor states the supplemental Schedules I and J show their ability to maintain plan payments once the loan modification is in place.

Debtor’s response and filing of Supplemental Schedules appears to resolve Trustee’s concerns.

The Trustee filed a Status Report on June 2, 2022, concurring with Debtor that the Supplemental Schedules resolves the Trustee’s concern and that the Plan may be confirmed.

### **DISCUSSION**

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor’s ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Incur Debt 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 Melinda Benner Taormina (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



## **DEBTOR'S RESPONSE**

Debtor filed a response (Dckt. 18) stating "Amended Schedules I & J, Amended Forms 122C-1 and 122C-2, and a Motion to Confirm First Amended Plan with supporting documents have been prepared and will be filed as soon as Debtor submits his signatures." Dckt. 18 at 1:19-21.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has failed to disclose their non-filing spouse's creditors. Additionally, Debtor may have failed to disclose all of their community debts and disposable income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Failure to Provide Disposable Income**

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

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

Debtor admitted at the First Meeting of Creditors that tax refunds yearly in the amount of \$4,840.00 are "common." Debtor did not disclose these tax refunds as additional income. Dckt. 1. Therefore, the Plan payment may not be Debtor's best efforts as required under 11 U.S.C. § 1325(b).

Debtor states that an amended plan will be filed, indicating that this Plan is no longer being prosecuted.

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.