

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

July 1, 2025 at 2:00 p.m.

1. [24-25653-E-13](#)
[PGM-1](#)

MICHAEL PARRA
Peter Macaluso

**CONTINUED MOTION TO CONFIRM
PLAN
4-15-25 [41]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on April 15, 2025. By the court's calculation, 35 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 XXXXXXX.

July 1, 2025 Hearing

The court continued the hearing on this Motion to allow the Debtor to get the loan modification process going. Debtor filed a Status Report on June 24, 2025, requesting the court grant a further 30-day continuance to acquire the loan modification. Docket 67. The Status Report provides no information about how the loan modification process is being prosecuted, who is doing it, or why additional time is appropriate. The proposed First Amended Plan filed on April 15, 2025, included the Non Standard provision for a refinance of the secured debt.

Creditor indicated at the prior hearing that it is unlikely a loan modification would be granted in this case.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

The debtor, Michael Anthony Parra (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for obtaining a loan modification on the mortgage with creditor Wells Fargo Bank, National Association, as Trustee for Banc of America Mortgage Securities, Inc. Mortgage Pass-Through Certificates, Series 2007-3 (“Creditor”). Amended Plan, Docket 45. The current arrearage on Creditor’s claim is \$76,296.15 and the monthly contract installment payment is \$4,692.34. Debtor is proposing to pay adequate protection payments to Creditor in the amount of \$2,200 pending the loan modification. If the loan modification is not approved, Debtor will submit an Amended Plan to address Creditor’s claim.

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 6, 2025. Docket 55. Trustee opposes confirmation of the Plan on the basis that:

- A. Amended Schedule J shows Debtor’s monthly net income as \$3,100. Docket 48 at 6-7. Debtor is proposing 55 payments of \$2,750. Debtor should contribute the extra \$350 to plan payments to pay unsecured creditor. Opp’n 1:27-2:5.
- B. Debtor filed a Liquidation Summary showing \$0 in non-exempt assets, but upon Trustee’s review of the Schedules, it appears Debtor may have up to \$4,000 in non-exempt assets. *Id.* at 2:6-18.
- C. It appears Debtor was on unemployment benefits at the start of the case, but Debtor is now employed. Trustee would like clarification if, and when, the Debtor stopped receiving unemployment income benefits. *Id.* at 2:19-24.

CREDITOR’S OPPOSITION

Creditor filed an Opposition on May 6, 2025. Docket 53. Creditor opposes confirmation of the Plan on the basis that:

- A. Creditor does not accept the proposed treatment of this Loan in the Plan because it is not feasible and does not comply with the Bankruptcy Code. Opp’n 3:11-12.
- B. Debtor’s Plan states that Debtor has a loan modification application in progress. As of May 6, 2025, Creditor has no record of a current loan modification in process for this Loan. Debtor’s Plan requires him to “diligently prosecute the loan modification application.” It appears Debtor

has failed to do so, and moreover, there is no specific definition of what “diligently prosecute” means in the Plan. As a result, it is impossible to determine if Debtor is in compliance with the Plan. *Id.* at 3:13-19.

- C. A modification of this Loan seems unlikely due to the fact that Debtor has no equity in the Property and has failed to make any payments since October 2023. Moreover, Debtor’s interest rate on the Loan is currently 3.5%, which is significantly lower than current interest rates. A loan modification with more favorable terms than the Debtor currently has appears very unlikely. *Id.* at 3:19-23.
- D. Debtor cannot modify Creditor’s claim because the collateral securing Creditor’s claim, real property commonly known as 2060 Ranch Creek Road, Cool, California 95614 (“Property”), is secured by Debtor’s principal residence. The Plan as proposed does not provide for paying the arrearage and ongoing monthly contractual payments.

DEBTOR’S REPLY

Debtor filed a Reply on May 13, 2025. Docket 58. Debtor states:

- A. Debtor has no opposition with the plan payments increasing by \$350.00, making payments to \$3,100.00 a month. Reply at 1:23-24.
- B. In regards to the liquidation summary, Debtor has made the suggested amendment to schedule C, which results in \$250.00 being non-exempt. *Id.* at 2:1-2.
- C. Debtor will not be receiving any more unemployment benefits. *Id.* at 2:4-5.

DISCUSSION

As an initial matter, the court has approved of variations of these Ensminger Provisions Debtor now proposes. A debtor is afforded time to attempt to receive a loan modification while making adequate protection payments. 11 U.S.C. § 1322(b) is not offended by this type of Plan as Creditor’s claim is not being modified. It is true there is a pause on regular payments, but only pending the loan modification. The adequate protection payments must be sufficient to protect a creditor’s interest, and the debtor must be engaging in reasonable efforts to obtain the loan modification.

In this case, Debtor has not provided a timeline to apply for and receive a loan modification. Creditor informs the court that there is no loan modification on file as of May 6, 2025. This tends to show Debtor is not diligently prosecuting this Plan.

Creditor also brings up the valid concern that Debtor’s current interest rate is 3.5% and that it is extremely unlikely Debtor will be able to negotiate a more favorable payment scheme in a loan modification. First, Debtor does not have any equity in the Property. Second, the current interest rates on a 30-year fixed mortgage are approximately 6%, substantially higher than Debtor’s current rate. COMPARE

CURRENT MORTGAGE RATES FOR TODAY, <https://www.bankrate.com/mortgages/mortgage-rates/> (Last visited May 16, 2025).

At the hearing, the Parties agreed to a continuance to allow the Debtor to get the loan modification process going.

The hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on July 1, 2025.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Michael Anthony Parra (“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
XXXXXXX.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on June 2, 2025. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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

Debtor filed a Chapter 7 bankruptcy case on December 15, 2021. Case No. 21-24162. Debtor received a discharge on August 9, 2022. Case No. 21-24162, Docket 125.

The instant case was filed under Chapter 13 on February 19, 2025.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on August 9, 2022, which is less than four years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 25-20717), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 25-20717, the case shall be closed without the entry of a discharge.

3. [25-21925-E-13](#)
[DPC-1](#)

PATRICIA MELMS
Peter Macaluso

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
6-9-25 [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).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 9, 2025. By the court’s calculation, 22 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:

1. Debtor Patricia Rene Melms (“Debtor”) failed to provide a copy of the Debtor’s last filed federal tax return or a tax transcript or a written statement that the documentation does not exist. Debtor also failed to provide evidence of income, such as pay advices. Obj. 2:1-9.
2. Debtor is \$2,695.00 delinquent in Plan payments to the Trustee. *Id.* at 2:10-16.
3. Disclosure of Attorney Compensation, does not match the Plan and shows the Attorney is charging \$10,000.00, with \$1,000.00 paid prior to filing and \$9,000.00 as the balance due. The Plan states that Debtor’s counsel was paid \$2,000 prior to filing and is to be paid an additional \$9,000 through the Plan. The Trustee is requesting that the Debtor amend the Disclosure of Compensation of Attorney for Debtor(s), to reflect the accurate amount the Debtor’s attorney is charging. *Id.* at 2:19-23.

Trustee submits the Declaration of Angelina Fernandez to authenticate the facts alleged in the Objection. Decl., Docket 29.

DISCUSSION

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).

Delinquency

Debtor is \$2,695.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Attorney’s Fees

The Disclosure Form at Docket 1 states Debtor’s counsel has charged \$10,000 for his services and has accepted a pre-petition payment of \$1,000. Meanwhile, the Plan states that counsel has accepted a \$2,000 pre-petition payment with \$9,000 to be paid over the life of the Plan. Plan, Docket 18.

At the hearing, **XXXXXXX**

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

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

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

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

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

4. <u>25-21953-E-13</u> <u>DPC-1</u>	SEAN DEEGAN Mikalah Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 6-11-25 <u>[13]</u>
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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).

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 11, 2025. 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.
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

1. Debtor Sean Christopher Deegan (“Debtor”) did not properly disclose deposits and expenses in the bank account with U.S. Bank Business (acct 1107). Obj. 2:1-3.
2. The Trustee shows the following deposits and withdrawals made identified in the US Bank statements:
 - a. November Statement: Deposits = \$ 6,892.01 and Withdrawals = \$6,677.65
 - b. December Statement: Deposits = \$28,091.35 and Withdrawals = \$22,006.35
 - c. January Statement: Deposits = \$32,805.48 and Withdrawals = \$29,462.73
 - d. February Statement: Deposits = \$ 6,960.00 and Withdrawals = \$13,115.70
 - e. March Statement: Deposits = \$44,166.14 and Withdrawals = \$18,862.90
 - f. April Statement : Deposits = \$1,993.76 and Withdrawals = \$13,263.02
3. Debtor admitted that he had received funds from an inheritance and funds were paid to insiders, including to his fiancé, his fiancé’s sister, and a business associate, to apparently make these deposits and withdrawals. *Id.* at 2:14-19.
4. The Schedules and related documents filed are inaccurate and are unreliable evidence. *Id.* at 2:21-3:20.

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

DISCUSSION

Inaccurate or Missing Information

Debtor’s Schedules, Statement of Financial Affairs, and Forms 122C-1 and 122C-2 contain inaccurate information. Without an accurate picture of debtor’s financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

It appears Debtor experienced something of windfall just prior to filing bankruptcy and then paid those funds to various persons, diverting funds from creditors. Trustee has also identified various inconsistencies in values for items on the Schedules. For instance, Schedule A/B shows the Debtor estimates jewelry at \$100.00; however, the Debtor’s US Bank statement shows on January 13, 2025, a

purchase made at Shane Co. for \$1,403.44. Obj. 2:23-27. Debtor's bank statement similarly identify various purchases totaling \$5,190 to Jeffrey Smart for handblown glass, but these assets do not appear on the Schedules. *Id.* at 2:24-3:7. There are obvious good faith issues in this case. 11 U.S.C. § 1325(a)(3).

At the hearing, **XXXXXXX**

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).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on June 16, 2025. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Incur Debt is xxxxxxx.

Nelson A. Madsen and Sharon L. Burns Madsen (“Debtor”) seek permission to enter into mortgage refinance offer with Kaiser Financial Services (“Kaiser”) to pay in full the holder of the first position deed of trust, Tricounties Bank, and the tax lien to the IRS. The terms of the loan are described one way in the Motion and a separate way in the loan documents. The attached chart depicts the discrepancies:

Category	As Described in Motion	As Described in Loan Estimate and Borrower Statement (Exhibits A and B, Dckt 132)
Loan Amount	no amount stated	\$413,200
Interest Rate	6.25%	6.75%
Estimated Total Monthly Payments	\$3,049	\$3,213
Duration	360 months	360 months

In explaining the discrepancies, at the hearing, **XXXXXXX**

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

Debtor appears to want to use the proceeds of this loan to pay all creditors provided for in the Plan and complete the Plan early. The Plan as confirmed is, however, a 60-month Plan that proposes a dividend of 0% to unsecured creditors. Plan, Docket 110. Unsecured claims totaled \$61,943.60. If Debtor is above median income and wishes to complete plan payments slightly early, then Debtor needs to pay all claims, secured and unsecured, in full. 11 U.S.C. § 1325(b)(4).

Debtor filed an Official Form 122C-1, the Chapter 13 Statement of Current Monthly Income. on April 18, 2025, indicating the applicable commitment period in the case is three years. Docket 70. This fact would permit paying the claims provided for in the Plan earlier than a five-year commitment period with the proceeds of this loan.

On the Statement of Current Monthly Income, the Debtor states having wage income of \$198 and unemployment compensation of \$967 for a family unit of two adults.

On Schedule I filed on January 24, 2025, the two Debtors state that they are both retired and have the following Income:

	Debtor 1	Debtor 2
Social Security	\$1,593	\$2,593
EDD		\$1,161

Dckt 1 at 29-30. This totals \$5,347.50 in monthly gross income. In response to Paragraph 13 Debtor states that the EDD income may be reduced or stopped in September 2022. On Schedule J Debtor states having no dependents. *Id.* at 31.

On April 18, 2022, Supplemental Schedules I and J were filed. Debtor 1 stated that he was now employed and having \$2,774.87 in gross income. Dckt. 69 at 4. Debtor lists the Social Security Income to be \$1,687 and \$2,746 a month, plus a “sister” is paying \$525 a month for “her share.” *Id.* at 5. This results in the monthly income rising to \$7,630, which is after (\$102) a month being withheld for tax, Medicare, and Social Security deductions. *Id.* at 5.

While the Original Schedule I stated that both debtors were retired, on the Amended Statement of Financial Affairs, Debtor state there being wage income of \$3,606 in 2022, with this Bankruptcy Case being filed on January 24, 2022. This is inconsistent with Debtor stating when this case was filed in January 2022 that there was no wage income for debtor 1 on Original Schedule I. ^{Fn.1.}

FN. 1. Counsel for Debtor may want to review “his” *signature* on the Amendment Cover Sheet. Dckt. 112. As a signature it is illegible and appears to consist of one letter, a capital “R.” It may be that someone is attempting to impersonate Counsel and the authorities should be notified.

At the hearing, **XXXXXXX**

~~—————The loan would permit Debtor to move on past bankruptcy with a fresh start. The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.~~

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

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

The Motion to Incur Debt filed by Nelson A. Madsen and Sharon L. Burns Madsen (“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 Nelson A. Madsen and Sharon L. Burns Madsen are authorized to incur debt pursuant to the terms of the agreement, Exhibits A and B, Dekt. 132.~~

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

Local Rule 9014-1(f)(1) Motion—Response Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on June 1, 2025. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Trustee filed a Response. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

Debtor Michael Mastromatteo ("Debtor") moves this court for an order dismissing his case pursuant to 11 U.S.C. § 1307(b). 11 U.S.C. § 1307(b) states:

On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

With respect to an 11 U.S.C. § 1307(b) Motion to dismiss, Federal Rule of Bankruptcy Procedure 1017(f)(2) states:

Cases Requiring a Motion . Dismissing or converting a case under §706(a), 1112(a), 1208(b), or 1307(b) requires a motion filed and served as required by Rule 9013.

Debtor has complied with this Rule and set this Motion for hearing. As part of the dismissal, Debtor makes the following request:

The debtor has paid his monthly plan payments to the Trustee. He requests **that the Bankruptcy Trustee NOT distribute any of the available funds to unsecured creditors**. Instead, the debtor requests that the Bankruptcy Trustee distribute any of the funds currently available for distribution in the Bankruptcy estate first to the creditor whose claim is secured by Debtor's real property located at 1278 Margaret Avenue, South Lake Tahoe, CA 96150 (this secured creditor is commonly referred to in the Trustee's distribution records as "Selene Finance LP.") The Debtor also authorized the Trustee to distribute any of the left over funds to pay for the bankruptcy case administrative costs owed to the Trustee and to his attorney Helga White.

TRUSTEE'S RESPONSE

Trustee filed a Response on June 17, 2025. Docket 120. Trustee does not oppose dismissal, but Trustee seeks clarification whether he is authorized to not pay unsecured creditors as provided for in the Plan. Trustee states:

1. To date, the Trustee has disbursed \$31,240.73 to Selene Finance towards the prepetition arrears portion of their claim and that portion of the proof of claim has been paid in full. The Trustee has also disbursed post-petition on-going payments to this creditor in the amount of \$46,089.72 and payments to this creditor are current through May of 2025.
2. To date, the Trustee has disbursed \$749.88 toward the Attorney's remaining fees that were approved in the total amount of \$2,500.00 with the remaining amount owing of \$1,750.12.
3. The unsecured creditor claims in this case total \$61,126.93. To date, the Trustee has disbursed \$479.31 toward their claims, approximately .078% with \$60,647.62 total still owing amongst the four unsecured creditors.
4. The Trustee currently has a balance on hand of \$7,645.96.
5. If the Trustee were to follow the language of the confirmed plan, the Trustee would disburse in the June 2025 disbursement the following amounts, which would bring the total percentage to the unsecured creditors up to 7.32%:
 - a. Class 1 Post-Petition On-Going Amount to Selene Finance: \$3,608.20.
 - b. Attorney's Fees to Helga White: \$41.66.
 - c. Unsecured Creditors: Citibank \$768.28, JPMorgan Chase Bank \$572.36, Law Office of Paul Cass \$980.61, Resurgent Capital Services \$1,674.84.
 - d. Debtor Refund: \$0.00.
6. Alternatively, if the Trustee follows the Debtor's request in this motion, the Trustee would disburse in the June 2025 disbursement the following amounts:
 - a. Class 1 Post-Petition On-Going Amount to Selene Finance: \$3,608.20.
 - b. Attorney's Fees to Helga White: \$1,750.12.

- c. Unsecured Creditors: \$0.00.
- d. Debtor Refund: \$2,287.64.

Resp. 2:5-3:14.

DISCUSSION

The provisions of this District's Plan Form, Form EDC 003-080, state regarding distribution of payments:

5.02. Distribution of plan payment.

(a) At a minimum, each monthly plan payment must be sufficient to pay in full: (i) Trustee's fees; (ii) post-petition monthly payments due on Class 1 claims; (iii) the monthly dividend specified in section 3.06 for administrative expenses; and (iv) the monthly dividends payable on account of Class 1 arrearage claims, Class 2 claims, and executory contract and unexpired lease arrearage claims.

(b) If the amount paid by Debtor is insufficient to pay all of the minimum dividends required by section 5.02(a), Trustee shall pay, to the extent possible, such fees, payments, expenses, and claims in the order specified in section 5.02(a)(i) through (iv). If the amount paid by Debtor is insufficient to pay all dividends due on account of fees, payments, expenses, and claims within a subpart of section 5.02(a), no dividend shall be paid on account of any of the fees, payments, expenses, and claims within such subpart except as permitted by section 3.07(b)(3).

(c) Each month, if funds remain after payment of all monthly dividends due on account of the fees, payments, expenses, and claims specified in section 5.02(a)(i) through (iv), the remainder shall be paid *pro rata*, first to holders of Class 1 arrearage claims, Class 2 claims, and executory contract and unexpired lease arrearage claims; second to Class 5 priority claims; third to Class 6 unsecured claims; and fourth to Class 7 unsecured claims.

(d) Over the plan's duration, distributions must equal the total dividends required by sections 3.04, 3.06, 3.07, 3.08, 3.12, 3.13, 3.14, and 4.01. The case may be dismissed if Debtor's plan payments are or will be insufficient to pay these dividends.

The distribution provisions do not allow for expediting the dividend to attorney's fees while ignoring the class of unsecured creditors. The relevant subparagraph, (c), clearly states that funds that remain after paying claims specified in section 5.02(a)(i) through (iv) are paid on a pro rata basis to Class 1, Class 2, Class 5, Class 6, and then Class 7 claims. Although the law is clear that the court shall dismiss Debtor's case pursuant to 11 U.S.C. § 1307(b), Debtor has not presented the court with law that would authorize it to issue an order altering the distribution terms of the confirmed Plan.

At the hearing, **XXXXXXX**

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

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

The Motion to Dismiss the Chapter 13 case filed by Debtor Michael Mastromatteo (“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 Dismiss is granted, and the case is dismissed.

7. [24-23586-E-13](#) **JON NEWTON** **MOTION TO MODIFY PLAN**
[WLG-2](#) **Michael Reid** **5-27-25 [36]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on May 27, 2025. By the court’s calculation, 35 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.
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The debtor, Jon Carter Newton (“Debtor”) seeks confirmation of the Modified Plan to cure a default cited in the Trustee’s Motion to Dismiss. Declaration ¶ 5, Docket 40. The Modified Plan provides \$0.00 per month for month 1, \$6,500.00 per month for month 2, \$0.00 per month for month 3, \$6,000.00 per month for month 4, \$5,400.00 per month for month 5, \$0.00 per month for month 6, \$5,000.00 per month for month 7, \$3,400.00 per month for month 8, \$4,300.00 per month for month 9, and then \$5,255.00

per month for months 10 through 60. Modified Plan, Docket 37. 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 June 13, 2025. Docket 45. Trustee opposes confirmation of the Plan on the basis that:

- A. It appears the Debtor is attempting to reduce the interest rate to Class 2 creditor Hyundai Motor Finance to the rate provided in the Proof of Claim at 1.9%, but the prior Plan provided for 8.5% interest, which the Trustee has been paying accordingly. Opp'n 1:22-2:3.

Debtor filed a Reply on June 25, 2025, stating that the interest rate of 1.9% was erroneously entered on the Modified Plan, and the correct interest rate is 8.5% as Trustee notes.

DISCUSSION

With Trustee's Opposition addressed, the Plan is confirmable with the order confirming the Plan amended to provide that Hyundai Motor Finance's Class 2 claim shall be paid at 8.5%.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jon Carter Newton ("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 May 27, 2025, is confirmed as amended to provide that Hyundai Motor Finance's Class 2 claim shall be paid at 8.5%. 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 RULINGS

8. [24-25394-E-13](#)

CLAYTON DELAUGHDER
Joshua Sternberg

MOTION TO CONFIRM PLAN
5-21-25 [\[32\]](#)

Item 8 thru 9

Final Ruling: No Appearance at the July 1, 2025 hearing is required.

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 21, 2025. 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 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 Hearing on the Motion to Confirm the Amended Plan is continued to July 29, 2025 at 2:00 p.m.

NO DOCKET CONTROL NUMBER

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

THE MOTION

The debtor, Clayton Daniel Delaughder ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for seven monthly payments of \$3,038.54, and then a step-up of 53 monthly payments of \$3,633.70. Amended Plan, Docket 36. 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 June 13, 2025. Docket 48. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor’s Plan relies on valuing his 2015 Chevrolet Spark, the collateral of creditor Santander Consumer USA. If the Motion to Value Collateral of Santander Consumer USA, Inc. is not granted, Debtor’s Plan is not sufficiently funded to pay the claim in full and therefore should also be denied confirmation. That Motion is being heard on July 29, 2025. Opp’n 1:26-2:7.
2. Debtor failed to provide a Docket Control Number in violation of Local Bankruptcy Rules 3015-1(c)(4) and 9004-2(b)(6). Opp’n 2:8-12.
3. Debtor served his Amended Notice of Motion and Motion for Confirmation of Modified Plan along with supporting documents to all parties in interest using the Official Certificate of Service Form, (Form EDC 007-005), which provides for a hearing date of June 24, 2025, at 2:00 PM. The hearing information on the Motion to Confirm Amended Plan, (Docket 32), amended Notice of Motion to Confirm, (Docket 39) and supporting documents show the hearing is scheduled for July 1, 2025, at 2:00 PM. *Id.* at 2:13-20.

DISCUSSION

The Motion to Confirm is only feasible if the Motion to Value the collateral of creditor Santander Consumer USA is granted. That Motion will not be heard until July 29, 2025. Trustee requests this Motion be continued to that date.

While the issue of confirmation largely depends on the Motion to Value, the court would note Debtor’s counsel is failing to comply with a number of Local Rules, including Local Rules 9014-1(c), 3015-1(c)(4) and 9004-2(b)(6). Moreover, Debtor is filing moving papers indicating different hearing dates, which leads to further confusion.

The hearing on the Motion to Confirm the Amended Plan is continued to July 29, 2025 at 2:00 p.m. to be heard in conjunction with Debtor’s Motion to Value the collateral of creditor Santander Consumer USA.

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, Clayton Daniel Delaughder (“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 Amended Plan is continued to July 29, 2025 at 2:00 p.m. to be heard in conjunction with Debtor's Motion to Value the collateral of creditor Santander Consumer USA.

9. [24-25394-E-13](#) **CLAYTON DELAUGHDER** **CONTINUED MOTION TO DISMISS**
[DPC-2](#) **Joshua Sternberg** **CASE**
5-6-25 [\[28\]](#)

Final Ruling: No appearance at the July 1, 2025 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 6, 2025. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on July 29, 2025, (Specially Set Day and Time), to be heard in conjunction with the Debtor's Motion to Confirm the Amended Plan and Motion to Value the collateral of creditor Santander Consumer USA.

Trustee moved to dismiss the case for Debtor failing to file an Amended Plan after this court denied confirmation on February 11, 2025.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on May 21, 2025. Dockets 36, 32. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dockets 34, 35. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Debtor appears to be actively prosecuting this case.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on July 1, 2025, to be heard in conjunction with the Debtor's Motion to Confirm the Amended Plan.

July 1, 2025 Hearing

The court having continued the hearings on the Motion to Value and Motion to Confirm Amended Plan to July 29, 2025, this Motion is continued to be heard in conjunction with those Motions.

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 Dismiss the Chapter 13 case 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 Motion to Dismiss is continued **to 2:00 p.m. on July 29, 2025 (Specially Set Day and Time)**, to be heard in conjunction with the Debtor’s Motion to Confirm the Amended Plan and Motion to Value the collateral of creditor Santander Consumer USA.