

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

August 6, 2024 at 2:00 p.m.

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1. <a href="#">24-22890</a> -E-13 <a href="#">MOH-1</a>	MARY WOOD Michael O'Dowd Hays	MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC 7-23-24 <a href="#">[16]</a>
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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 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 Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on July 23, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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<p><b>The Motion to Value Collateral and Secured Claim of Onemain Financial Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$11,813.00.</b></p>
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The Motion filed by Mary Monica Wood ("Debtor") to value the secured claim of Onemain Financial Group, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Docket 18. Debtor is the owner of a 2018 Nissan Altima 2.5 SR 4 door sedan ("Vehicle"). Debtor seeks to value the Vehicle

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at a replacement value of \$11,813 as of the petition filing date. Decl. 2:7, Docket 18. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED.R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## **DISCUSSION**

The lien on the Vehicle's title secures a loan incurred on June 23, 2023, to secure a debt owed to Creditor with a balance of approximately \$22,636.36. Proof of Claim, No. 9-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$11,813.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Onemain Financial Group, LLC ("Creditor") secured by an asset described as 2018 Nissan Altima 2.5 SR 4 door sedan ("Vehicle") is determined to be a secured claim in the amount of \$11,813.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$11,813.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, parties requesting special notice, and Office of the United States Trustee on July 3, 2024. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

1. The debtor Christopher Allen Tully ("Debtor") did not appear at the initial 341 Meeting. Obj. 1:25-2:5.
2. Debtor is named as the Defendant in a divorce case in which his spouse, Heather Tully, is alleging that the Debtor has additional financial obligations and a Domestic Support Order (Docket 8) which are not provided for in the Plan or on the Schedules. Heather Tully filed a secured claim in the amount of \$95,000.00 on May 28, 2024, which is not provided for in the Plan. *Id.* at 2:7-20.

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

## **DISCUSSION**

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

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

However, Debtor appeared at the 341 Meeting held on July 25, 2024. This portion of the Objection is overruled.

### **Failure to Provide for Claim**

Creditor Heather Tully filed a secured proof of claim in the amount of \$95,000 on May 28, 2024. POC 2-1. Debtor does not mention this creditor's secured claim, although Debtor Scheduled this creditor's unsecured claim in the amount of \$52,000 on Schedule E/F at line 4.7. Docket 1 at 21. Failing to provide for the secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

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.

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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 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, attorneys of record who have appeared in the case, creditors, parties requesting special notice, and Office of the United States Trustee on June 20, 2024. By the court's calculation, 47 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 without prejudice.**

The debtor, Michael Joe Marasco and Susan Diane Marasco ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$1,795 for 36 months and a sale of Debtor's residence to pay off the mortgage and real property tax liens. Amended Plan, Docket 68. 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 July 22, 2024. Docket 76. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is delinquent in plan payments. Debtor has been paying \$1,500 per month while the plan payments call for \$1,795 per month. *Id.* at 1:22-28.

2. Debtor does not provide a time line for the sale of their residence, effectively allowing Debtor to live in bankruptcy without making the sale. *Id.* at 2:1-10.
3. Some of the Plan's terms are vague. The Plan states in the non-standard provisions that the Debtor will contribute as much of their \$1,262.30 monthly social security payments as of June 23, 2024 as may be required to achieve a "successful" Chapter 13 Plan. Where the Plan calls expressly for monthly payments of \$1,795.00, the Trustee is not certain who or how it will be determined that the monthly plan payment will increase. *Id.* at 2:11-15.
4. No evidence has been submitted in support of confirmation. Furthermore, the Plan provides for payments to creditors CA Dept of Tax and Fee Administration and the IRS outside of bankruptcy, but the Plan does not provide for the specific details of the payment arrangement. *Id.* at 2:16-24.
5. Based on the nonstandard provisions for the IRS and CA Dept of Tax and Fee Administration, it is not clear whether the Plan proposes to pay priority claims in full within the term of the Plan as required by 11 U.S.C. §1325(a)(1) & 1322(a)(2) or if the claimants have agreed to another treatment since this case was filed. *Id.* at 2:25-28.
6. The other non-standard provisions in the Plan dealing with creditors Lake Shastina Community Services District, State Farm, and Siskiyou County Tax Collector are unclear. Trustee cannot tell whether there is an arrearage and what amount of payments will be made to these creditors. *Id.* at 3:1-10.
7. Where the Plan states the dividend to unsecured creditors as "TBD," Trustee is unable to determine if the Plan passes the Chapter 7 liquidation test. *Id.* at 3:11-15.

Trustee submits the Declaration of Teryl Wegemer in support of the Opposition. Decl., Docket 77.

## **DISCUSSION**

### **Delinquency**

Debtor is \$590 delinquent in plan payments as Debtor continues to remit plan payments of \$1,500 instead of the required \$1,795. 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).

### **Debtor Fails Liquidation Analysis**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Because the Plan does not specify

the amount unsecured creditors will receive, there is no indication whether or not the Plan can pass the liquidation test. This is cause to deny the Motion.

### **Vagueness of Non-Standard Provisions**

Much of the non-standard provisions do not contain concrete language on what types of payments will be made to which creditors. The Trustee is unable to determine the feasibility of the Plan without all payments being disclosed, being unable to determine in what amount these creditors will be paid outside the Plan. The claims of the creditors Lake Shastina Community Services District, State Farm, and Siskiyou County Tax Collector must be disclosed in order to determine the nature of the payments.

Furthermore, the Plan calls for Debtor to contribute some unknown amount of social security for a “successful” Chapter 13 Plan. This presumably means there will be a step-up in plan payments, but the Plan is silent on how much of a step-up will occur. Trustee is unable to make distributions to creditors under the Plan when given vague terms.

### **Failure to Provide Evidence in Support**

The glaring problem with this Motion is that there is no Declaration or other admissible evidence filed in support of confirmation. Fed. R. Bankr. P. 9017 incorporates Fed. R. Civ. P. 43, 44, and 44.1, as well as the Fed. R. Evid. in bankruptcy proceedings. Submitting a Plan and Motion to Confirm without authenticated evidence in support is asking the court to simply take the attorney at his word that all pleadings are true and accurate. There is nothing in the Fed. R. Bankr. P., Fed. R. Civ. P., or Fed. R. Evid. that authorize the court to take such liberties. As such, the court is unable to determine if any of the facts alleged in the Motion or terms of the Plan are accurate.

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 confirmation 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). This is further cause for denial of confirmation.

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, Michael Joe Marasco and Susan Diane Marasco (“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.

4. [23-24174-E-13](#)      **MICHAEL/SUSAN MARASCO**      **CONTINUED MOTION TO DISMISS**  
[DPC-1](#)      **Timothy Stearns**      **CASE**  
6-12-24 [[62](#)]

**Final Ruling**

**The Motion to Dismiss was dismissed without prejudice by this court's Order issued on August 5, 2024. Docket 88.**

5. [15-20002-E-13](#)      **BRIAN SANCHEZ**      **CONTINUED MOTION FOR**  
[FF-13](#)      **Gary Fraley**      **EXAMINATION AND FOR PRODUCTION**  
6-16-23 [[217](#)]      **OF DOCUMENTS**

**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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The court originally set the hearing for August 8, 2024. Order, Docket 219.

**The Order for Examination and for Production of Documents is XXXXXXX.**

**August 6, 2024 Hearing**

The court continued the Order to allow Debtor to locate and serve Judgement Debtor Ahmed Mami. A review of the Docket on July 26, 2024 reveals that nothing new has been filed with the court.

At the hearing, XXXXXXX

**REVIEW OF THE ORDER TO APPEAR**

The Order to Appear and Examination of Judgment Debtor Ahmed Mami was issued on June 20, 2023. The court issued the Order based on Debtor Brian Sanchez's *ex parte* application for Judgment Debtor Ahmed Mami to appear and furnish information to aid in enforcement of two money judgments



entered on October 5, 2022 and January 26, 2023. Additionally, Debtor Sanchez requests Judgment Debtor Mami produce documents identified in Exhibit B, Dckt. 218.

### **August 8, 2023 Hearing**

At the hearing, counsel for the Judgment Creditor reported that they had been unable to serve the order for examination and requested that the hearing be continued and seek to locate the Judgment Debtor.

### **November 7, 2023 Hearing**

At the hearing, counsel for the Debtor reported that they still have not been able to locate the person they seek to serve. Debtor requested that the hearing be continued **to 2:00 p.m. on March 26, 2024.**

### **March 26, 2024 Hearing**

The court continued the Order to allow Debtor to locate and serve Judgement Debtor Ahmed Mami. A review of the Docket on March 12, 2024 reveals that nothing new has been filed with the court.

Counsel for the Debtor filed a request for an extension of time for this Ordered examination, citing to specific impediments to proceeding on March 26, 2024. Mtn.; Dckt. 230.

The court has continued the date for the Examination and production of documents to 2:00 p.m. on August 6, 2024. Order; Dckt. 232.

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

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

The Order to Appear and Examination of 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 Order For Examination and for Production of Documents is **XXXXXXX** .

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, attorneys of record who have appeared in the case, creditors that have filed claims, other parties in interest, parties requesting special notice, and Office of the United States Trustee on June 21, 2024. By the court’s calculation, 46 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).

<p><b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXXXX</span>.</b></p>
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The debtor, Guadalupe Ramos (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for \$4,552 having been paid through May, 2024, with monthly payments of \$3,028 to pick up in June, 2024, through completion of the 60 month Plan. Amended Plan § 7, Docket 36. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CREDITOR’S OPPOSITION**

Santander Consumer USA Inc. (“Creditor”) holding a secured claim filed an Opposition on July 11, 2024. Docket 40. Creditor opposes confirmation of the Plan on the basis that:

- A. Creditor was assigned the rights to enforce a Retail Installment Sales Contract that Debtor entered into to purchase a 2020 Mitsubishi Outlander, vin ending in 8757 (“Vehicle”). *Id.* at 2:2-6.

- B. Debtor provides for the claim in Class 2(B), reducing the claim amount based on the value of the collateral at \$16,418. However, Creditor asserts the value is \$21,550. *Id.* at 2:15.
- C. Debtor has not filed a Motion to Value. *Id.* at 2:21-22.
- D. Moreover, Debtor only provides for an interest rate of 8%, which is below the prime rate and any risk adjustments. *Id.* at 2:26-3:8.

Creditor files the Declarations of Christopher Little and John Eng in support, authenticating the attached Vehicle Valuation report and the prime interest rate. Decls., Dockets 41, 42. Creditor files as authenticated Exhibit C a NADA Used Car Guide showing the Vehicle's value of \$21,550 for clean retail. Ex. C 23, Docket 43.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 19, 2024. Docket 45. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's monthly net income only shows as \$2,276, so she cannot afford the plan payment. *Id.* at 2:4-9.
- B. Debtor's Plan relies on filing a Motion to Value to value the Vehicle, but no Motion has been filed. *Id.* at 2:11-20.

Trustee files the Declaration of Teryl Wegemer in support. Decl., Docket 46.

## **DEBTOR'S REPLY**

Debtor files a Reply to Creditor and Trustee on July 30, 2024. Docket 48. Debtor states:

- A. Debtor has filed Schedules I and J with this Reply as Exhibits that show they can afford the plan payment by adding social security income, which they originally hoped to save, to the plan payments. *Id.* at 1:19-20.
- B. Debtor is attempting to reach a deal with Creditor over the value and interest rate of its claim. *Id.* at 1:31-2:6.

## **DISCUSSION**

### **Review of Minimum Pleading Requirements for a Motion**

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

In this case, Debtor cited to no sections of the Code whatsoever in support of the Motion, in violation of Rule 9013, failing to state with particularity grounds to confirm the Modified Plan. It is true that Debtor mentions some of the elements of 11 U.S.C. § 1325(a) in the Motion, such as stating the Amended Plan has been proposed in good faith. However, the lack of citation to specific sections in support of confirmation falls short of Rule 9013 pleading.

At the hearing, **XXXXXXX**

### **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 Creditor, Creditor arguing the value of the Vehicle is higher than for which the Plan provides. Debtor has failed to file a Motion to Value, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor asserts there is a compromise in the works over the value of the Vehicle as well as the applicable interest rate. At the hearing, **XXXXXXX**

### **Interest Rate**

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 8%. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment, which is greater than 8%. *See* JP

Morgan Chase, Historical Prime Rate, <https://www.jpmorganchase.com/legal/historical-prime-rate> (last visited August 5, 2024). The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Debtor asserts there is a compromise in the works over the value of the Vehicle as well as the applicable interest rate. At the hearing, **XXXXXXX**

### **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). The proposed plan payments are in the amount of \$3,028 while Debtor's Schedule I and J indicate a net monthly income of only \$2,276. Schedule J 19 line 23c, Docket 13. Debtor states they will use social security savings in the amount of \$1,805 from line 21 of Schedule J to make up the balance. At the hearing, **XXXXXXX**.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Guadalupe Ramos ("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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on June 26, 2024. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXXXX</span>.</b>
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The debtor, Michele Louise Davenport (“Debtor”) seeks confirmation of the Modified Plan to address creditor Rushmore Servicing’s proof of claim that specified a higher amount of prepetition arrears than Debtor originally provided for in the confirmed Plan. *See* POC 3-1; Mot. 4:6-8, Docket 42. Additionally, Debtor fell behind on plan payments due to medical bills and increased water usage that caused her to accrue a postpetition delinquency to that same creditor, so the Modified Plan provides for the postpetition delinquency. Decl. 2:7-16, Docket 45.

The Modified Plan provides for an increase of \$93 in plan payments per month, bringing the total plan payment to \$2,183.00 for months 9-60. Modified Plan § 7.01, Docket 47. 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 July 23, 2024. Docket 52. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not filed a supplemental Schedule J with the court, so Trustee is unable to adequately assess feasibility. Opp'n 1:26-2:3, Docket 52.
- B. The confirmed and modified plan propose no less than 0% to unsecured creditors. However, the Trustee calculates that the modified plan will pay approximately 100% to unsecured creditors. There are only about \$2,800.00 in total filed general unsecured claims. *Id.* at 2:4-10.

## DISCUSSION

Debtor testifies in her Declaration in support of this Motion that she can afford the increase of \$93 in the plan payment because, “[her] net income from retirement increased from \$1,375.97/mo to \$1,409.58/mo. [Her] social security increased from \$1,716 to \$1,766 at the beginning of this year. This increase of \$83 per month, plus [her] decreasing [her] recreation budget by \$10/mo will allow [her] to cover the increased plan.” Decl. 2:15-28, Docket 45. Trustee asserts he cannot assess feasibility as Debtor only filed a Supplemental Schedule I, and not a Supplemental Schedule J.

The Local Bankruptcy Rules of this district provide:

- 1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor’s attorney written notice of the default.
- 2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days’ notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee’s evidence, the case shall be dismissed at the hearing.
- 3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor’s financial condition has materially changed, **amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.**

Local Bankruptcy Rule 3015-1(g) (emphasis added).

At the hearing, **XXXXXXX**

In clarifying the amount that will be paid to general unsecured creditors, at the hearing, **XXXXXXX**

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

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

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

~~IT IS ORDERED~~ that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on June 26, 2024, 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.

8.	<a href="#"><u>19-25021</u></a> -E-13 <a href="#"><u>MMP-7</u></a>	STEPHEN/KAREN GINGOLD Michele Poteracke	MOTION TO SELL AND/OR MOTION TO WAIVE STAY OF 6004(H) 7-5-24 <a href="#"><u>[202]</u></a>
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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 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, other parties in interest, and Office of the United States Trustee on July 5, 2024. By the court’s calculation, 32 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition). Movant is three days’ late of the required notice period.

At the hearing, **XXXXXXX**

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

<b>The Motion to Sell Property is granted.</b>
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The Bankruptcy Code permits Stephen Anthony Gingold and Karen Michelle Gingold, the Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 236 East Kentucky Street, Fairfield, California, 94533 (“Property”).

Debtor is current in plan payments under the confirmed Plan. The Plan is set to complete in August of 2024. However, Movant states the principal balance on their mortgage will come due in the coming months, so Movant wishes to sell the Property now in bankruptcy to pay secured creditors in full and complete the Plan. Decl. 1:20-24, Docket 205. Debtor Stephen Gingold’s sister is proposing to purchase the Property. Movant explains they will continue to reside in the Property after the sale and take care of the buyer due to her age and needs. *Id.* at 1:25-28.

The proposed purchaser of the Property is Debtor Stephen Gingold’s sister, Robin Gingold (Decl. 1:25, Docket 205) (“Buyer”), and the terms of the sale are:

- A. Purchase price of \$325,000.
- B. First Mortgage Loan to Polycomp Trust Company FBO Brian Kraft IRA will be paid in the full amount of \$215,000.
- C. The IRS will be paid in the full amount of \$73,000.
- D. Movant is providing a “gift equity” to Buyer in the amount of \$34,751.26.
- E. Movant estimates it will need to provide additional funds in the amount of \$14,718.80 to close escrow and pay all liens, costs, and fees in full.

Estimated Closing Statement, Ex. A, Docket 206.

The Chapter 13 Trustee filed a nonopposition on July 22, 2024, stating “Debtor has provided information and documentation that this sale is in the best interest of all creditors and will pay all secured liens in full.” Docket 210.

## **CREDITOR’S OPPOSITION**

Creditor Provident Trust Group, successor to Polycomp Trust Company, Custodian of FBO Brian L. Kraft IRA (“Creditor”), submitted a Conditional Opposition on July 23, 2024. Docket 212. Creditor stats:

- A. Creditor is owed approximately \$217,000. Opp’n 1:26-27, Docket 212.
- B. The sale should not be made free and clear of liens pursuant to 11 U.S.C. § 363(f). Movant makes no mention of 11 U.S.C. § 363(f) in the Motion, only in the Memorandum in Support, and there are no grounds to grant the Motion pursuant to 11 U.S.C. § 363(f). *Id.* at 2:1-16.
- C. The terms of sale and the validity of the source of funds to complete the sale are not clear, there being no contract for sale provided. *Id.* at 2:17-18.

- D. Creditor does not oppose a sale that would pay off its lien in full pursuant to 11 U.S.C. § 363(b). *Id.* at 2:19-23.
- E. Creditor demands adequate protection. *Id.* at 3:1.

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

The Movant seeks to sell the Property free and clear of the liens of Creditor and the IRS. Mem. 2:6-11, Docket 207. There is no mention of a 11 U.S.C. § 363(f) sale in the Motion or prayer itself. The relief stated in the Motion is not for a sale free and clear of liens.

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has not established grounds for a sale pursuant to 11 U.S.C. § 363(f). The memorandum in support states: “Bankruptcy code section 363(f) provides that the sale may be approved when the price is sufficient to pay all entities with an interest in the property. . . [the purchase price of] \$325,000 is sufficient to pay the secured claims against the property, and costs associated with the sale.” Mem. 2:6-12, Docket 207.

However, such a request must be stated in the Motion and Notice, which is not the case here. A party cannot bury different relief requested in the Memorandum in support. The court notes that if the sales proceeds are enough to pay all liens in full, then the liens encumbering the Property will be extinguished with the close of escrow.

### **DISCUSSION**

Creditor argues the Motion indicates that there may not be sufficient sale proceeds to pay all claims and costs in full. Opp'n at 9-10, Docket 212. Debtor's proposed estimated closing statement mentions a debit of \$34,751.26 in gift equity without explaining exactly what that cost is. Ex. A 2, Docket 206. There is no explanation as to whose equity is being gifted, and who is receiving such equity. The gift equity appears to render the purchase price of \$325,000 insufficient to cover all costs. As such, it appears Debtor or Buyer will need to come up with an additional \$14,718.80 in order to actually close escrow. *Id.* at 3. Furthermore, there is no actual purchase agreement submitted with the court, so the terms of the sale are unknown.

At the hearing, **XXXXXXX**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**.

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor will be able to pay off all creditors in full with proceeds from the sale.~~

Movant has explained that there is no broker's commission involved in this transaction. Decl. 2:8-11, Docket 205.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court to allow the escrow to close as soon as practicable following approval of sale, as the sale will have no impact on the completion of the Plan. Mot. 2:12-13, Docket 202.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief 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 Sell Property filed by Stephen Anthony Gingold and Karen Michelle Gingold, 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,

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~~**IT IS ORDERED** that Stephen Anthony Gingold and Karen Michelle Gingold, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b)~~

to Robin Gingold or nominee ("Buyer"), the Property commonly known as 236 East Kentucky Street, Fairfield, California, 94533 ("Property"), on the following terms:

- ~~\_\_\_\_\_~~ A. The Property shall be sold to Buyer for \$325,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit ~~xx~~, Dekt. ~~xx~~, and as further provided in this Order.
- ~~\_\_\_\_\_~~ B. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- ~~\_\_\_\_\_~~ C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- ~~\_\_\_\_\_~~ D. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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

~~\_\_\_\_\_~~ **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

**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, all creditors and parties in interest, and Office of the United States Trustee on June 25, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Substitute 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. Opposition was stated.

**The Motion to Substitute is denied.**

#### **August 6, 2024 Hearing**

The court continued the hearing on this Matter to allow for Opposition and Reply Pleadings to be filed. The court ordered "Opposition pleadings shall be filed and served on or before July 24, 2024, and Reply Pleadings, if any, filed and served on or before July 31, 2024." Docket 257. The secured creditor in this case Placerville Investment Group, LLC ("Creditor") filed its Opposition on July 24, 2024. Opp'n., Docket 260. Creditor states:

1. The case is almost a year old with no Chapter 13 Plan confirmed. *Id.* at 1:22-23.

2. Most cases applying Fed. R. Bankr. P. 1016 involve substitution where a plan has already been confirmed. *Id.* at 2:15-16.
3. The interest of pre-petition and post-petition creditors must be considered, not the interests of the deceased debtor or his heirs (citing *In re Sanford*, 619 B.R. 380, 388-89. (Bankr. E.D. Mich. 2020)). Opp’n. at 2:23-24.
4. The case should be dismissed because there is no confirmed plan, and under 11 U.S.C. § 1321 only a debtor (not the estate or a debtor’s representative) may propose a plan. *Id.* at 3:4-7.
5. A case should presumptively not proceed in bankruptcy where a debtor dies before plan confirmation (citing *In re Spiser*, 232 B.R. 669, 674 (Bankr. N.D. Tex. 1999)). Opp’n. at 3:10-12.
6. Proceeding with this bankruptcy case would interfere with the probate proceedings. The proposed substitution of Humas Madaan may be improper where he is not the sole heir, having two siblings who were also dependent on the deceased Debtor, each being entitled to an equal share of the deceased Debtor’s estate in probate. *Id.* at 4:11-14.
7. The Motion fails to satisfy Rule 1016's requirement that going forward is in the best interest of the parties. *Id.* at 5:25-26. Humas, only nineteen years of age, would be charged with operating a liquor store over a five year period to generate profits for the benefit of creditors. This idea is wholly impractical and a likely failure. *Id.* at 5:27-6:2.
8. Humas cannot hold the liquor license because he is not yet twenty-one years of age. *Id.* at 6:3-4. Furthermore, it appears the license is to be transferred to Sonia Madaan, who is not subject to the jurisdiction of this court. The license is the only unencumbered asset of the estate with material value. The license is set to expire at the end of August of this year, and there is no evidence that fees have been paid to ensure the license does not expire shortly. *Id.* at 6:3-17. There are too many risks involved in having Humas run the business while being too young to hold the liquor license.
9. The Amended Plan proposes that upon confirmation assets of the estate revert in the Debtor. There is no precedent for “revesting” assets in a non-debtor such as Humas, who of course is a stranger to the chapter 13 case and the court’s jurisdiction, and thus the course of action proposed by Humas is not feasible. For all these reasons the Motion should be denied. *Id.* at 7:8-14.

### **Reply, Humas Madaan**

On July 31, the proposed substitute representative Humas Madaan filed a Reply to Creditor’s Opposition. Docket 263. Mr. Madaan argues:

1. The cases Creditor cites are distinguishable from this case. *Id.* at 3:8-12.
2. *In re Wells* 2024 WL 3029484 (Bankr. W.D. Wash. 2024) is directly on point and is applicable. *Id.* at 3:13-16.
3. There will be no California Probate Case involved here. *Id.* at 4:5-9.
4. Humas Madaan is currently operating the 99 Cent Store generating the necessary income to continue to fund the Chapter 13 Plan. *Id.* at 4:12-13.
5. There has been substantial work toward confirming a plan with the last outstanding issue the Motion to Value Creditor's collateral. *Id.* at 2:2-6.
6. Ankit Madaan has made a firm commitment to help fund the Chapter 13 Plan if necessary to ensure feasibility and ensure "possible" as provided in FRBP 1016. *Id.* at 4:20-21.
7. The present Chapter 13 case requires one order valuing the 99 Cent Store. There are no other pending issues. Confirming the proposed Chapter 13 Plan is in the best interest of all parties. *Id.* at 5:9-10.
8. Creditor requests this Court only look at their subjective opinion which is not credible. Creditor has opposed everything in this case and has not supported their opposition with admissible factual evidence or declaratory support. This is consistent with Creditor's approach in the present case. *Id.* at 5:11-13.
9. General unsecured creditors are to receive a pot of \$52,000.00 that they will not receive if this case is dismissed and none of the general unsecured creditors have objected to the Chapter 13 Plan. *Id.* at 5:20-22.
10. All creditors in this case will receive funds with the continuation of this Chapter 13 case more quickly than if this case were dismissed, and some will not receive anything upon dismissal. *Id.* at 6:3-4.
11. FRBP 1016 does not suggest that if a debtor dies before the Plan is confirmed then the case should be dismissed. FRBP 1016 provides: "the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." The plain unambiguous language provides the continuation of the Chapter 13 AND conclusion do not have to be exactly as the case would have been; so far as possible. *Id.* at 7:7-10.

Mr. Madaan submits two Declarations in support of the Reply. Dockets 264, 265. In his own Declaration, Mr. Madaan states "[Creditor] has opposed everything in the case, so [he] does not find their opposition credible. . . [Creditor] clearly does not want human beings to obtain the relief the Bankruptcy Code provides." Decl. ¶¶ 4, 7, Docket 264. Mr. Madaan testifies that he is currently running the store without any issue with his mother and continues to make Chapter 13 Plan payments. *Id.* at ¶ 8. He also testifies he has

support form a family member Ankit Madaan, as well as his entire community. *Id.* at ¶ 9. He testifies all fees are paid with the liquor license and it will not expire in August of 2024. *Id.* at ¶ 12. Mr. Madaan makes the legal conclusions that it is in the best interest of all creditors to continue the case. *Id.* at ¶¶ 22, 23.

Mr. Mindin J. Reid testifies in his Declaration in support that there is no need for a probate proceeding in this case, and that the liquor license will not expire this year in August of 2024. Decl. ¶¶ 4, 5, Docket 265.

## **DISCUSSION**

11 U.S.C. § 1321 provides “The debtor shall file a plan.” There is no language of a substituted representative having authority to follow a plan. Fed. R. Bankr. P. 3015 further states:

The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

Again, only the debtor in a Chapter 13 case is given the authority to file a plan. “Debtor” is defined as a “person or municipality concerning which a case under this title has been commenced.” 11 U.S.C. § 101(13). Mr. Madaan did not commence the case and is not the debtor in this case. Collier’s treatise on bankruptcy states:

The chapter 13 debtor has the exclusive right to file a plan. The exclusive right on the part of the debtor to file a chapter 13 plan is in keeping with the voluntary nature of chapter 13 relief. The chapter 13 trustee is expected to advise and assist the debtor in the preparation of a plan, but may not file a plan.

8 COLLIER ON BANKRUPTCY ¶ 1321.01. Only the debtor appears to be authorized to file a plan. The same holds true for filing an amended plan. 11 U.S.C. § 1323 states:

(a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1322 of this title.

Collier’s treatise on bankruptcy states on the issue of modifications that, “[o]nly the debtor may file a chapter 13 plan and only the debtor may file a modification of the plan prior to confirmation.” 8 COLLIER ON BANKRUPTCY ¶ 1323.02.

In this case, a Plan has already been filed, but is yet to be confirmed. The Plan may need revisions or amendments depending on how this court rules on the Motion to Value.

## **Review of Humas Madaan Testimony**

Humas Madaan provided his First Declaration in support of this Motion. Dec. Dckt. 244. In this First Declaration Humas Madaan’s testimony, as summarized by the court, is:



- A. Humas Madaan is nineteen (19) years old and the son of the deceased Debtor. Dec., ¶ 1; Dckt. 244.
- B. Humas Madaan is the only heir of the deceased Debtor. *Id.*; ¶ 2.

No other testimony is provided for how Humas Madaan, as successor representative, can run the deceased Debtor's business that is property of the Bankruptcy Estate.

The court ordered there to be further briefing of this matter and allowed the filing of further evidence. A Second Declaration of Humas Madaan was filed. Dec.; Dckt. 264. In this Second Declaration Humas Madaan's testimony, as summarized by the court, is:

- A. Humas Madaan testifies that he has no idea why the deceased Debtor's death certificate states that Debtor was married to Sonia Madaan. Second Dec., ¶ 3; Dckt. 264.
- B. Humas Madaan states a conclusion that:
  - 1. "Facts in this case support it is more than possible, in the best interest of the parties, that this Chapter 13 case may proceed and be concluded in the same manner as though my father had never committed suicide ." *Id.*; ¶ 5.
  - 2. "The facts of this case are precisely in line with this case continuing given the untimely death of my father." *Id.*; ¶ 6.

While concluding that such "facts" exists, Humas Madaan fails to provide the court with personal knowledge testimony of such facts. Fed. R. Evid. 602.

- C. Humas Madaan then states his conclusion that the objecting Creditor "[c]learly does not want human beings to obtain the relief the Bankruptcy Code provides." *Id.*; ¶ 7.
- D. Humas Madaan states that he is "running the store without issue with the help of my mom," who is not identified in the testimony of Humas Madaan. *Id.*; ¶ 8.
- E. Humas Madaan states that he has the support of his family member Ankit Madaan, plus all of Humas Madaan's family members, and "the entirely community of Wheatland. . . ." *Id.*; ¶¶ 9, 10.
- F. Humas Madaan and his mother are in discussions with the ABC regarding the Liquor License, the fees have been paid, and that Humas Madaan believes that issues relating to the Liquor License are "just a matter of procedure." *Id.*; ¶¶ 11-12.
- G. Humas Madaan testifies that unidentified probate attorneys have been consulted and there will be no probate proceeding filed. *Id.*; ¶ 13.
- H. Humas Madaan testifies that he has worked at the Wheatland 99 Cent Store & Liquor for around five years and knows the operation. *Id.*, ¶ 14.

- I. Humas Madaan testifies that numerous family members, who are more than 21 years old, are involved in the business and will be responsible for selling liquor until Humas Madaan turns 21 years of age. *Id.*; ¶ 15.
- J. Humas Madaan testifies his conclusion that he can operate the business. *Id.*; ¶ 18.

This Declaration “testimony” is long on Humas Madaan’s conclusions that he dictates to the court and short with testimony of personal knowledge facts. This testimony is in the nature of Humas Madaan being a figurehead, with others behind the scene running the show.

The Declaration of Mindin J. Reid, Esq. is also filed in support of the Motion. Dec.; Dckt. 265. This testimony includes that Attorney Reid is a license attorney who has practiced probate law for nine (9) years, and has administered forty-one (41) probate cases. *Id.*; ¶ 1, 2.

Attorney Reid states that a conclusion that there is “no need for a probate case to be opened” and that such a case would not be in the best interest of the parties. *Id.*; ¶ 4. Further, that Attorney Reid has reviewed Debtor’s holographic will. *Id.*; ¶ 3.

Attorney Reid, while dictating a conclusion that no probate proceeding needs to be opened, Attorney Reid provides no factual testimony of the facts and the applicable law that would lead to such a conclusion. The testimony provided could be construed to sound more in the nature to trying to avoid probate proceedings and use bankruptcy as a backdoor workaround California law.

Attorney Reid does not provide testimony and analysis of the holographic will, and no copy of the holographic will has been provided. This creates the appearance that Humas Madaan is being used as a figurehead for those behind the scenes family members and it may be that bankruptcy is being used to subvert California probate and inheritance law with people who have no right to the deceased Debtor’s assets taking the assets through the Bankruptcy Case.

In the Reply Points and Authorities filed by counsel for Humas Madaan, the court notes that while long on arguments, it is short on legal authorities. With respect to the issue of whether a probate proceeding needs to be commenced and who under California law is the successor to Debtor’s assets and rights (inheritance) there is no legal analysis of facts and law, but only the argument that based on Attorney Reid’s conclusion, no probate proceedings need to be commenced. Reply, p. 2:13-17; Dckt. 263.

### **Review of Schedules Filed by Debtor**

On May 23, 2024, Debtor filed an Amended Schedule I and Amended Schedule J. Dckt. 227. On Amended Schedule I Debtor stats that he is a self employed owner of Wheatland 99 Cents & Liquor. Sch. I; Dckt. 227 at 1. Debtor states in response to ¶ 8 of Amended Schedule I that he has \$6,449.00 in monthly net income from running his Business. *Id.* at 2. However, Debtor failed to attach and file with Amended Schedule I the required gross income and expenses statement for the Business. *Id.* (The court has review the prior filed Amended and Original Schedules I and did not find the gross income and expense attachment filed with any of them.)

On Amended Schedule J Debtor states that he has three sons, ages 13, 16, and 18. *Id.* at 3. On Amended Schedule J Debtor states under penalty of perjury that his housing expense is \$800 a month, that

he \$0.00 in any repair and maintenance expense, that his utilities (gas and electric) are only \$75 a month, his water/sewer/garbage expense is \$50 a month, his and his son's clothing expense is only \$20 a month, and food and housekeeping supplies for his family unit (Debtor and three teenage sons) are only \$390 a month. *Id.* at 3-4.

On Amended Schedule J Debtor states that he pays no income tax, self-employment tax, and no Social Security tax. *Id.* at 4.

In reviewing the Statement of Financial Affairs, Part 2, Debtor states that for the first seven months in 2023, Debtor's gross income from his business was \$421,000, and that for 2022 it was \$855,082 and for 2021 it was \$822,636. That averages \$60,142 in monthly gross income in 2023, \$71,256 in 2022, and \$68,553 in 2021.

Using the lower monthly gross income of \$60,142 a month and Debtor having net income of only \$6,449, then Debtor's monthly expenses are eating up 89% of the monthly gross income, with the business having only an 11% profit margin.

### **Plain Language of Fed. R. Bankr. P. 1016 and 11 U.S.C. § 1321**

Starting with Federal Rule of Bankruptcy Procedure 1016 states that in the event of the death of a Chapter 13 debtor, the case may be dismissed, or if further administration is possible and in the best interests of the parties, "the case may proceed and be concluded in the same manner" as though the death had not occurred. This Rule requires the court to proceed to the Bankruptcy Code to see if it can be administered as if the debtor had not died.

Since no Plan has been confirmed in this Bankruptcy Case, much of the argument has focused on the provisions of 11 U.S.C. § 1321 that says "The **debtor shall** file a plan" (emphasis added). It is argued that since no plan has been confirmed and the proposed plan will likely need to be amended – there is no Debtor to file such Plan/amendments.

As the court and counsel know, the Supreme Court provides in Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 7025, 9014 that in the event of a party in interest, including the debtor, a successor representative can be appointed and the litigation (whether adversary proceeding or the bankruptcy case) can proceed. The successor representative then fulfills the obligations of the debtor and has all of the fiduciary duties and obligations to the bankruptcy estate and arising under the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

After reading the Plan language of the Statutes and Rules, the court concludes that the death of the Debtor does not automatically result in the dismissal of the case merely because a Chapter 13 plan has not been confirmed.

### **Determination Not to Appoint Humas Madaan as the Successor Representative**

The court considers the evidence presented by Humas Madaan and his attorney, who served as counsel for the deceased debtor. The court has allowed supplemental pleadings to be filed, affording Humas

Madaan and his attorney an extended opportunity to provide the court with evidence to support granting the Motion. The evidence, as presented, appears to be the best that could be provided.

As is discussed above, the court concludes that Humas Madaan, the nineteen year son of the deceased Debtor, has not provided the court with evidence that he can fulfill the duties and obligations of a successor representative.

Humas Madaan is a nineteen years son of the deceased Debtor. He does not provide any testimony about his experience in running this type of business, what he has been employed to do at the business in the past, and how running this business (and being the fiduciary in this Case and under any Chapter 13 Plan) fits with his post high school plans for the next five years.

The testimony of Humas Madaan fails to provide testimony and evidence of his knowledge and ability to run a business with gross income of approximately \$800,000 a year. Rather, he states conclusions he reaches and dictates to the court.

Humas Madaan's testimony further reflects that there are a multitude of other family members working behind the scenes to run the business. He makes reference to his mother (but does not name her) as a person who is running the business with him.

The court has quoted the two Declarations of Humas Madaan to show how they do not contain relevant facts concerning his ability to run this business, fulfill the fiduciary duties as the successor representative of the deceased Debtor, and perform a Chapter 13 Plan. If Humas Madaan had such facts to present the court, he would have done so with the assistance of his experienced bankruptcy counsel (who also was counsel for the deceased Debtor).

From the evidence presented, the court concludes that Humas Madaan is a figurehead that has been placed to obfuscate the persons who are/intend to run and profit from its operation and assets. He has presented the court with general conclusions and statements, which do not provide the court with evidence to conclude that he can do the job.

The court is further concerned given the testimony of Mindin J. Reid, Esq., the probate attorney presented to the court. Attorney Reid just dictates a conclusion that no probate proceedings are required, providing no evidence or even summary legal analysis as to why such is dictated to the court.

While Attorney Reid references a holographic will, no copy of it is provided to the court. The court finds it further interesting that Attorney Reid fails to provide even a conclusion to the court who the heirs are of the deceased Debtor and who are the real parties in interests who have inherited the deceased Debtor's rights and property.

Though the court does not make any findings of fact with respect to the following, from what has been presented to the court it may well be that the various persons who are behind the proposed figurehead Humas Madaan are attempting to divert assets from the heirs of the deceased Debtor and divert them to themselves. This further undercuts the credibility of what has been presented to the court in this Motion.

The Motion to appoint Humas Madaan as the successor representative of the deceased Debtor Satinder Singh and waive specified provisions of the Bankruptcy Code is denied.

## REVIEW OF THE MOTION

Humas Madaan (“Mr. Madaan”), deceased Debtor Satinder Singh’s son and only competent heir, seeks an order approving the motion to substitute Mr. Madaan for the deceased Debtor Satinder Singh (“Debtor”). This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 13 on July 31, 2023. No Plan has yet been confirmed, issues having been ongoing regarding valuing property. On June 23, 2024, Debtor passed away. Mr. Madaan asserts that he is the lawful successor and representative of Debtor. Madaan Decl. 2:1-2, Docket 244.

Pursuant to Federal Rule of Bankruptcy Procedure 1016, Mr. Madaan requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Notice of Death was filed on June 25, 2024. Dckt. 243. Mr. Madaan is the son of the deceased party and is the successor’s heir and lawful representative. Mr. Madaan states he will continue to prosecute this case in a timely and reasonable manner. Madaan Decl. 2:1-2, Docket 244.

## DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes 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 a debtor in Chapter 13 dies. *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.

The application of Rule 25 and Rule 7025 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*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther 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.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

### **Appointment of Successor Representative to Prosecute a Chapter 13 Case**

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.

9 COLLIER ON BANKRUPTCY ¶ 1016.04 provides a discussion of the application of Federal Rule of Bankruptcy Procedure 9016 in Chapter 13 cases, including the following (emphasis added):

In a chapter 12 or 13 case, the confirmation and successful completion of a chapter 12 or 13 plan are almost always dependent upon the debtor’s future earnings. Thus, the debtor’s death will often lead to dismissal of the case because the debtor will likely have no future income. Alternatively, if a plan has been confirmed, the court

may enter a hardship discharge under section 1328(b), which would preserve the benefits of discharge for the debtor's estate.

**Nevertheless, since chapter 13 is viewed as a voluntary proceeding, in many cases, unless a plan was confirmed prior to the debtor's death, the case will be dismissed even if the debtor's estate has sufficient income to fund a plan.** Indeed, it has been held that if the originally proposed plan cannot be confirmed after a debtor's death, the case must be dismissed because no one but the debtor may propose a plan under section 1321.<sup>3</sup> The same court held that the case could not be converted to chapter 7 because, under section 109, a probate estate is not eligible to be a debtor in a chapter 7 case.<sup>4</sup> Courts have also held that conversion, which would prevent creditors from reaching assets they could otherwise pursue, would not be in the interest of creditors and therefore would not satisfy the dictates of Rule 1016.5 However, if a debtor has proposed a confirmable plan and that plan is still feasible after the death of the debtor, the court may allow the case to continue for the benefit of the debtor's estate.<sup>6</sup> And a court may permit the debtor's estate to propose a plan that would allow the case to proceed.<sup>7</sup>

3. *In re Martinez*, 2013 Bankr. LEXIS 4853 (Bankr. W.D. Tex. Nov. 15, 2013); *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999).

4. *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999); *see also* 11 U.S.C. § 1307(f) (case may not be converted from chapter 13 to another chapter unless debtor may be a debtor under that chapter).

5. *In re Hancock*, 2009 Bankr. LEXIS 2174 (Bankr. N.D. Okla. Aug. 10, 2009); *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999).

6. *In re Fogel*, 550 B.R. 532 (D. Colo. 2015) (reversing order that dismissed case and denied waiver of financial education requirement where plan had been completed and personal representative sought deceased debtor's discharge); *In re Perkins*, 381 B.R. 530 (Bankr. S.D. Ill. 2007) (denying trustee's motion to dismiss and rejecting argument that Rule 1016 is inconsistent with the statute); *In re Stewart*, 52 C.B.C.2d 1197 (Bankr. D. Or. 2004) (completion of plan was in interest of creditors and debtor's heirs).

7. *In re Terry*, 543 B.R. 173 (E.D. Pa. 2015) (affirming confirmation of plan in case of deceased debtor where debtor's income not necessary to plan); *In re Lewis*, 2011 Bankr. LEXIS 1765 (Bankr. E.D.N.C. May 12, 2011) (debtor's executor proposed plan under which debtor's family would lease debtor's residence, providing income to pay creditors).

The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Notice of Death. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Mr. Madaan, as the son of the deceased party and as the successor's heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Satinder Singh. The court grants the Motion to Substitute Party.

The court waives the 11 U.S.C. § 1328(g) Certification requirement, the court finding it is not necessary for Mr. Madaan to complete this instructional course concerning personal financial management for the late Debtor.

However, the Motion also requests the court enter an order waiving other 11 U.S.C. § 1328 requirements without specifying which ones to be waived. The Motion requests: “Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications.” Mot. 2:21-22, Docket 243. The court cannot issue a blanket order waiving all requirements without some specific facts warranting such a waiver and describing with particularity which certifications to be waived.

### **June 16, 2024 Hearing**

At the hearing, opposition was stated by counsel for Placerville Investment Group.

The hearing on the Motion to Substitute is continued to 2:00 p.m. on August 6, 2024. Opposition pleadings shall be filed and served on or before July 24, 2024, and Reply Pleadings, if any, filed and served on or before July 31, 2024.

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

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

The Motion for Substitute After Death filed by 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 Substitute Humas Madaan as the successor representative of deceased Debtor Satinder Singh and related relief is denied.



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, attorneys of record who have appeared in the case, creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2024. 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).

<p><b>The Motion to Confirm the Modified Plan is <del>granted</del>.</b></p>
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The debtor, Rhonda Faye Roberts (“Debtor”) seeks confirmation of the Modified Plan as she had some unexpected expenses come up, including having to pay taxes. Declaration ¶ 2, Docket 30. The Modified Plan provides for Debtor having paid a total of \$8,864.70 through June 2024, and plan payments of \$2,530.00 per month to commence July 25, 2024 for 55 months to completion. Modified Plan § 7, Docket 31. 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 July 23, 2024, purely on procedural grounds. Docket 37. Trustee states Debtor never marked the recently filed Schedules I and J as Amended or Supplemental at Docket 33. Furthermore, it appears Debtor did not serve Schedules I and J on the interested parties in violation of Local Bankruptcy Rule 3015-1(d)(2).

## **DISCUSSION**

Upon the court's review of the Schedules, Schedule I is not marked as amended or supplemental, while Schedule J is marked as supplemental. Schedule J at 6, Docket 33. At the hearing, **XXXXXXX**

Local Bankruptcy Rule 3015-1(d)(3) states, in the event of a default in plan payments:

Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, **amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.**

(Emphasis added). Debtor's Certificate of Service at Docket 32 does not show that the Schedules were served with this Motion. At the hearing, **XXXXXXX**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Rhonda Faye Roberts ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 2, 2024, 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.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on July 2, 2024. 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).

<b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXXXX</span>.</b>
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The debtor, Nelson A Madsen and Sharon L Burns ("Debtor") seeks confirmation of the Modified Plan because Debtor was late with plan payments. Declaration ¶ 2, Docket 109. The Modified Plan provides for Debtor having paid a total of \$151,299.63 through June 2024, and plan payments of \$6,130.00 per month to commence July 25, 2024 for 31 months to completion. Modified Plan § 7, Docket 110. 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 July 23, 2024. Docket 115. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan appears to fail the Chapter 7 liquidation test. The Debtor's non-exempt equity totals \$11,048.99 and the Debtor proposes to pay the unsecured creditors a zero percent (0%) dividend. Opp'n 1:25-27, Docket 115.

- B. Supplemental Schedules I and J do not appear to have been served with this Motion, not being listed on the Certificate of Service. *Id.* at 2:15-19.
- C. In violation of Local Bankruptcy Rule 9014-1(d) and Fed. R. Bankr. P. 9013, Debtor cites to no applicable law in support of the Motion. *Id.* at 3:3-7.

## DISCUSSION

### Liquidation Analysis

Trustee argues that Debtor fails a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides “the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.” Here, General unsecured creditors will receive a 0% distribution, Plan, Docket 110 § 3.12, but Trustee estimates Debtor has \$11,048.99 in non-exempt equity in assets of the estate.

At the hearing, **XXXXXXX**

### Service of Supplemental Schedules

Local Bankruptcy Rule 3015-1(d)(3) states, in the event of a default in plan payments:

Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor’s financial condition has materially changed, **amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.**

(Emphasis added). Debtor’s Certificate of Service at Docket 111 does not show that the Schedules were served with this Motion.

At the hearing, **XXXXXXX**

### Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,

545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. See 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

In this case, Debtor cited to no sections of the Code whatsoever in support of the Motion, in violation of Rule 9013, failing to state with particularity grounds to confirm the Modified Plan. It is true that Debtor mentions some of the elements of 11 U.S.C. § 1325(a) in the Motion, such as stating the Modified Plan has been proposed in good faith. However, the lack of citation to specific sections in support of confirmation falls short of Rule 9013 pleading.

At the hearing, **XXXXXXX**

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

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

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

**IT IS ORDERED** that Motion to Confirm the Modified Plan is **XXXXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2024. 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).

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

The debtor, Charmayne Lee Shultz ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for Debtor having paid a total of \$820 through June 2024, and plan payments of \$765 per month to commence July 25, 2024 for 58 months to completion. Amended Plan § 7, Docket 45. 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 17, 2024. Docket 51. Although Trustee ultimately recommends confirmation, Trustee lists the following minor concerns with the Amended Plan:

- A. The Trustee calculations show the monthly attorney's fee payments is \$1.98 too high at \$118.65 per month, where it should be \$116.67 per month. *Id.* at 2:3-6.

- B. It is not clear who is paying the utilities. Amended Schedule J at Docket 47 identifies that “Family members pay utilities;” however, line #6 shows the Debtor paying \$580.00 total utilities. Opp’n at 2:7-11.

## **DEBTOR’S REPLY**

Debtor filed a Reply on July 29, 2024. Docket 55 Debtor stats the Order confirming can adjust attorney’s fees. Debtor further states that unallocated social security will cover utilities in the event the family does not “live up to their word.”

## **DISCUSSION**

In clarifying the attorney’s fee monthly payment and the issue of who pays utilities, at the hearing, **XXXXXX**

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Charmayne Lee Shultz (“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 July 2, 2024, 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.

13 thru 14

**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, parties requesting special notice, and Office of the United States Trustee on July 3, 2024. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
---

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

1. The debtor, Alyn Marie Ojanpera Grayson and Edward Allen Grayson ("Debtor"), is delinquent \$1,250 in plan payments. Obj. 1:1-2, Docket 16.
2. Debtor Edward Allen Grayson failed to submit a legible copy of proof of his social security number to the Trustee before the First Meeting of Creditors held on June 27, 2024. *Id.* at 2:9-10.
3. Debtor electronically signed their Plan and Schedules without providing we signatures to their attorney. *Id.* at 2:20-26.



4. The Debtor has failed to provide the Trustee with a tax transcript or a copy of their Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. *Id.* at 3:1-6.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket18.

## **DISCUSSION**

### **Delinquency**

Debtor is \$1,250 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. The Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Failure to Authenticate Identity**

Fed. R. Bankr. P. 4002(b)(1) provides:

Individual Debtor's Duty To Provide Documentation.

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

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

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

Here, Debtor has not provided evidence of social-security number(s), or a written statement that such documentation does not exist in preparation of the 341 Meeting. This is cause to sustain the Objection.

### **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).

### **Debtor's Signatures**

Local Bankruptcy Rule 9004-1(c) provides:

All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in *propria persona*. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

Here, Debtor has not signed the Plan or Schedules in violation of this Rule. That is cause to deny confirmation.

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, and Office of the United States Trustee on June 13, 2024. By the court's calculation, 54 days' notice was provided. 14 days' notice is required.

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

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
---

HSBC Bank USA, National Association as Trustee for Merrill Lynch Mortgage Investors, Inc., Mortgage Pass-Through Certificates, MANA Series 2007-A1 as serviced by Newrez LLC dba Shellpoint Mortgage Servicing (fka Specialized Loan Servicing LLC) ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. The Plan does not account for Creditor's arrearage in the amount of \$4,254.42. When this arrearage is added to the Plan, Debtor's income will be sufficient to make plan payments. Obj. 2:11-22.

Creditor did not submit any Declaration in support.

## DISCUSSION

### 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 \$4,254.42 in pre-petition arrearage. POC 6-1. The Plan does not propose to cure that arrearage. 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 arrearage.

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 HSBC Bank USA, National Association as Trustee for Merrill Lynch Mortgage Investors, Inc., Mortgage Pass-Through Certificates, MANA Series 2007-A1 as serviced by Newrez LLC dba Shellpoint Mortgage Servicing (fka Specialized Loan Servicing 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 sustained, and the proposed Chapter 13 Plan is not confirmed.

15 thru 16

**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, parties requesting special notice, and Office of the United States Trustee on July 3, 2024. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

<b>The Objection to Confirmation of Plan is sustained.</b>
--

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

1. Debtor Lonna Sue Sanders ("Debtor") is delinquent \$488 in plan payments. Obj. 2:1-2, Docket 20.
2. Debtor has not filed all required tax returns. *Id.* at 2:8-14.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 22.

**DISCUSSION**  
**Delinquency**

Debtor is \$488.00 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).

#### **Failure to File Tax Returns**

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2022 and 2023 tax years have still not been filed. 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).

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.

16. [24-22168-E-13](#)  
[CLB-1](#)

**LONNA SANDERS**  
**Michael O’Dowd Hays**

**OBJECTION TO CONFIRMATION OF  
PLAN BY JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION  
7-5-24 [24]**

**Final Ruling:** No appearance at the August 6, 2024 Hearing is required.

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**JPMorgan Chase Bank, National Association (“Creditor”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar.**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, attorneys of record who have appeared in the case, creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2024. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXXXX</span>.</b></p>
--

The debtor, Edward Allen Varner and Kirsten Elizabeth Varner (“Debtor”) seek confirmation of the Modified Plan to reduce the proposed percentage to unsecured creditors from 19% to 15% based on the unsecured deficiency claim filed by Travis Credit Union resulting from a surrender of Debtor’s vehicle. Declaration 2:6-16, Docket 34. /July 2024 will be month 60 of the Plan. The Modified Plan provides for monthly payments of \$215 with a 15% dividend to unsecured creditors. Modified Plan, Docket 40. 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 July 23, 2024. Docket 37. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor never filed the Modified Plan with the court. *Id.* at 1:25-2:3.

- B. No supplemental Schedule I & J have been filed to support this motion so the Court may find the debtor has not proven they can afford the payments. *Id.* at 2:5-9.

## DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on August 1, 2024. Docket 42. Debtor states:

The failure to file the Modified Chapter 13 Plan with the Motion to Modify was counsel's error. The Modified Chapter 13 Plan was served with the Motion to Modify, but the documents was not submitted for electronic filing. *Id.* at 1:26-28.

Debtors filed Supplemental Schedules I and J on July 30, 2024. *Id.* at 2:6-7.

## DISCUSSION

Indeed, upon filing the Motion, it appears that Debtor inadvertently failed to file the Modified Plan with the court. However, Debtor indicated on their certificate of Service at Docket 36 that the Modified Plan had been served on the interested parties. Debtor did eventually file the Modified Plan on July 24, 2024. Docket 40.

Moreover, Debtor is not changing the monthly plan payments for their Modified Plan. The original Plan at Docket 4 and the Modified Plan at docket 40 both call for plan payments of \$215. There has been no default in payments giving rise to the Modified Plan, Debtor being current. There has been no material change in Debtor's financial condition. The only change in the Plan being made is reducing the amount to unsecured creditors based on a new unsecured claim. Therefore, the court finds that a Supplemental Schedule I and J are not necessary for purposes of this Motion. *See* Local Bankruptcy Rule 3015-1(g)(3) (providing if there has been default and if "the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.").

However, in order to ameliorate Trustee's concerns, Debtor did ultimately file Supplemental Schedules I and J, noting the final plan payment has already been made. Docket 41.

At the hearing, **XXXXXXX**

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Edward Allen Varner and Kirsten Elizabeth Varner ("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 July 24, 2024, 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.

18. [24-22280-E-13](#)  
[DPC-1](#)

**MICHAEL/JODIE MEDINA**  
**Pauldeep Bains**

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK**  
**7-1-24 [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).**

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 1, 2024. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
---

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

1. The plan without explanation provides for no payment to any claim filed by "Alec Snowden." Where any claim filed is deemed allowed unless a party

in interest objects, (11 U.S.C. §502(a)), Debtor seeks to re-write the Bankruptcy Code. Obj. 1:25-2:2, Docket 15.

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Objection. Decl., Docket 17.

Proof of Claim 21-1 was filed on August 2, 2024, by counsel for Alec Snowdon, for \$4,400,000. This Claim is stated to be for personal injury damages.

## DISCUSSION

Debtor's proposed Plan contains the following language in the non-standard provisions section:

Schedule E/F discloses a potential creditor on line 4. by the name of Alec Snowdon. This claim is Contingent, Unliquidated, and Disputed. The amount claimed by this potential creditor is \$4,400,000.00. Trustee shall not disburse funds to this potential creditor pursuant to the terms of this plan.

Plan § 7.01, Docket 3. The Bankruptcy Code defines a claim as:

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, **unliquidated**, fixed, **contingent**, matured, unmatured, **disputed**, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5) (emphasis added). A creditor is defined as:

(10) The term "creditor" means—

(A) **entity that has a claim against the debtor** that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim.

11 U.S.C. § 101(10) (emphasis added). In reading these definitions together, it is clear that a creditor with an unliquidated, contingent, or disputed claim may nonetheless file a proof of claim under 11 U.S.C. § 501. Furthermore, 11 U.S.C. § 502 states:

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

According to Section 3 of the standard Plan used in this District, a proof of claim will determine the amount and classification of a claim, not a debtor's Schedules or the Plan.

As noted above Proof of Claim 21-1 has been filed for Alec Snowdon.

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).**

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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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 22, 2024. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

<p><b>The Motion to Impose the Automatic Stay is granted.</b></p>
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Michael Anthony Valera and Angelique Marie Valera (“Debtor”) seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor’s third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor’s prior bankruptcy cases (Nos. 23-22080 and 24-20484) were dismissed on January 4, 2024, and June 5, 2024, respectively. *See* Order, Bankr. E.D. Cal. No. 23-22080, Dckt. 51, January 4, 2024; Order, Bankr. E.D. Cal. No. 24-20484, Dckt. 28, June 5, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed because Debtor Michael A. Valera’s business, demolition, suffered during the pandemic, which led Debtor to fall behind on plan payments. Decl. ¶ 1, Docket 13. Debtor explains business is on the rise now, their circumstances having changed, and are able to proceed with a viable plan for reorganization. *Id.* at ¶ 2.

## APPLICABLE LAW

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

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

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

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

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

11 U.S.C. § 362(c)(4)(D).

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

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

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

## DISCUSSION

Debtor's prior cases were dismissed after Debtor fell behind in plan payments in both cases. Debtor explains now the demolition business is back on the rise meaning they can afford a viable Plan, having competent counsel representing them in this case.

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

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

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

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

The Motion to Impose the Automatic Stay filed by Michael Anthony Valera and Angelique Marie Valera (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

20 thru 21

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

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

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on May 22, 2024. By the court's calculation, 13 days' notice was provided. The court set the hearing for June 4, 2024. Dckt. 22.

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

<b>The Motion to Impose the Automatic Stay is <span style="color: red;">XXXXXXX</span>.</b>
---

#### **August 6, 2024 Hearing**

The Motion to Impose the Automatic stay was granted by Interim Order through and including on August 16, 2024. Order, Docket 47. The hearing was continued to August 6, 2024, the court to determine whether to further extend the stay. A review of the Docket on August 1, 2024 reveals that nothing new has been filed with the court. Debtor explained at the hearing held on July 2, 2024, that Debtor would be filing an Amended Plan to address Creditor's concerns.

At the hearing, XXXXXXX

#### **REVIEW OF THE MOTION**

Tazmin Sabina Godamunne (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor’s third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor’s prior bankruptcy cases (Nos. 24-21368 and 24-21711) were dismissed on April 22, 2024, and May 13, 2024, respectively. *See* Order, Bankr. E.D. Cal. No. 24-21368, 9, April 22, 2024; Order, Bankr. E.D. Cal. No. 24-21711, 15, May 13, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that the previous cases were dismissed not due to willful inadvertence or negligence of her part, but because she was unsure of her rights as a Debtor in *pro se*. Decl., Docket 18 ¶¶ 6-7.

## CREDITOR’S OPPOSITION

Sunit Lohtia And Meenal S. Lohtia (“Creditor”) filed two Oppositions in this matter. Creditor’s initial Opposition filed on May 28, 2024, asserts Debtor has not overcome the presumption of bad faith in this recent filing. Opp’n, Docket 23. Creditor argues that because Debtor’s Declaration does not provide sufficient evidence to overcome the presumption of a bad faith filing. *Id.* at 7:20-8:1. Creditor also argues that, because Debtor has not made a payment as of yet, this also shows the filing was not in good faith. *Id.* at 8:2-8.

Creditor filed a second Opposition on May 30, 2024, in response to Debtor’s proposed Chapter 13 Plan and Schedules. Opp’n, Docket 31. This Opposition lays out arguments for why Debtor’s Chapter 13 Plan is not feasible, and also asserts Debtor has inaccurately reported information in her Schedules. Specifically, Creditor argues it should be paid \$10,969 monthly in its Claim (*Id.* at 5:19), and that Debtor has overstated her income where she cannot even afford the \$5,517 proposed plan payment (*Id.* at 6:21-25).

In summarizing Creditor’s Opposition, Creditor states that Creditor’s Claim is a (\$425,263.73) secured claim, with daily interest accrual of (\$188.74). Additionally, the payment on this loan in full is due August 1, 2025, with a final balloon payment of (\$363,900).

In the Supplemental Opposition, Creditor computes that the amount necessary to pay the Claim in full would be:

Principal Payment Monthly .....(\$6,065.00)

Interest Payment Monthly .....(\$3,900.00)

Arrearage Payment Monthly.....(\$1,004)

for a total monthly payment of (\$10,969.00). Supp. Opp., p. 3:7-11; Dckt. 31.

Creditor also reviews the history of there being no payments made to Creditor on this loan, with Debtor immediately going into default when the first monthly payment came due.

With a monthly interest payment of (\$3,900.00) and the principal balance of (\$360,000), this would appear to be a loan with approximately 13% per annum interest rate.



As filed, Creditor argues that the proposed Chapter 13 Plan does not provide to pay this claim in full during the term of the Plan.

## **REVIEW OF DEBTOR'S CHAPTER 13 PLAN**

Debtor, now represented by counsel, has her Chapter 13 Plan filed. Dckt. 29. The Plan is for a term of sixty (60) months, with Plan payments of \$5,517.00 per month. Over the sixty month term of the Plan that totals \$331,020 in Plan payments.

On Schedule D, Debtor lists Creditor having a claim of (\$423,887) and that the Property securing the Claim has a value of \$622,303.00. Dckt. 26 at 11.

The Plan states that Creditor is to receive the regular post-petition payment of \$3,900.00 and an arrearage cure payment of \$1,004 to cure the (\$60,250.00). But the Plan does not provide for paying the claim in full during the sixty (60) month term of the Plan – whether that would be from fully amortizing the repayment over the sixty months of the Plan or making adequate protection payments which the Debtor promptly proceeded with a commercially reasonable sale of the Property to preserve any exempt value.

It appears that if Creditor's claim totals (\$425,263.73), then amortizing it over sixty (60) months of a plan at 9.5% would require a monthly payment to Creditor of approximately (\$8,946.79). While not quite as high as Creditor computes it, a very substantial monthly payment. The (\$4,900.04) monthly plan disbursement to Creditor falls significantly short of that amount.

## **APPLICABLE LAW**

When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

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

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

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

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a

case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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

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

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

## DISCUSSION

Debtor's prior cases were dismissed after Debtor failed to timely file her Schedules and related Forms. Here, Debtor has knowledgeable counsel to assist her in prosecuting a viable Chapter 13 case, correcting the missteps in the previous cases. Her Schedules report income sufficient to fund a Chapter 13 Plan. *See* Schedule J 19, Docket 26.

This case has been filed to stop a foreclosure sale and reorganize debts. Successive filings to stop a foreclosure do not constitute a bad faith reason for filing a Chapter 13 Case, so long as a Debtor can show that there has been a positive change in circumstances. *In re Metz*, 820 F.2d 1495, 1498 (9th Cir. 1987). With knowledgeable counsel retained in prosecuting this case, and sufficient income present to fund a Plan, such positive change in circumstances is present.

However, filing the case to stop a foreclosure sale is not the end of the inquiry. The court considers what the Debtor will and can do in the Bankruptcy Case to prosecute and perform a confirmable Chapter 13 Plan. Merely having counsel working to move the case forward is not, in and of itself, sufficient to prevail on a motion to impose the Stay.

Here, Debtor is not showing how she can, and is willing, to confirm and perform a Chapter 13 Plan that provides for Creditor's Claim. As shown on Schedule D, the amount of Creditor's Claim (though Creditor has not yet filed a proof of claim) is not in dispute.

At the hearing, counsel for the Debtor addressed what good faith, confirmable Plan the Debtor was intending to pursue, stating the Debtor has come to accept that this property must be sold for Debtor to preserve her equity in it. Hopefully, there will be a buyer that will lease the property back to the Debtor so that she can continue to operate her daycare business there.

Creditor counsel expressed the continuing frustration with the Debtor, reminding the court and Debtor's counsel that Debtor immediately defaulted on this loan and has never made a payment. Debtor's counsel noted the high interest rate on this loan.

Debtor's counsel stated that a Plan will be filed in the next week, which will provide for the marketing and sale of the property securing creditor's claim in a commercially reasonable matter. Additionally, Debtor will make adequate protection payments beginning in June 2024 through the Plan in the amount of \$5,300.00, consisting of a \$3,900.00 interest payment and \$1,400.00 arrearage cure payment.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay on an interim basis while Debtor gets her plan on file and commences making the adequate protection payments through the Plan. The court continues the hearing to allow Debtor to accomplish the initial promises of action and payment.

### **July 2, 2024 Hearing**

The court continued the hearing to conduct the final hearing this Motion, having previously imposed the stay on an interim basis through and including July 28, 2024. Docket 38. A review of the Docket on June 27, 2024 reveals that nothing new has been filed with the court.

At the hearing, counsel for the Trustee reported that the first Plan payment has been made and Debtor has attended the 341 Meeting. Debtor is sending the Trustee copies of the tax returns and evidence of the non-debtor support for the Plan. The Motion to Employer a real estate broker will be filed the week of July 1, 2024.

The broker says that there are two interested buyers who would lease the property back to the Debtor for her business operation.

Debtor will be filing an amended Plan that will provide for the immediate sale of the commercial property.

Counsel for Creditor noted that the promises to hire a broker and move forward with employing a broker would be done.

The Motion to Impose the Automatic Stay is granted and the automatic stay is imposed on an interim basis through and including 11:59 p.m. on August 16, 2024.

The hearing is continued to 2:00 p.m. on August 6, 2024 at 2:00 p.m.

In light of the claims in this case and the Debtor's plan to promptly move for the marketing and sale of property, the confirmation hearing in this case will be set for 2:00 p.m. on September 24, 2024, notwithstanding the Debtor getting an amended plan and motion to confirm promptly on file.

The Debtor made an oral motion for the court to deny confirmation of the existing plan so that Creditor and the Chapter 13 Trustee would not need to file objections to confirmation. The court grants the request.

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

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

The Motion to Impose the Automatic Stay filed by Tazmin Sabina Godamunne (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

21. [24-22090-E-13](#)  
[MF-1](#)

**TAZMIN GODAMUNNE**  
**Eric Schwab**

**CONTINUED MOTION TO CONFIRM  
TERMINATION OR ABSENCE OF STAY  
5-20-24 [10]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, all creditors and parties in interest, attorneys of record who have appeared in the case, and Office of the United States Trustee on May 20, 2024. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Confirm Absence of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter xx 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, Opposition was stated by Debtor.

<b>The Motion to Confirm Absence of the Automatic Stay is <b>XXXXXXX</b>.</b>
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**August 6, 2024 Hearing**

The court continued the hearing on this Motion in conjunction with the Motion to Impose the stay. A review of the Docket on August 1, 2024 reveals that nothing new has been filed with the court. At the hearing, **XXXXXXX**

### **REVIEW OF THE MOTION**

Sunit Lohtia And Meenal S. Lohtia (“Movant”) moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(j). Movant pleads that the present case is Tazmin Sabina Godamunne’s (“Debtor”) third bankruptcy case pending in the last year. However, there is a motion seeking to impose the stay pursuant to 11 U.S.C. § 362(c)(4)(B) being heard in conjunction with this matter.

A review of Debtor’s prior bankruptcy cases reveals that two cases were pending in the prior year, such that the provisions of 11 U.S.C. § 362(c)(4)(i) applied, and the automatic stay did not go into effect upon the filing of this case. *See* Order, Bankr. E.D. Cal. No. 24-21368, Dckt. 9; Order, Bankr. E.D. Cal. No. 24-21711, Dckt. 15.

At the related hearing on Debtor’s Motion to Impose the Automatic Stay Debtor’s counsel and Movant’s counsel addressed various issues, including how Debtor (now represented by counsel) would move forward with a plan that provides for adequate protection payments to Movant and the commercially reasonable sale of the property that secures Movant’s claim.

Movant does not identify any actions taken by Movant or others during the period that no stay was in effect, but states that Movant is seeking this order to insure that all parties in interest are aware, by order of the court, that there is no automatic stay impacting the nonjudicial foreclosure sale Movant desires to have conducted.

The hearing on this Motion is continued to 2:00 p.m. on July 2, 2024, to be heard in conjunction with the final hearing on Debtor’s Motion to Impose the Automatic Stay.

### **July 2, 2024 Hearing**

The court continued the hearing to conduct the final hearing the Motion to Impose the Stay, having previously imposed the stay on an interim basis. Docket 38. A review of the Docket on June 27, 2024 reveals that nothing new has been filed with the court.

At the hearing, the Parties agreed to continue the hearing to 2:00 p.m. on August 6, 2024.

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

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

The Motion to Confirm Absence of the Automatic Stay filed by Sunit Lohtia And Meenal S. Lohtia (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

22. [24-21054-E-13](#)  
[BB-3](#)

DAVID DURYEE AND FELICA  
TORTORICI  
Bonnie Baker

MOTION TO CONFIRM PLAN  
6-25-24 [[53](#)]

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2024. 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 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).

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

The debtor, David Andrew Duryee and Felica Joseph Tortorici ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for two payments of \$3,000 for the month of April and May of 2024, and then payments of \$6,000 commencing on June, 2024 for the remaining 58 months with 0% going to general unsecured creditors. Plan, Dckt. 33. 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 July 23, 2024. Dckt. 58. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent \$4,500.00 in plan payments and will need to have paid \$10,500 to become current by the hearing date. *Id.* at 1:21-26.

## DEBTOR'S REPLY

Debtor filed a Reply to the Trustee's Opposition on July 30 and July 31, 2024. Dockets 65, 67. Debtor states:

- A. They have experienced significant financial challenges leading up to their Chapter 13 filing, including Debtor David Duryee suffering a brain aneurism four years ago, resulting in loss of income. Reply 2:2-4, Docket 65.
- B. Debtor has come up with a plan to become current and show their dedication to making plan payments. Debtor has earned income from both of their jobs and are contributing \$1,500 weekly to both save for the monthly payment and cure the delinquency. *Id.* at 2:22-3:18.
- C. Debtor requests a continuance to allow receipt and payment of their earned employment wages, and to apply the wages to cure the delinquency. Reply 1:21-24, Docket 67.

## DISCUSSION

### Delinquency

The Chapter 13 Trustee asserts that Debtor is \$4,500.00 delinquent in plan payments, which represents multiple months of the plan payment. Before the hearing, another plan payment will be due. Trustee has filed a Motion to Dismiss in this case for the delinquency to be heard on August 14, 2024. Docket 61. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **XXXXXXX**

The 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 Chapter 13 Plan filed by the debtor, David Andrew Duryee and Felica Joseph Tortorici ("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 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, Chapter 13 Trustee, attorneys of record who have appeared in the case, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2024. 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).

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

The debtor, Allen Dontony Gamble ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$8,100 for 60 months. Amended Plan, Docket 76. 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 filed an Opposition on July 23, 2024. Docket 95. Trustee provides detailed points for Opposition, summarized by the court as follows:

- A. Debtor's Plan simply is not proposed in good faith. Debtor has failed to include the \$79,000 in insurance proceeds in his Schedules. Debtor has not included his NF-Spouse's assets in the Schedules. *Id.* at 1:26-2:14.
- B. Debtor is delinquent \$8,100. *Id.* at 2:16.
- C. Debtor has not provided proof of income. *Id.* at 2:17-3:27.



- D. Debtor's Schedules are omitting relevant and necessary information, such as NF-Spouse's assets and certain credit card debt. *Id.* at 3:1-26.
- E. Debtor's attorney's fees are too high. *Id.* at 4:8-13.
- F. Debtor may fail the liquidation test.

## DISCUSSION

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

11 U.S.C. § 1325(a)(3) states:

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

...

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

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

The court sees many of the same issues in this case occur under the terms of the Amended Plan and related documents. Debtor fails to accurately Schedule his assets, including the \$79,000 insurance proceeds. Debtor fails to list community property of the NF-Spouse. Debtor fails to provide business documents to show proof of income and ability to make plan payments. Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3).

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, Allen Dontony Gamble (“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, Chapter 13 Trustee, and creditors on June 24, 2024. By the court's calculation, 43 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).

<p><b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXXXX</span>.</b></p>
---

The debtor, Lorell Jo Leal ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$18,804.94 having been paid through May of 2024 with monthly payments of \$5,795.91 commencing thereafter for 56 months. Amended Plan, Docket 87. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S NONOPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Nonopposition on July 19, 2024. Docket 96. Trustee states he does not oppose confirmation and Debtor is current, but points out there is a lack of evidence in support.

#### DISCUSSION

The glaring problem with this Motion is that there is no Declaration or other admissible evidence filed in support of confirmation. Fed. R. Bankr. P. 9017 incorporates Fed. R. Civ. P. 43, 44, and 44.1, as well as the Fed. R. Evid. in bankruptcy proceedings. Submitting a Plan and Motion to Confirm without authenticated evidence in support is asking the court to simply take the attorney at his word that all pleadings

are true and accurate. There is nothing in the Fed. R. Bankr. P., Fed. R. Civ. P., or Fed. R. Evid. that authorize the court to take such liberties. As such, the court is unable to determine if any of the facts alleged in the Motion or terms of the Plan are accurate.

The court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take parties 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). This is further cause for denial of confirmation.

Here, the Debtor is prosecuting this Chapter 13 Case in *pro se*. there are only four proofs of claim that have been filed in this case – Three General Unsecured claims totaling approximately (\$7,200), POC 1-1, 2-1, and 3-1, and One Secured claim in the amount of (\$455,090.91), POC 3-1. There are no priority claims filed.

The Fourth Amended Plan (Dckt. 100) provides for Class 1 Plan Disbursements of \$1,119.49 for the arrearage and \$4,259.11 for the post-petition monthly payment on the secured claim. The Plan provides for no less than a 0.00% dividend on general unsecured claims.

Schedule I reflects that Debtor has a stable retirement income source, as well as contribution by other members of the household (who may also hold an interest in the real property which Debtor is seeking to save from foreclosure through this Bankruptcy Case). Dckt. 1 at 38-39.

Though Debtor's *pro se* Motion and Declaration would not survive review if they were prepared by an attorney, the simplicity of the Plan, creditors, and income give the court leeway in light of this being a *pro se* debtor.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Lorell Jo Leal ("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 June 24, 2024, is confirmed. Debtor 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

25. [24-20420-E-13](#)  
[TLA-1](#)

BRIANNA COLLINS  
Thomas Amberg

MOTION FOR COMPENSATION FOR  
THOMAS L. AMBERG, JR., DEBTORS  
ATTORNEY(S)  
7-1-24 [\[19\]](#)

**Final Ruling:** No appearance at the August 6, 2024 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 1, 2024. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees 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). 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 Motion for Allowance of Interim Professional Fees is granted.</b>
--

Thomas L. Amberg, Jr., the Attorney ("Applicant") for Brianna Tanice Collins, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 28, 2023, through June 29, 2024. Applicant requests fees in the amount of \$3,250 and costs in the amount of \$45. Mot. 2:8-9, Docket 19. Applicant was paid \$1,000 prepetition for work done prepetition, so Applicant requests the fees and costs of \$2,295 be paid through the Plan and the court authorize Debtor to apply the \$1,000 prepetition retainer payment to the fees immediately. *Id.* at 2:3-6.

The Chapter 13 Trustee submitted a nonopposition on July 22, 2024. Docket 25.

Applicant opted out of the no-look fee provisions of the Chapter 13 Plan. *See* Plan, Docket 7; Order Confirming Plan, Docket 13.

## APPLICABLE LAW

### Reasonable Fees

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

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

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

### Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include meeting with Client and analyzing her situation, creating and reviewing the Debtor's schedules, proposing a Chapter plan, attending Debtor's 341 hearing, confirming the Debtor's plan, communicating with Debtor, and reviewing claims filed in the Debtor's case. Mot. 2:12-15, Docket 19. Debtor submitted an authenticated Task Billing Summary into evidence, detailing these areas of work as Exhibit B, Docket 22. The court finds the services were beneficial to Client and the Estate and were reasonable.

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

### **Fees**

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>
Thomas L. Amberg, Jr	10	\$325.00	<u>\$3,250.00</u>
<b>Total Fees for Period of Application</b>			\$3,250.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$45 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Credit Report	\$45.00	\$45.00
<b>Total Costs Requested in Application</b>		\$45.00

## FEES AND COSTS & EXPENSES ALLOWED

### Fees

#### Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$3,250.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330. Fees in the amount of \$2,250 are authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. Applicant is authorized to apply the \$1,000 retainer for prepetition work toward the fee amount immediately.

#### Costs

First Interim Costs in the amount of \$45 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution 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	\$2,250
Costs and Expenses	\$45

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case. Applicant is further authorized to apply the \$1,000 retainer for prepetition work toward the fee amount immediately.

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 Thomas L. Amberg, Jr. (“Applicant”), Attorney (“Applicant”) for Brianna Tanice Collins, the Chapter 13 Debtor (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Thomas L. Amberg, Jr. is allowed the following fees and expenses as a professional of the Estate:

Thomas L. Amberg, Jr., Professional employed by the Chapter 13 Debtor

Fees in the amount of \$3,250.00  
Expenses in the amount of \$45,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that Applicant is authorized to apply the \$1,000 retainer for prepetition work toward the fee amount immediately, and the Chapter 13 Trustee is authorized to pay the remainder from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

26. <a href="#"><u>24-21020-E-13</u></a> <a href="#"><u>TLA-1</u></a>	<b>BARRY PERRY AND REGINALD DAVIS</b> Thomas Amberg	<b>MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG HARVEY FOR THOMAS L. AMBERG, JR., DEBTORS ATTORNEY(S)</b> 7-2-24 [16]
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**Final Ruling:** No appearance at the August 6, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 2, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees 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). 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.

<p><b>The Motion for Allowance of Interim Professional Fees is granted.</b></p>
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Thomas L. Amberg, Jr., the Attorney ("Applicant") for Barry Dewayne Perry and Reginald Lee Davis, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 21, 2024, through July 1, 2024. Applicant requests fees in the amount of \$3,705.00 and costs in the amount of \$0. Mot. 3:2-3, Docket 16. Applicant was paid \$1,500 prepetition for work done prepetition, so Applicant requests the fees of \$2,205.00 be paid through the Plan and the court authorize Debtor to apply the \$1,500 prepetition retainer payment to the fees immediately. *Id.*



The Chapter 13 Trustee submitted a nonopposition on July 24, 2024. Docket 22.

Applicant opted out of the no-look fee provisions of the Chapter 13 Plan. *See* Plan, Docket 3; Order Confirming Plan, Docket 13.

## **APPLICABLE LAW**

### **Reasonable Fees**

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

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

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

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a

[professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include meeting with Client and analyzing her situation, creating and reviewing the Debtor’s schedules, proposing a Chapter plan, attending Debtor’s 341 hearing, confirming the Debtor’s plan, communicating with the IRS, and reviewing claims filed in the Debtor’s case. Mot. 2:12-16, Docket 16. Debtor submitted an authenticated Task Billing Summary into evidence, detailing these areas of work as Exhibit B, Docket 19. The court finds the services were beneficial to Client and the Estate and were reasonable.

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

### **Fees**

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>
Thomas L. Amberg, Jr	11.4	\$325.00	<u>\$3,705.00</u>
<b>Total Fees for Period of Application</b>			\$3,705.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$0 pursuant to this application.

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

## Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$3,705.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330. Fees in the amount of \$3,705.00 are authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. Applicant is authorized to apply the \$1,500 retainer for prepetition work toward the fee amount immediately.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$3,705.00
Costs and Expenses	\$0

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case. Applicant is further authorized to apply the \$1,500 retainer for prepetition work toward the fee amount immediately.

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 Thomas L. Amberg, Jr. ("Applicant"), Attorney ("Applicant") for Barry Dewayne Perry and Reginald Lee Davis, the Chapter 13 Debtor ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Thomas L. Amberg, Jr. is allowed the following fees and expenses as a professional of the Estate:

Thomas L. Amberg, Jr., Professional employed by the Chapter 13 Debtor

Fees in the amount of \$3,705.00  
Expenses in the amount of \$0,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that Applicant is authorized to apply the \$1,500 retainer for prepetition work toward the fee amount immediately, and the Chapter 13 Trustee is authorized to pay the remainder from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

**Final Ruling:** No appearance at the August 6, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and parties in interest, and Office of the United States Trustee on June 25, 2024. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, James John Matthew and Christina Brydon Matthew ("Debtor"), have filed evidence in support of confirmation. Decl., Docket 32; Exhibits, Docket 33. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 23, 2024. Docket 43. 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 James John Matthew and Christina Brydon Matthew ("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 June 24, 2024, 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.

28. <a href="#">24-22251-E-13</a> <a href="#">DPC-1</a>	<b>OSCAR MOLINA AND SONIA ELIZABETH SANTAMARIA DE MOLINA Bert Vega</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-3-24 [18]</b>
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**Final Ruling:** No appearance at the August 6, 2024 Hearing is required.  
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Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, persons requesting special notice, and Office of the United States Trustee on July 3, 2024. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection To Confirmation has been set for hearing on the notice required by Local 9014-1(f)(2). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on July 17, 2024. Dockets 28, 30. Debtor attempts to address trustee's concerns in this Amended Plan, directly responding to the issues raised in this Objection. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not 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 Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

29. <a href="#">24-21564-E-13</a> <a href="#">TLA-1</a>	<b>DANIEL/RAINBOW WELLS</b> <b>Thomas Amberg</b>	<b>MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG HARVEY FOR THOMAS L. AMBERG, DEBTORS ATTORNEY(S)</b> <b>7-2-24 [30]</b>
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**Final Ruling:** No appearance at the August 6, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 2, 2024. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees 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). 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.

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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Thomas L. Amberg, Jr., the Attorney (“Applicant”) for Daniel Richard Wells and Rainbow Shannon Wells, the Chapter 13 Debtor (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 4, 2024, through July 2, 2024. Applicant requests fees in the amount of \$4,257.50 and costs in the amount of \$90. Mot. 2:6-7, Docket 30. Applicant was paid \$2,000 prepetition for work done prepetition, so Applicant requests the fees of \$2,257.50 and costs of \$90 be paid through the Plan and the court authorize Debtor to apply the \$2,000 prepetition retainer payment to the fees immediately. *Id.* at 2:8-12.

The Chapter 13 Trustee submitted a nonopposition on July 22, 2024. Docket 45.

Applicant opted out of the no-look fee provisions of the Chapter 13 Plan. *See* Plan, Docket 5; Order Confirming Plan, Docket 24.

## **APPLICABLE LAW**

### **Reasonable Fees**

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

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

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

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include meeting with Client and analyzing her situation, creating and reviewing the Debtor’s schedules, proposing a Chapter plan, attending Debtor’s 341 hearing, confirming the Debtor’s plan, communicating with Debtor, and reviewing claims filed in the Debtor’s case. Mot. 2:14-18, Docket 30. Debtor submitted an authenticated Task Billing Summary into evidence, detailing these areas of work as Exhibit B, Docket 32. The court finds the services were beneficial to Client and the Estate and were reasonable.

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

### **Fees**

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>
Thomas L. Amberg, Jr	13.1	\$325.00	<u>\$4,257.50</u>
<b>Total Fees for Period of Application</b>			\$4,257.50

### **Costs & Expenses**



Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$90 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Credit Report	\$45.00	\$90.00
Total Costs Requested in Application		\$45.00

## FEES AND COSTS & EXPENSES ALLOWED

### Fees

#### Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$4,257.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330. Fees in the amount of \$2,257.50 are authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. Applicant is authorized to apply the \$2,000 retainer for prepetition work toward the fee amount immediately.

#### Costs

First Interim Costs in the amount of \$90 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution 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	\$2,257.50
Costs and Expenses	\$90

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case. Applicant is further authorized to apply the \$2,000 retainer for prepetition work toward the fee amount immediately.

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 Thomas L. Amberg, Jr. (“Applicant”), Attorney (“Applicant”) for Brianna Tanice Collins, the

Chapter 13 Debtor (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Thomas L. Amberg, Jr. is allowed the following fees and expenses as a professional of the Estate:

Thomas L. Amberg, Jr., Professional employed by the Chapter 13 Debtor

Fees in the amount of \$4,257.50

Expenses in the amount of \$90,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that Applicant is authorized to apply the \$2,000 retainer for prepetition work toward the fee amount immediately, and the Chapter 13 Trustee is authorized to pay the remainder from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

**Final Ruling:** No appearance at the August 6, 2024 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, parties requesting special notice, and Office of the United States Trustee on June 28, 2024. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

The Motion to Reconvert 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). 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.

**The Motion to Reconvert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.**

This Motion to Reconvert the Chapter 13 bankruptcy case of Daniel Puentes (“Debtor”) has been filed by David Cusick, the Chapter 13 Trustee (“Movant”). The case was originally filed under Chapter 7 on August 30, 2023. Debtor explained in his Motion to Convert at Docket 49 that he “determined the cost and burden of defending a potential objection to his homestead exemption maybe burdensome and may result in the loss the Kolbert Property and has determined that payment of debts in a chapter 13 plan over 60 month period would be a better financial situation.” The court granted the Motion to Convert the Chapter 7 Case to one under Chapter 13 by Order on May 4, 2024. Docket 58.

Now, Movant seeks to reconvert the case back to one under Chapter 7. Movant asserts that the case should be reconverted based on the following grounds:

- A. The Debtor failed to appear and was not examined at the First Meeting of Creditors held on June 20, 2024 as required pursuant to 11 U.S.C. §343. Debtor again failed to appear at the continued Meeting held on July 25, 2024. Obj. 2:3-7, Docket 90.

- B. Debtor failed to ever file a Plan in this case, resulting in unreasonable delay that is prejudicial to creditors. *Id.* at 2:8-14.
- C. The prior Chapter 7 Trustee spent time investigating assets and believed there may be substantial non-exempt equity in this case, so conversion is in the best interest of creditors. *Id.* at 2:15-24.

## APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[.]; [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);

(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or

(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

## **DISCUSSION**

Here, the court finds conversion to a case under Chapter 7 is warranted under 11 U.S.C. § 1307(c)(1) and (3). Debtor failing to appear at the initial and continued meeting of creditors is unreasonable delay that is prejudicial to creditors. Furthermore, Debtor never filed a Plan in the case, which is an enumerated reason for conversion under 11 U.S.C. § 1307(c)(3).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case under Chapter 7.

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

**IT IS ORDERED** that the Motion to Reconvert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

**Final Ruling:** No appearance at the August 6, 2024 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 that have filed claims, and Office of the United States Trustee on June 19, 2024. By the court’s calculation, 48 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.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Jeffrey Afafe Fernandez (“Debtor”) has provided evidence in support of confirmation. *See* Decl., Docket 52; Exhibits, Docket 51. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on July 22, 2024. Docket 55. 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, Jeffrey Afafe Fernandez (“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 June 19, 2024, 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.

32. [23-23812-E-13](#)  
[LBG-401](#)

**RICHARD/LISA RAVALLI**  
**Lucas Garcia**

**MOTION TO CONFIRM PLAN**  
**6-6-24 [39]**

**Final Ruling:** No appearance at the August 6, 2024 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, attorneys of record who have appeared in the case, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2024. By the court's calculation, 62 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.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Richard John Ravalli and Lisa Marie Ravalli ("Debtor") has provided evidence in support of confirmation. *See Decl.*, Docket 42; Exhibits, Docket 43. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 23, 2024. Docket 51. 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, Richard John Ravalli and Lisa Marie Ravalli (“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 June 6, 2024, 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.