

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

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

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: August 20, 2024**

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

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Modesto, California

August 20, 2024 at 1:00 p.m.

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1.     [24-90205](#)-B-13    THERESA/GUADALUPE SOLIS                    MOTION FOR COMPENSATION FOR  
                             David S. Henshaw                                 DAVID S. HENSHAW, DEBTORS  
   ATTORNEY(S)  
   7-16-24 [[25](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

For the reasons explained below, the motion will be denied without prejudice.

**Fees and Costs Requested**

David S. Henshaw ("Movant"), the attorney for Chapter 13 Debtors Theresa and Guadalupe Solis ("Debtors"), makes a request for the allowance of \$5,000.00 in attorney's fees through Debtors' amended plan filed July 15, 2024. Prior to filing Debtors' petition, Movant apparently agreed with Debtors that he would accept \$6,000.00 as payment for services in Debtors' case, with Debtors paying \$1,000.00 prior to filing, leaving \$5,000.00 to be paid. Movant requests compensation pursuant to LBR 2016-1(b). See Dkts. 21 at § 3.05, 27 at ¶¶ 3, 8. Movant's hourly rate is \$500.00. Dkt. 27 at ¶ 11.

LBR 2016-1(b) provides for an application for compensation through 11 U.S.C. § 330. Section 330 authorizes "reasonable compensation for actual, necessary services" and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

As an initial matter, Movant's hourly rate of \$500.00 is not reasonable. At least in the Eastern District of California, a reasonable hourly rate for a consumer bankruptcy attorney with Movant's years of experience, *i.e.*, fourteen, is \$375.00. See *e.g.*, in *re Lupekha*, 2024 WL 1146610, at \*3 (Bankr. E.D. Cal. March 14, 2024). The court will therefore reduce Movant's hourly rate from \$500.00 to \$375.00 per hour.

The other problem here is that Movant appears to request payment of the "no-look" flat fee permitted under LBR 2016-1(c) when compensation in this case is admittedly governed by LBR 2016-1(b) which incorporates § 330. See dkt. 27 at ¶¶ 9, 10. Compensation under § 330 is limited to "actual services." Movant has not submitted any evidence of services actually provided, *i.e.*, billing invoices, time sheets, or the like. The extent to which "actual services" are identified is limited to Movant's unsupported statement that he "spent over seven (7) hours reviewing Debtors' documents, preparing the filings, and attending the meetings of creditors in this case." Dkt. 27 at ¶ 11.

Based on the foregoing, the motion for compensation will be denied without prejudice. Any re-filed motion shall (i) be limited to a request for compensation at an hourly rate of \$375.00 and (2) include billing statements or similar records that identify

August 20, 2024 at 1:00 p.m.

task, time spent, and total hours for which compensation is requested. Compensation will also be allowed only for time actually spent on services actually provided, not for unperformed and contemplated future services. Movant is further cautioned that time for actual services is subject to reduction for block billing. In that regard, Movant should review *Deocampo v. Potts*, 2014 WL 788429, \*4 (E.D. Cal. Feb. 25, 2014), and this court's decision in *Valentine v. Holmes, et al.*, adv. no. 22-2086, dkt. 264.

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

The court will issue an order.

### **Final Ruling**

The *initial* Chapter 13 Plan filed June 7, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to August 27, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtor's Form 122C-2 at line 18 lists a monthly life insurance deduction of \$523.00. Debtor testified at the 341 meeting of creditors that this deduction includes life insurance for herself, her three adult children, her mother and her grandchildren. Line 18 specifically states to not include premiums for life insurance on your dependents, for a non-filing spouse's life insurance, or for any form of life insurance other than term. Without an accurate Official Form 122C-1 and Official Form 122C-2 if appropriate, it cannot be determined whether the plan provides that all of Debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Second, Debtor's Form 122C-2 at line 41 lists a monthly deduction of \$1,189.16 for qualified retirement deductions. Debtor testified at the 341 meeting of creditors that this deduction includes her voluntary retirement deduction which does meet the requirements of a qualified retirement deduction under 11 U.S.C. § 541(b)(7). Without an accurate Official Form 122C-1 and Official Form 122C-2 if appropriate, it cannot be determined whether the plan provides that all of Debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Third, Debtor's Schedule I at line 5c shows a total payroll deduction of \$958.32 per month for voluntary contribution to a retirement plan. This expense is not reasonable or necessary, as Debtor's plan proposes to repay general unsecured creditors an estimated 15%.

Fourth, Debtor's Schedule I at line 5d lists a required repayment of retirement fund loans of \$230.84. Debtor provided the Trustee with a statement for this loan, reflecting that this loan will be repaid in full within the Debtor's 60-month plan term. Debtor's plan payment does not increase accordingly after this loan is fully repaid.

The plan filed June 7, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on August 23, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtor's attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on August 27, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on August 27, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the minutes.  
The court will issue an order.

3. [24-90318](#)-B-13 LENE HERNANDEZ OBJECTION TO CONFIRMATION OF  
[LGT](#)-1 Peter G. Macaluso PLAN BY LILIAN G. TSANG  
7-29-24 [[15](#)]

CONTINUED TO 9/03/34 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 8/21/24.

## Final Ruling

No appearance at the August 20, 2024, hearing is required. The court will issue an order.

4. [24-90133](#)-B-13 ALISON DEVINE  
[AP-1](#) Simran Singh Hundal

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-15-24 [[27](#)]

JPMORGAN CHASE BANK, N.A.  
VS.

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for relief from automatic stay.

JP Morgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2023 Subaru Impreza Wagon (the "Vehicle"). The moving party has provided the Declaration of James Stephan to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Stephan Declaration states that there are five post-petition payments in default totaling \$2,572.27.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$28,824.33, as stated in the Stephan Declaration, while the value of the Vehicle is determined to be \$25,709.00, as stated in Schedules A/B and D filed by Debtor.

### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will issue an order.



5.     [24-90285](#)-B-13     JOHNATHAN MOHR                             OBJECTION TO CONFIRMATION OF  
          [LGT](#)-1             David C. Johnston                         PLAN BY LILIAN G. TSANG  
   7-19-24 [[23](#)]

CONTINUED TO 9/03/34 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS  
SET FOR 8/21/24.

**Final Ruling**

No appearance at the August 20, 2024, hearing is required. The court will issue an  
order.

6. [24-90298](#)-B-13 RONALD/KAREN HILLIARD MOTION TO AVOID LIEN OF ASTA  
[JTN](#)-1 Jasmin T. Nguyen FUNDING ACQUISITION  
**Thru #8** 7-9-24 [[18](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to avoid lien of ASTA Funding Acquisition.

This is a request for an order avoiding the judicial lien of ASTA Funding Acquisition ("Creditor") against the Debtors' property commonly known as 7300 Elm Street, Hughson, California ("Property").

A judgment was entered against Debtor Ronald Hilliard in favor of Creditor in the amount of \$6,050.09. An abstract of judgment was recorded with Stanislaus County on December 3, 2001, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$482,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$364,683.00 on Schedule C. All other liens recorded against the Property total \$117,317.00.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

7. [24-90298](#)-B-13 RONALD/KAREN HILLIARD MOTION TO AVOID LIEN OF FORD  
[JTN](#)-2 Jasmin T. Nguyen MOTOR CREDIT COMPANY  
7-9-24 [[23](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to avoid lien of Ford Motor Credit Company.

This is a request for an order avoiding the judicial lien of Ford Motor Credit Company ("Creditor") against the Debtors' property commonly known as 7300 Elm Street, Hughson, California ("Property").

A judgment was entered against Joint Debtor Karen Hilliard in favor of Creditor in the amount of \$26,924.54. An abstract of judgment was recorded with Stanislaus County on

June 21, 2016, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$482,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$364,683.00 on Schedule C. All other liens recorded against the Property total \$117,317.00.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

8. [24-90298](#)-B-13 RONALD/KAREN HILLIARD OBJECTION TO CONFIRMATION OF  
[LGT-1](#) Jasmin T. Nguyen PLAN BY LILIAN G. TSANG  
7-18-24 [[28](#)]

### **Final Ruling**

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

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

Feasibility depends on the granting of motions to avoid lien of Asta Funding Acquisition and Ford Motor Credit Company. Those motions were granted at Items 7 and 8, JTN-1 and JTN-2. This resolves the objection to confirmation.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed May 31, 2024, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.