UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 26, 2025 at 2:00 p.m.

1.	**24-24011-E-13** **MS-2**	**ANGELA SANTANA** **Mark Shmorgon**	**MOTION TO MODIFY PLAN** **7-22-25 [38]**

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on July 22, 2025. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Angela Santana ("Debtor") has provided evidence in support of confirmation. *See* Decl., Docket 42; Exhibits, Docket 41. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 11, 2025. Docket 46. Trustee does not oppose confirmation, but Trustee requests language in the order specifying that tax refund monies in excess of $2,000.00 shall be turned over to the Chapter 13 Trustee during the life of the plan.

At the hearing, **xxxxxxx**

The Amended Plan, as amended to include any annual tax refunds in excess of $2,000.00 to be turned over to the Trustee as additional Plan payments, 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, Angela Santana ("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 22, 2025, is confirmed as amended to state that tax refund monies in excess of $2,000.00 shall be turned over to the Chapter 13 Trustee as additional Plan payments during the life of the Plan. 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.

2. 25-23022-E-13 DPC-1 — THUY NGUYEN — David Boone — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 7-29-25 [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, and Office of the United States Trustee on July 29, 2025. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

1. Debtor Thuy Duong Nguyen's ("Debtor") proposed Plan relies on a Motion to Value Collateral being filed for Onemain Financial, listed in Class 2C. Debtor has not filed the Motion to Value. Obj. 2:3-12.

2. Debtor has not filed a Motion to Confirm the Amended Plan. *Id.* at 2:13-16.

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

DISCUSSION

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

Moreover, Debtor has filed an Amended Plan but has not set it for hearing or filed a Motion to Confirm in violation of Local Bankruptcy Rule 3015-1(d).

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

Amended Plan Filed

On July 24, 2025, the Debtor filed an Amended Plan. The Debtor has not filed a motion to confirm, supporting evidenced, or set the motion for a hearing. L.B.R. 3015-1(d). The proposed Amended Plan:

A. Increases the monthly plan payments to $366.00 a month for the remaining 59 months of the Plan.

B. Continues to provide for the reduced claim of OneMain Financial as a Class 2(B) secured claim. (Which requires a motion to value secured claim.)

C. Continues to provide a general unsecured dividend of not less than 0.00%

The filing of a amended plan is a *de facto* withdrawal or dismissal without prejudice of the prior proposed Chapter 13 Plan.

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

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

3.	**19-22025-E-12 RLC-30**	**JEFFREY DYER AND JAN WING-DYER** **Stephen Reynolds**	**MOTION FOR HARDSHIP DISCHARGE** **O.S.T.** **8-8-25 [576]**

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on August 8, 2025. By the court's calculation, 18 days' notice was provided. The court set the hearing for August 26, 2025. Dckt. 575.

The Motion for Entry of Hardship Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion for Entry of Hardship Discharge is xxxxxxx.

Jeffrey E Dyer and Jan E Wing-Dyer ("Debtor") move for entry of a hardship discharge. Debtor argues:

1. Debtors have diligently worked to make their Chapter 12 Reorganization successful. They have modified their plan in response to challenges throughout their case. They have cooperated with the Chapter 12 Trustee and have filed dozens of Monthly Operating Reports. Mot. 2:22-24.

2. They have paid all creditors with the exception of Classes 5, 6 and 9.

   a. Class 5 Rabo Agrifinance, LLC has been paid significant sums through the life of the Plan as well.

   b. Creditors have, to date, received more than $3,000,000 through the Chapter 12 Trustee or direct payments from escrow. Mot. 2:13-15.

3. Debtors original plan and all plan modifications other than the most recent contemplated payment of Class 5 over eight years. Classes 6 and 9 have been and continue to be paid monthly outside of the plan. *Id.* at 2:25-27.

4. Debtor diligently marketed the Lamb Ranch for over a year. At present there are very few sales of agricultural properties similar to the Lamb Ranch. Debtor has received a serious offer from the party responsible for the recent lending which has allowed for the payment of court approved borrowing, Classes 2, 4 and 12. However the proposed sale was contingent on the sale of another property owned by that party. That sale remains possible but not in time to save the current case. This is not a circumstance for which Debtors may justly be held accountable. Debtors are not seeking discharge of Classes 5, 6 and 9. *Id.* at 3:4-9.

5. All other Classes including Class 12 general unsecured creditors will be paid prior to the entry of the Order Granting Discharge. Modification of the current Chapter 12 Plan is not practicable. *Id.* at 3:9-11.

With respect to the payment of claims and how the creditors have benefitted from the Chapter 12 Plan, the following grounds are stated with particularity in the Motion:

Debtors have sold two properties and have paid or will have paid in full the following claims:

Class 1: Administrative Priority Claims, in this case the Chapter 12 Trustee.

Class 2: Sutter County Property Taxes (excluding ongoing property taxes).

Class 3: Yolo County property taxes.

Class 4: Suncrest Bank now Citizens Business Bank.

Class 7: Community First Credit Union.

Class 8: Tri Counties Bank.

Class 10: Kubota Credit Corporation.

Class 12: General Unsecured Claims. Allowed general unsecured claims totaled $403,722.15. $7,772.63 of that total remains to be paid to satisfy all general unsecured claims as well as the Chapter 12 Trustee fees arising from the contemplated payment of the remaining general unsecured claims.

Classes 6 and 9 consist of the first priority secured claims of Banner Bank and Yolo County Realty. These claims are secured respectively by a 5.4-acre parcel adjacent to Debtors residence and Debtors residence. Both claims have been paid monthly outside of the Plan for the duration of this case. Class 5 Rabo Agrifinance, LLC has been paid significant sums through the life of the Plan as well. Creditors

> have, to date, received more than $3,000,000 through the Chapter 12 Trustee or direct payments from escrow.

Motion, p. 1:28-2:15; Dckt. 576.

The Motion goes further addressing the last amendment to the Chapter 12 Plan and actions taken in light of there not being a ready, able, and willing buyer for the Lamb Ranch Property,

> As no serious offer was received Debtor's instead obtained financing that has allowed for the satisfaction of the remaining claims other than Classes 5, 6 and 9.

Id., p. 2:16-18.

The Declaration of Jeffrey E. Dyer is filed in support. Docket 583. Mr. Dyer provides insight into the challenges of the case and states:

> 2. We faced a number of challenges through our case including significant drops in crop prices and significant increases in interest rates. It is hard to say which was more difficult for our case. The high interest rates depressed farm values which made a refinance during bankruptcy impracticable. The high interest rates also worked to suppress normal farm sales. The significantly reduced my brokerage income which traditionally mitigated swings in my farm income. As a result we used refinancing and the sale of two investment properties (Woodland and Bodega Bay) as well as farm brokerage and social security income to make Plan payments.
>
> 3. Our most recent plan modification called for the sale of the Lamb Ranch (our orchard property). No serious offer was received despite my marketing efforts.[2] I have been negotiating with a serious buyer, but their purchase is contingent on the sale of another property. That sale may occur in the medium term, but we are not in contract today.
>
> 4. In short, we have done everything we could to satisfy the creditors in this case. We have always had a young orchard with significant annual improvements in yield (currently approximately 75,000 pounds per year) producing high quality nuts. I am working to raise the final $7,772.63 necessary to complete payments to the general unsecured creditors.

Decl. ¶¶ 2-4, Docket 583.

APPLICABLE LAW

Section 1228(b) of the Bankruptcy Code states:

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

> (1)the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
>
> (2)the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
>
> (3)modification of the plan under section 1229 of this title is not practicable.

Collier's Treatise on Bankruptcy states regarding the hardship discharge in Chapter 12 case:

> A debtor that has not made all payments under the plan may nonetheless seek a discharge under the provisions of section 1228(b), referred to as a "hardship discharge." A hardship discharge may be sought by the debtor at any time after confirmation of the plan and may be granted only after notice and a hearing. A hardship discharge will be granted by the court only if the debtor is able to satisfy each of the three requirements set forth in section 1228(b). The requirements for a hardship discharge are identical to those in chapter 13 cases, so case law from chapter 13 cases should be useful in interpreting section 1228(b) and (c).

8 COLLIER ON BANKRUPTCY ¶ 1228.03.

The provisions of 11 U.S.C. § 1228(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g.*, *In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden of proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). "Unsubstantiated and conclusory statements" about a debtor's inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g.*, *In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1228(b) to determine whether a "debtor is justly accountable for the plan's failure." *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;

B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;

C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;

D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;

E. Whether the debtor had control, direct or indirect, of the intervening event or events; and

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

Id.

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

Sub-section 11 U.S.C. § 1228(b)(1) "requires that the circumstances leading to the debtor's failure to make payments be beyond the debtor's control." *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be "truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability." *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1228(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the "best interests" test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1228(b)(3) requires that modifying the Chapter 12 plan not be practicable. Proposing a modified plan "is not 'practicable' if there is no source of income to fund the modified plan." *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

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

DISCUSSION

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1228(b) have been met. As an initial matter, modification of the Plan is no longer feasible as the time limit to modify has expired. 11 U.S.C. § 1229(c). While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a clear series of unfortunate event in Debtor's life and relating to debtor's farming operation that prevents Debtor from complying with and completing the Plan. Collier's instructs that:

> The first requirement for a debtor to be entitled to a hardship discharge is that the debtor's failure to comply with the terms of the plan is due to circumstances for

> which the debtor should not justly be held accountable. This may include failure of the debtor's crop due to natural disaster or loss of livestock due to disease. The likely focus of the court's inquiry will be on whether the circumstances could have been foreseen or avoided by the debtor.

8 COLLIER ON BANKRUPTCY ¶ 1228.03[1]. Debtor experienced hardship with interest rates depressing farm values and crops in crop prices, which are not foreseeable by Debtor. The court could also note this case was opened in 2019 and Debtor has paid over $3,300,000 into the Plan over the years. Moreover, as Debtor states, Debtor is not seeking discharge of Classes 5, 6 and 9, and Debtor will be paying the remaining classes of creditors in full.

At the hearing, **xxxxxxx**

The Motion is granted, and a hardship discharge under 11 U.S.C. § 1228(b) is entered for Debtor in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Hardship Discharge filed by Jeffrey E Dyer and Jan E Wing-Dyer ("Debtor") having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the court shall enter a "hardship" discharge pursuant to 11 U.S.C. § 1228(b) for Jeffrey E Dyer and Jan E Wing-Dyer in this case based on the Plan as performed as of the August 26, 2025 hearing date on this Motion.
>
> **IT IS FURTHER ORDERED** that the discharge is not in effect against creditors in Classes 5, 6 and 9 of the Confirmed Modified Plan. Those creditors are Rabo Agrifinance LLC (Class 5); Banner Bank (Class 6); and Yolo County Realty (Class 9).

4. 22-21329-E-13 MOH-1 | **ROBERT/ELISA PINEDA** **Michael Hays** | **MOTION TO AVOID LIEN OF ASSET ACCEPTANCE, LLC** **7-28-25 [38]**

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 Creditor and other parties in interest on July 28, 2025. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Asset Acceptance LLC ("Creditor") against property of the debtor, Robert Pineda and Elisa Pineda ("Debtor") commonly known as 6940 Irwin Ave., Oroville, Ca ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,511.09. Exhibit 1, Dckt. 41. An abstract of judgment was recorded with Butte County on April 11, 2017, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $360,000 as of the petition date. Schedule A at 12, Docket 1. The unavoidable consensual liens that total $35,607.04 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 21, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $378,500.00 on Schedule C. Schedule C at 19, Docket 1.

Trustee's Opposition

Trustee filed an Opposition on August 11, 2025. Docket 44. Trustee opposes on the grounds that Debtor had scheduled Creditor in the Plan as an unsecured creditor. The Plan is now complete, and Trustee has distributed $1,618.93 on its claim. This Motion may be moot since the Creditor filed an unsecured claim, and the dividend they were entitled to have already been paid in this Plan has been disbursed to them and the Plan is complete.

Debtor's Reply

Debtor replies and states that the lien remains on the Property, and so it must be removed or else risk hindering Debtor's ability to sell their home. Docket 47

DISCUSSION

It is true that, as Trustee states, the proof of claim controls, and the confirmed Plan becomes the new contract between parties. Creditor filed an unsecured claim in the amount of $9,511.09, and Trustee made distributions on that claim. POC 2-1. However, the issue is not moot because the lien remains on the Property and must be properly removed.

Therefore, 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 the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Robert Pineda and Elisa Pineda ("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 judgment lien of Asset Acceptance, LLC, California Superior Court for Butte County Case No. 155806, recorded on April 11, 2017, Document No. 2017-0012574, with the Butte County Recorder, against the real property commonly known as 6940 Irwin Ave., Oroville, Ca, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

5. 24-24730-E-13 BLG-6 — LIZBETH/DANIEL ALARCON — Chad Johnson — OBJECTION TO CLAIM OF ROSA FRANCO, CLAIM NUMBER 16 — 6-30-25 [86]

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on parties in interest on June 30, 2025. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 16-1 of Rosa Franco is overruled, and allowed in the amount of $15,150.00 as stated in Amended Proof of Claim 16-2.

Lizbeth Navar Alarcon and Daniel Alarcon, Chapter 13 Debtor, ("Objector," "Debtor") requests that the court disallow the claim of Rosa Franco ("Creditor"), Proof of Claim No. 16-3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $17,150 as an unsecured priority claim under 11 U.S.C. § 507(a)(4).

Objector asserts that the priority claim should be disallowed as it the claim does not fit within the statutory framework of priority claims under 11 U.S.C. § 507(a)(4). Specifically, Debtor states the wages were earned beyond the 180-0day period prescribed in that statute, so they cannot be priority. The grounds stated in the Objection by Debtor are:

1. Debtor commenced this Bankruptcy Case as an on October 21, 2024. Objection, ¶ 1; Dckt. 86.

2. On February 11, 2025, the court issued an order overruling Debtor's Objection to Creditor's general unsecured claim, but sustained it without prejudice to Debtor filing an amended proof of claim to assert a priority claim. *Id.*; ¶ 3.

The court's order with respect to filing an amended claim includes the following:

IT IS FURTHER ORDERED that Creditor may file an amended proof of claim on or before March 20, 2025, to make a claim that is entitled to payment of any portion thereof as a priority claim. The amended proof of claim shall be supported by documentation filed therewith identifying the basis upon which the priority is asserted.

As the court discussed with the Parties, before incurring more legal fees and expenses in advancing their arguments, they should consider the economic realities of such litigation, including that the proposed Chapter 13 Plan already provides for at least a 29% dividend to be paid creditors with general unsecured claims. Plan; ¶ 3.14; Dckt. 16. By rough numbers, if there is a $15,000 priority that is in dispute, at least $4,350 would be paid even if it all were a general unsecured claim, leaving the parties fighting over
$10,650.

3. On February 12, 2025 (the Objection 2024), Creditor amended her claim to state that there is a $15,150.00 priority claim. Dec., ¶ 4; Dckt. 86. Amended Proof of Claim 16-2 was filed on February 12, 2025.

4. The attachments to Amended Proof of Claim 16-2 includes: (1) Settlement and Release Agreement and (2) Independent Contractor Agreement. Dec. 5; Dckt. 86.

5. Creditor's Claim is based on a Settlement and Release Agreement. *Id*.;¶ 7.

6. The Settlement Agreement states that Creditor asserts the obligation is based on failure of Debtor and Debtor's entities' real estate commissions. *Id*.; ¶ 8.

7. The Independent Contract Agreements includes provisions stating: (1) It is not an employment agreement, (2) the partes are independent contracting parties, and (3) the Agreement does not constitute a partnership. *Id*.; ¶ 9.

8. The Creditors states she stopped working with Debtor in November 2021. *Id*.; ¶ 15.

9. Debtor has worked in real estate since August 4, 2000, and at no time from November 2021 to present (August, 2025) has Debtor ceased working as a Realtor. *Id*. ¶ 6.

10. From December 30, 2020 through January 1, 2024, Debtor worked with Broker Side, Inc. *Id*. ¶ 18.

11. From January 2, 2024 - January 30, 2025, Debtor worked with Broker Real Brokerage Technologies. *Id*.; ¶ 19.

12. Debtor did set up two corporations to run her real-estate income through. *Id*.; ¶ 21.

13. For the period relevant to the Proof of Claim, Vivid Realty, Inc. was set up on February 3, 2021, and went inactive on September 3, 2024. *Id*.; ¶ 22.

14. After Debtor's 2023 return was filed in 2024, she stopped running her income through Vivid Realty, however she continued to earn her income as a realtor. *Id*.; ¶ 24.

15. The 11 U.S.C. § 507(a)(4) priority is limited to $10,000.00 for each individual or corporation within the earlier of 180 days before the filing of the bankruptcy petition or the cessation of the debtor's business. *Id*.; p. 4:24-5:7.

16. Creditor stopped working for Debtor in November 2021, but Debtor never ceased operating as a realtor. Vivid Realty, Inc, ceased operation on September 2, 2024, which is more than 1,007 days after Creditor would have earned the commissions. *Id*.; p. 5:14-23.

17. The Settlement Agreement is clear that the Claim is based on an independent contractor agreement, and not only has it been show that the commissions were earned within 180 days of either the bankruptcy filing or ceasing business operations, but no evidence is offered that Creditor earned 75% of her commissions in the prior twelve month period from Debtor as is required under 11 U.S.C. § 507(a)(4)(B). *Id*.; p. 6:9-16.

Debtor's Declaration

Debtor provides her Declaration in support of the Objection to Claim. Dckt. 88. Debtor's testimony, as summarized by the court:

A. Debtor has worked in real estate since August 5, 2000. Dec., ¶ 2; Dckt. 88.

B. From June 16, 2017 to December 29, 2020, Debtor worked with Broker Norcal Gold, Inc. *Id*.; ¶ 3.

C. From December 30, 2020 to January 1, 2024, Debtor worked with Broker Side, Inc. *Id*.; ¶ 4.

D. From January 2, 2024 to January 9, 2025, Debtor worked with Broker Real Brokerage Technologies. *Id*.; ¶ 5.

E. Debtor currently works with Broker eXp Realty of Northern California, Inc. *Id*.; ¶ 6.

F. Vivid Realty, Inc. was set up on February 3, 2021, and went inactive on September 3, 2024. Debtor's 2021, 2022 and 2023 income "went through Vivid Realty." After Debtor's 2023 taxes were filed in 2024, I stopped working under Vivid Realty, and as of January 2, 2024, nothing has been paid to Vivid. *Id*.; ¶ 8.

G. Creditor only worked at Broker Side, Inc. from January 2, 2021 to August 20, 2021. *Id.*; ¶ 9.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on August 12, 2025. Docket 96. Creditor states:

1. Creditor was hired to work as a real estate agent in a real estate office operated by Vivid Realty Inc. on December 7, 2020. Creditor believed that Debtor was the owner operator. Opposition, p. 2:1-4; Dckt. 96.

2. Pursuant to the Team Member Independent Contract Agreement dated December 7, 2020, Creditor was to be compensated by Vivid Realty, Inc. The Agreement is filed as Exhibit A, Dckt. 98. Opp., p. 2:5-8; Dckt. 96.

3. In December 2021, after Creditor complained about not being paid her commissions, the Vivid Realty, Inc. office was suddenly closed, with no forwarding address provided for either Vivid Realty, Inc. or the Debtor. *Id.*; p. 2:9-12.

4. On January 31, 2022, Creditor filed a State Court Action against Vivid Realty, Inc. and Debtor for $73,000 in unpaid real estate commissions. *Id.*; p. 2:13-17.

5. On July 19, 2024, during a pretrial settlement conference, Vivid Realty, Inc. and Debtor Lizbeth Alarcon agreed to pay Claimant $55,000 in settlement of the breach of contract action for nonpayment of real estate sales commissions. *Id.*; 2:18-20.

6. Claimant's earnings in 2021 and 2022 were entirely from Vivid Realty, Inc., and from September 2023 until September 2024 — the 12 months before the bankruptcy filing — Claimant earned less than $25,000 in real estate commissions. Accordingly, Claim No. 16 satisfies the 75% requirement under both proposed dates. *Id.* at 5:18-6:1.

7. Claimant has filed a Declaration in support of Claim No. 16 that Vivid Realty, Inc. ceased doing business on or about January 2022. Creditor's evidence is more reliable than Debtor's because Creditor actually was unable to locate Vivid Realty. *Id.* at 6:16-21.

8. The July 29, 2024 Settlement Agreement and Release is a reaffirmation of an employment debt dating back to 2021 when the services were rendered. *Id.*; p. 2:18-21.

9. Creditor asserts that Vivid Realty, Inc. ceased doing business in 2022 when it closed its office and Debtor elected to no longer process taxes through the company. *Id.*; p. 3:2-6.

10. Creditor earned less than $25,000 in real estate commissions during the 12 month period from September 2023 to the September 2024 filing of the Bankruptcy Case. *Id*.; p. 5:14-6:2.

11. Vivid Realty, Inc. ceased doing business on or about January 2022 when it closed its office. The commissions claimed by Debtor were generated only from Vivid Realty, Inc. work and also satisfy the 75% requirement. *Id*.; p. 6:4-11.

Creditor's Declaration

Creditor provides her Declaration in support of the Opposition. Dec.; Dckt. 97. The testimony in the Declaration, as summarized by the court, includes:

A. Creditor was hired on December 7, 2020 by Vivid Realty, Inc. and Debtor (who was also an agent) under the Team Member Independent Contractor Agreement. Creditor assets that she was both an employee of Debtor and an independent contractor working with Vivid Realty, Inc. *Id*.; ¶ 2.

B. Under the Terms of the Independent Contractor Agreement Creditor worked exclusively for Vivid Realty, Inc. for all of 2021, until she filed suit for the unpaid real estate commissions. All of Creditor's 2021 income was from Vivid Realty, Inc. *Id*. ¶ 3.

Creditor Exhibits

Exhibit A filed by Creditor is the Team Member Independent Contractor Agreement, which is stated in the title to be made between the Broker and Associate-Licensee. Ex. A, p. 1; Dckt. 98. The Broker in the Independent Contractor Agreement is identified as Side, Inc. and the Associate-Licensee is identified as the Creditor. *Id*.; ¶ 1.

In Paragraph 5 of the Independent Contractor Agreement, which is titled Independent Contractor Relationship, it states:

1. This Agreement does not constitute an employment agreement by either party, and that the Broker and Associate-Licensee are independent contracting parties under the Agreement; and that the Agreement does not create a partnership. Ex. A, ¶ 5.A.; Dckt. 98.

2. Associate-Licensee is not required to accept any assignment by Broker for any particular prospective listing or parties. *Id*.; ¶ 5.C.

3. Except as otherwise required by law Associate-Licensee:

> (i) retains sole and absolute discretion and judgment in the methods, techniques, and procedures to be used in soliciting and obtaining listings, sales, exchanges, leases,

> rentals, or other transactions, and in carrying out Associate-Licensee's selling and soliciting activities;
>
> (ii) is under the control of Broker as to the results of Associate Licensee's work only, and not as to the means by which those results are accomplished;
>
> (iii) has no authority to bind Broker by any promise or representation; and
>
> (iv) Broker shall not be liable for any obligation or liability incurred by Associate-Licensee.

Id.; ¶ 5.D. (the court reforming paragraphs (i) through (iv) into separate lines for ease of reading.

4. Associate-Licensee who only performs as a real estate sale agent shall not be treated as an employee for state and federal tax purposes. *Id*.. ¶ 5.E.

The Independent Contractor Agreement is signed by both Side, Inc. and Debtor as the "Partner." *Id*.; p. 9.

The Settlement Agreement entered into in the State Court Action is filed as Exhibit C, Dckt. 98. Under the terms of the Settlement Agreement Debtor agrees to pay Creditor $50,000.00, on a timetable for payments to begin in August 2024 and continue through July 2025, in equal monthly amounts. *Id*. ¶ I.b. It also provides that entering into the Settlement Agreement is not an admission of liability or responsibility. *Id*.; ¶ 9. The Debtor and Creditor also that they are entering into the Settlement Agreement:

> [i]n order to avoid the costs and uncertainties of litigation, as well as to bring this matter to a close so that each party can go forward with their respective lives and/or business without further interference or disruption caused by the dispute.

Id.; ¶ H.

The Settlement Agreement is signed by Debtor on July 19, 2024. On October 21, 2024, three months after signing the Settlement Agreement, the Debtor filed the Voluntary Chapter 13 Case. In the confirmed Chapter 13 Plan in this Case (Dckt. 26), the Debtor is only able to pay a not less than 29% dividend to creditors holding general unsecured claims.

APPLICABLE LAW

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

arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the *prima facie* validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

11 U.S.C. § 507(a)(4) states:

> (a) The following expenses and claims have priority in the following order:
>
> > (4) Fourth, allowed unsecured claims, but only to the extent of $10,000 [2] for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition **or the date of the cessation of the debtor's business, whichever occurs first**, for—
> >
> > > (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
> > >
> > > (B) **sales commissions earned by an individual** or by a corporation with only 1 employee, **acting as an independent contractor** in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(emphasis added). Collier's Treatise state on this priority:

> A priority for wages was included as part of the Bankruptcy Act upon its original enactment in 1898 and has been a feature of the bankruptcy law since that time. The purpose of allowing a priority for wages is to alleviate hardship on workers who lose their jobs or part of their salary by bankruptcy. Employees are usually the hardest hit financially by a bankruptcy because the debtor/employer is typically the only source of income for the employees. When a debtor fails to pay debts to its other creditors, those creditors presumably have other sources of income and do not rely on the debtor as their sole source of income. Another distinction is that other creditors presumably knowingly extended credit to the debtor. Employees do not typically view themselves as extending credit by waiting for their paychecks. One additional purpose of the wage priority is to encourage employees to stand by an employer in financial difficulty. . .
>
> A claim is entitled to priority under section 507(a)(4) only if earned during the 180 days prior to the earlier of the filing of the petition or the cessation of the debtor's business. The reason that cessation of the business is used as an alternative measuring date is to protect the wage priority of employees if the debtor shuts down its business but delays the filing of a bankruptcy case. The 180-day priority period is the same as the 180-day priority period provided under the fifth priority for contributions to employee benefit plans.

> In order for cessation of the business to be used as a measuring date, the debtor must cease business altogether. It is not enough that the debtor shut down the division or line of business that employed a particular employee. The standard for determining when to use cessation of the business as the measuring date is the same as under the fifth priority for contributions to employee benefit plans. Cases under the fifth priority analyzing when cessation is considered to have occurred are relevant to the same issue under the fourth priority.

4 COLLIER ON BANKRUPTCY ¶ 507.06.

DISCUSSION

An undisputed fact is that Creditor earned the wages in 2021. Decl., ¶¶ 3-4, Docket 97. A settlement agreement later years cannot be said to be the date when the disputed wages or commissions were earned.

The critical issues before the court revolve around the time line of the cessation of Debtor's business, when the wages were earned, and whether Creditor, as an independent contractor, earned 75% of her wages from Debtor.

As to the first issue, the date of cessation, a determination on this point could render the remaining issues moot. The Code provides for wages earned within 180 days prior to filing or cessation of the business to protect workers of companies that file or cease business operations and delay filing. In this case, it appears Creditor has been aggrieved some years ago in 2021, and the wages she earned relate to those causes of action that accrued years ago.

Cessation of Business

The pleadings and evidence presented raise some "interesting" inconsistencies. In her Declaration, Debtor testifies that from December 30, 2020 to January 1, 2024, she worked with Broker Side, Inc. Dec., ¶ 4; Dckt. 88. The Independent Contractor Agreement (Ex. A; Dckt. 98) which states it is between Side, Inc. and the Creditor, for which Debtor has also signed as a "Partner."

Debtor, then states that another corporation was set up in February 3, 2021, that being Vivid Realty, Inc. Dec., ¶ 8; Dckt. 88. Debtor further testifies under penalty of perjury that:

> My income for 2021, 2022 and 2023 went through Vivid Realty, Inc.

Id.. Thus, it appears that there was no income being generated by Side, Inc. in 2021 based on this testimony. While Debtor testifies that she worked "with" Broker Side, Inc. From December 2020 to January 1, 2024, she testifies that none of her income was through Side, Inc.

Debtor does not provide the court with testimony or evidence that Side, Inc. and Debtor, as the Partner to the Independent Contractor Agreement did any business after 2021. Possibly some information is in the Schedules or Statement of Financial Affairs, but none is brought to the court's attention by the Debtor.

Debtor does not provide the court with any tax returns or other business records showing that Side, Inc. and Debtor, as the Partner, were continuing to operate any business. Rather, merely her conclusion testimony to substantiate that the business operation of Side, Inc., Debtor (as a Partner), and Creditor continued on into 2024.

While testifying that Debtor "worked with" Broker Side, Inc. From December 30, 2020 to January 1, 2024, Debtor also testifies that she "set up" Vivid Realty, Inc. on February 3, 2021 and had all of her income (from whatever source) go "through" Vivid realty. Dec.; ¶¶ 4, 9; Dckt. 88.

Debtor also testifies under penalty of perjury that Creditor only worked at Side, Inc. from January 2, 2021 until August 20, 2021. *Id*.; ¶ 9. This is consistent with Creditor asserting that the work done for the commissions that are owed occurred in 2021.

What Debtor's testimony and evidence shows is that the operation of Side, Inc. terminated in 2021. Creditor's testimony in her Amended Correction Declaration (Exhibit D; Dckt. 98) states that in early October 2021 she was "fed up with not being paid" her commissions and confronted the Debtor. That is within 180 days of Creditor having earned the commissions.

In the Settlement and Release Agreement Debtor agrees to pay $50,000.00 for the claim due for commissions. Debtor's entity Vivid Realty, Inc., agrees that it is jointly and severally liable for the $50,000.00 obligation. Settlement and Release Agreement, ¶ 1; Exhibit C, Dckt. 98. The court does not find any record of Vivid Realty, Inc. having filed bankruptcy in either the Eastern District or Northern Districts of California. Thus, the Debtor has the relief of being able to seek contribution from Vivid Realty, Inc. for at least a portion of this priority unsecured debt.

This Contested Matter is one in which the burdens of proof placed on the parties is of significance. As noted above, a proof of claim is *prima facie* evidence of the validity of the claim, and it is party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Then, once the prima facie evidence of validity has been rebutted, the creditor then has the burden of proof to establish the right to the claim.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018).

Here, the testimony from Debtor are her factual conclusions about operating the business Vivid Realty, Inc. and running all of her income through it. Debtor does not offer business record, tax returns, or other evidence of how the Independent Contractor Agreement with Side, Inc, the Debtor (as Partner), and Creditor is not the business entity and operation from which this Settlement obligation for commissions is owed. Debtor offers no evidence that Side, Inc. continued in operation after 2021.

That Debtor chose to pass her earn monies through other business operations does not mean that the Debtor's business operations with Side, Inc. continues in business operations. The Debtor's business with Side, Inc. terminated in 2021, with neither side providing the court with a clear date.

From the evidence presented, Creditor's Priority Unsecured Claim for $15,150.00 is allowed.

Amended Proof of Claim 16-3
Attempted to Have Been Filed by Creditor

This Objection to Claim was filed on June 30, 2025. Dckt. 86. This commenced the Contested Matter (Fed. R. Bankr. P. 9013, 9014, 3007) which put at issue the amount of and whether the priority claim would be allowed. Notwithstanding the issue of Creditor's priority claim being the subjection of this Contested Matter litigation, Creditor attempted to file Amended Proof of Claim 16-3 on August 12, 2025.

This Second Amended Proof of Claim sought to state that the Claim was for only $17,150.00. Clearly this is in error to the Amended Proof of Claim 16-2 that is before the court.

In the Opposition Creditor states that she filed Second Amended Proof of Claim 16-3 since the amount of the priority unsecured claim for wages or commissions was increased to $17,150.00 starting April 1, 2025. Opp., FN. 1; Dckt. 96.

The Bankruptcy Code provides that when such adjustments are made, they do not apply to bankruptcy cases that were filed prior to the date of the adjustment. 11 U.S.C. § 104(c). As Creditor states in her Opposition, the adjustment to increase the 11 U.S.C. § 507(a)(4) priority claim amount was effective April 1, 2025. Debtor's Bankruptcy Case was filed on October 14, 2024, well before April 1, 2025.

Thus, the increase in the amount of the priority claim does not apply to Creditor's Claim in this Case.

The attempted filing of Second Amended Claim 16-3 is dismissed as: (1) being improperly filed while this Contested Matter was pending, and (2) stating an amount in violation of 11 U.S.C. § 401(c).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Rosa Franco ("Creditor"), filed in this case by Lizbeth Navar Alarcon and Daniel Alarcon, Chapter 13 Debtor, ("Objector," "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 Objection to Proof of Claim Number 16-2 of Creditor is overruled and the Claim of Creditor is allowed in the amount of $15,150 as a priority unsecured claim and $34,850.00 as a general unsecured claim (the total amount of the unsecured claim being stated in Amended Proof of Claim 16-2 to be $50,000.00).
>
> **IT IS FURTHER ORDERED** that the Second Amended Proof of Claim 16-3 is dismissed as:
>
> (1) Being improperly filed which this Contested Matter to determine the amount of the priority claim was pending; and

(2) The stated grounds for the amendment was to claim a higher priority unsecured claim amount of $17,150.00 based on an April 15, 2025 amendment to 11 U.S.C. § 507(a)(4) priority claim amount, which increase applies only to bankruptcy cases filed on or after April 15, 2025, as statutorily limited in 11 U.S.C. § 104(c).

This is without prejudice to Amended Proof of Claim 16-2 filed by Debtor and this Order of the Court.

6. 25-20941-E-13 CDL-1 — BRANDON/JENNIFER DESART — Colby LaVelle — MOTION TO CONFIRM PLAN — 7-15-25 [32]

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on July 17, 2025. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Brandon Paul Desart and Jennifer Marie Desart ("Debtor") have provided evidence in support of confirmation. *See* Decl., Docket 34. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 11, 2025. Docket 40. Trustee does not oppose confirmation, but Trustee requests language in the order specifying that the total paid into the Plan through July 2025 (month 5) is $11,620.00,

with the next payment of $1,701.00 due on August 25, 2025, and continuing in that amount through the end of the 60-month plan.

At the hearing, **xxxxxxx**

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, Brandon Paul Desart and Jennifer Marie Desart ("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 15, 2025, is confirmed as amended to state that the total paid into the Plan through July 2025 (month 5) is $11,620.00, with the next payment of $1,701.00 due on August 25, 2025, and continuing in that amount through the end of the 60-month plan. 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.

7. 25-21077-E-13 JGD-3 | **ANNE WEBER** / **John Downing** | **MOTION TO CONFIRM PLAN** / **7-28-25 [67]**

Item 7 thru 8

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditor and parties in interest on July 28, 2025. By the court's calculation, 29 days' notice was provided. The court granted the Motion Shortening Time on August 22, 2025, setting the hearing for August 26, 2025. Order, Docket 86.

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is xxxxxxx.

The debtor, Anne Marie Weber ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for $5,500.00 per month for 4 months, $6,100.00 per month for 56 months, and an additional $326,000.00 on or before Month 10, and an additional $83,000 on or before Month 60. Amended Plan, Docket 69. These lump sum payments appear to be made by future sales of vacant lots. 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 August 11, 2025. Docket 77. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor has failed to disclose information in the Plan and Schedules. They have not provided a clear picture of the source of the Debtor's income for the ability to make the Plan payments or lay out in the Plan how creditors will be paid. *Id.* at 2:18-20.

2. The Plan does not state the source of where the lump sum payments will come from and it is not otherwise clear from any of the documents that the

Debtor has filed what the source of these large payments could be. *Id.* at 2:24-26.

3. The Plan does not propose a specific date to pay the arrearage of $294,072.44 owed to creditor Wilmington Savings Fund Society, FSB ("Creditor"). *Id.* at 2:27-3:2.

4. It is also unclear how Debtor will propose to pay statutory liens of $26,302 owed to Marin County Assessor and $51,859 owed to Placer County Assessor. *Id.* at 3:5-12.

5. Trustee is concerned that the property tax arrears or ongoing property taxes will not be paid by the Debtor which will affect the feasibility of the plan. *Id.* at 3:17-18.

CHAPTER 13 CREDITOR'S OPPOSITION

Creditor filed an Opposition on August 12, 2025. Docket 80. Creditor opposes confirmation of the Plan on the basis that:

1. The proposed Plan does not provide for timely payment on the arrearages owed to Secured Creditor. It appears the Plan proposed to eventually pay the arrearage with proceeds from sales of vacant lots, but no timeline is given. *Id.* at 2:11-18.

2. While Secured Creditor does not object to Debtor's intent to sell the vacant lots, Secured Creditor does object to any delayed or non-payment of the arrearages. *Id.* at 2:19-21.

DISCUSSION

The court has allowed debtors to make lump-sum payments from the sales of property, so long as those debtors are making monthly adequate protection payments, and the sales are done within a commercially reasonable amount of time.

In this case, Debtor is proposing a sale by month 10 and the another by month 60. The sale taking place by month 60 is not commercially reasonable. However, Debtor is making a substantial post-petition payment to Creditor in the mean time pending the sale in the amount of $5,356.05. The court would be more inclined to grant confirmation of a Plan like this with such a substantial ongoing payment if the sale were to take place by July 31, 2026, which would create enough funds to cure the arrearage owed to Creditor in full.

Furthermore, it is not clear in the Plan how Debtor proposes to pay the tax assessor liens. If these are going to be done through the sales as well, the court would need evidence supporting the idea that the sales will generate enough proceeds to pay these debts.

At the hearing, **xxxxxxx**

~~The Plan as proposed does not comply with the requirements of 11 U.S.C. §§ 1322 and 1325, 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, Anne Marie Weber ("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**.

8. **25-21077-E-13 DPC-3** | **ANNE WEBER** **John Downing** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **7-22-25 [61]**

Final Ruling: No appearance at the August 26, 2025 hearing is required.

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed a Notice of Dismissal, Dckt. 75, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Claim of Exemptions was dismissed without prejudice, and the matter is removed from the calendar.**

9. 24-23282-E-13 CYB-2 | TRINIDAD/RINA BANUELOS, Candace Brooks | MOTION TO MODIFY PLAN, 7-22-25 [42]

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on July 22, 2025. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Trinidad Jesus Banuelos and Rina Banuelos ("Debtor") have provided evidence in support of confirmation. *See* Decl., Docket 44; Ex., Docket 45. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 12, 2025. Docket 49. Trustee does not oppose confirmation, but Trustee notes the Plan indicates the Debtors will be filing on Objection to Mr. Banuelos student loan as well as a Motion to Avoid a Judgement Lien, but neither of those Motions have been filed.

At the hearing, **XXXXXXX**

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, Trinidad Jesus Banuelos and Rina Banuelos ("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 22, 2025, 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.

10. 25-20717-E-13 KSH-1 **CASEY WOODBURY** **Pro Se** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 6-27-25 [61]**

WILMINGTON SAVINGS FUND SOCIETY, FSB VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on June 27, 2025. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxxxx.

August 26, 2025 Hearing

The court continued the hearing on this Motion to allow Debtor to have completed negotiations on selling the Property and have a Motion to Sell set. A review of the Docket on August 22, 2025 reveals that no Motion has been set.

On August 19, 2025, Trustee filed an Amended Status Report. Docket 83. Trustee states he has made an adequate protection to Creditor in the amount of $1,000 on August 14, 2025.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as Owner Trustee on Behalf for CSMC 2018-RPL12 Trust, by and through its servicing agent Rushmore Servicing, as its attorney in fact ("Movant") seeks relief from the automatic stay with respect to Casey Woodbury's ("Debtor") real property commonly known as 961 Silverton Cir, Lincoln, CA 95648-8000 ("Property"). Movant has provided the Declaration of Israel Herrera to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 63.

Movant argues Debtor has not made three post-petition payments, with a total of $8,325.84 in post-petition payments past due. Declaration ¶ 12, Docket 63.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 15, 2025. Docket 72. Trustee states the proposed Plan does not offer Movant any funds for the post-petition ongoing mortgage payments. This is a liquidation Plan with the Property to be sold in six months to pay Movant in full. The Plan is in month five.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 15, 2025. Docket 74. Debtor asserts that a broker has been employed by order of the court to market and sell the Property. Debtor states he has a potential buyer lined up and requests the court deny or continue the hearing to August 26, 2025 at 2:00 p.m.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $544,136.70 (POC 1-1), while the value of the Property is determined to be $677,100, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 3, Docket 16.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re*

Busch, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

In this case, Debtor is proposing to liquidate the real property and provides evidence that he has engaged a potential buyer. Decl. ¶ 9, Docket 76. Moreover, it appears Debtor has an equity cushion of approximately $132,000. The Ninth Circuit has held that a 20% equity cushion is sufficient to provide a secured creditor with adequate protection. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). 20% in this case would be $135,420.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.*

Information About Sale of the Property

The court authorized the Debtor to employ a real estate broker to sell the property by an Order entered on June 16, 2025. Order; Dckt. 60. Debtor testifies that the Property was listed, under the updated Listing Agreement (with the same Broker as authorized by the court) on July 14, 2025. Dec., ¶ 8. Debtor further testifies that he believes that a potential buyer has been identified and they are negotiating the terms of a purchase contract. *Id.*; ¶ 9.

At the hearing, counsel for the Debtor appeared, prosecuting this case in pro se, and reported that the property is being actively marketed and he is in negotiations with a possible purchaser. The Debtor discussed with the court his understanding of the bankruptcy process and how the prompt sale of the Property in a commercially reasonable manner for its current fair market value (rather than a perceived future value or value what the Debtor would "want") is the task he must complete as part of his seeking bankruptcy relief under these circumstances.

The Chapter 13 Trustee reported that he is holding sufficient funds to make a $1,000.00 adequate protection payment to Movant.

The hearing on the Motion is continued to 2:00 p.m. on August 26, 2025, to allow the Debtor to complete the negotiations and get a Motion to Approve the Sale of the Property on file and set for hearing.

The Chapter 13 Trustee is ordered to make a $1,000.00 adequate protection payment to Movant.

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

> The Motion for Relief from the Automatic Stay filed by Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as Owner Trustee on Behalf for CSMC 2018-RPL12 Trust, by and through its servicing agent Rushmore Servicing, as its attorney in fact ("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**.

FINAL RULINGS

11. 22-22406-E-13 CRG-1 | **SHANNON GILLIS, Carl Gustafson** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF LINCOLN LAW FOR CARL R GUSTAFSON, DEBTORS ATTORNEY(S) 7-17-25 [52]**

Final Ruling: No appearance at the August 26, 2025 hearing is required.

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 and all creditors and parties in interest on July 17, 2025. By the court's calculation, 40 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 Additional 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.

The Motion for Allowance of Additional Professional Fees is granted.

Debtor's Counsel, Carl R. Gustafson, the Attorney ("Applicant") for Shannon Darnell Gillis, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Applicant requests additional fees in the amount of $4,400 to be paid through the Plan.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 12, 2025. Docket 61.

APPLICABLE LAW
Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

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

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

A review of the application shows that Applicant's for the Estate include:

> preparing and filing the Debtor's bankruptcy case; preparing the case for Debtor's 341 meeting; preparing the case for confirmation of Chapter 13 Plan; and expending time for necessary case representation tasks; auditing claims; preparing time records and pleadings for an application for additional attorney's fees.

Mot. 2:2-5.

The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Under the Local Rules prior to the August 2023 revisions, which are in effect in this case, Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 22. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant

to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES REQUESTED

The 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:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Carl R. Gustafson, Attorney	54.9	$475.00	$26,077.50
Total Fees for Period of Application			$8,400 (reduced rate)

As fees in the amount of $4,000 have already been paid through the Plan, Applicant now only seeks the additional fees of $4,400 be paid through the Plan.

FEES ALLOWED
Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $4,400 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee")

from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $4,400

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Carl R. Gustafson ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Carl R. Gustafson is allowed the following fees and expenses as a professional of the Estate:
>
> Carl R. Gustafson, Professional Employed by Shannon Darnell Gillis ("Debtor")
>
> Fees in the amount of $4,400,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

12. 24-21861-E-13 PLG-2 | **AUDRA KUNKLE** | **MOTION TO MODIFY PLAN**
Steven Alpert | **7-22-25 [39]**

Final Ruling: No appearance at the August 26, 2025 Hearing is required.

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 and all creditors and parties in interest on July 22, 2025. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Audra Lee Ann Kunkle ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 43; Ex., Docket 42. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 1, 2025. Docket 45. 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, Audra Lee Ann Kunkle ("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 22, 2025, 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.

13. 24-24390-E-13 PLC-3 | **TARRA WASILCHEN** **Peter Cianchetta** | **CONTINUED MOTION TO MODIFY PLAN** **3-27-25 [49]**

Item 13 thru 14

Final Ruling: No appearance at the August 26, 2025 hearing is required.

The Motion to Modify Plan has been continued to October 28, 2025 at 11:00 a.m. to be conducted before the Hon. Judge Klein by prior Order of this Court (Dckt. 82). No appearance at the August 26, 2025 hearing is required.

14. 24-24390-E-13 PLC-4 | **TARRA WASILCHEN** **Peter Cianchetta** | **OBJECTION TO CLAIM OF DAVID BRUCE CHAPMAN, CLAIM NUMBER 15** **7-16-25 [75]**

Final Ruling: No appearance at the August 26, 2025 hearing is required.

The Objection to Claim has been continued to October 28, 2025 at 11:00 a.m. to be conducted before the Hon. Judge Klein by prior Order of this Court (Dckt. 83). No appearance at the August 26, 2025 hearing is required.

15. 23-24595-E-13 TLA-2 | **BRIAN MEREDITH** Thomas Amberg | **MOTION TO MODIFY PLAN** 7-8-25 [41]

Final Ruling: No appearance at the August 26, 2025 Hearing is required.

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 and all creditors and parties in interest on July 8, 2025. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Brian Russell Meredith ("Debtor"), has filed evidence in support of confirmation. *See* Decl., Docket 44; Ex., Docket 45. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 11, 2025. Docket 48. 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, Brian Russell Meredith ("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 8, 2025, 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.