

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

**August 30, 2022 at 2:00 p.m.**

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1. [21-21606-E-13](#) **GUADALUPE VALENCIA** **MOTION TO COMPROMISE**  
[MS-3](#) **Mark Shmorgon** **CONTROVERSY/APPROVE**  
**SETTLEMENT AGREEMENT WITH**  
**SUCCESSOR TRUSTEE JONATHAN**  
**BASILLOTE**  
**7-28-22 [57]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2022. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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 Approval of Compromise is granted.**

Guadalupe Valencia, Chapter 13 Debtor, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses with Jonathan Basillote, the Successor Trustee to Debtor’s late former husband’s trust, the 2020 Richard Valencia Living Trust (“Settlor”). The claims and disputes to be resolved by the proposed settlement are all claims against deceased Settlor for the sum of \$170,000.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 60):

- A. Movant will remove all personal property and vacate the real property known as 1507 Oburn Court, Campbell, California.
- B. Movant will work with Settlor to effectuate a sale of the Property.
- C. Upon sale of the Property, \$170,000 of the sale proceeds due to Movant will be transferred from escrow to the Chapter 13 Trustee in full satisfaction of the Family Court Judgment, Santa Clara County Case No. 2013-6-FL-0010686.

## DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
- 4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

The proposed settlement permits Movant to immediately list for sale and then sell both Movant and deceased Settlor’s interests in the real property commonly known as 1507 Oburn Court, Campbell, California (“Property”). The costs of litigating this proceeding in an adversary proceeding

would cause delay and be costly. Additionally, the settlement is of paramount interest of the creditors because it will allow Trustee to pay all claims in full and leave a surplus to the Debtor.

### **Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it will allow Movant to pay all timely filed claims and settle Movant's claim against deceased Settlor. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Guadalupe Valencia, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Jonathan Basillote, the Successor Trustee to Debtor's late former husband's trust, the 2020 Richard Valencia Living Trust, is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 60).

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 3, 2022. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

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

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

- A. The debtor, Michael Allen Coffman and Susan Carol Coffman (“Debtor”) failed to appear at 341 Meeting of Creditors.

**DISCUSSION**

Trustee’s objections are well-taken.

**Failure to Appear at 341 Meeting**

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear

and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2022. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

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**The Motion to Sell Property is granted.**

The Bankruptcy Code permits Heather Margaret Escobar, Chapter 13 Debtor, (“Movant”) to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1121 Presidio Blvd., Pacific Grove, California (“Property”).

The proposed purchaser of the Property is Ronald and Sherri Quock, and the terms of the sale are:

- A. Purchase Price: \$1,050,000
- B. Deposit: \$210,000
- C. Remainder of Purchase Price: Seven (7) days after Motion is granted

- D. Overbid procedure: Deposit of \$210,000 plus increments of at least \$25,000.00 more than the previous bid.

## DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it allows Debtor to recover net proceeds in \$689,467.17 for the estate.

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

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Buyer has negotiated a short term close of escrow in return for the purchase price offered.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by Heather Margaret Escobar, Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Heather Margaret Escobar, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Ronald and Sherri Quock or nominee (“Buyer”), the Property commonly known as 1121 Presidio Blvd., Pacific Grove, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$1,050,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 30, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.



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

- A. Plan may not be feasible because: (1) Schedule I identifies Debtor as receiving \$1,840.00 as “Grandson’s Help,” however, at Debtor’s First Meeting of Creditors, Debtor admitted the grandson only receives income in the amount of \$1,040.00; (2) Schedule J estimates Debtor’s dependent grandson’s expenses as a total of \$450.00, which appears low; and (3) Debtor has a potential elder abuse claim they failed to list on their schedules.
- B. The Plan contains conflicting reports of Debtor’s Attorney fees.

## DISCUSSION

Trustee’s objections are well-taken.

### Debtor Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Debtor purports to receive \$1,840.00 in monthly income from “Grandson’s Help”, for a total monthly income of \$2,900.31. Dckt. 1, Pages 25-26. The Debtor has failed to provide any Declaration or other evidence from grandson as proof that he can and will contribute any amount to the Debtor over the duration of the Plan. Additionally, Debtor admitted at the First Meeting of Creditors that the grandson only receives \$1,040.00 of disability social security per month. Also, Schedule J estimates Debtor’s dependent grandson’s expenses as a total of \$450.00, which, when considering the IRS National Standards for Allowable Living Expenses, is low.

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

### Unreported Assets

Debtor has not listed an Elder Abuse claim on Schedule A/B despite admitting the existence of such a claim at the First Meeting of Creditors. Dckt. 1, Pages 11-17. Thus, the assets of the estate are not fully accounted for and the Plan may not be confirmed. The Plan, therefore, violates 11 U.S.C. § 1325(b)(1), which provides (emphasis added):

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

## Conflicting Reports of Attorney Fees

Debtor may not be able to comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan states that Debtor's Attorney received \$1,500.00 prior to filing this case and \$1,500.00, will be paid through the Plan, for a total amount of \$3,000.00 being charged as a flat fee for attorney fees. Dckt. 3, Page 2. Debtor's Rights and Responsibilities, states that Debtor's Attorney agreed to attorney fees of \$4,000.00, and \$1,500.00 was paid prior to filing the case. Dckt. 6, Page 3. Disclosure of Compensation of Attorney for Debtor, identifies that the attorney fees are \$4,000.00 and \$1,500.00 was paid to attorney prior to filing and \$2,500.00 is to be paid through the Plan. Dckt. 1, Page 46. Because the Debtor's Attorney fees are inconsistent, the Plan may not be confirmed.

At the hearing, the Trustee agreed to a continuance to allow Debtor to continue to work to address these issues.

### August 30, 2022 Hearing

At the hearing, **XXXXXXXXXX**

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 Plan is **XXXXXXXXXX**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2022. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

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

Jorge Chavez and Dina Mae Chavez (“Debtor”) seeks permission to purchase real property commonly known as 805 Taft Way, Galt, California, with a total purchase price of \$600,000.00 and monthly payments of \$3,484.94 to Guild Mortgage Company LLC. over 30 years with a 5.875% fixed interest rate.

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

The court notes Debtor's residence expenses will increase from approximately \$1,550.00, Supplemental Schedule J, Dckt. 51, to \$4,593.00. Second Supplemental Schedule J, Dckt. 73. This dramatically reduces the monthly net income of Debtor. However, Debtor has completed all monthly payments under the Plan. Given Debtor has completed the Plan, the court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Jorge Chavez and Dina Mae Chavez ("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 Jorge Chavez and Dina Mae Chavez is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 72.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 20, 2022. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy 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 Second Amended Plan is dismissed as moot, the Case having been converted to one under Chapter 7.**

The debtor, Ronald Gene Custodio and Angela Alvarado Custodio (“Debtor”), seeks confirmation of the Second Amended Chapter 13 Plan. The Trustee opposed the Motion.

On August 26, 2022, the court entered its Order converting this case to one under Chapter 7. Order, Dckt. 82.

The Bankruptcy Case having been converted to one under Chapter 7, the Motion to Confirm the Second Amended Plan is dismissed as moot.

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

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

The Motion to Confirm the Second Amended Chapter 13 Plan filed by the debtor, Ronald Gene Custodio and Angela Alvarado Custodio (“Debtor”), having been presented to the court, the Bankruptcy Case having been converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Second Amended Plan is dismissed as moot.

7. [18-25374-E-13](#)      **JAMES WALKER**      **MOTION TO MODIFY PLAN**  
[PGM-4](#)              **Peter Macaluso**              **7-15-22 [119]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 15, 2022. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

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

The debtor, James Larry Walker (“Debtor”) seeks confirmation of the Third Modified Plan because Debtor’s financial situation has changed due to the breakdown of a vehicle, which he can no longer afford and must surrender. Declaration, Dckt. 121. The Modified Plan considers that Debtor has paid a total of \$23,408.00 through July 2020, and proposes to satisfy outstanding claim amount through payments of \$385.00 for 14 months, to commence July 25, 2022, with a 0% percent dividend to

unsecured claims totaling \$24,603.85. Modified Plan, Dckt. 123. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 9, 2022. Dckt. 125. Trustee opposes confirmation of the Plan on the basis that:

- A. Trustee cannot comply with the Plan due to typographical error, as § 7 in the Plan proposes a plan payment of \$23,408.00 through July 2020, where Trustee believes Debtor intended July 2022.
- B. Schedules I and J are marked both as amended and supplemental.

## REPLY FILED BY DEBTOR

Debtor filed a Reply to Trustee's Opposition on August 18, 2022. Dckt. 129. Debtor states therein that the Plan payment date was inadvertently, incorrectly listed, and should be "2022." Additionally, Debtor has filed Supplemental Schedules I and J concurrently with this Motion. Supplemental Schedules I and J, Dckt. 128.

Debtor's Reply appears to resolve the Motion. At the hearing, ~~XXXXXXXXXXXX~~

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, James Larry Walker ("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 15, 2022, as amended at the hearing to provide:

\$23,408.00 through June, 2022, then \$385.00 per month commencing July 25, 2022, and continuing for fourteen (14) months

is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the forgoing amendment to said Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2022. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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

Walter Edward Island and Adreena Christine Island (“Debtor”) seeks permission to purchase 1019 Wisteria Court, Vacaville, California, with a total purchase price of \$624,846.00 and monthly payments of \$4,930.67 to Kappel Mortgage Group, Inc. over 360 months with a 6.00% fixed interest rate. Although Debtor’s previous monthly mortgage payment was \$3,561.00 and Debtor’s Plan payment is \$2,944.00, the loan will fully payoff the Chapter 13 Plan. As such, Debtor’s net income will be able to afford the new mortgage payment.

**Creditor’s Opposition**

Creditor Lakeview Loan Servicing, LLC, filed a limited opposition. Dckt. 76. Creditor states it holds a First Deed of Trust on the Property. Creditor states the total lien balance is \$395,563.08, not \$385,997.37, as indicated on Debtor’s Motion.

At the hearing, Debtor confirmed the payoff amount as \$\$\$\$\$\$. XXXXXX

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

~~————— The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.~~

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

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

~~————— The Motion to Incur Debt filed by Walter Edward Island and Adreena Christine Island (“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 Walter Edward Island and Adreena Christine Island is authorized to incur debt pursuant to the terms of the Estimated Refinance Statement, Exhibit A, Dekt. 73.~~

**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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Stipulation was served by MEB Loan Trust IV, U.S. Bank National Association, and Linda Kaori Mizogami on Debtor, Debtor's Attorney, Chapter 13 Trustee, and the Office of the U.S. Trustee on July 14, 2022.

The court issued an Order for Initial Hearing for Debtor's proposed Chapter 13 Plan on July 18, 2022. This was served July 19<sup>th</sup> and 20<sup>th</sup>, 2022. The court computes that 13 and 14 days notice have been provided.

**The Proposed Chapter 13 Plan is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~**

On May 16, 2022, Debtor Linda Mizogami filed a Proposed Chapter 13 Plan. Dckt. 18. On July 14, 2022, Debtor and Creditor MED Loan Trust, IV, US Bank National Association, not in its individual capacity but solely as trustee, as serviced by Specialized Loan Servicing, LLC lodged with the court, through their respective very experienced bankruptcy counsel, a proposed order titled "Stipulation Re: Chapter 13 Plan." The court rejected the proposed order on the Stipulation for several reasons, each stated in said rejection order.

The Debtor's Plan appearing to be in limbo, the court has determined that an Initial Hearing on Debtor's Proposed Chapter 13 Plan is necessary.

**Trustee's Status Report**

On July 25, 2022, Trustee filed a status report indicating Debtor is \$2,352.01 delinquent in Plan payments. Dckt. 28. Additionally, Debtor's Attorney failed to appear at the second continued First Meeting of Creditors. Also, Trustee has been unable to verify Debtor's Social Security Number and has not received any tax transcripts or copies of Debtor's Federal Income Tax Returns. Also, the Plan may be over the unsecured debt limit of 11 U.S.C. § 109(e) as the case was filed on April 19, 2022, prior to the debt limits changing on June 21, 2022.

Debtor has not filed a status report.

**Failure to Appear at 341 Meeting**

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

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

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

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

Debtor has failed to submit proof of their social security number to Trustee as required by Federal Rules of Bankruptcy Procedure 4002(b)(1)(B). Attempting to confirm a plan while failing to provide proof of identification represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Section for 109 Amount of Debt Compliance**

On the April 19, 2022 filing, 11 U.S.C. § 109(e) limited Chapter 13 eligibility to individuals with regular income who owe “on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200.”

However, effective as of June 21, 2022, 11 U.S.C. § 109(e) was amended to provide “Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than \$2,750,000 or an individual with regular income and such individual’s spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than \$2,750,000 may be a debtor under chapter 13 of this title.”

This case having been filed on April 19, 2022, the debt limits in 11 U.S.C. § 109(e) effective that date, and not the debt limits in the June 2022 amendment, apply in this case.

### **August 2, 2022 Hearing**

At the hearing, counsel for the Debtor reviewed the effort being made to communicate with Debtor in light of her suffering two heart attacks. Counsel requested that the hearing be continued so that he and the Debtor could focus on getting the back tax returns filed, attend the First Meeting of Creditors, and work with counsel for the Chapter 13 Trustee to address issues concerning whether an amended plan may be prosecuted in this case.

### **Debtor’s Status Report**

Debtor filed a Status Report on August 2, 2022 stating that Debtor's Domestic Partner advised that Debtor is aware that the meeting with Trustee was continued to August 18, 2022, and Debtor is recovering from health issues. Dckt. 32.

**August 30, 2022 Hearing**

At the hearing, **XXXXXXXXXX**

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.

Debtor's Proposed Chapter 13 Plan filed by Linda Kaori Mizogami ("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 Proposed Chapter 13 Plan is **XXXXXXXXXX**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2022. By the court’s calculation, 18 days’ notice was provided. 14 days’ notice is required.

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

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

Lillian Delores Deaner (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 22-20019) was dismissed on July 6, 2022, after Debtor failed to file an amended plan. *See* Order, Bankr. E.D. Cal. No. 22-20019, Dckt. 45, July 6, 2022. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor believed there was only one secured claim on Debtor’s residence of the First Deed of Trust and Debtor did not believe her income supported her filing taxes. Therefore, her Plan was not confirmed. Debtor has not indicated why she was unable to file an amended plan and instead failed to prosecute the Trustee’s Motion to Dismiss. However, Debtor’s misunderstandings do not appear in bad faith.

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

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

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

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 26, 2022. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted.**

Mary Ellen Terranella, the Attorney ("Applicant") for Bich Thi-Ngoc Tran, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period May 9, 2021, through September 24, 2021. Applicant requests fees in the amount of \$2,170.00 and costs in the amount of \$7.70.

#### **Trustee's Nonopposition**

Trustee filed a nonopposition on August 10, 2022, (Dckt. 51), indicating there may be a typographical error in the Motion where it states Applicant only received a retainer of \$1,000.00, when the Order Confirming Plan states the amount received was \$2,000.00. Dckt. 29. At the hearing, **XXXXXXXXXX**

#### **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 litigating a modified Plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

## “No-Look” Fees

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

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

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 29. 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 AND COSTS & EXPENSES REQUESTED

### Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Prepared, Filed, and Litigated Confirmation of a Modified Plan: Applicant spent 6.20 hours in this category. Applicant prepared and filed a Modified Plan and filed and litigated a Motion to Confirm the Modified Plan because the Internal Revenue Service filed an amended claim showing the secured portion.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
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Mary Ellen Terranella	6.20	\$350.00	\$2,170.00
<b>Total Fees for Period of Application</b>			\$2,170.00

**Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$7.70 to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	\$0.70	\$7.70
Total Costs Requested in Application		\$7.70

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The unique facts surrounding the case, including filing and confirming a Modified Plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$2,170.00 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.

**Costs & Expenses**

Costs in the amount of \$7.70 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$2,170.00
Costs and Expenses	\$7.70

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 Mary Ellen Terranella (“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 Mary Ellen Terranella is allowed the following fees and expenses as a professional of the Estate:

Mary Ellen Terranella, Professional Employed by Bich Thi-Ngoc Tran (“Debtor”)

Fees in the amount of \$2,170.00  
Expenses in the amount of \$7.70,

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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on August 3, 2022. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

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

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

- A. Debtor, Miguel Angel Luna and Teresita Jesus Luna, (“Debtor”) failed to file all tax returns,
- B. Debtor may not be able to make plan payments.

## **DISCUSSION**

Trustee’s objections are well-taken.

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

Debtor has failed to file all required tax returns as evidenced by the Internal Revenue Service's filing of its Amended Proof of Claim. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan is not feasible because Debtor may not be able to afford the payment due to supporting elderly parent(s). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

The Plan may not list all of Debtor's disposable income or be Debtor's best effort. The Debtor listed care for elderly parents in the amount of \$1,200.00 per month on Schedule J (Dckt. 19) but admitted at the First Meeting of Creditors that the elderly parents collect income from social security. Further, the IRS and Franchise Tax Board issued tax refunds to Debtor.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2022. By the court’s calculation, 10 days’ notice was provided.

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

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

Curtis Terence Burks and Carmen Vernita Burks (“Debtor”) seeks permission to purchase a 2019 Toyota Camry, with a total purchase price of \$35,159.52 and monthly payments of \$182.55 to CarMax over 60 months with a 2.95% fixed interest rate. The purchase of this vehicle has been necessitated by the loss of the Debtor’s 2016 Honda Pilot in an accident. Fortunately, Debtor maintained good insurance coverage on the Honda, the creditor with a lien on the Honda has been paid, and Debtor seeks to use the balance of the unencumbered proceeds as the down payment on the replacement vehicle.

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, including Debtor's prior vehicle being totaled, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Curtis Terence Burks and Carmen Vernita Burks ("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 Curtis Terence Burks and Carmen Vernita Burks is authorized to incur debt pursuant to the terms set forth in the Term Sheet, section marked "Debtors' Choice" on page 2 thereof, which is filed as Exhibit A, Dckt. 124.



- A. Infeasible Plan
- B. Failure to File Documents Related to Business

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on July 12, 2022 (Dckt. 24) stating:

- 1. Debtor submitted six months of profit and loss statements and their Debtor's 2019 tax return.
- 2. Debtor clarifies that the nonstandard provision regarding the claim of Solano County Department of Child Support Services is for child support arrears to be paid outside the Plan. Debtor asserts that it would be impossible to repay the claim over sixty months within the Plan.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Infeasible Plan**

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The Plan calls for the priority claim of Solano County Department of Child Support Services to be paid by Debtor. Dckt. 3 at 7. Schedules I and J do not indicate any expense for child support, and the Debtor has not provided any verifying documents indicating the creditor agrees to this treatment. Dckt. 1, pages 37-38. It is not clear that Debtor will be able to comply with the Plan or make all the Plan payments. Thus, the Plan may not be confirmed.

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

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

- A. Two years of tax returns,
- B. Six months of profit and loss statements,

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

At the hearing, the Trustee agreed to a continuance to allow Debtor to continue to work to address these issues.

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

Trustee filed a Status Report on August 22, 2022. Dckt. 32. Trustee states therein that the Debtor remains current in plan payments and the confirmation issues raised in the Trustee's Objection to Confirmation have been cured by Debtor's filing of supplemental Schedules I and J on August 9, 2022. Dckt. 30. Trustee no longer objects to confirmation of Debtor's plan.

### **August 30, 2022 Hearing**

The Trustee having stated that the grounds for the Objection have been resolved and that the Trustee does not oppose confirmation.

The Objection to Confirmation is overruled.

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 Plan is overruled. 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.



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.

Here, Creditor has not provided persuasive evidence of the validity of their claim given they have provided no evidence, beyond the form document, that they have a claim against Debtor. Adequate information would include attachments evidencing a contract, invoice, lawsuit, judgment, etc. as to the nature of debt and why it is owed.

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

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

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

The Objection to Claim of Chase Auto Finance ("Creditor"), filed in this case by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 15-1 of Creditor is sustained and the claim is disallowed in its entirety.