

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

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

**October 12, 2023 at 3:00 p.m.**

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1. <a href="#"><u>21-23343</u></a> -E-13 <a href="#"><u>JNV</u></a> -3	MAHAGONY BONAFIDE Jason Vogelpohl	CONTINUED MOTION TO INCUR DEBT 9-6-23 <a href="#"><u>[47]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors and parties in interest, and parties requesting special notice on September 6, 2023. By the court’s calculation, 20 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, 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.

<b>The Motion to Incur Debt is <span style="color:red">xxxxxxx</span>.</b>
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Mahagony Bonafide (“Debtor”) seeks permission to purchase a motor vehicle because she lost her vehicle in a car accident. Debtor seeks to incur debt to afford the vehicle with a total purchase price of \$32,445.00 with \$34,989.79 financed, and having monthly payments of \$725.00 to the car dealership Future Honda located in Citrus Heights, California. The loan period is for 72 months with an 13.99% fixed interest rate. Declaration, Dckt. 57.

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

Debtor asserts she requires reliable transportation to travel to and from her employment, to bring her and her dependents to appointments, and for running typical errands. Declaration, Dckt. 49.

Debtor previously presented the court with financing at an 18.55% interest rate. This is extraordinarily high. Debtor has subsequently found a better interest rate at 13.99%. However, the court notes monthly payments are higher, and the vehicle is much more expensive as well, going up from \$25,720.00 with \$21,520.00 financed to now \$32,445.00 with \$34,989.79 financed. Declarations, Dckts. 49, 47.

Debtor seeks to purchase a 2023 Honda Accord. The Motion states that Debtor believes that the terms of the purchase and financing are more favorable than the previous financing agreement, including the 13.99% interest rate. Declaration; Dckt. 57.

It is not clear whether Debtor, who is facing such financial challenges that the extraordinary relief under Bankruptcy is necessary, is seeking to buy a new car or a 2023 with nominal mileage (such as a demo car).

Also, Debtor does not address how, if the prior owned vehicle was damaged and lost, why the insurance money just paid off the secured debt, as opposed to being used for a replacement vehicle.

Debtor and Debtor’s counsel have provided the court with a more favorable interest rate, but they do not inform the court why a new, 2023 model is the most commercially reasonable vehicle given the circumstances.

### **October 3, 2023 Hearing**

Debtor has provided the court with detailed supplemental pleadings in support of the Motion. These pleadings are:

#### Declaration of Debtor’s Counsel Dckt. 63

Debtor’s counsel provides his declaration provide information regarding his research on three different 2021 models of the Honda Accord (the vehicle Debtor desires to purchase). The information was obtained from the NADA.com website (J.D. Power).

A. 2021 Honda Accord Sedan 4D EX-L I4; Exhibit 1 (Dckt. 65).

1. In his declaration, counsel states that the information states the average price for this vehicle is \$28,403.

- a. Exhibit 1 also provides information that the high and low purchase prices, based on 661 transaction, was between \$27,346 and \$30,403 for 80% of the transactions.
- B. 2021 Honda Accord Sedan 4D LX I4, Exhibit 2 (Dckt. 64)
  - 1. In his declaration, counsel states that the information states the average price for this vehicle is \$25,3033.
    - a. Exhibit 2, also provides information that the high and low purchase prices, based on 661 transaction, was between \$24,415 and \$26,779 for 80% of the transactions.
- C. 2021 Honda Accord Sedan 4D Sport 1.5; Exhibit 3 (Dckt. 64)
  - 1. In his declaration, counsel states that the information states the average price for this vehicle is \$27,528.
    - a. Exhibit 3, also provides information that the high and low purchase prices, based on 661 transaction, was between \$26,557 and \$29,141 for 80% of the transactions.

Supplemental Declaration  
of Debtor. Dckt. 67.

Debtor has also provided her supplemental Declaration (Dckt. 67), in which her testimony includes the following:

- A. Debtor wishes to purchase a 2023 Honda Accord for \$32,445. Dec., ¶ 3; Dckt. 67.
  - 1. Debtor has shopped around and found used cars which were comparable in price to the 2023 Honda Accord Debtor “wishes to purchase.” *Id.*

At this juncture, the court notes that Debtor has not shopped around for other used cars to fulfill her transportation need, but has only limited it to cars that are “comparable in price to the 2023 Honda Accord I wish to purchase.” *Id.*; 1:22-25.

- 2. The comparably priced cars are identified as:
  - a. 2021 Honda Accord Sedan 4D EX-L I4, with an average price of \$28,403.
  - b. 2021 Honda Accord Sedan 4D LX I4, with an average price of \$25,303.
  - c. 2021 Honda Accord Sedan 4D Sport 1.5, with an average price of \$27,528.

*Id.*, ¶ 3. Debtor references the Exhibit filed with her counsel's Declaration.

Debtor also testifies that:

4. I have not had good experience with asking conventional banks for loans. So, I prefer to get financing through a car dealer. I have not tried to get a loan in this instance through any other source other than the dealer

*Id.*, ¶ 4. In this she admits to not having tried to obtain financing from any other source, but has relied only on an "Auto Dealer" and "Car Salesmen" to provide her with reasonable financing.

The court notes that while Debtor may not of had a good experience when trying to seek a loan from a bank or other non Car Salesmen sources, she is not along as she seeks financing for her car. She has the assistance of her experienced attorney, who has access to the larger consumer bankruptcy attorney community , in seeking commercially reasonable alternatives.

Debtor also testifies that she is "expecting some insurance money within the next 30 days." *Id.*, ¶ 5. She does not testify as to how much money she will be receiving for her vehicle that was totaled and other monies for damages she has suffered. Debtor's declaration is dated September 28, 2023, so it appears that she is mere weeks away from getting that insurance check.

#### Review of Debtor's Proposed Purchase Data

Debtor has provided the court with a one page summary from the loan proposed by Consumer Portfolio Servicing as Exhibit A (Dckt. 50). This summary shows the following terms and how the monthly payment of (\$675.51) is generated. The information on Exhibit A (Dckt. 50) for this proposed transaction is:

List Price.....	\$25,720.00
Contract Price.....	\$25,720
Down Payment.....	(\$ 4,200)
Tax.....	\$ 2,345
AMOS\$/Opt.....	\$ 995
Insurance.....	\$ 895
Service Contract.....	\$ 3,400
Fee\$/Lender.....	\$ 528.75

Adding up the purchase price, tax, insurance, service contract, and other amounts, the total obligation to be financed is \$29,683.75. The loan repayment period is seventy-five (75) months and 45 days (six years and four months). The interest rate is 18.5%.

In her original Declaration (Dckt. 49), Debtor testimony was that her prior vehicle, a 2014 Nissan Murano Utility 4D S AWD V6 was totaled in an accident. Dec., ¶ 2; Dckt. 49. Debtor does not state how

long ago the accident occurred and what proceeds remain after having paid off the loan secured by the Murano. No secured claim was filed for which that vehicle is listed as being encumbered. No creditor is listed on Schedule D as having a lien of the Murano.

On Schedule A/B, Debtor listed the Murano as having a value of \$6,775.

At the hearing, counsel for Debtor advised the court of the updated purchase information, Exhibit C (Dckt. 59), for which the interest rate has been reduced to 13.99%. While such may seem high when compared to the last ten years or so, with the dramatic increase in interest rates in the past year, the 13.99% for a bankruptcy debtor may not be unreasonable.

Debtor's counsel will also provide information as to the date of the accident, the amount of anticipated insurance proceeds, the date receipt of the proceeds is projected, and how the proceeds will be used (apply to down payment, paid into the Plan, and the like). Additionally, counsel will review with Debtor the reasonable amount for transportation expenses if Debtor's purchase includes a service contract.

### **October 12, 2023 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 Motion to Incur Debt filed by Mahagony Bonafide ("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 Incur Debt is **XXXXXXXXXX**.