

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

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

**October 18, 2022 at 2:00 p.m.**

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<b>1.</b>	<b><u>21-20775-E-13</u></b> <b><u>PSB-8</u></b>	<b>JOSEPH/MARTHA ESPANA</b> <b>Paul Bains</b>	<b>MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAINS LEGAL, PC FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S) 9-20-22 [<a href="#">135</a>]</b>
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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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 20, 2022. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

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<b>The Motion for Allowance of Professional Fees is granted.</b>
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Pauldeep Bains, the Attorney (“Applicant”) for Joseph Humberto Espana and Martha Eugenia Espana, 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 April 22, 2022, through September 19, 2022. Applicant requests fees in the amount of \$3,500.00 and costs in the amount of \$0.00.

### **Trustee’s Non-Opposition**

David Cusick, Chapter 13 Trustee, filed a non-opposition on September 7, 2022. Dckt. 141. Trustee states that the fees are reasonable and the plan payments are current.

### **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 filing a Motion to Sell and a Motion for Compensation. 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. 99. 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.

Motion to Sell: Applicant spent 12.2 hours in this category. Applicant drafted, edited, filed and served a Motion to Sell. Applicant also attended hearings and communicated with various parties.

Motion for Compensation: Applicant spent 3.2 hours in this category. Applicant prepared Motion for Additional Attorney Fees .

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Tina Perez, Paralegal	5.9	\$185.00	\$1,091.50
Pauldeep Bains, attorney	9.5	\$350.00	\$3,325.00
<b>Total Fees for Period of Application</b>			\$4,416.50
<b>Attorney “no-charging” .98 hrs of attorney time and 3.10 hrs of paralegal time</b>			\$916.50
<b>Net Fees for Period of Application</b>			\$3,500.00

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

### **Fees**

The unique facts surrounding the case, including drafting a motion to sell to pay for Chapter 13 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 \$3,500.00 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.

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

Fees	\$3,500.00
Costs and Expenses	\$0.00

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 Pauldeep Bains (“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 Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:

Pauldeep Bains, Professional Employed by Joseph Humberto Espana and Martha Eugenia Espana (“Debtor”).

Fees in the amount of \$3,500.00  
Expenses in the amount of \$0.00,

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.

2. [22-22001](#)-E-13      PRAKHONG CHANTHORN      OBJECTION TO CONFIRMATION OF  
[DPC](#)-1      James Keenan      PLAN BY DAVID CUSICK  
9-28-22 [\[19\]](#)

**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 and Debtor's Attorney, on September 28, 2022. By the court's calculation, 20 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.**

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

- A. The debtor, Prakhong Jimmy Chanthorn (“Debtor”), failed to appear and the First Meeting of Creditors held on September 22, 2022,
- B. Debtor is delinquent in Plan payments to the Trustee,
- C. Debtor has failed to provide Business Documents to the Trustee. While Debtor mailed something to Trustee, Debtor’s counsel was advised that the Trustee does not accept secure documents by physical mail, and such must be uploaded to the Trustee’s secure online portal,
- D. Debtor has failed to provide payment advices related to Debtor’s non-filing spouse’s employment, with the State of California, to the Trustee,
- E. Debtor’s Schedule C lists improper exemptions for funds and earnings. California Code of Civil Procedure § 704.070.

## **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).

### **Delinquency**

Debtor is \$3,000.00 delinquent in plan payments, which represents one month of the \$3,000.00 Plan payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

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.

### **Failure to Provide Pay Advices**

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). The Trustee's Objection states that Debtor is married and Schedule I reflects that his non-filing spouse is, and has been employed with the State of California for the past 19 years. While Debtor has provided some pay stubs, Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Improper Use of California Code of Civil Procedure § 704.070**

Trustee states that Debtor's Schedule C shows an attempt to exempt funds held in Debtor's checking accounts in the total amount of \$5,200.00. Trustee disputes the exemption claimed as Debtor's Schedule I shows that Debtor is self-employed and may only claim 75% of paid earnings as exempt. However, trustee does not provide sufficient legal support for this objection.

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

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

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

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

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

**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, Creditor, and Office of the United States Trustee on September 16, 2022. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of One Main Financial Group, LLC (“Creditor”) is denied without prejudice.**

The Motion filed by Jaswinder Kaur Sandhu (“Debtor”) to value the secured claim of One Main Financial Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 12. Debtor is the owner of a 2016 Honda Civic (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$14,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **TRUSTEE’S OPPOSITION**

On October 3, 2022, Chapter 13 Trustee, David Cusick (“Trustee”), filed an opposition (Dckt. 18) indicating the debt was incurred more than a year ago but less than 910 days. Therefore, Trustee argues, Debtor can only value the car to the extent the debt is non-purchase money. Trustee states the Motion should not be granted because Debtor argues there is approximately \$10,000 in non-purchase money debt, however, does not disclose the exact amount.

### **DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred on August 2021. This is less than 910 days prior to filing of the petition. According to Creditor's Proof of Claim, there is a balance of approximately \$18,704.34. Proof of Claim 8-1. Creditor's claim secured by a lien on the asset's title is under-collateralized.

However, upon the court's review of Debtor's Petition, Schedules, and Motion, as well as Creditor's Proof of Claim, it is not clear to the court whether a portion of this debt is non-purchase-money loan. Under 11 U.S.C. § 506(a), a secured claim can be determined as equivalent to the value of the collateral. However, under 11 U.S.C. § 1325(a)(5), § 506 does not apply to a claim described in § 506(a) if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

Here, the debt was incurred within the 910 day period. Therefore, any claim of Creditor secured through a purchase-money loan cannot be valued for a lesser amount. Any non-purchase-money claim could be valued at the value of the collateral, since the case was filed more than one year after the loan was incurred.

Debtor provides no evidence of the portion of purchase-money loans nor non-purchase-money loans. Declaration, Dckt. 12. Debtor just states "[t]he debt includes approximately \$10,000 of non-purchase money security interest debt." This is insufficient for the court to determine the value of the collateral and secured claim of Creditor.

The Motion is denied without prejudice.

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

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

The Motion to Value Collateral and Secured Claim filed by Jaswinder Kaur Sandhu ("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 denied without prejudice.

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2022. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees 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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<b>The Motion for Allowance of Professional Fees is granted.</b>
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Candace Y. Brooks, the Attorney ("Applicant") for Cherri Mae Da Roza, 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 April 27, 2019, through December 7, 2021. Applicant requests fees in the amount of \$3,100.00.

#### **TRUSTEE'S RESPONSE**

Trustee filed a Response to this Motion on October 4, 2022. Dckt. 139. Trustee calculates that fees for the unanticipated work expended on Debtor's case should total \$3,097.25 based on 9.53 hours of work performed for a rate of \$325.00 per hour. Trustee also notes that Debtor is \$680.00 delinquent in Plan

payments, and Applicant's time sheet's does not break down the fees constituting the Invoice total amount requested of \$3,100.00. Declaration, Dckt. 140.

Further, Trustee calculates that Debtor's Plan is funded to pay only \$3,061.95 but all unsecured claims have been paid. Therefore, Trustee is not opposed to granting the Motion so long as the amount of approved fees does not exceed \$3,061.95.

## **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 work for the Estate includes the preparation and filing of three (3) motions to Modify Debtor's Chapter 13 Plan, communication and response associated with such motions, changes to Debtor's Schedules I and J, and the preparation and filings of four (4) responses to Motions to Dismiss. 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. 9. 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.

Substantial and Unanticipated Work: Applicant spent 23.60 hours in this category. Applicant the preparation and filing of three (3) motions to Modify Debtor's Chapter 13 Plan, communication and response associated with such motions, changes to Debtor's Schedules I and J, and the preparation and filings of four (4) responses to Motions to Dismiss. <sup>FN.1.</sup>

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FN. 1. The Trustee provide the insight that Applicant's detailed billing records show the breakdowns for the individual task billings, but does not include the aggregate amount of the fees requested.

For the court, it appears that the billing records include fees for what allowance is not requested. Some are identified as “Part of Flat Fee.” Some say “Forgiven.” The court recognizes that some judges in the past (and some may currently do) would require attorneys to provide detailed time records not just for the additional, substantial, unanticipated legal service fees, but an analysis for the total legal services in the case. Then the judge would decide whether the unanticipated, substantial legal service should just be shoved into the no-look fee. As this court has explained previously, the no-look fee is an average fee election by counsel, covering both good and bad fee elections. If there is additional, unanticipated legal services required in a case, then those need to be properly compensated in that case.

If an attorney needs to provide that information for other judges, this court requests that the total billing records for the case be clearly marked as a separate exhibit. This allows the attorney to have one additional fee request set of forms, but allow this court to easily see which exhibit does not need to be read.

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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>
Candace Y. Brooks, Attorney	23.60	\$325.00	\$7,670.00
<b>Total Fees for Period of Application</b>			\$7,670.00

Although Applicant spent 23.60 hours in substantial and unanticipated work, she is only requesting \$3,100.00 for 9.53 hours worked. The court notes, 9.53 hours worked would yield \$3,097.25 in compensation, not \$3,100.00. However, given Attorney is requesting a reduced rate, the court is okay with the nominal difference.

As noted above, Trustee indicates only \$3,061.95 will be on hand to pay Applicant. ~~At the hearing, Applicant agreed/did not agree to \$3,061.95 instead of \$3,100.00.~~

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

### **Fees**

The unique facts surrounding the case, including defending a Motion to Dismiss and modifying Debtor’s Plan and Schedules, 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 ~~\$3,061.95/\$3,100.00~~ 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.

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

Fees ~~\$3,061.95/\$3,100.00~~

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 Candace Y. Brooks (“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 Candace Y. Brooks is allowed the following fees and expenses as a professional of the Estate:

Candace Y. Brooks, Professional Employed by Cherri Mae Da Roza (“Debtor”)

Fees in the amount of ~~\$3,061.95/\$3,100.00~~

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).**

-----

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 September 20, 2022. 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 -----.

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

- A. Debtor is delinquent \$372.00 in Plan payments.
- B. Debtor’s Chapter 13 Documents are incomplete.
- C. Debtor’s Plan may not be in Debtor’s best efforts as Debtor may have more disposable income to fund the Plan.

#### **Trustee’s Status Report**

Trustee filed a status report on October 11, 2022. Dckt. 19. Trustee states Debtor is now current and the Chapter 13 documents have been amended. Therefore, Trustee’s only outstanding concerns remain Debtor’s best efforts.

## DISCUSSION

### Failure to Provide Disposable Income / Not Best Effort

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.

Debtor's Schedule I reflects mandatory retirement contributions of \$579.26 per month and voluntary contributions of \$623.18 per month. Amended Schedule I, Dckt. 14. This is 23 percent of Debtor's gross income. Debtor is proposing to pay nonpriority unsecured claims no less than a 11.8% dividend. It appears Debtor could be contributing more to the Plan if they adjust their voluntary contributions.

Here, Debtor has combined monthly gross income of \$8,964.91. Amd. Sch. I; Dckt. 14 at 16-17. One is an employee of the County of Sacramento and the others for a well known Federal credit union. One debtor is employed by the County has been there 20 years and the credit union employed debtor has been employed there for 10 months.

In looking at Schedule J, the two debtors form the family unit (no dependants). Dckt. 1 at 37-39. Included in the Schedule J expenses are a payment of (\$100) for repayment of a "Civil Service retirement loan repayment." *Id.*, ¶ 21.

Debtor has not provided the court with any bona fide, good faith basis for diverting \$623 a month in income for additional civil service benefits. Over the sixty (60) months of the Plan, that totals \$37,380 that Debtor is putting into their own pockets while obtaining extraordinary bankruptcy relief to be freed from paying creditors.

At the hearing, **XXXXXXX**

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

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

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

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

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

6. [11-21824](#)-E-13      **DANNY/DEBRA HORSFALL**      **MOTION TO VALUE COLLATERAL OF**  
[PGM-1](#)      **Peter Macaluso**      **COMERICA BANK**  
9-13-22 [[65](#)]

**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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 13, 2022. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of Comerica Bank  
 (“Creditor”) is XXXXXX .**

The Motion to Value filed by Danny Richard Horsfall and Debra Sue Horsfall (“Debtor”) to value the secured claim of Comerica Bank (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 68. Debtor is the owner of the subject real property commonly known as 1119 East 19th Street, Marysville, California (“Property”). Debtor seeks to value the Property at a fair market value of \$134,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor offers the Declaration of James Chausee, a licensed real estate appraiser with 38 years’ experience, who opines that the value of the Property is \$134,000.00. Exhibit A, Dckt. 67.

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

### **Proof of Service**

Debtor's Proof of Service indicates a detailed search on the Secretary of State to locate the address of Creditor. Dckt. 70. Creditor was served at their Principal Address, also indicated as their Mailing Address in Dallas, Texas. Additionally, Debtor served a "Thomas J. Colven III," a Marina Del Rey address, appearing to be where their agent is located, a Sacramento Branch, and a PO Box in Dallas Texas. It appears, therefore, creditor had adequate notice to appear before the court.

### **No Proof of Claim filed**

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

### **Evidence to Support the Secured Interest**

Comerica was listed on Debtor's Schedule F as an unsecured nonpriority claim in the "unknown" amount. Dckt. 1 p. 39. Therefore, at the time of filing the petition, it appears Debtor believes Comerica was unsecured, not secured. Aside from being listed on Schedule F as an unsecured claim, there is no evidence of Comerica's interest. Debtor did not provide the court with any evidence in the form of a deed of trust, recorded abstract, or otherwise, evidencing Creditor has a secured interest in Debtor's Property. It is unclear to the court whether Comerica had a secured interest at the date of filing and Debtor did not know it was secured, or if Comerica secured their claim after the date of filing.

The declaration of Debtor indicates Comerica, at the time of filing, had a fourth position note and Deed of Trust in the amount of \$465,000.00. Declaration, Dckt. 68. Debtor provides no copy of the Deed of Trust, or an further evidence beyond their Declaration.

As of this time, there is no secured claim in this case for the court to value such claim. Creditor has not filed a proof of claim. Debtor has not filed a proof of claim for Creditor. Debtor has not provided the court with a certified copy of the lien, the loan documents, and evidence of amount of the debt (like a statement from the creditor or documentation obtained through a 2004 exam or discovery in this Contested Matter).

At the hearing, ~~XXXXXXXXXX~~

## DISCUSSION

~~—————The senior in priority deed of trust secures a claim with a balance of approximately \$168,505.32. Schedule D, Dckt. 1. The value of the Property at the time of filing was \$134,000.00. Schedule A, Dckt. 1. Creditor’s fourth position deed of trust secures a claim with a balance of approximately \$465,000.00. Declaration, Dckt. 68. Therefore, Creditor’s claim secured by a fourth position deed of trust is completely under-collateralized. Creditor’s secured claim is determined to be in the amount of \$0.00, the value of the collateral, and therefore, no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

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

~~—————The Motion to Value Collateral and Secured Claim filed by Danny Richard Horsfall and Debra Sue Horsfall (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~—————**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Comerica Bank (“Creditor”) secured by a fourth in priority deed of trust recorded against the real property commonly known as 1119 East 19th Street, Marysville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$134,000.00 and is encumbered by a senior lien securing a claim in the amount of \$168,505.32, which exceeds the value of the Property that is subject to Creditor’s lien.~~

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.

**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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#### **NOTICE AS A MOTION UNDER LBR 9014-1(f)(1) OR (f)(2) IS UNCLEAR**

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held on the Motion for Order to Show Cause and Evidentiary Hearing. Based upon no indication that written opposition is required, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Movant is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

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, creditor, and creditor's counsel on September 28, 2022. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

<p><b>The Motion for Order to Show Cause and Evidentiary Hearing is <span style="color: red;">XXXXX</span>.</b></p>
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On September 27, 2022, the debtor, Michael Anthony Carter and Torrie Gidget Conn ("Debtor"), filed this Motion for an Order to Show Cause and Evidentiary Hearing to require Attorney Christina J. Khill ("Attorney Khill") and Malcolm Cisneros Law Corporation ("Malcom Cisneros") to show cause why they should not be sanctioned. Debtor seeks to resolve the issue whether:

1. Attorney Khil and Malcom Cisneros knowingly make false claims of representation;
2. The allegations made by Attorney Khil and Malcom Cisneros in the Proof of Claim and other pleading with the court constitute frauds in bad faith;
3. Why they and any clients they represent should not be sanctioned pursuant to the authority of the court and 28U.S.C. § 1927.

## **Factual Assertions**

Debtor claims:

1. Wilmington Savings Fund Society, FSB, is not in its individual capacity but solely acting as Trustee (“Creditor Trustee”) representing the CSMC 2021-RPL8 Trust.
2. Creditor Trustee is required to have the Board of Directors of the Creditor Trust expressly authorize and approve in writing hiring professional services like Malcom Cisneros.

No legal basis is provide for the proposition that a board of directors, and not the officers and employees, who operate the business hire persons to provide services to Creditor.

3. The Creditor Trust is governed by a Pooling and Servicing Agreement (“Agreement”) which does not give the Trustee authority to take any actions with respect to the Creditor.
4. Attorney Khil and Malcom Cisneros made claims of representation in Proof of Claim 1-1 stating they have an attorney-client relationship with the Creditor and Creditor Trustee.

It is asserted that an attorney must “prove” that it has been retained by the client before it can proceed with representing a client. Debtor discusses in part as standing, not whether the attorney actually represents that client. Debtor draws that conclusion, but does not appear to offer any evidence that the lawyers do not have Creditor for a client.

5. Debtor puts forth questions as to the actual parties Attorney Khil and Malcom Cisneros represent.
6. Malcom Cisneros has no attorney-client relationship with Creditor Trustee.

## **OPPOSITION**

Creditor (represented by the attorneys that Debtor questions) has filed an Opposition. Dckt. 93.

With respect to the substance of the Motion, Creditor asserts that it really is in the nature of objecting to Proof of Claim 2-1 that the attorneys filed for Creditor. Creditor asserts that based on a Bankruptcy Appellate Panel decision; *In re Sandoval*, 186 B.R. 490 (B.A.P. 9th Cir. 1995); that bankruptcy courts cannot award sanctions pursuant to 28 U.S.C. § 1927, and therefore such request to a bankruptcy judge is

improper. No analysis of the requirements for exercising the § 1927 is provided, nor consideration that bankruptcy judges are judicial officers of and constitute a unit of the District Court, and not “merely” judges of a bankruptcy court. 28 U.S.C. §§ 151, 158(a). The Ninth Circuit decision cited in *Sandoval*, which involved another provision of law, does not include a discussion of a bankruptcy judge being a judicial officer of the District Court,

### **October 18, 2022 Hearing**

At the hearing, XXXXXXXXXXXX

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).**

-----

#### **NOTICE AS A MOTION UNDER LBR 9014-1(f)(1) OR (f)(2) IS UNCLEAR**

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held on the Motion for Order to Show Cause and Evidentiary Hearing. Based upon no indication that written opposition is required, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and creditors' counsel on October 4, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

<p><b>The Motion for Order to Show Cause and Evidentiary Hearing is <span style="color: red;">XXXXX</span>.</b></p>
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On October 4, 2022, the debtor, Michael Anthony Carter and Torrie Gidget Conn ("Debtor"), filed this Motion for an Order to Show Cause and Evidentiary Hearing to require Attorneys Jennifer C. Wong, JaVonne M. Phillips, Melissa Robbins Coutts, a "Mr. Chase", and McCarthy & Holthus, LLP ("Attorneys") to show cause why they should not be sanctioned. Debtor seeks to resolve the issue whether:

1. Attorneys knowingly make false claims of representation;

2. The allegations made by Attorneys in the Request for Special Notice, Proof of Claim, and other pleadings and filings constitute frauds in bad faith;
3. Why they and any clients they represent should not be sanctioned pursuant to the authority of the court and 28U.S.C. § 1927.

### **Factual Assertions**

Debtor claims:

1. Attorneys did not file a Notice of Appearance for Proof of Claim 0 as required by Federal Rules of Bankruptcy Procedure 3002.
2. Attorneys did not enter a Notice of Appearance when they filed a Request for Special Notice. Dckt. 30.
3. The Request for Special Notice does not state attorneys are appearing for a creditor, nor mention a creditor, nor is it stated under penalty of perjury. Upon the court's review, however, the Request states they have been "retained by Federal National Mortgage Association [("Creditor")]," which indicates representation.
4. The Motion for Relief and Supporting Documents by Creditor, Dckts. 47-53, indicates fraud because it implies Attorneys and Creditor have an attorney-client relationship.
5. There are omissions of declarations from Attorneys which implies Creditor and Attorneys do not have an attorney-client relationship.
6. And other allegations of fraud set forth in the Motion.

### **October 18, 2022 Hearing**

At the hearing, **XXXXXXXXXX**

**DEBTOR DISMISSED: 12/21/2021**

**MOTION FOR AN ORDER TO SHOW  
CAUSE AS TO WHY ATTORNEY HAS  
FAILED TO RETURN FUNDS TO THE  
ESTATE  
9-13-22 [\[32\]](#)**

**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.

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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, and Office of the United States Trustee on September 13, 2022. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for an Order to Show Cause 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.

<p><b>The Motion for an Order to Show Cause is granted.</b></p>
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The Chapter 13 Trustee, David P. Cusick ("Trustee"), filed this Motion requesting an Order to Show Cause as to why Debtor's Attorney, Peter Nisson ("Debtor's Attorney"), has failed to return funds to the estate, in violation of Federal Rules of Bankruptcy Procedure 9014 and 9020.

On April 14, 2022, the court entered an order directing Debtor's Attorney to return funds in the amount of \$2,500.00 to be paid by April 24, 2022. Dckt. 31. To date, Trustee reports Debtor's Attorney has not been refunded to the Estate or paid to Debtors.

This is in clear violation of the court's lawful order. The court will issue an Order to Show Cause the court should not impose a corrective sanction for Debtor's Attorney failed to comply with the court's order. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a).

The court's Order to Show Cause will provide it will impose a corrective sanction of \$3,500.00 if Debtor's Attorney has not repaid the \$2,500.00 on or before five days before the hearing on the Order to Show Cause. Debtor's Attorney can avoid the \$3,500.00 corrective sanction by merely complying with this court's prior order to refund the \$2,500.00.

The court will also order Debtor's Attorney to appear in person at the hearing on the Order to Show Cause. If Debtor's Attorney fails to appear, the court will consider issuing an order for the U.S. Marshal to take Debtor's Attorney into custody and deliver to him to the court, with the court setting a short continuance on the hearing for the Order to Show Cause.

If Debtor's Attorney has not paid the \$2,500.00, the court will consider whether a higher corrective sanction, in addition to the \$3,500.00 is appropriate, or if it is appropriate to refer this contempt to the Article III Chief Judge of the District Court for the exercise of a District Court judge's corrective and punitive sanction power

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 for an Order to Show Cause 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 Motion for an Order to Show Cause is granted, and the court will issue an Order based on Debtor's Attorney's noncompliance with the April 14, 2022 court order directing Debtor's Attorney to return funds in the amount of \$2,500.00 to the bankruptcy estate. Dckt. 31.

**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 September 22, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

- A. Debtor failed to provide proof of her social security number to the Trustee at the First Meeting of Creditors held on September 15, 2022,
- B. Debtor may not be able to comply with the Plan because
  - 1. The length of the Plan and its Terms are contradictory and may exceed the maximum permissible length of 60 months;
  - 2. The Plan does not specify which piece of property Debtor intends to sell;
  - 3. The monthly dividend for Class 2 claims is insufficient;

4. Schedules I/J reflect a monthly Plan payment that exceeds Debtor's net monthly income and does not adequately describe expenses;
5. The amount of attorneys' fees being charged to Debtor are unclear and inconsistent; and
6. Debtor's filed Schedules A/B, C, and I, are inaccurate.

C. Lastly, Trustee notes that a Plan payment is coming due.

## DISCUSSION

Trustee's objections are well-taken.

### 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).

### 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). Trustee's Objection states that Trustee cannot properly assess the Plan, and it is not feasible because:

Section 7.01 of the Plan states that Debtor will pay \$800.00 per month from September 25, 2022, to August 25, 2029, and that Debtor will pay the Plan within 24 months from land sale proceeds. Dckt. 3. These provisions contradict one another as Debtor cannot fund the Plan within two years and continue to make Plan payments over a period of seven years, simultaneously. Additionally, this may indicate the Plan exceeds sixty months allowed under 11 U.S.C. § 1322(d).

Debtor's Plan proposes to sell property to satisfy debt, but Schedule A/B shows that Debtor owns seven different properties, and the Plan does not specify which property is intended to be sold. Further, the Plan refers to "property" and "land" which does not adequately match the description of Debtor's property listed in Schedule A/B.

The Plan proposes to pay a monthly dividend of \$10.00 to tax collecting agencies. The Trustee notes that this amount may be insufficient, depending on the length of the Plan Debtor is proposing, which is currently unclear. The amount is also in violation of Federal Rules of Bankruptcy Procedure 3010 as Rule 3010 provides, emphasis added, "**no payment** in an amount **less than \$15** shall be distributed by the trustee **to any creditor . . .**."

Further, certain Chapter 13 documents are inaccurate, unclear, and inconsistent:

Schedule J - Debtor's Schedule J reflects a monthly net income of \$600.00, however, the Plan proposes a monthly payment of \$800.00. It is unclear to the court where the additional \$200 in monthly funds is coming from.

Additionally, Schedule J shows real estate taxes as \$0.00 and Property insurance as \$85.00. Debtor indicates they own seven (7) properties, therefore, \$85.00 does not appear sufficient to pay all properties' insurance nor have \$0.00 in real estate taxes.

Schedule A/B - Debtor's Schedule A and B fails to list electronic, jewelry, and bank account assets.

Schedule I - Debtor has failed to provide a supplemental Schedule I when she admitted at the First Meeting of Creditors that she started a new job at Oak Run Elementary School.

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

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.

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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 March 20, 2022. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Amended Plan is ~~XXXXXXXX~~.**

The debtor, Dennis A. Frazier ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$1,750.00 for 57 months, and a 100% dividend to unsecured claims totaling \$12,047.35. Amended Plan, Dckt. 50. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CREDITOR'S CONDITIONAL OBJECTION**

First Trust ("Creditor FT") holding a secured claim filed a Conditional Objection on April 7, 2022. Dckt. 75. Creditor FT conditionally opposes confirmation of the Plan on the basis that:

- A. Creditor FT requires clarification that the Plan will be amended to incorporate the entirety of Creditor FT's judgment if ongoing adversary proceeding is resolved in Creditor FT's favor.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on April 11, 2022. Dckt. 78. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan is contingent on the court's granting of Debtor's Motions to Value Secured Claim and To Avoid Lien.
- B. It is unclear whether Debtor intends to prosecute the ongoing adversary proceeding.
- C. Debtor failed to file supplemental Schedules I and/or J.

## DEBTOR'S REPLY

Debtor filed a reply to Trustee's opposition on April 19, 2022. Dckt. 84. In their reply, Debtor responds to Trustee with the following:

- A. Debtor's Motion to Avoid Lien is set for hearing on May 10, 2022 and has not been opposed yet.
- B. Regarding the Adversary Proceeding, Case No. 22-02008, Debtor and Creditor FT applied for Bankruptcy Dispute Resolution ("BDR"). As a means of resolving the claim, Debtor will file a cross-complaint if BDR is not successful.

## DISCUSSION

### Clarification of Creditor FT's Claim

Creditor FT has a recorded deed of trust secured by Debtor's residence in the amount of \$75,000.00. Claim 2-1. Debtor did not object to Creditor FT's secured claim. Creditor FT initiated Adversary Proceeding No. 22-02008 ("*First Trust v. Frazier*") to determine whether the deed of trust is a valid and enforceable lien against Debtor's residence. Objection, Dckt. 75 at 2:16-18. It should be noted that Creditor FT's Objection contains a typographical error and mistakenly references the case number as 22-020078 rather than 22-02008.

Creditor FT is aware that Debtor's Plan provides an "opaque statement" indicating that Debtor will amend the Plan within fourteen (14) days of the "entry of order [of the judgment in *First Trust v. Frazier*]." *Id.* at 2:27-28. However, Creditor FT requests the language to specifically state:

[I]n the event that the judgment in [*First Trust v. Frazier*] provides that the Deed of Trust is [a] valid lien on Debtor's real property and/or is a judgment for money owed by Debtor to Creditor First Trust, that the Amended Plan will be further amended to be entirely consistent with the judgment in [*First Trust v. Frazier*].

*Id.* at 3.

Debtor's Reply (Dckt. 84) does not indicate whether they accept the above language of Creditor FT.

### **Debtor's Reliance on Motion to Avoid Lien**

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Kelstin Group, Inc., dba Pacific Credit Services ("Kelstin"). Debtor filed a Motion to Avoid Lien in connection with this claim on April 1, 2022 and it is set for hearing on May 10, 2022. See Dckt. 69. Trustee filed a Response indicating non-opposition on April 11, 2022. Dckt. 81.

Trustee notes that Debtor's Plan also relies on a Motion to Value Secured Claim and Avoid Lien in connection with Creditor FT's secured claim. Dckt. 78 at 2:1-2. Debtor has not filed such motion. If Debtor does not file such Motions and/or they are not granted, Debtor's Plan will be insufficient to pay Creditor FT's claim in full. *Id.* at 2:4-7. In Debtor's Reply, with respect to Creditor FT, Debtor "requests that the Motion to [be] continued [a]fter completion of [the BDR] process." Dckt. 84 at 1:24-26. The court is unsure what Motion Debtor is referring to, as Debtor has not filed any Motions in connection with Creditor FT's claim. Regardless, without the court valuing the claim(s) of Kelstin and First Trust, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

### **Debtor's Prosecution of Adversary Proceeding**

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

Trustee states that it is unclear, based on the Amended Plan, whether Debtor intends to prosecute *First Trust v. Frazier*. Dckt. 78 at 2:16-18. Debtor's Plan states, "Debtor shall prosecute Adversary #22-020078[.]" Dckt. 50 at 7. The trustee is uncertain of treatment of Creditor FT's claim if the Plan is confirmed.

Similarly to the typographical error made by Creditor FT in its Objection, Debtor appears to have erred in providing the correct case number. The court finds that Debtor meant to state they intended to prosecute #22-02008.

Debtor's Reply states that Debtor and Creditor FT applied for Bankruptcy Dispute Resolution ("BDR") to resolve the claim without further litigation. Dckt. 84 at 2:3-5. In the event that the BDR is unsuccessful, Debtor intends to apply for permission to file a cross complaint against Creditor FT. *Id.* at 2:6-8.

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

### **Debtor Failed to File Schedules I/J**

Trustee states Debtor's bankruptcy case was filed on November 9, 2021. Dckt. 78 at 2:19-20. Accordingly, Trustee is uncertain if Debtor's income and expenses have changes in the last five (5) months. *Id.* at 2:20-21. Debtor's Reply does not address this deficiency. Without Debtor's supplemental Schedules I/J, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

## **April 26, 2022 Hearing**

At the hearing, Counsel for Debtor advised the court that Debtor and Creditor FT agreed to participate in the BDRP in an effort to resolve their disputes. All parties in interest at the hearing agreed to a continuance of this hearing to allow the BDRP mediation to proceed.

## **Motion to Avoid Lien**

On April 1, 2022 Debtor filed a Motion to Avoid Lien of Kelstin. Dckt. 69. On May 15, 2022 an Order Granting Motion to Avoid Lien was entered. Dckt. 91. The Order states the judgment lien is avoided in its entirety pursuant 11 U.S.C. § 522(f)(1). This seems to resolve part of Trustee's opposition to the Motion to Confirm Amended Plan.

## **July 12, 2022 Hearing**

At the hearing the Parties agreed to continue this hearing, as determination of confirmation is impacted by the Adversary Proceeding (22-2008) between Debtor and Creditor FT, and confirmation cannot be determined until that matter is resolved.

## **U.S. Bank Trust National Association Opposition**

U.S. Bank Trust National Association, as trustee for RMTP Trust Series 2021 Cottage-TT-V, its successors and/or assigns ("Creditor USBT"), filed an Opposition on October 4, 2022. Dckt. 103. The Opposition states that:

- A. Creditor USBT's claim is secured by a Deed of Trust on Debtor's principal residence located at 2 Odom Court, Sacramento, California. As of November 1, 2021, Debtor was in default by \$29,419.27.
- B. Creditor USBT further states that the Amended Plan includes provisions to address pre-petition arrears due, and adequate protection payments, while a loan modification application is pending. Creditor USBT states that Debtor initiated the application process, as detailed in the Amended Plan, with Freedom Mortgage Corporation, the prior loan servicer. However, the loan has since been transferred to Creditor USBT.
- C. Creditor USBT states that no loan modification application is currently pending.
- D. Additionally, no adequate protection payments of \$1,435.83 have been paid yet.

Therefore, Creditor USBT requests that the Plan be further amended to provide for the payment of the pre-petition arrears in full and maintenance of the regular post-petition payments as they become due.

**October 18, 2022 Hearing**

At the hearing, **xxxxxxx**.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Dennis A. Frazier (“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 is **xxxxxxx**.

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

**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 Service Not Provided. No proof of service has been filed. At the hearing, ~~xxxxxxxxxx~~.

~~Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor [(pro se), Debtor's Attorney], Chapter [7 | 11 | 12 | 13] Trustee, [Official Committee of Creditors Holding General Unsecured Claims / creditors holding the twenty (20) largest unsecured claims], creditors, parties requesting special notice, and Office of the United States Trustee on xxxx, 202x. By the court's calculation, xx days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).~~

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

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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Pauldeep Bains, the Attorney ("Applicant") for Jorge Chavez and Dina Chavez, 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 6/1/2022, through 9/13/2022. Applicant requests fees in the amount of \$1,805.25 and costs in the amount of \$0.00.

### Trustee's Opposition

Trustee filed an opposition on September 28, 2022. Dckt. 86. Trustee does not oppose the additional fees but is opposed to the fees being paid directly to Applicant, outside of the plan. Trustee cites a lack of evidence from both Debtors in support in the application, since it only provides Dina Chavez's statement.

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 filing a Motion to Incur Post Petition Debt and Motion for Compensation. 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. Dekt. 23. 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 & Peek 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:

————— Motion to Incur Post Petition Debt: Applicant spent 6.6 hours in this category. Applicant reviewed options, discussed approval process, attended hearings, and drafted Order.

————— Motion for Compensation: Applicant spent 2.0 hours in this category. Applicant prepared a Motion for Additional Attorney Fees.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
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Tina Perez, Paralegal	1.7	\$185.00	\$314.50
Pauldeep Bains, Attorney	6.9	\$300.00	\$2,070.00
<b>Total Fees for Period of Application</b>			\$2,384.50
<b><del>"No charge" discount for 1.93 hrs of attorney time</del></b>			<del>(\$579.25)</del>
<b>Net Fees for Period of Application</b>			\$1,805.25

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

### **Fees**

~~\_\_\_\_\_ The unique facts surrounding the case, including Motion to Incur Debt for the purchase of house, 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 \$1,805.25 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:~~

<del>_____ Fees _____</del>	<del>\$1,805.25</del>
<del>_____ Costs and Expenses _____</del>	<del>\$0.00</del>

~~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 Pauldeep Bains ("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 Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:~~

~~\_\_\_\_\_ Pauldeep Bains, Professional Employed by Jorge Chavez and Dina Chavez ("Debtor")~~

~~Fees in the amount of \$1,805.25~~

Expenses in the amount of \$0.00,

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.~~

13.	<a href="#"><u>22-21952</u></a> -E-13 <a href="#"><u>DPC-1</u></a>	PATRICK/CRYSTAL DICKENS Mikalalah Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 9-20-22 <a href="#"><u>[18]</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 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 parties requesting special notice on September 20, 2022. 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:

A. The Plan may not be in Debtor's best efforts.

## DISCUSSION

Trustee's objections are well-taken.

### Failure to Provide Disposable Income / Not Best Effort

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.

There are numerous discrepancies with Debtor's Chapter 13 documents. Based on Debtor's pay advices, Trustee shows earnings of \$19,370.28 per month, rather than \$18,160.00 as Debtor claims on Debtor's 122C-1 form. Dckt. 1 at 36. Additionally, Debtor's Schedule I indicates monthly gross income of only \$16,550.00. *Id.* at 28.

Debtor claims \$4,800 deduction in taxes on their 1022C-2 form, however their Schedule I only reflects \$4,410.00. *Id.* at 42, 29.

Debtor claims \$370 for optional telephone and telephone services, which is not supposed to include payments for basic home telephone, internet, and cell phone service. Debtor claims \$500 for Phone, Internet and Utilities in their Schedule I, so it is not clear what this \$370 is for. *Id.* at 42.

Debtor claims \$55 per month in attorney's fees on their 122C-2 form under "special circumstance" but does not explain why these are justifiable additional expenses. *Id.* at 45.

Debtor pays \$325 in retirement loans, which, once it is paid off should increase Debtor's Plan payment. Schedule I, Dckt. 1 at 30.

Debtor has not provided proof of need for \$545 in childhood and education expenses or \$300 in special needs. Schedule J, Dckt. 1 at 31.

Debtor has a \$1,198.00 expense for a Ferrari which appears unreasonable when Debtor has two other vehicles. Once the lease ends, Debtor will likely be able to increase their Plan payment, as indicated on Debtor's Schedule J, however, that is not accounted for in the Plan.<sup>FN.1.</sup>

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FN. 1. The Ferrari lease expense is "interesting." On Schedule A/B Debtor lists owning three vehicles:

2009 Dodge Coupe

2009 Mercedes ML350

Ferrari (model and year not identified)

Dckt. 1 at 11. On Schedule A/B Debtor states that there are 24 lease payments left on the Ferrari. With a lease expense of \$1,198, that means Debtor will be funding the Ferrari with \$28,752 in payments in a mere 24 months.

On Schedule G Debtor lists having the lease for the Ferrari, with “Luxury Auto Leasing” identified as the lessor. *Id.* at 26.

On Schedule I Debtor lists his income of \$16,550 a month, and though saying co-Debtor is employed, all of the income fields are stated under penalty of perjury to be 0.00. *Id.* At 28-29.

On Schedule J, Debtor lists having two children as dependents (one 18 years of age). *Id.* At 30-31. Debtor further states that the plan payments will increase when Debtor’s Ferrari driving concludes in 24 months.

Debtor’s driving the Ferrari into and through bankruptcy, are having to seek this extraordinary relief, and can “afford” to only pay creditors with general unsecured claims a 38% dividend. Plan, ¶ 3.14; Dckt. 3. But, under the Plan, Luxury Auto Leasing will not miss any payments of \$1,198 a month until the end of the lease, when Luxury Auto Leasing whisks away the Ferrari and \$28,752 of cash from Debtor, and Debtor’s creditors.

While Debtor may desire to drive a Ferrari through bankruptcy, rather than rejecting the lease and kicking Luxury Auto Leasing to the general unsecured curb, that does not appear to be action by Debtor:

- (1) filing bankruptcy in good faith to obtain the extraordinary relief available under the Bankruptcy Code;
- (2) proposing a Chapter 13 Plan in good faith consistent with the Bankruptcy Code and fair treatment for creditors with unsecured claims; or
- (3) prosecuting a Chapter 13 Case in good faith.

Luxury Auto Leasing “neglected” to include a copy of the lease with its Proof of Claim 7-1. Additionally, Luxury Auto Leasing failed to attach the required statement of interest or other charges. POC 7-1, § 7.

Rather than good faith, it appears that Debtor has chosen a “forget the law and let’s see how much we can get away with before we get caught.” Bankruptcy is not a game where ethics and compliance with the law are mere “concepts” that nobody needs to follow.

Debtor’s conduct may manifest a bad faith so pervasive that not only there would be a dismissal of this case, but a bar on Debtor, either of them, filing a Chapter 13 bankruptcy case for six (6) years.

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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.

14. [18-20567-E-13](#)      **JOYCE BILYEU**      **MOTION TO VACATE DISMISSAL OF**  
[LBG-4](#)      **Lucas Garcia**      **CASE**  
           **9-21-22 [65]**  
**DEBTOR DISMISSED: 09/08/2022**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2022. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Motion to Vacate 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, -----.

<b>The Motion to Vacate is denied.</b>
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Joyce Ann Bilyeu (“Debtor”) filed the instant case on February 1, 2018. Dckt. 1. A plan was confirmed on July 12, 2018, and an order confirming the plan was entered on July 18, 2018. Dckt. 49 & 50.

On July 27, 2018, the Chapter 13 Trustee, David Cusick (“Trustee”), filed a Motion to Dismiss the Case due to delinquency in Plan payments. Dckt. 57. On September 7, 2022, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 62. The ruling was final because Debtor did not file any opposition.

On September 21, 2022, Debtor filed this instant Motion to Vacate, claiming Debtor believed they cured their default prior to the hearing on the Motion to Dismiss.

Debtor cites no legal authority for vacating dismissals.

### **Trustee’s Response**

On October 12, 2022, Chapter 13 Trustee, David Cusick (“Trustee”), filed a response indicating Debtor would be delinquent \$3,499.00. Dckt. 69. Additionally, Debtor was required to provide the Trustee with any tax refund over \$2,000.00. Therefore, Debtor may be further delinquent.

Trustee argues that its been over a month and a half since the case was dismissed. Reopening the case would confuse creditors who believe the case was dismissed. Additionally, Trustee has already issued a refund to Debtor in the amount of \$672.71, which has not been mailed yet due to the filing of this Motion. If this Motion is granted, the amounts would need to be credited back to the case or accounted for in a modified Plan.

Trustee has also indicated Debtor has failed to prosecute the prior case, noting numerous failures of Debtor and Debtor’s Counsel to prosecute the Chapter 13 case prior to dismissal.

Additionally, Trustee argues, the Motion has failed the heightened pleading standard.

### **APPLICABLE LAW**

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

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

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

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

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

*Martinez v. Trainor*, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an

attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

### **Grounds Stated in Motion**

Movant has not provided any legal grounds, merely factual statements. The insufficient statements made by Movant are:

- A. Debtor believed their payments were completed.
- B. The error caused no disadvantage to creditors because the Trustee was still able to disburse payments and Debtor can make past due payments.
- C. The enforcement of the dismissal would be a burden as Debtor would need to administer a fresh sixty (60) month case.

Those “grounds” are merely factual statements by Movant. Presumably, Movant believed that the court would cite the legal grounds for Movant. This would be against the particularity requirement set forth in the Federal and Local Rules of the court.

Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other lesser sanctions.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

Debtors’ Declaration provides testimony that Debtor stopped making payments because TFS sent a notice that payments had been completed. Dec. ¶ 6.a.; Dckt. 67. Debtor states that she just relied on the TFS notice, and did not provide any testimony about how that notice compared to what she understood the payments on the Plan to be or that she sought out the assistance of her counsel to confirm that she no longer had to make payments.

Debtor then “semi-admits” that she made an error and told TFS an incorrect number of payments Debtor was required to make. *Id.*, ¶ 6.b.

Debtor then testifies that she will be able to make payments and the Trustee can make payments to creditors, would “TFS allows for it.” *Id.*, ¶ 6.c.

Finally, Debtor concludes testifying that she concludes that dismissal will not benefit creditors, as “a refiling would be shortly accomplished at an extreme burden to both myself and the bankruptcy trustee in administering a new case.” *Id.*, ¶ 6.d. Debtor provides no information about what these “great burdens” would be and how such would be so prejudicial to the Chapter 13 Trustee.

In stating that the Debtor “testifies,” the court uses that term generously, as the Debtor’s statements are made under penalty of perjury. They are merely “arguments.”

Debtor offers no arguments or testimony as to how she knew she had to make 60 plan payments and why or how Debtor would blindly rely of a notice from TFS rather than: (1) checking her records to confirm that she had made 60 payments and/or (2) communicate with her attorney as to whether she could make less than 60 payments.

No testimony, or even arguments, are presented as to what Debtor and Debtor’s counsel did when they were served with the Motion to Dismiss and had actual notice that the Plan payments were in default. The Motion to Dismiss was filed on July 27, 2022 (Dckt. 57). It clearly states, “[t]he debtor is delinquent \$2,799.00 in plan payments.” Motion, p. 1:20; Dckt. 57.

Federal Rule of Civil Procedure 60(b), which is incorporated into Federal Rule of Bankruptcy Procedure 9024, sets forth clear grounds for a federal court to vacate a prior order. Debtor offers no grounds under Federal Rule of Civil Procedure 60(b) for the court to vacate the prior order.

It is unfortunate that Debtor allowed her bankruptcy case to be dismissed. But the court must be presented with proper grounds under Federal Rule of Civil Procedure 60(b) to vacate the prior order.

The Motion to Vacate is denied.

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 Vacate Dismissal filed by Joyce Ann Bilyeu (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Vacate Dismissal is denied without prejudice.

15 thru 18

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 2, 2022. By the court's calculation, 46 days' notice was provided. 14 days' notice is required.

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

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

MEB Loan Trust VI, U.S. Bank National Association dba Specialized Loan Servicing LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Proposed interest rate is lower than the rate in the loan agreement
- B. Motion to value property not filed
- C. Cannot comply with plan

## **Debtor's Response**

Debtor filed a response on October 4, 2022. Dckt. 52. Debtor asserts she will amend the interest rate back to the agreed 9.25%. Debtor further notes that the secured liens by FHL and MEB Loan Trust will be paid in full from sale and refinance. Debtor also asserts that a motion to value is irrelevant because the claim will be paid in full from the sale or refinance of the property. Lastly, Debtor asserts that she will make plan payments because her income is projected to increase due to lower mortgage payments starting September 2023.

## **DISCUSSION**

### **Interest Rate**

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5.00%. Creditor's claim is secured by \$121,031.65. Creditor argues that this interest rate is impermissibly modified from the agreed upon rate of 9.250% and violates 11 U.S.C. § 1322(b)(2).

However, Debtor agreed in her reply that she will amend the plan back to the original interest rate of 9.25%. Dckt. 52.

### **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 MEB Loan Trust VI, U.S. Bank National Association dba Specialized Loan Servicing LLC. Debtor has failed to file a Motion to Value the Secured Claim of MEB Loan Trust VI, U.S. Bank National Association dba Specialized Loan Servicing LLC, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

### **Failure to Afford Plan Payment / 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 plans to make monthly payments of \$2,550.00 for 5 months then \$2,720.00 for 6 months even though Debtor has a monthly new income of \$2,555.10. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 MEB Loan Trust VI, U.S. Bank National Association dba Specialized Loan Servicing LLC ("Creditor") holding

a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

16. [22-21978-E-13](#)  
[CLH-2](#)

LILLIAN DEANER  
Cindy Hill

**MOTION TO AVOID LIEN OF  
CITIBANK/CALVARY SPV I LLC  
9-7-22 [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.

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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, parties requesting special notice, and Office of the United States Trustee on September 7, 2022. By the court's calculation, 41 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.

<b>The Motion to Avoid Judicial Lien is granted.</b>
--

This Motion requests an order avoiding the judicial lien of Calvary SPV I LLC ("Creditor") against property of the debtor, Lillian Delores Deaner ("Debtor") commonly known as 7605 Isles Ct, Fair Oaks, California ("Property").

### **Trustee's Opposition**

On September 26, 2022, Trustee filed an opposition (Dckt. 46) stating:

1. There is a typographical error on Debtor's Motion as the address should be 7605 Isles Ct, Fair Oaks.

2. Debtor only provided a copy of the Judgment, not the Abstract, therefore, there is not sufficient evidence surrounding the recorded abstract.
3. Debtor's exhibits did not include page numbers. In violation of Local Bankruptcy Rule 9004-2(d)(2).

### **Debtor's Reply**

On October 11, 2022, Debtor filed a Reply. Dckt. 59. Debtor confirms the correct address as 7605 Isle Court, Fair Oaks, as Trustee indicated. Additionally, Debtor attached a copy of county recorder's records which reflects an abstract of judgment filed in March 2020.

Upon review of the attached exhibit, Debtor appears to attach a "Public Index Search" of everything recorded in Sac County under someone with the name of "Deaner." Dckt. 60.

Although there appears to be an Abstract of Judgment recorded with a Grantor by the name of Deaner Lillian and Grantee by the name of Cavalry SPV I LLC, there is no indication that this is for the Judgment at issue.

Although the Abstract has not been provided, the court can discern critical pieces of information to grant an order determining Debtor's avoidance of Creditor's lien. Upon review of Debtor's Exhibit 3, Dckt. 35, attached to Creditor's Proof of Claim, Proof of Claim 1-1, Creditor obtained a Judgment against Debtor on October 18, 2019, in the Sacramento County Superior Court, Case No. 34-2018-00238746. The court has been provided the state court case number, document number of the recorded abstract, and counties where the state court action occurred and where abstract was recorded. Although a better practice is for Movant to attach the abstract of judgment as a separate exhibit to the Motion, the court can rule on this Motion.

### **DISCUSSION**

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,152.66. Exhibit 3, Dckt. 35. An abstract of judgment was recorded with Sacramento County on March 3, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$630,000.00 as of the petition date. Dckt. 45. The unavoidable consensual liens that total \$482,688 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 9. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$147,312.00 on Schedule C. Dckt. 9.

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 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 judgment lien of Calvary SPV I LLC, California Superior Court for Sacramento County Case No. 34-2018-00238746, recorded on March 3, 2020, Document No. 202003031553, with the Sacramento County Recorder, against the real property commonly known as 7605 Isles Ct, Fair Oaks, California, 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.

17.	<a href="#"><u>22-21978</u></a> -E-13 <a href="#"><u>DPC-1</u></a>	<b>LILLIAN DEANER</b> <b>Cindy Hill</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> <b>9-21-22 [37]</b>
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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 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 September 21, 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 -----.

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

- A. Cannot Make Payments
- B. Plan Relies on Pending Motion
- C. Schedule B is not Accurate
- D. Amended Mailing Matrix has no Attachment
- E. Plan Payment Coming Due

### **Debtor’s Response to Trustee’s Objection to Confirmation**

Debtor filed a response to Trustee’s objection on October 4, 2022. Dckt. 49. Debtor states that the Plan relying on Pending Motion is true. Debtor will also correct the typographical error.

Debtor also states that the bank accounts on Schedule B are closed and that Debtor sent the bank statement for the new account. Debtor also states that the amended Mailing Matrix is filed on Dckt. 8 instead of Dckt. 11. Debtor also made her first plan payment. Lastly, Debtor states that Trustee is not questioning her ability to make plan payments but rather the sale of property.

### **DISCUSSION**

Trustee’s objections are well-taken in part.

#### **Failure to Afford Plan Payment / 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). The Plan relies on sale or refinance of the residence by month 13 to pay the arrearages on first and second mortgage. Additionally, there is a secured claim of Citi Bank of an unknown amount. Also, there are significant liens on the property which may or may not be paid off with the sale of the Property.

It is unclear to the court and Trustee whether there is sufficient equity given the “unknown” amount owed to Citi Bank. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

#### **Plan Relies on Pending Motion**

Trustee asserts that compliance with the plan rests on the Motion to Value Collateral of Cavalry SVP LLC that is set for hearing on the same day. If motion to value is not granted, Trustee asserts that Debtor cannot comply with plan.

The court has granted that Motion to Value Secured Claim.

## **Various Concerns**

Trustee directs the courts to various issues with Debtor's Chapter 13 documents, which, on their own, does not give rise to denial of the Plan, but should be addressed by Debtor:

### **Schedule B is not Accurate**

Debtor failed to provide account numbers for their two US bank accounts.

### **Amended Mailing Matrix has no Attachment**

Debtor filed an Amended Verification of Creditor Matrix on August 12, 2022 but it appears that no creditor addresses were attached.

### **Plan Payment Coming Due**

Debtor's first Plan payment of \$2,550.00 was due on September 25, 2021. Trustee fails to articulate how this is grounds for denying confirmation of plan.

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

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 21, 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 -----.

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

Federal Home Loan Mortgage Corporation (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Fails to cure default on Secured Creditor’s claim.
- B. Cannot make all payments or comply with Plan.

#### **Debtor’s Response**

Lillian Deaner (“Debtor”) filed a response on October 4, 2022. Dckt. 54. Debtor asserts that she will pay off the arrearages within 1 year of filing and that her income will increase, allowing her to comply with the payment plan. Debtor also notes that the sale or refinance of property will help her comply with plan.

## DISCUSSION

Trustee's objections are well-taken.

### **Failure to Cure Arrearage of Creditor**

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$75,964.90 in pre-petition arrearages. Although Debtor states their income will increase and they will pay off the arrearages in a year, the Plan only proposes to pay \$65,385 of arrearages, not the total amount. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

### **Failure to Afford Plan Payment / 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 proposes to make monthly payments of \$2,550.00 for 5 months, \$2,720.00 for months 6 through 12, and then sell or refinance the property. However, Debtor only has a monthly net income of \$2,555.20, which the creditor asserts is insufficient to fund the plan and the pre-petition arrearages. Creditor is also concerned that Debtor has not filed a motion to sell or refinance real property at the time the objection was filed. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 Federal Home Loan Mortgage Corporation ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**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 parties requesting special notice September 9, 2022. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Motion to Confirm the Plan is denied.</b></p>
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The debtor, William R Doty ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides sixty (60) monthly payments with a monthly sum of \$5,445.00 and no less than a 100% dividend to unsecured claims. Plan, Dckt. 40. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **DEBTOR'S AMENDED MOTION**

Debtor filed an Amended Motion on September 22, 2022, Dckt. 46, where Debtor states grounds with particularity for the relief sought.

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

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on September 29, 2022. Dckt. 50. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.

- B. No Declaration has been filed in support of the Motion.
- C. The Plan still does not comply with 11 U.S.C. § 1325(a)(1) because Debtor admitted at the First Meeting of Creditors they collect \$2,500 for two units, when Amended Schedule I still reflects \$1,000 and Schedule A/B has not been amended to reflect the Venmo account or any other electronic accounts.

## **DISCUSSION**

### **Delinquency**

Debtor is \$10,845.00 delinquent in plan payments, which represents one month of the \$5,445.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Cannot Comply with Plan / Cannot Afford Plan Payments**

Trustee indicates Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(1) as:

- A. Debtor admitted at the First Meeting of Creditors they collect \$2,500 for two units, when Amended Schedule I still reflects \$1,000 and Schedule A/B has not been amended to reflect the Venmo account or any other electronic accounts.

This would violate 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.

Debtor states in their Amended Schedule I that they expect to receive an additional \$1,000.00 in the next year from their rental units. Dckt. 37. Additionally, Debtor admitted at the First Meeting of Creditors they are now collecting \$2,500.00 per month in rent for two units. The \$2,500.00 is reflected in Debtor's Statement of Current Monthly Income, Dckt. 16, which appears included in the \$9,615.00 figure listed as Debtor's "Net Income from rental property and from operating a business, profession, or farm" on Debtor's Amended Schedule I. However, the additional \$1,000.00 in income anticipated to be received within the next year is not included in Debtor's Plan. If this additional income is not provided in the Plan, Debtor may not be using all of Debtor's projected disposable income.

Additionally, Schedule B does not show Debtor's Venmo account or any electronic accounts. This could indicate further disposable income to fund the Plan.

## **Failure To Provide Evidence**

Debtor's Motion to Confirm makes various factual assertions. However, no declaration of the Debtor or other evidence was filed to support those assertions.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

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

The Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

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

**IT IS ORDERED** that the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

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

**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 September 22, 2022. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

- A. Failed to Appear at 341 Meeting
- B. Failed to Provide Business Documents
  - 1. Bank Statements for Wells Fargo Bank accounts
  - 2. Profit and Loss statements
  - 3. Personal and S-Corporation Tax Returns for 2020
  - 4. Business Questionnaire

- C. Cannot Comply with Plan
- D. Unsecured Claims may receive more in Chapter 7 Liquidation
- E. Plan Payment Coming Due

## **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 Continued Meeting of Creditors will be held on October 20, 2022.

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

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

- A. Business Questionnaire,
- B. 2020 Personal and S-Corporation tax returns,
- C. Seven months of profit and loss statements for each individual, and
- D. Six months of bank account statements two Wells Fargo accounts

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.

### **Failure to Afford Plan Payment / 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). Trustee estimates that the Plan will take around 234 months to complete, due to the Internal Revenue Service's Claim of \$471,936.20. The Plan exceeds the maximum length of 60 months. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Debtor Fails Liquidation Analysis**

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that unsecured claims may not be receiving what they would receive in the event of a hypothetical Chapter 7 Liquidation. There is non-exempt equity of \$169,875.00. Debtor's Plan only provides \$130,620 total in Plan payments. Therefore, Debtor's Plan fails the liquidation analysis.

## **Plan Payment Coming Due**

Debtor's first Plan payment was due on September 25, 2022 in the amount of \$2,177.00. Dckt. 14.

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.

# FINAL RULINGS

21. [22-21297-E-13](#) JAY SMITH MOTION TO CONFIRM PLAN  
[DBJ-1](#) Douglas Jacobs 8-31-22 [\[28\]](#)

**Final Ruling:** No appearance at the October 18, 2022 hearing is required.  
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**The Motion to Confirm is denied.**

Jay Andrew Smith (“Debtor”) has filed a “Withdrawal of Motion” of the Motion to Confirm which is pending before this court. Debtor, or any party, is not given a “super power” to withdraw from the court contested matters or other proceedings in which oppositions or other responses have been filed. The court is unaware of any Federal Rule enacted by the Supreme Court that allows a party to withdraw from the court a matter for which responsive pleadings have been filed.

Debtor has been presented with substantive opposition by both the Chapter 13 Trustee and TIAA, FSB. Dckts. 33, 36.

A party, once an opposition or other response pleading has been filed may seek an order dismissing the motion or application before the court. Fed. R. Civ. P. 41(a)(2), Fed. R. Bankr. P. 7041, 9014. However, such a motion must state grounds for the court entering such an order.

The court accepts, This Time, Debtor’s “withdrawal” as a statement of no response to and no objection to the court denying Debtor’s Motion. In effect, Debtor states that he is abandoning the prosecution of the Motion.

The Motion is denied.

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 filed by Jay Andrew Smith (“Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 39, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm is denied.

**Final Ruling:** No appearance at the October 18, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2022. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Danny Lee Kelly and Marisa Leigh Kelly (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on September 27, 2022. Dckt. 44. 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, Danny Lee Kelly and Marisa Leigh Kelly (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

23.	<a href="#"><u>22-22063</u></a> -E-13 <a href="#"><u>DPC-1</u></a>	LYLE/SHARON SHEPHERD Scott Johnson	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 9-27-22 <a href="#"><u>[29]</u></a>
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## Failure to Provide for a Secured Claim

Creditor Ira Adams (“Creditor”) asserts a claim of \$130,000.00 in this case. Debtor’s Schedule D estimates the amount of Creditor’s claim as \$130,000.00 and indicates that it is secured by a mortgage agreement on Debtor’s residence. The Plan provides for treatment of this as a Class 2(A) claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay \$500.00 for 60 months under the Plan.

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

Here, Debtor is providing for the secured claim in the Plan. However, Debtor is not proposing to pay the claim in full or surrender the collateral. There is no evidence Debtor and creditor agreed to Debtor only paying \$30,000.00 of the claim. That is reason to sustain the Objection.

On October 12, 2022, Debtor filed an Amended Plan and Motion to Confirm. Dckts. 40, 36. This manifest a non-opposition to the Objection to the prior filed 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.

24. [22-22038](#)-E-13      MARIA FARIA  
[DPC-1](#)                      Kristy Hernandez

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK**  
9-26-22 [[13](#)]

**Final Ruling:** No appearance at the October 18, 2022 hearing is required.  
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The Chapter 13 Trustee, David Cusick (“Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.**