

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

November 5, 2024 at 2:00 p.m.

1. [22-21314-E-13](#) NADIA ZHIRY  
[PGM-7](#) Peter Macaluso

**MOTION FOR ALLOWANCE OF FINAL  
DISBURSEMENT  
10-17-24 [441]**

**DEBTOR DISMISSED: 09/20/24**

**Item #1 on 1:30 Calendar**

**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 October 17, 2024. By the court's calculation, 19 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). Movant is two days short of the required notice period. At the hearing, **XXXXXXX**

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

At the hearing held on September 18, 2024, the court made the following findings in its civil minutes:

There remains one administrative expense to be addressed, that of the general contractor, Richard Sanders, which the Debtor employed and Debtor's family members agreed to fund payment for his services. Order; Dckt. 126. As set forth in this court's Order entered on July 13, 2024, Mr. Sanders must file a Motion for Final Allowance of fees, costs, and expenses. Order; Dckt. 297.

At the September 18, 2024 hearing, the court was advised that Mr. Sanders has now filed a Mechanics Lien for the unpaid fees, costs, and expenses.

The Court by separate order will require the Chapter 13 Trustee to hold the monies paid into the Plan to date and order the general contractor employed by the Estate to file a Motion for final approval of fees, costs, and expenses.

Civil Minutes at 4-5, Docket 433.

The court's Order from the September 18, 2024 hearing provides that the Contractor must file a Motion for Final Approval of Fees, Costs and Expenses.

### **Motion for Approval of Fees and Expenses**

On October 17, 2024, a pleading titled "Motion for Allowance of Final Disbursement to Contractor Richard Sanders" was filed by Debtor. Dckt. 441. The Motion states that the Contractor worked on the property of the bankruptcy estate during this case. It then references the following prior interim disbursements:

2. The Court has approved the First *Ex Parte* disbursement of \$10,585.04.
3. The Court has approve the Second *Ex Parte* disbursement of \$2,255.36.
4. The Court has approved the Third *Ex Parte* disbursement of \$16,102.23.

*Id.*; ¶¶ 2, 3, 4. The Motion does not cite to the Orders in the Record.

The court authorized the employment of the Contractor by order entered on October 19, 2022. Dckt. 126. In this Order the court authorized an initial disbursement of \$4,988.00 to the Contractor.

The court's order filed on April 14, 2023, authorized the disbursement of \$10,585.04 from "Blocked Account" (which was Debtor's counsel's client trust account) for payment of \$10,585.04 to the City of Sacramento for fees associated with the work to be done on the Property. Dckt. 178.

The court's order filed on April 17, 2023, authorized the disbursement of \$2,255.36 from Debtor's counsel's client trust account for an interim payment of fees and expenses. Dckt.181.

The court's order filed on July 13, 2023, authorized the disbursement of \$16,000.00 from Debtor's counsel's client trust account for an interim payment of fees and expenses. Dckt. 297.

Debtor Nadia Zhiry ("Debtor") now moves this court for an Order authorizing payment of the funds in the amount of \$34,064.50 held by the Chapter 13 Trustee to Richard Sanders, general contractor.

Contractor Richard Sanders provides his Declaration in support of the Motion. Dckt. 443. He testifies that the work was completed on the project on June 2, 2023. Dec., ¶ 1; Dckt. 443. He then testifies that after receiving the above payments, the balance owed to him is (\$49,048.13). The Contractor provides as Exhibit A his final billing statement setting forth his fees and expenses, and the interim payments received. Dckt. 444.

The charges for the services and materials provided total (\$69,547.33). The Contractor states having only received payments from the Debtor of:

\$ 1,500.00  
\$16,000.00  
\$ 3,000.00

for a total of \$20,500.00. This amount is inconsistent with what is stated in the Motion and what the court has previously ordered to be paid to Contractor from the Debtor's counsel's client trust account.

At the hearing, **XXXXXXX**

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional'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 professional 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)).

### **Lodestar Analysis**

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). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (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)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional 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, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] 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 Mr. Sanders services include renovating Debtor’s property. With no opposition being made by the Debtor or the Chapter 13 Trustee, the court finds the services were beneficial to Debtor and were reasonable.

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

#### **Fees**

The court finds that the rates are reasonable and that Mr. Sanders effectively used appropriate rates for the services provided. Final Fees in the amount of \$34,064.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds held on hand from Debtor’s plan payments.

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

Fees	\$34,064.50
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pursuant to this Application as final fees and costs 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 Debtor Nadia Zhiry (“Debtor”), on behalf of her general contractor Richard Sanders, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Richard Sanders is allowed the following fees and expenses as a professional of the Estate:

Richard Sanders, Professional employed by Debtor,

~~\_\_\_\_\_ Fees in the amount of \$34,064.50;~~

~~\_\_\_\_\_ as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as general contractor for Debtor.~~

~~\_\_\_\_\_ **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available funds held on hand from Debtor’s plan payments.~~

Item 2 thru 4

**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 7 Trustee, creditors, and Office of the United States Trustee on March 7, 2024. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to for Joint Administration, which the court construes to be a Motion to Substantively Consolidate Case no. 24-21440 with Case no. 24-23545 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 Substantively Consolidate Case of this Erika Norman Bankruptcy Case, No. 24-21440 with the Kevin Norman Chapter 13 Bankruptcy, Case No. 24-23545, Erika Norman's spouse, is granted, with the Substantive Consolidation effective as of the April 8, 2024 filing of Case no. 24-21440.**

**The cases are substantively consolidated under Case No. 24-21440, the earlier filed Case.**

Debtor Erika Lizeth Norman ("Debtor") has filed a Motion titled "Motion for Joint Administration of Related Case, which requests

Debtor moves the Court for an Order Joining the instant case to case #24-23545-E-13C. This Motion is brought pursuant to Rule 42(a) of the Fed. R. Civ. P. . . .

Motion, p. 1:18-20; Dckt. 126. Federal Rule of Civil Procedure 42, which is incorporated into Federal Rules of Bankruptcy Procedure 7042 and 9014(c). The Notice of Hearing is titled "Notice of Hearing on Motion for Joint Administration of Related Cases." Notice, Docket 127.

However, consolidation of bankruptcy cases are expressly provided for in Federal Rule of Bankruptcy Procedure 1015 promulgated by the United States Supreme Court. The court applies the proper Rule for consolidation, whether joint administration or substantive consolidation, below.

The Parties and their counsel have addressed the court, in both the Erika Norman and the Kevin Norman Bankruptcy Cases that the two Debtor spouses desire to substantively consolidate their cases, not merely have them “jointly administered.”

Debtor includes in the Motion the following grounds, stated with particularity (Fed. R. Bankr. P. 9013), moves this court for an order substantively consolidating on the following grounds:

1. Counsel met with Debtors and with Erika Norman’s prior attorney and determined that the Debtors should have been filed jointly. Mot. ¶ 3, Docket 3.
2. Trustee has concluded both Meeting of Creditors in the respective cases. Neither case has been confirmed, once joined an Amended Plan will be filed and set for hearing. *Id.* at ¶ 4.
3. Debtors are requesting that Erika Lizeth Norman’s case be joined with Kevin James Norman and be administered as one case with the schedules and Plan filed with the Court as case #24-23545-E13C. *Id.* at ¶ 5.

David Cusick, the Chapter 13 Trustee (“Trustee”), filed a Nonopposition on October 22, 2024. Docket 137. However, Trustee states he may file a Motion to Dismiss based on plan payment delinquency.

## **APPLICABLE LAW**

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:

(a) **CASES INVOLVING SAME DEBTOR.** If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.

(b) **CASES INVOLVING TWO OR MORE RELATED DEBTORS.** If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).

(c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

The advisory notes to this Rule states:

Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates.

Notably, “neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law.” 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Substantive consolidation of assets and liabilities between different entities may be “dealt with as if the assets were held, and the liabilities incurred, by a single entity. This type of consolidation generally is referred to as substantive consolidation. . . . The power to consolidate substantively is derived from the court’s general equitable powers as set forth in section 105. . . .” *Id.* at ¶ 1015.02[3]. The court is also aware that “[t]he power to consolidate should be used sparingly because of the potential harm to creditors of substantive consolidation.” *Id.* at ¶ 105.09[1][d] (internal quotations omitted).

The Ninth Circuit has recognized the power of the bankruptcy courts to substantively consolidate cases of two separate debtors as an equitable remedy available to the bankruptcy courts. *See In re Bonham*, 229 F. 3d 750, 763 (9th Cir. 2000) (“The bankruptcy court’s power of substantive consolidation has been considered part of the bankruptcy court’s general equitable powers since the passage of the Bankruptcy Act of 1898.”). When the bankruptcy court finds substantive consolidation is proper and issues an order accordingly, “[t]he consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-company claims are extinguished; and, the creditors of the consolidated entities are combined for purposes of voting on reorganization plans.” *Id.* at 764.

The primary purpose of substantive consolidation is to ensure the equitable treatment of all creditors. *Id.* The Ninth Circuit has instructed that “in ordering substantive consolidation, courts must consider whether there is a disregard of corporate formalities and commingling of assets by various entities; and balance the benefits that substantive consolidation would bring against the harms that it would cause.” *Id.* at 765. In making a determination of whether to order substantive consolidation, the Ninth Circuit has adopted the test used by the Second Circuit. Bankruptcy courts are to consider “(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. . . . The presence of either factor is a sufficient basis to order substantive consolidation.” *Id.* at 766.



The first factor is satisfied when the record shows “lenders structure their loans according to their expectations regarding th[e] borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower’s assets.” *Id.* (internal quotations omitted). The second factor is met when “the time and expense necessary even to attempt to unscramble [the debtors] [is] so substantial as to threaten the realization of any net assets for all the creditors or where no accurate identification and allocation of assets is possible.” *Id.* (internal quotations omitted).

Joint administration is the alternative to consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when “the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds.” 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

...

(d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

## DISCUSSION

### Substantive Consolidation is Proper

In this case, the court has enough evidence to find that substantive consolidation of the two cases is warranted. In applying the first factor in the test set forth in *Bonham*, the court concludes that the vast majority of creditors have dealt with both Debtors as a single economic unit, considering the Debtors are married. The major secured creditor in these cases, Sutter Commercial Capital Inc., et al., has filed an identical claim against the Debtors' residence in both cases. See Case no. 24-21440, POC 14-1; Case no. 24-23545, POC 7-1. Other creditors similarly appear in both cases, such as PG&E and Rudolph Incorporated. Therefore, the court concludes that the vast majority of creditors have dealt with both Debtors as a single economic unit, satisfying the first factor in *Bonham*.<sup>FN.1.</sup>

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FN. 1. Fortunately, the creditors in the two Cases are relatively simple to review. For future reference, a party seeking to have substantive consolidation of cases should provide the court with the clear analysis of each factor, including how the creditors line up.  
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Regarding the second factor as set forth in *Bonham*, the court must find that the affairs of the debtor are so entangled that consolidation will benefit all creditors. The court finds this factor is also met, Debtors being married and sharing debts based on community property interests.

Additionally, while the court does not take silence as "consent," it does note that no creditor has come forward asserting that substantive consolidation is not proper or that it would result in economic detriment to creditors.

The court grants the Motion and Bankruptcy Case no. 24-21440 of Erika Norman is substantively consolidated with Case no. 24-23545 of Kevin Norman, with the Substantive Consolidation effective as of the April 8, 2024 filing of Case no. 24-21440. This effective date for consolidation is without prejudice to any person who did not receive notice of or had actual knowledge of the filing of the Motion to Substantively Consolidate these two cases.

The consolidated case shall proceed going forward under Case No. 24-21440, and be titled:

In Re Erika Elizabeth Norman,  
Debtor  
and

In re Kevin James Norman,  
Debtor

Substantively Consolidated Bankruptcy Cases

All rights and powers of the respective bankruptcy estates, including avoiding transfers and recovery of assets, are preserved in full force and effect for the Consolidated Bankruptcy Estate.

All pleadings in the Substantively Consolidated Bankruptcy Cases shall be filed in Case 24-21440, and for the Kevin James Norman bankruptcy filed, 24-23545, a Notice of Substantively Consolidated Cases shall be placed on the Docket and the Clerk of the Court shall file all further pleadings, absent a subsequent order of the court, for the Kevin James Norman case into the Substantively Consolidated Bankruptcy Cases being administered with Case No. 24-21440.

The consolidated Debtors shall file and serve a Notice of Substantively Consolidated Bankruptcy Cases shall be served on all Parties in Interest in each of the two Bankruptcy Case, providing notice and direction to:

- A. The two Bankruptcy Cases are substantively consolidated, and will be administered as one joint case, 11 U.S.C. § 302, under Case No. 24-21440.
- B. All pleadings and other documents shall be filed in Case No. 24-21440.
- C. **XXXXXXX**

**Counsel for the Debtor shall prepare two proposed orders of substantive consolidation, one for each case, have them approved as to form by **XXXXXXX** , and lodge them with the court.**

ARTHUR H. SUTTER, TRUSTEE OF  
THE ARTHUR H. SUTTER  
REVOCABLE TRUST VS.

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

**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, parties requesting special notice, and Office of the United States Trustee on July 29, 2024. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay and Motion for Adequate Protection 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.

**The Motion Relief from the Automatic Stay and Motion for Adequate Protection  
is **XXXXXXX**.**

### November 5, 2024 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the Motion for Joint Administration. As of the court's review of the Docket on October 30, 2024, nothing new has been filed with the court under this Docket Control Number. At the hearing, **XXXXXXX**

### REVIEW OF THE MOTION

Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an

undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees (“Movant”) seeks relief from the automatic stay with respect to Erika Lizeth Norman’s (“Debtor”) real property commonly known as 448 Royal Tern Drive, Vacaville, CA 95687 (“Property”). Movant has provided the Declarations of Christy Mathers (Docket 56) and Reilly Wilkinson (Docket 58) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three post-petition payments, with a total of \$10,946.82 in post-petition payments past due. Declaration 4:25-26, Dckt. 56. Movant also provides evidence that there are four pre-petition payments in default, with a pre-petition arrearage of \$29,511.88, when adding other fees. *Id.* at 4:23. Movant also argues Debtor has not maintained property taxes. Mot. 3:7-8, Docket 54.

Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) so that any order for relief will be binding in any other case under this title purporting to affect the subject property filed within two years of the order for relief, as this bankruptcy was filed solely to hinder and delay Movant. Mot. 2:8-10, Docket 54. Movant argues Debtor does not hold an interest in the Property. *Id.* at 11-12. *See* Decl. ¶ 8, Docket 56 (stating that Debtor transferred her entire interest in the Property to her spouse by quitclaim deed dated February 7, 2018); Ex. 3, Docket 57.

Movant also moves this court for relief from the Co-Debtor stay of 11 U.S.C. § 1301 “out of an abundance of caution,” although Movant does not believe there is a Co-Debtor stay in place here. Mot. 2:16-23, Docket 54.

Movant further moves this court for its postpetition attorneys’ fees and costs incurred in bringing the Motion. *Id.* at 3:13-17. No specific amount of attorney’s fees is provided in the Motion, and no task billing summary is provided in the Exhibits.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on August 27, 2024. Dckt. 96. Debtor states:

1. Debtor’s spouse, Kevin James Norman filed a Chapter 13 case, case number 24-23545 on August 10, 2024. *Id.* at 2:14-15.
2. Mr. Norman cured the entire prepetition arrearage of \$29,824.15 in a previous case before it was dismissed, case no. 20-22267. *Id.* at 2:25-26.
3. Debtor only signed the quitclaim deed to Mr. Norman as she believed it was a requirement of the title company, or the lender, as she was not going to be a co-signer on the loan. Debtor maintains she has a community property interest as well as a possessory interest in the property, having resided consistently in the property since its purchase. *Id.* at 3:10-14.
4. There is no cause for relief pursuant to 11 U.S.C. § 362(d)(4). The only other case affecting the Property was Mr. Norman’s first case where he made substantial payments to Movant. Movant seeks extraordinary relief in a case with no extraordinary cause. *Id.* at 4:2-7.

5. Debtor understands that, since her husband filed his case on August 10, 2024, Mr. Norman's attorney Peter Macaluso, has conferred with Movant's attorney and has had fruitful conversations regarding a stipulation to resolve Movant's concerns regarding Debtor's case. Debtor understands that Mr. Macaluso will be filing a motion to consolidate the two cases, for better administration of same. Debtor is agreeable to the consolidation as well as the administration of the cases under the experienced guidance and expertise of Mr. Macaluso. Debtor believes it would be prudent to continue this matter until such time as the intended stipulation is completed, and the court has an opportunity to review it. *Id.* a 4:7-16.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$430,816.49 (Declaration ¶ 15, Dckt. 56), while the value of the Property is determined to be \$760,000.00, as stated in Schedules A/B filed by Debtor. Schedule A/B 11:1.1, Docket 1.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

In this case, relief from the stay would not allow Movant to pursue a foreclosure where Mr. Norman's bankruptcy case is currently ongoing, there being a stay present there. Debtor's case has been transferred to Department E, and Debtor indicates there is a Motion to Consolidate that will be filed soon, consolidating Debtor and Mr. Norman's cases into one.

### **Co-Debtor Stay**

Additionally, Movant has not provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has not established, pursuant to 11 U.S.C. § 1301(a), that the Co-Debtor stay is in effect, Debtor's spouse having his own bankruptcy stay in place under 11 U.S.C. § 362(a).

### **11 U.S.C. § 362(d)(4)**

#### **Prospective Relief from Future Stays**

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.*

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was not part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The only case to affect the Property was Mr. Norman's first case, case no. 20-22267, which resulted in making substantial payments on Movant's claim. It is true that Mr. Norman has filed a new case recently, case no. 24-23545. However, it appears the court will soon be consolidating that case and Debtor's current case into one. This behavior does not amount to a series of filings effecting the Property in an attempt to hinder or delay Movant's foreclosure proceedings. Relief pursuant to 11 U.S.C. § 362(d)(4) is denied.

### **Continuance of September 10, 2024 Hearing**

At the September 10, 2024 hearing, the Parties and counsel, including counsel for Kevin Norman, reported to the court that a stipulation for adequate protection has been reached. Additionally, a Motion to Consolidate the Debtor's case with that of her spouse, Kevin Norman, will be filed. The Chapter 13 case will be prosecuted as a joint case.

The Parties requested a short continuance to allow for the stipulation to be documented.

### **September 24, 2024 Hearing**

The court continued this hearing to afford parties time to document their Stipulation, the Parties and counsel, including counsel for Kevin Norman, reported to the court that a stipulation for adequate protection has been reached. Order, Docket 114. A review of the Docket on September 20, 2024 reveals that no such Stipulation has been filed with the court.

Though it has been represented to the by the Debtor and her spouse Kevin Norman, a debtor in his separately filed Chapter 13 Case, 24-23545, that the Erika Norman case will be consolidated with the Kevin Norman case to be prosecuted as a joint case. No motions to consolidate had been filed as of the court's September 22, 2024 review of the files in these two cases.

At the hearing, counsel for the Creditor reported that a stipulation has been worked out, documented, and it has been circulated for signatures.

The hearing is continued to 1:30 p.m. on October 8, 2024.

### **October 8, 2024 Hearing**

The court continued the hearing to afford the parties the opportunity to have the Stipulation filed and proposed Order uploaded to the court. A review of the Docket on October 2, 2024 reveals no stipulation has been filed with the court.

However, Debtor filed a Motion for Joint Administration to administer this case with the related case no. 24-23545. Docket 126.

The hearing on the Motion is continued to 2:00 p.m. on November 5, 2024, to be conducted in conjunction with the hearing on the Motion for Joint Administration.

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 Relief from the Automatic Stay filed by Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is **XXXXXXX**.



**RUDOLPH INCORPORATED VS.**

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

**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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 7, 2024. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

**The Motion for Relief from the Automatic Stay is XXXXXXX.**

**November 5, 2024 Hearing**

The court continued the hearing on this Motion to be heard in conjunction with the Motion for Joint Administration. As of the court's review of the Docket on October 30, 2024, nothing new has been filed with the court under this Docket Control Number. At the hearing, XXXXXXX

**REVIEW OF MOTION**

Rudolph Incorporated, its successors and/or assignees in interest ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Ford F150 Regular Cab, VIN ending in 0916 ("Vehicle"). The moving party has provided the Declarations of Angela Hellman (Docket 68) and Reilly

Wilkinson (Docket 69) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Erika Lizeth Norman (“Debtor”).

Movant argues Debtor has not made four monthly post-petition payments, with a total of \$2,086.36 in post-petition payments past due. Declaration 4:8, Docket 68. Movant also provides evidence that there is one pre-petition payment in default, with a pre-petition arrearage of \$547.66. *Id.* According to Movant, relief should be granted pursuant to 11 U.S.C. § 362(d)(1) for this delinquency, and because Debtor misrepresented facts to Movant when obtaining the loan secured by the vehicle. Mot. 2:14-21, Docket 66. Movant further seeks an order granting relief pursuant to 11 U.S.C. § 362(d)(2), arguing there is no equity in the Property and it is not necessary for a reorganization. *Id.* at 2:25-26.

Movant further moves this court for its postpetition attorneys’ fees and costs incurred in bringing the Motion. *Id.* at 3:10-12. No specific amount of attorney’s fees is provided in the Motion, and no task billing summary is provided in the Exhibits.

### **Kelley Blue Book Valuation Report Provided**

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. Ex. 8, Docket 70. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

### **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$14,489.60 (Declaration 4:14-15, Docket 68), while the value of the Vehicle is determined to be \$13,268, as stated in the Kelley Blue Book Valuation Report for the Vehicle. Ex. 8, Docket 70.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

#### **11 U.S.C. § 362(d)(2)**

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2)

establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

However, as noted in the related matter, relief from the stay would not allow Movant to pursue repossession where Debtor's spouse's ("Mr. Norman") individual bankruptcy case is currently ongoing, there being a stay present there. Debtor's case has been transferred to Department E, and Debtor indicates there is a Motion to Consolidate that will be filed soon, consolidating Debtor and Mr. Norman's cases into one.

### **Co-Debtor Stay**

Additionally, Movant has not provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has not established, pursuant to 11 U.S.C. § 1301(a), that the Co-Debtor stay is in effect, Debtor's spouse having his own bankruptcy stay in place under 11 U.S.C. § 362(a).

### **Attorneys' Fees Requested Request for Attorneys' Fees**

Movant requests that it be allowed attorneys' fees. Movant seeks the fees pursuant to the "Security Agreement securing Movant's claim or 11 U.S.C. § 506(b)." Mot. 3:10-13, Docket 66. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

### **Continuance of September 10, 2024 Hearing**

At the September 10, 2024 hearing, the Parties and counsel, including counsel for Kevin Norman, appeared. Additionally, a Motion to Consolidate the Debtor's case with that of her spouse, Kevin Norman, will be filed. The Chapter 13 case will be prosecuted as a joint case.

The hearing is continued to 1:30 p.m. on October 22, 2024. Opposition pleadings shall be filed and served on or before October 10, 2024, and Reply pleadings, if any, filed and served on or before October 17, 2024.

### **October 22, 2024 Hearing**

The court continued this hearing to afford Debtor time to get a Motion to Consolidate on file and provide for Movant's claim moving forward. The court set the deadlines: "Opposition pleadings shall be filed and served on or before October 10, 2024, and Reply pleadings, if any, filed and served on or before October 17, 2024." Order, Docket 115.

On October 9, 2024, Debtor filed an Opposition to the Motion. Docket 134. Debtor states the Vehicle is being paid in full and is protected. *Id.* at 2:9-10. However, there is no Chapter 13 Plan on the Docket that reflects such treatment.

The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on November 5, 2024, (Specially Set Time) to be conducted in conjunction with the hearing on the Motion for Joint Administration.

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 Relief from the Automatic Stay filed by Rudolph Incorporated, its successors and/or assignees in interest (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion for Relief from the Automatic Stay 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 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, parties requesting special notice, and Office of the United States Trustee on October 15, 2024. By the court's calculation, 21 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>
---

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

1. Debtor James Marshall Frank and Christina Lyn Frank ("Debtor") failed to provide proof of their social security numbers prior to th 341 Meeting. Obj. 1:27-2:4, Docket 13.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 15.

## DISCUSSION

### Failure to Authenticate Identification Prior to Meeting of Creditors

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court they did not provide the required identification. That is cause for dismissal.

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.

Item 6 thru 7

**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, parties requesting special notice, and Office of the United States Trustee on October 16, 2024. 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 -----.

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

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

1. Debtor Pritam Singh ("Debtor") has reported inaccurate information on his Schedules, and Debtor has not filed required business documents. Obj. 2:1-20, Docket 20.
2. Debtor likely attempted to claim certain assets as exempt in a greater value than statutorily permitted, which may result in Debtor failing the liquidation analysis. *Id.* at 2:21-3:9.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 22.

## **DISCUSSION**

### **Inaccurate or Missing Information**

Debtor's Schedules I and J contain outdated or inaccurate information. Specifically, Debtor is reporting a disposable net income as \$250 after calculating expenses, but Trustee has reviewed pay advices that show the gross income is likely much lower than what is reported. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *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, and
- D. Six months of bank account statements.

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

### **Liquidation Analysis**

Trustee argues that Debtor may fail a liquidation analysis under 11 U.S.C. §1325(a)(4). 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date."

Here, Debtor is attempting to claim exemptions in the homestead (\$600,000) and a savings account (\$15,920) beyond what is statutorily permitted, which would generate non-exempt equity to unsecured creditors in a Chapter 7 case. The Trustee asserts that the median sales price for residences in the county is less than \$600,000.

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.

7. [24-23957-E-13](#)  
[NLG-1](#)

**PRITAM SINGH**  
**Peter Macaluso**

**OBJECTION TO CONFIRMATION OF  
PLAN BY WILMINGTON SAVINGS FUND  
SOCIETY, FSB**  
**10-16-24 [24]**

**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, parties requesting special notice, and Office of the United States Trustee on October 16, 2024. 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 -----.

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

Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as Owner Trustee on Behalf for CSMC 2018-RPL12 Trust (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Pritam Singh’s (“Debtor”) Plan does not propose to cure the arrearage on Creditor’s claim in the amount of \$2,816.40. Accounting for

the arrearage is not possible under Debtor's reported income. Obj. 2:15-23, docket 24.

## **DISCUSSION**

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

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has informed the court it is in the process of filing a timely proof of claim in which it asserts \$2,816.40 in pre-petition arrearage. The Plan does not propose to cure that arrearage. 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 arrearage.

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 Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as Owner Trustee on Behalf for CSMC 2018-RPL12 Trust ("Creditor") 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.

Item 8 thru 10

**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 (pro se), Chapter 13 Trustee, and Office of the United States Trustee on October 8, 2024. 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>
---

US Bank Trust National Association, Not In Its Individual Capacity But Solely As Owner Trustee For VRMTG Asset Trust ("Creditor"), opposes confirmation of the Plan on the basis that:

1. Debtor Abdul Munif ("Debtor") has not used the correct plan form in violation of Local Bankruptcy Rule 3015-1(a). Obj. 3:4-9, Docket 24.
2. Debtor's Plan cannot be confirmed as proposed because it fails to properly provide for Creditor's claim, not proposing to pay the arrearage in the amount of \$82,010.54. *Id.* at 3:17-4:5. Debtor will be unable to afford to pay the arrearage under his stated monthly disposable income. *Id.* at 4:6-19.

## DISCUSSION

### Wrong Plan Form

Creditor argues that the Plan is based upon an incorrect plan form. The Plan is based on the plan form for the Central District of California, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1(a).

### **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 \$82,010.54 in pre-petition arrearage. POC 2-1. The Plan does not propose to cure that arrearage. 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 arrearage.

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 US Bank Trust National Association, Not In Its Individual Capacity But Solely As Owner Trustee For VRMTG Asset Trust ("Creditor") 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 (pro se), parties requesting special notice, and Office of the United States Trustee on October 9, 2024. 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>
---

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

1. Debtor Abdul Munif (“Debtor”) is delinquent under the terms of the proposed Plan. Obj. 1:25-2:4, Docket 32.
2. Debtor failed to appear and be examined at the First Meeting of Creditors held on October 3, 2024. *Id.* at 2:5-9.
3. Debtor failed to submit proof of his social security number and a copy of a government issued picture identification to the Trustee before the First Meeting of Creditors held on October 3, 2024, as required pursuant to FRBP 4002(b)(1)(A) and (B). *Id.* at 2:10-16.
4. Debtor failed to provide Trustee with 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing of the

petition and tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required. *Id.* at 2:18-3:2.

5. Debtor has used the improper Plan form. *Id.* at 3:3-9.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 34.

## **DISCUSSION**

### **Delinquency**

Debtor is \$1,216.15 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Failure to Appear at 341 Meeting**

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

### **Failure to Provide Pay Stubs**

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). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

### **Failure to Authenticate Identification Prior to Meeting of Creditors**

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause for dismissal.

### **Wrong Plan Form**

The Plan Debtor used is based on the plan form for the Central District of California, which is a violation of Federal Rule of Bankruptcy Procedure 3015-1(a).

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 (pro se), Chapter 13 Trustee, Persons who have filed a Request for Notice, and Office of the United States Trustee on October 10, 2024. 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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#### REUSED DOCKET CONTROL NUMBER

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

#### THE OBJECTION

U.S. Bank National Association as Legal Title Trustee for Truman 2021 SC9 Title Trust (“Creditor”), opposes confirmation of the Plan on the basis that:

1. Debtor Abdul Munif (“Debtor”) improperly attempts to bifurcate Creditor’s Claim, but where the real property securing Creditor’s claim is valued at \$336,000, the claim is fully secured. Obj. 3:24-4:5, Docket 28.



2. Debtor's Plan cannot be confirmed as Debtor is not making ongoing postpetition monthly mortgage payments, and Debtor is not providing for Creditor's arrearage. *Id.* at 4:6-13.

## **DISCUSSION**

### **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 \$72,277.92 in pre-petition arrearage. POC 2-1. The Plan does not propose to cure that arrearage. 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 arrearage.

### **Improper Treatment of Creditor's Secured Claim**

Creditor has filed a Proof of Claim (POC 1-2) where it asserts a secured claim in the amount of \$204,004.77. According to this District's standard Plan Form, EDC 003-080, "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Plan Form EDC 003-080, § 3.02. Debtor has not complied with this language, instead providing for Creditor's secured claim in the amount of \$72,696.06. Plan Class 3B, Docket 6. Such treatment is impermissible without there being a Motion to Value or Objection to Claim granted by the court.

### **Other Requests in Prayer**

Creditor offers no argument, law, or evidence in support of dismissing the case, as is requested by Creditor in the prayer. Creditor is Objecting to Confirmation, not moving to dismiss. The court is not inclined to grant extra relief merely requested in the prayer.

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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 U.S. Bank National Association as Legal Title Trustee for Truman 2021 SC9 Title Trust (“Creditor”) 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.

11. [24-23775-E-13](#)  
[DPC-1](#)

**TOMAS GARCIA**  
**Peter Macaluso**

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK**  
**10-9-24 [25]**

**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, parties requesting special notice, and Office of the United States Trustee on October 9, 2024. 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>
--

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

1. Debtor Tomas John Garcia’s (“Debtor”) Plan relies on a Motion to Value. No motion to value has been filed, and reduced valuation of the secured claim has been made. Debtor’s Plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation. Obj. 2:1-7, Docket 25.
2. Debtor’s budget relies on contributions from family members. Schedule I identifies Debtor’s monthly income as \$3,641.58, which includes assistance from Debtor’s Mother in the amount of \$1,500.00. The Debtor has failed to provide a Declaration from this contributing family member to evidence the reliability of this income over the duration of the Plan. *Id.* at 2:8-13.
3. Debtor has misreported the actual amount of his monthly child support payment on his Schedules. *Id.* at 2:14-20.
4. Pursuant to Local Bankruptcy Rule 3015-1(c)(2), the Debtor is required to serve upon the trustee no later than fourteen (14) days after the filing of the petition a Domestic Support Obligation Checklist. To date, the Debtor has failed to provide the Trustee with the Domestic Support Obligation Checklist, thereby hindering the trustee from performing his duties. *Id.* at 2:21-26.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 27.

## **DISCUSSION**

### **Debtor’s Reliance on Motion to Value Secured Claim**

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Regional Acceptance Corp. Debtor has failed to file a Motion to Value the Secured Claim of that creditor. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

#### **Issues with Plan Funding**

Debtor relies on contributions from his mother to fund the Plan; however, Trustee is unable to verify the contributions will be coming in regularly and timely without evidence suggesting so on the record. A review of the Docket shows there is no evidence on the record showing Debtor’s mother will be making monthly contributions to the Plan.

Moreover, Debtor appears to have under reported the monthly childcare support payment. If Debtor has under reported the figure at \$383 per month when the payment is really \$2,659.67 per month, Debtor’s plan is not feasible.

Debtor has also not provided Trustee with EDC.003-088, the Domestic Support Obligation Checklist. These are all grounds for denial of confirmation.

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

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

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

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

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

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

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

-----

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, parties requesting special notice, and Office of the United States Trustee on October 15, 2024. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

<b>The Motion to Sell Property is granted.</b>
--

The Bankruptcy Code permits Forrest Sylvan Gardens, Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1399 Sacramento avenue, #100, West Sacramento, CA 95605 (“Property”).

The proposed purchaser of the Property is Laurel Brungraber (“Buyer”), and the terms of the sale are:

- A. The purchase price shall be \$90,575, with all faults, as is.
- B. Proceeds of the sale will be used to pay all liens in full.
- C. After paying liens, commissions, and costs associated with the sale in full, Debtor should be due \$68,100.13 in proceeds from the sale.

- D. Proceeds of the sale will also change the dividend to unsecured creditors from 0% to 1.5%.

Mot. 2:22-3:27, Docket 105.

## DISCUSSION

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

The court notes Debtor has claimed a homestead exemption in the amount of \$15,296.00 in his Schedules. Schedule C at 14, Docket 1. The court has not seen any amended Schedule C, and so the amount claimed as exempt is far less than Debtor's projected return from the sale. In discussing how the percentage to unsecured creditors is the Debtor's best efforts pursuant to 11 U.S.C. § 1325(b)(1), at the hearing, **XXXXXXX**

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor can pay the secured claim in full, generate a net return for unsecured creditors, and complete the Chapter 13 Plan.~~

Movant has estimated that as part of the sale, Hanson's Mobile Home Sales will be paid a commission in the sum of \$6,000. Offer to Purchase, Ex. 1 at 2, Docket 109. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than \$6,000.

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

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because time is of the essence to retain the proposed buyer, and to avoid delay, the stay should be waived. Mot. 4:19-21, Docket 105,

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

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

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

The Motion to Sell Property filed by Forrest Sylvan Gardens, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Forrest Sylvan Gardens, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Laurel

Brungraber or nominee (“Buyer”), the Property commonly known as 1399 Sacramento avenue, #100, West Sacramento, CA 95605 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$90,575, on the terms and conditions set forth in the Manufactured Homes Purchase Order and Federal Disclosure Statement, Exhibit A, Dckt. 109, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to pay a real estate broker’s commission in an amount not more than \$6,000 to Hanson’s Mobile Home Sales.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee’s demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

**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, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 14, 2024. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

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

<p><b>The Motion to Impose the Automatic Stay is granted.</b></p>
---

Eileen Anne Argel (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is Debtor’s third bankruptcy petition pending in the past year with the prior two cases having been dismissed. Debtor’s prior bankruptcy cases (Nos. 23-23148 and 24-21464) were dismissed on March 1, 2024, and August 29, 2024, respectively. *See* Order, Bankr. E.D. Cal. No. 23-23148, Dckt. 58, March 1, 2024; Order, Bankr. E.D. Cal. No. 24-21464, Dckt. 36, August 29, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

Here, Debtor states that the instant case was filed in good faith and explains that her circumstances have changed to allow for completion of a successful plan in this case. Debtor testifies that her income has stabilized, having rented a room out of her home as well as earning more with her daycare business. Decl. ¶¶ 5, 6, Docket 10. Moreover, Debtor’s mother, Ms. Madlansacay, has testified she will reinstate her daughter’s mortgage with Mr. Cooper by taking out a HELOC loan in the amount of \$250,000. Decl ¶ 2, Docket 11. Those funds would be sufficient to cure the arrearage in full.

**APPLICABLE LAW**



When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

For purposes of subparagraph (B), a case is presumptively filed not in good faith as to all creditors if:

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; . . .

11 U.S.C. § 362(c)(4)(D).

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

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

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

## DISCUSSION

Debtor's prior cases were dismissed after Debtor filed an *ex parte* motion to dismiss her own case (No. 23-23148) and after Debtor became delinquent under her Chapter 13 Plan (No. 24-21464). Here,

Debtor has shown she can prosecute this case and that her circumstances have changed to permit prosecuting a viable case and Chapter 13 Plan.

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

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

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

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

The Motion to Impose the Automatic Stay filed by Eileen Anne Argel (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

Item 14 thru 15

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (pro se), parties requesting special notice, and Office of the United States Trustee on October 10, 2024. 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:

1. Debtor John M. Radulovich ("Debtor") failed to appear and be examined at the First Meeting of Creditors held on October 3, 2024. Obj. 1:3-6, Docket 26.
2. Debtor has failed to provide proof of photo identification and Social Security number before the First Meeting of Creditors as required pursuant to FRBP 4002(b)(1)(B). *Id.* at 2:7-9.
3. Debtor is delinquent in plan payments. *Id.* at 2:10-16.
4. Debtor failed to provide Trustee with 11 U.S.C. § 521 documents, including 60 days of employer payment advices received prior to the filing of the

petition and tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required. *Id.* at 2:18-28.

5. The Plan fails to provide for the arrearage of Carrington Mortgage in the amount of \$159,496.18. *Id.* at 3:1-7.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Objection. Decl., Docket 28.

## **DISCUSSION**

### **Failure to Appear at 341 Meeting**

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

### **Failure to Authenticate Identification Prior to Meeting of Creditors**

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause for dismissal.

### **Delinquency**

Debtor is \$3,000 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Failure to Provide Pay Stubs**

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). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

Creditor Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust F has filed a timely proof of claim in which it asserts \$156,496.18 in pre-petition arrearage. POC 2-1. The Plan does not propose to cure that arrearage. 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 arrearage.

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 (pro se), Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on September 25, 2024. By the court's calculation, 41 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>
---

Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust F ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor John M. Radulovich's ("Debtor") Plan does not provide for ongoing mortgage payments or cure the arrearage of Creditor's claim. Obj. 3:6-10, Docket 22.

## DISCUSSION

### Failure to Cure Arrearage of Creditor

Creditor has filed a timely proof of claim in which it asserts \$156,496.18 in pre-petition arrearage. POC 2-1. The Plan does not propose to cure that arrearage. 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 arrearage.

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 Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust F (“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.

***Ex Parte Motion to Employer Broker Filed (Dckt. 27)***  
**No Proposed Order Lodged With Court**

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2024. By the court’s calculation, 13 days’ notice was provided. The court set the hearing for November 5, 2024. Dckt. 37.

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

<p><b>The Motion to Sell Property is granted.</b></p>
---

The Bankruptcy Code permits Jessica Lynn Beer, Chapter 13 Debtor, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1020 Swallow Circle, Yreka, CA 96097 (“Property”).

The proposed purchaser of the Property is Bhrett Cross (“Buyer”), and the purchase price is for \$270,000. The sale will be sufficient to pay all liens and costs of sale in full, and is expected to generate enough funds to pay all claims in full. Mot. 1:24-2:8, Docket 32.

**DISCUSSION**



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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will generate funds to pay all claimants in full.

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately \$13,500, to go to Amy Fernandez Cornerstone Properties, who is both Buyer's and Movant's broker. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission.

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

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

The Motion to Sell Property filed by Jessica Lynn Beer, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Jessica Lynn Beer, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Bhrett Cross or nominee ("Buyer"), the Property commonly known as 1020 Swallow Circle, Yreka, CA 96097 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$270,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 35, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. Chapter 13 Debtor is ~~authorized to pay a real estate broker's commission in an amount not more than five percent of the actual purchase price upon consummation of the sale. The five percent commission shall be paid to Amy Fernandez of Cornerstone Properties.~~
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13

Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee's demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.

# FINAL RULINGS

17. [24-23200-E-13](#)  
[PLG-1](#)

LAURA GILLIS  
Steven Alpert

MOTION TO VALUE COLLATERAL OF  
AMERICAN CREDIT ACCEPTANCE  
10-3-24 [\[17\]](#)

**Final Ruling:** No appearance at the November 5, 2024 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 3, 2024. By the court’s calculation, 33 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 American Credit Acceptance (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$17,601.**

The Motion filed by Laura Stephanie Gillis (“Debtor”) to value the secured claim of American Credit Acceptance (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Docket 19. Debtor is the owner of a 2018 Chevrolet Camaro (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$17,601 as of the petition filing date. Decl. ¶ 6, Docket 19. 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).

The Chapter 13 Trustee, David Cusick, filed a nonopposition on October 22, 2024. Docket 27.

## DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on October 24, 2020, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance

of approximately \$23,305.37. Proof of Claim, No. 1-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$17,601, the value of the collateral. *See* 11 U.S.C. § 506(a). 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 Laura Stephanie Gillis ("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 American Credit Acceptance ("Creditor") secured by an asset described as a 2018 Chevrolet Camaro ("Vehicle") is determined to be a secured claim in the amount of \$17,601, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$17,601 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**Final Ruling: No appearance at the November 5, 2024 Hearing is required.**  
-----

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, parties requesting special notice, and Office of the United States Trustee on September 26, 2024. By the court’s calculation, 40 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. .

**The Objection to Confirmation of Plan has been dismissed without prejudice by  
Creditor (Dckt. 20).**

Flagstar Bank, N.A. (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. Debtor Michael Glen Murray and Kelly Dawn Murray (“Debtor”) does not pay the arrearage on Creditor’s claim, Claim 10-1. Obj. 1:22-2:3, Docket 15.
2. Creditor requests dismissal and an award of attorneys fees. *Id.* at 2:10-14.

Creditor submits the Declaration of Mirjeta Isufi to authenticate the facts alleged in the Objection. Decl., Docket 17.

## **DISCUSSION**

### **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 \$2,166.41 in pre-petition arrearage. POC 10-1. The Plan does not

propose to cure that arrearage. 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 arrearage.

### **Other Requests in Prayer**

In the prayer for this Objection to Confirmation, Creditors adds a request that the court dismiss the bankruptcy case. Creditor offers no argument, law, or evidence in support of dismissing the case, as is requested by Creditor in the prayer. Creditor is Objecting to Confirmation, not moving to dismiss. Creditor does not show any basis for joining a request to dismiss a bankruptcy case with an objection to confirmation.

Moreover, in the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

### **Withdrawal of Objection to Confirmation**

On November 1, 2024, Creditor filed a "Withdrawal" of the Objection to Confirmation. Dckt. 20. The court deems this "Withdrawal" to be a dismissal of the Objection by Creditor pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 7041, 9014(c). The Federal Rules do not provide for a party "withdrawing" pleadings filed with the court.

Pursuant to the November 1, 2024 "Withdrawal" filed by Creditor, the Objection has been dismissed by Creditor as provided in Federal Rule of Civil Procedure 41(a)(1)(A)(i).

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 Flagstar Bank, N.A. ("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 has been dismissed without prejudice by Creditor pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 7041, 9014(c).

**Final Ruling: No appearance at the November 5, 2024 Hearing is required.**

-----

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, parties requesting special notice, and Office of the United States Trustee on August 14, 2024. 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.

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

### REVIEW OF OBJECTION

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

1. The Internal Revenue Service (“IRS”) filed a Proof of Claim claiming the Debtor owes \$215,817.91 total, claiming an unsecured priority in the amount of \$146,880.99, and an unsecured general claim in the amount of \$68,936.92 (Claim #6). The Debtor’s Plan estimates the priority claim in the amount of \$86,907.00. The Plan is overextended as proposed, not properly accounting for the IRS’ claim. Obj. 2:1-12, Docket 28.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 30.

### DISCUSSION

## **Overextended Plan**

With the IRS' claim (POC 6-1) and Debtor's proposed monthly payments of \$6,500, the Plan will take 101 months to complete. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

Counsel for the Debtor requested that the hearing be continued. The Debtor has now filed and has been attempting to communicate with the Internal Revenue Service. However, the Internal Revenue Service has not responded to her inquiries.

To afford Debtor the opportunity to further communicate with the Internal Revenue Service or to file an Objection to Claim, the Chapter 13 Trustee concurred with the Debtor's request for a continuance.

The hearing on the Objection to Confirmation is continued to 2:00 p.m. on November 5, 2024.

## **November 5, 2024 Hearing**

The court continued the hearing on this Objection to afford Debtor the opportunity to further communicate with the Internal Revenue Service or to file an Objection to Claim. On October 30, 2024, Debtor filed a Status Report with the court. Debtor states there is an issue with his 2021 tax return that requires amending it. Debtor will need to also file an Amended Plan, suggesting the court sustain this Objection.

The Objection to Confirmation is sustained and the Chapter 13 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 is sustained.



**Final Ruling: No appearance at the November 5, 2024 Hearing is required.**

-----

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 August 2, 2024. By the court’s calculation, 39 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.

**The Objection to Confirmation of Plan is dismissed without prejudice.**

**Confirmation of the Chapter 13 Plan has been denied pursuant to the Objection of the Chapter 13 Trustee.**

### **REVIEW OF OBJECTION**

Deutsche Bank National Trust Company, as Trustee for Carrington Home Equity Loan Trust Series 2005-NC4 Asset-Backed Pass-Through Certificates (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

1. Creditor is the holder of the underlying Note and Deed of Trust secured by Debtor’s real property located at 2929 Muttonbird Way, Sacramento, CA 95834 (“Property”).
2. The Plan cannot be confirmed as proposed as it fails to properly provide for the cure of Creditor’s pre-petition arrears. Creditor’s pre-petition arrears approximately total \$87,750.50. Debtor’s Plan proposes to cure \$82,000.00 in pre-petition arrears. Obj. 2:19-21, Docket 22.

## **DISCUSSION**

### **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 \$87,750.50 in pre-petition arrearage. The Plan does not propose to cure that arrearage. Creditor computes that the monthly plan payment must be increased by an additional \$95.84 a month to fully provide for the pre-petition arrearage.

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 arrearage.

At the hearing, the Debtor amended the Plan to increase the monthly plan payment. However, the issues relating to the amount of the Internal Revenue Service claim do not allow this Objection to be resolved at this time.

Counsel for the Debtor requested that the hearing be continued. The Debtor has now filed and has been attempting to communicate with the Internal Revenue Service. However, the Internal Revenue Service has not responded to her inquiries.

To afford Debtor the opportunity to further communicate with the Internal Revenue Service or to file an Objection to Claim, counsel for the Creditor concurred with the Debtor's request for a continuance.

### **November 5, 2024 Hearing**

The court continued the hearing on this Objection to afford Debtor the opportunity to further communicate with the Internal Revenue Service or to file an Objection to Claim. As of the court's review of the Docket on October 29, 2024, nothing new has been filed with the court.

Debtor's counsel has reported that the issues with the Internal Revenue Service have not been resolved and that an amended plan will need to be filed.

The court has denied confirmation of the proposed Plan pursuant to the Objection of the Chapter 13 Trustee.

The court dismisses without prejudice Creditor's objection, the Debtor having proposed amendments to address Creditor's Objection.

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 Deutsche Bank National Trust Company, as Trustee for Carrington Home Equity Loan Trust Series 2005-NC4 Asset-Backed Pass-Through Certificates ("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 Plan is dismissed without prejudice. The court has denied confirmation of the proposed Plan pursuant to the separate Objection to Confirmation filed by the Chapter 13 Trustee.

21. [24-23756-E-13](#)  
[DPC-1](#)

**RENEE DAMACION**  
**Mo Mokarram**

**OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P CUSICK**  
**10-10-24 [13]**

**Final Ruling:** No appearance at the November 5, 2024 hearing is required.

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David Cusick (“the Chapter 7 Trustee”) having filed a Notice of Withdrawal, Dckt. 17, 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 was dismissed without prejudice, and the matter is removed from the calendar.**

Item 22 thru 24

**Final Ruling: No appearance at the November 5, 2024 Hearing is required.**

-----

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 12, 2024. 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.

<p><b>The hearing on the Objection to Confirmation of Plan has been continued to 2:00 p.m. on December 10, 2024, by prior order of the court (Dckt. 44).</b></p>
--

### REVIEW OF OBJECTION

Kristofer Orre and Sarah Orre (“Creditor”) holding a secured claim oppose confirmation of the Plan on the basis that:

1. Debtor Barbara Ann Dodge (“Debtor”) did not file this Plan and case in good faith, in violation of 11 U.S.C. § 1325(a)(3) and (7). Debtor has engaged in hiding assets prepetition by transferring money to avoid paying Creditor’s claim, as well as misrepresenting costs on Debtor’s Schedule J in the present case. Docket 23.

Creditor submits the Declaration of Sarah Orre to authenticate the facts alleged in the Objection. Decl., Docket 25.

### DEBTOR’S REPLY

Debtor filed a Reply on October 2, 2024, asking the court continue the hearing on this Objection to November 5, 2024 at 2:00 p.m. to be heard in conjunction with the related Motion to Avoid Judicial Lien. Docket 32.

## DISCUSSION

### Good Faith Requirement of 11 U.S.C. § 1325(a)(3)

11 U.S.C. § 1325(a)(3) states:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

...

(3) the plan has been proposed in good faith and not by any means forbidden by law;

The Ninth Circuit has ruled “[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner” in ruling on whether a Plan was proposed in bad faith. *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

The evidence before the court in this case shows that Debtor owed Creditor \$252,581.56 resulting from an arbitration award entered by the Superior Court of California, County of Santa Cruz, case no. 23CV01407. Decl. ¶ 6, Docket 25. Creditor argues that Debtor closed certain accounts prepetition and moved funds from the closed accounts in order to frustrate collection attempts. If true, the court could infer the plan has been filed in bad faith.

At the hearing, the parties requested that the hearing be continued to 2:00 p.m. on November 5, 2024. The hearing on the Debtor’s Motion to avoid the judicial lien of Creditor has been continued to that time and date.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 5, 2024.

### November 5, 0224 Hearing

By prior Order of the Court, Dckt. 44, the hearing has been continued to 2:00 p.m. on December 10, 2024.

**Final Ruling: No appearance at the November 5, 2024 Hearing is required.**

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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, parties requesting special notice, and Office of the United States Trustee on September 11, 2024. 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.

<p><b>The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on December 10, 2024.</b></p>
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## REVIEW OF OBJECTION

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

1. Debtor Barbara Ann Dodge’s (“Debtor”) Plan relies on a Motion to Avoid Judicial Lien, and if the Motion is not granted, the Plan is not confirmable because it will fail the liquidation test. Obj. 2:3-14, Docket 19.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Objection. Decl., Docket 21.

## DISCUSSION

### Debtor’s Reliance on Motion to Avoid Judicial Lien

Debtor’s Plan relies on avoiding the judicial lien of Kristofer Orre and Sarah Orre (“Creditor”). If Debtor succeeds on that Motion and the claim is placed in the general unsecured class of creditors, then

Debtor's Plan passes the liquidation test. However, if the Motion does not succeed and Creditor's claim stays secured, Debtor's Plan will not provide unsecured creditors with more than what they would receive under a Chapter 7. 11 U.S.C. §1325(a)(4) provides "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date."

At the hearing, the parties requested that the hearing be continued to 2:00 p.m. on November 5, 2024. The hearing on the Debtor's Motion to avoid the judicial lien of Creditor has been continued to that time and date.

The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on November 5, 2024.

### **November 5, 2024 Hearing**

The court continued the two related matters to December 10, 2024. Dockets 43, 44. Therefore, the court continues the hearing on Trustee's Objection to the same time and date to be heard in conjunction with the related matters at 2:00 p.m. on December 10, 2024.

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 hearing on the Objection to Confirmation of Plan is continued to **2:00 p.m. on December 10, 2024.**

24. [24-23271-E-13](#)  
[EJS-1](#)

**BARBARA DODGE**  
Eric Schwab

**CONTINUED MOTION TO AVOID LIEN  
OF KRISTOFER ORRE & SARAH ORRE  
8-13-24 [10]**

**Final Ruling:** No appearance at the November 5, 2024 hearing is required.

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<p><b>The Hearing on the Motion to Avoid Lien has been continued to December 10, 2024 at 2:00 p.m. by this court's Order issued on October 24, 2024. Docket 43.</b></p>
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**Final Ruling: No appearance at the November 5, 2024 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 24, 2024. By the court’s calculation, 42 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).

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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The debtor, Darren James SooHoo (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for 60 monthly payments of \$1,550 each with an estimated 25% dividend to general unsecured creditors. Amended Plan, Docket 21. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 22, 2024. Docket 28. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan should call for contributing any amount of tax refunds over \$2,000, as Debtor has received substantial refunds in the past, and the Plan may not be Debtor’s best effort as proposed. *Id.* at 1:26-2:6.

Debtor filed a Response on October 25, 2024, agreeing to this modification. Docket 30.

#### **DISCUSSION**



With Debtor consenting to Trustee's suggest Plan amendment of contributing any amount in tax refunds over \$2,000 to the Plan, the Plan may be confirmed.

The Amended Plan, as amended, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, as amended to state that Debtor must contribute any amount on tax refunds over \$2,000 to the Plan, and Debtor's Amended Chapter 13 Plan filed on September 24, 2024, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.