

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

Honorable Christopher D. Jaime  
Robert T. Matsui U.S. Courthouse  
501 I Street, Sixth Floor  
Sacramento, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: November 14, 2023**

**CALENDAR: 1:00 P.M. CHAPTER 13**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

November 14, 2023 at 1:00 p.m.

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1. [21-20402](#)-B-13 ALFONSO PULIDO MOTION FOR COMPENSATION FOR  
[PGM](#)-7 Peter G. Macaluso PETER G. MACALUSO, DEBTORS  
ATTORNEY(S)  
10-17-23 [[122](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for additional compensation.

**Request for Additional Fees and Costs**

As part of confirmation of the Debtor's Chapter 13 plan, Peter G. Macaluso ("Applicant") consented to initial fees of \$6,000.00 of which \$0.00 were paid prepetition. Dkts. 1, 6. Applicant now seeks additional compensation in the amount of \$3,540.00 in services, which represents 11.80 hours billed at \$300.00 per hour.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 126.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Chapter 13 Trustee would file multiple motions to dismiss case which required Applicant to file multiple and separate modified plans. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	\$3,540.00
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November 14, 2023 at 1:00 p.m.

The motion is ORDERED GRANTED for additional fees of \$3,540.00.

The court will issue an order.

2.     [23-22341](#)-B-13   ALEJANDRO HERNANDEZ AND                   MOTION TO CONFIRM PLAN  
          [MRL](#)-1            TRINIDAD VILLASENOR                   10-10-23 [[35](#)]  
                          Mikalah Liviakis

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

3. [23-23441](#)-B-13 MALEIK FISHER  
[KGR](#)-1 Michael K. Moore

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-17-23 [[10](#)]

THE GOLDEN 1 CREDIT UNION  
VS.

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee filed a response. Debtor Maleik Fisher ("Debtor") also filed a response.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to deny the motion for relief from automatic stay.

The Golden 1 Credit Union ("Golden 1") seeks relief from the automatic stay with respect to a 2022 Subaru BRZ (the "Vehicle"). Golden 1 requests relief under 11 U.S.C. §§ 362(d)(1) and (d)(2). See *dk. 13*. The moving party has provided the Declaration of Karl Williams to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

#### Section 362(d)(1)

Golden 1 states that the Debtor is **8 postpetition payments in default** totaling \$4,621.12. See *dk. 13*. That statement is false and, perhaps, even sanctionable under Fed. R. Bankr. P. 9011. This Chapter 13 case was filed on September 29, 2023. See *dk. 1*. Golden 1 filed the present motion a little over 2 weeks later on October 17, 2023. See *dk. 10*. It is therefore impossible for there to have been 8 unpaid postpetition payments when Golden 1 filed the present motion.<sup>1</sup>

In fact, there are no unpaid postpetition payments. The initial postpetition payment, which includes payment of Golden 1's Class 2 claim, was due on October 25, 2023. The Debtor apparently made that payment on October 25, 2023. However, because the payment was made through the Chapter 13 Trustee's electronic payment system, its receipt and application were delayed due to processing time. Going forward, the Debtor has been advised to make plan payments through the electronic payment system or by certified funds mailed to the Chapter 13 Trustee well in advance of the due date.

Golden 1 has not established cause under § 362(d)(1) to the extent it relies on the absence of postpetition payments as a basis for relief. Monthly payments proposed under the Debtor's Chapter 13 Plan are also sufficient to adequately protect Golden 1's interest in the Vehicle.

The current request for relief under § 362(d)(1) will therefore be denied.

#### Section 362(d)(2)

Golden 1 has also not established a basis for relief under § 362(d)(2). Once a movant

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<sup>1</sup>This is not the first time that Golden 1 and its attorney, Karel Rocha of the law firm of Prenovost, Normandin, Dawe & Rocha, have filed documents in this court without first making the inquiry required by Fed. R. Bankr. P. 9011. See e.g., *The Golden One Credit Union v. Fielder (In re Fielder)*, — B.R. —, 2023 WL 7277985 (Bankr. E.D. Cal. Nov. 2, 2023). Although at this time the court issues no order for Golden 1, attorney Rocha, and/or the Prenovost law firm to show cause why they should not be collectively or individually sanctioned under Fed. R. Bankr. 9011, the court reserves the right to do so at some later point.

under § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2).

Based upon the evidence submitted, the court determines that there is no equity in the Vehicle. From the evidence provided to the court, and only for purposes of this motion, the debt secured by the Vehicle is determined to be \$39,760.53, as stated in the Williams Declaration, while the value of the Vehicle is determined to be \$28,315.00, as stated in Schedules A/B and D filed by the Debtor.

That said, the Petition and Schedules confirm that the Debtor resides in Manteca and works in San Jose. That makes the Vehicle, which is the Debtor's only vehicle, absolutely necessary for the Debtor's employment and, thus, for the Debtor's effective reorganization in this Chapter 13 case.

Relief under § 362(d)(2) will also be denied.

#### Conclusion

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

4. [22-21861](#)-B-13 BASILIO MIRANDA  
[LGT](#)-1 Natali A. Ron

CONTINUED MOTION TO DISMISS  
CASE  
10-11-23 [[50](#)]

**Final Ruling**

This matter was continued from October 31, 2023. Debtor's counsel timely filed a certificate of service on November 1, 2023, as required by the court's order, dkt. 57. The Chapter 13 Trustee was ordered to file a response by November 7, 2023, stating approval or disapproval of a continuance for an additional 45 days from November 14, 2023. No response was filed.

Therefore, the motion to dismiss case will be continued to January 9, 2023, at 1:00 p.m. at the Sacramento courtroom.

The motion is ORDERED CONTINUED for reasons stated in the minutes.

The court will issue an order.

5. [19-22891](#)-B-13 VERNON/RHONDA SMITH  
[WW-8](#) Mark A. Wolff

OBJECTION TO CLAIM OF LOANME,  
INC., CLAIM NUMBER 17-1  
9-26-23 [[145](#)]

### **Final Ruling**

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 17-1 of LoanMe, Inc. and disallow the claim as a duplicate claim.

Debtors request that the court disallow the claim of LoanMe, Inc. ("LoanMe"), Claim No. 17-1. The claim is asserted to be in the amount of \$5,000.00. The Debtors state that this is a duplicate of Claim No. 12-1 of Alliant Capital Management - HDH. Claim No. 17-1 was filed by Debtor's attorney on behalf of LoanMe. Debtor recently learned that payments to LoanMe on account of Claim 17-1 have been returned and, upon further investigation, the Debtors learned that the debt owed to LoanMe was transferred to Alliant Capital Management - HDH prior to the filing of this case and that its attorney filed a claim, which was assigned number 12-1. Debtors' counsel subsequently confirmed that Claim 12-1 is LoanMe.

### **Discussion**

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Debtors have satisfied its burden of overcoming the presumptive validity of the claim. Specifically, that Claim No. 17-1 that Debtors' counsel filed on behalf of LoanMe is a duplicate of Claim No. 12-1. Based on the evidence before the court, Claim No. 17-1 is disallowed. The objection to the proof of claim is sustained.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.



6. [23-22700](#)-B-13 MANUEL GALVAN  
[CAS](#)-1 James L. Keenan

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY CAPITAL  
ONE AUTO FINANCE  
9-14-23 [[17](#)]

**Final Ruling**

This matter was continued from November 7, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 10, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 62 sustaining the objection to confirmation, shall become the court's final decision. The continued hearing on November 14, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

7. [23-22720](#)-B-13 KAREEM SYKES  
[LGT](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY LILIAN  
G. TSANG  
10-11-23 [[35](#)]

### **Final Ruling**

The *initial* Chapter 13 Plan filed August 23, 2023, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies. Debtor Kareem Sykes ("Debtor") filed a reply.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Chapter 13 Trustee objects to plan confirmation on grounds that the Debtor has failed to supply business documents and Schedule I business income and expenses. The Debtor has provided all business documents and filed Business Income and Expenses at dkt. 41.

Second, Section 2.01 provides for plan payments of \$3,200 but plan payments need to be at least \$3,370. The Debtor has filed amended Schedules I/J that shows monthly disposable income of \$3,370.

Third, the Debtor has failed to provide a detailed explanation of Zelle payments to and from multiple recipients. The Debtor has not addressed this in his reply and, therefore, the plan is not confirmable.

Fourth, the Debtor must provide detailed month-by-month analysis of income to allow the Trustee to determine whether all disposable income is being applied to make payments to unsecured creditors. The Debtor has not addressed this in his reply and, therefore, the plan is not confirmable.

Fifth, the plan not proposed in good faith because the Debtor can not afford to make payments and the Statement of Financial Affairs at #4 fails to accurately list income for the years 2021 and 2022. The Debtor has not sufficiently addressed this in his reply and, therefore, the plan is not confirmable.

The plan filed August 23, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

8. [23-20748](#)-B-13 RONALD/YUVETTA PERRIN CONTINUED MOTION FOR RELIEF  
[RDW](#)-1 G. Michael Williams FROM AUTOMATIC STAY AND/OR  
PAUL J. NEWMAN VS. MOTION FOR ADEQUATE PROTECTION  
8-22-23 [[78](#)]

### **Final Ruling**

The motion for relief from automatic stay was continued from September 5, 2023, and again from October 10, 2023, on the basis that Debtors Ronald Perrin and Yubetta Perrin ("Debtors") were negotiating with a prospective lender to refinance the loan secured by a first deed of trust on 1746 East Market Street, Stockton, California, and because they had also filed a second amended plan on October 3, 2023, to address the default in monthly payments. See dkt. 162.

The motion to confirm the second amended plan was heard and denied on November 7, 2023. See dkt. 162. The Debtors have also failed to file any response to the motion for relief from automatic stay, including the status of the stated loan refinance.

The court's decision is to deny the motion for relief from automatic stay.

Paul J. Newman, as Trustee of the Paul J. Newman Trust dated 10/7/1992 and Restated 5/30/2013, its successors and/or assignees ("Movant"), seeks relief from the automatic stay with respect to real property commonly known as 1746 East Market Street, Stockton, California (the "Property"). Movant has provided the Declaration of Paul Newman to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Newman Declaration states that there are 5 post-petition payments in default totaling \$7,666.65.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property that is owed to Movant is determined to be \$205,737.52 as stated in the Newman Declaration and Schedule D filed by the Debtor/s. The value of the Property is determined to be \$530,000.00 as stated in Schedules A/B and D filed by Debtor.

### **Discussion**

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Movant has not met this burden.

Movant stated in its papers that the property has a valuation of \$530,000.00. This value corresponds with the valuation stated in Debtors' Schedules A/B, C and D. Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court values the Property at \$530,000.00.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Movant claims it is owed \$205,737.52 as of August 22, 2023. Based on the Property's \$530,000.00 value, that leaves equity of \$324,262.48, which in turn creates an equity cushion of 61.118%. Movant is therefore adequately protected, even in the absence of postpetition payments.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

