

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

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

**December 14, 2021 at 2:00 p.m.**

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<b>1.</b>	<b><u>21-23510-E-13</u></b> <b><u>DPC-1</u></b>	<b>MUSTAPHA CHAM</b> <b>Anh Nguyen</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> <b>11-23-21 [39]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 23, 2021. 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 -----  
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<b>The Objection to Confirmation of Plan is sustained.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. 11 U.S.C. § 109(g)(2) Eligibility - Debtor previously filed a Motion for Voluntary Dismissal after a Motion for Relief from Stay was granted. Trustee intends to file a motion to dismiss this case, if the Debtor fails to request a dismissal in the immediate future.
- B. Best Effort - Debtor is not showing their spouses income to the Plan Payment.
- C. Liquidation - Debtor's plan may not pay unsecured at least what they would receive in a Chapter 7.
- D. Not All Financial Documents Received - Debtor has not provided Coinbase and Bianace crypto account statements.
- E. Plan Payment Coming Due - First plan payment will be due on November 25, 2021.

## **DISCUSSION**

Trustee's objections are well-taken.

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

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

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

Trustee alleges if Debtor's spouse is receiving income, it should be committed to the plan payment. Debtor is showing the spouse has \$2,656.00 per month in unemployment compensation under the Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period Form 122C-1. Dckt. 14.

### **Debtor Fails Liquidation Analysis**

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor has substantial property as noted by the entries under "Bonds, mutual funds, or publicly trades stocks" which Trustee is requesting additional information on.

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

Debtor has failed to timely provide Trustee with business documents relating to Debtor's

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and parties requesting special notice on November 22, 2021. By the court's calculation, 22 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, -----

<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits Karina A. Hangartner, Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 8201 Florintown Way, Sacramento, California ("Property").

The proposed purchaser of the Property is Donis Estuardo DeLeon Suazo, and the terms of the sale are:

- A. Purchase Price: \$250,000.00
- B. Initial Deposit: \$1,000.00
- C. Close of Escrow: 50 days after acceptance

**CREDITOR TOWD POINT MASTER FUNDING TRUST'S OPPOSITION**

On December 1, 2021, Creditor Towd Point Master Funding Trust 2021-PM1 filed an opposition to Debtor's Motion to Sell. Dckt. 93. Creditor states they hold a promissory Note dated July 7, 2011 in the original principal amount of \$126,704.00 which is secured by a Deed of Trust on the Property. The court notes Creditor's proof of claim is for a secured amount of \$115,273.60. Proof of Claim, 101. Creditor does not oppose of the sale so long as they are paid in full.

### **TRUSTEE'S NONOPPOSITION**

On December 7, 2021, Trustee David Cusick filed a nonopposition to Debtor's Motion to Sell. Dckt. 96. Trustee states Debtor has not filed a motion to approve real estate agent/broker. Trustee requests the Order state all proceeds are to be disbursed directly to the Trustee in an amount to pay all creditors in full pursuant to the Trustee's demand.

### **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: xxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it allows the first mortgage lender, Towd Point Master Funding Trust, to be paid in full on the proceeds of the sale as well as all unsecured claims.

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 Karina A. Hangartner, 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 by Karina A. Hangartner, Chapter 13 Debtor, ("Movant"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Donis Estuardo DeLeon Suazo or nominee ("Buyer"), the Property commonly known as 8201 Florintown Way, Sacramento, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$250,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 90, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

- C. The Chapter 13 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. After payment of usual commissions and expenses, payments of all liens and encumbrances, and payment in full of all secured, priority, and unsecured claims, the Chapter 13 Trustee is authorized to release the net proceeds to Debtor.

3. [19-23924-E-13](#)      **PEDRO/YZA TABANGCURA**      **MOTION TO SELL**  
[SLH-1](#)                      **Seth Hanson**                      **11-23-21 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 23, 2021. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

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<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits Pedro Soriano Tabangcura and Yza Gole Cruz Tabangcura, 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 1648 Highland Drive, West Sacramento, California, 95691 (“Property”).

The proposed purchaser of the Property is Opendoor Property Acquisition LLC, and the

terms of the sale are:

A. The purchase price is ~~\$669,600.00~~.

In the Motion Debtor states that an “offer” to purchase the property for \$669,600.00 has been received. Motion, ¶ 3; Dckt. 23. However, the Purchase Agreement filed as Exhibit A states a purchase price of \$684,100.00. Purchase Agreement, ¶ 1.C.; Dckt. 26 at 11. On the “Master Settlement Statement the sales price is stated to be \$669,600.00. Exhibit B; *Id.* at 31.

At the hearing, Debtor’s counsel clarified the purchase price, stating ~~XXXXXXX~~

B. Buyer to provide a deposit of \$1,250.00.

C. Close of Escrow shall occur on December 21, 2021.

### **TRUSTEE’S NONOPPOSITION**

Chapter 13 Trustee, David P. Cusick, does not oppose the Motion so long as proceeds are disbursed directly to Trustee in an amount to pay all creditors in full pursuant to the Trustee’s demand based on Debtors’ confirmed plan.

### **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: ~~XXXXXXXXXXXXXXXXXX~~.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the net proceeds will be \$351,193.11 and will allow Debtors to pay 100% to secured and unsecured claims.

Movant has estimated that a 0-6% percent broker’s commission from the sale of the Property will equal approximately \$17,012.50 to Seller’s Real Estate Broker, Big Block Realty North. Exhibit A & B, Dckt. 26. 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 6.0% 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 Pedro Soriano Tabangcura and Yza Gole Cruz Tabangcura, 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 Pedro Soriano Tabangcura and Yza Gole Cruz

Tabangcura, Chapter 13 Debtor (“Movant”) , is authorized to sell pursuant to 11 U.S.C. § 363(b) to Opendoor Property Acquisition LLC, or nominee (“Buyer”), the Property commonly known as 1648 Highland Drive, West Sacramento, California, 95691 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$684,100.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 26, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale pursuant to the terms of the Purchase Agreement.
- C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. After payment of the costs, fees, expenses, and liens as provided above, the net sales proceeds shall first be distributed to the Chapter 13 Trustee, who shall make a written demand in escrow for disbursement of monies to fully fund the Chapter 13 Plan.
- F. After payment of the above, all net proceeds after disbursement to the Chapter 13 Trustee on his demand, shall be disbursed directly from escrow to the Chapter 13 Debtor.



**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 Not Provided. No Proof of Service has been filed with the Motion. At the hearing, XXXXXXXXXXXX**

The Proof of Service states that the Motion and supporting pleadings were served on **xxxxx** on **xxxx, 2021**. By the court's calculation, **xx** days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

<b>The Motion to Sell Property is granted.</b>
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The Bankruptcy Code permits Rudy P. Orpilla and Felicidad A. Orpilla, Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 257 Thorndike Way, Folsom, California ("Property").

The proposed purchaser of the Property is Mohammad Najim, and the terms of the sale are:

- A. Purchase Price: \$750,000.00
- B. Close of Escrow: 30 days after acceptance
- C. Initial Deposit: \$10,000.00
- D. Increased Deposit Upon Removal of All Contingencies: \$35,000.00

**CREDITOR'S CONDITIONAL NONOPPOSITION**

U.S. Bank National Association, not in its individual capacity but solely as indenture trustee, for the holders of the CIM Trust 2020-R5, Mortgage-Backed Notes, Series 2020-R5, submits a Conditional Nonopposition not opposing to the sale so long as the order includes the following statement:

1. Respondent's lien is paid in full from the proceeds of the sale.
2. Respondent is authorized to submit an updated payoff demand to the escrow company facilitating the sale closer in time to the closing of the proposed sale.
3. If the sale does not take place, Respondent shall retain its lien in full for the amount due on their loan.

Dckt. 102.

### **TRUSTEE'S RESPONSE**

On November 29, 2021, Chapter 13 Trustee, David P. Cusick, filed a response stating the proposed sale is sufficient for Debtor to pay all creditors in full. However, Debtor has not filed a Motion to Employ a Real Estate Agent.

### **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: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow Debtor to complete the Chapter 13 Plan with payment in full to creditors.

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 Rudy P. Orpilla and Felicidad A. Orpilla, 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 Rudy P. Orpilla and Felicidad A. Orpilla, Chapter 13 Debtor, ("Movant"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Mohammad Najim or nominee ("Buyer"), the Property commonly known as 257 Thorndike Way, Folsom, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$ \$750,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 100, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- D. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. As U.S. Bank National Association, not in its individual capacity but solely as indenture trustee, for the holders of the CIM Trust 2020-R5, Mortgage-Backed Notes, Series 2020-R5 (“Creditor”), holds a secured claim on the Subject Property, Creditor’s lien will be paid in full from the proceeds and is authorized to submit an updated payoff demand to the escrow company facilitating the sale closer in time to the closing.
- F. If the sale does not go forward, Creditor will maintain its lien in full on the Property for the amount due on its loan.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2021. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Approve Loan Modification is <span style="color: red;">XXXXXXX</span> .</b></p>
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The Motion to Approve Loan Modification filed by Sayed Naim Shah and Sheila Diann Shah ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the Plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$2,169.55 per month to \$1,876.51 per month.

The Motion is supported by the Declaration of Sayed Naim Shah and Sheila Diann Shah. Dckt. 33. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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

On November 29, 2021, Chapter 13 Trustee, David P. Cusick, filed a response to Debtor's Motion to Approve Loan Modification. Dckt. 36. Trustee states Debtor's request to split and decrease their plan payment to \$2,828.44 for the months during the trial period is a direct conflict of Debtor's confirmed plan and must be done with a Modified Plan.

Also, Debtor's are delinquent \$996.29 under the confirmed plan. Also, if the court does not bifurcate Debtor's payment, Trustee believes the payment listed in incorrect. As of October 25, 2021,

Debtors' plan payment increased to \$4,724.52 pursuant to the Notice of Mortgage Payment Change filed March 5, 2021, effective April 1, 2021. Therefore, the split towards Debtors' plan payment during the trial loan modification would be \$2,852.96, not the \$2,828.44.

With respect to splitting the trial loan payment, this court has authorized it in the past, making sure that the responsibility for, and blame in the event of a default, making the timely trial loan payments fall directly on the square of the Debtor's shoulders. This removes the Chapter 13 Trustee from the trial loan modification payment process, and responsibility liability if there is an inadvertent missed distribution by the Trustee, and the Debtor faces losing the house because the missed trial loan payment.

However, at this juncture the Trustee raises serious issues concerning Debtor's ability to pay and the numbers upon which the modification is based.

At the hearing, **XXXXXXX**

~~————— The Motion to Approve the Loan Modification is granted.~~

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

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

~~————— The Motion to Approve Loan Modification filed by Sayed Naim Shah and Sheila Diann Shah ("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 court authorizes Sayed Naim Shah and Sheila Diam Shah, Debtor, to enter into the Trial Loan Modification with Wells Fargo Home Mortgage ("Creditor"), for the claim that is secured by the real property commonly known as 4619 Charleston Drive, Carmichael, California, on such terms as stated in the Modification Agreement filed as Exhibit B in support of the Motion (Dckt. 34).~~

~~————— **IT IS FURTHER ORDERED** that Debtor is authorized to, and shall, make the trial loan modification payments directly to Creditor for the months through March 2022, and decrease the monthly pay payment by such loan modification payment amount for those months.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 21, 2021. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

- A. Debtor failed to appear at the First Meeting of Creditors.
- B. Debtor failed to provide payment advices and Federal Income Tax Return.

## **DISCUSSION**

Trustee's objections are well-taken.

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

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

The Continued Meeting of Creditors was held on December 9, 2021, and Trustee's Report indicates Debtor appeared. Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this Objection.

### **Combined Pay Stubs & Tax Returns**

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). Also, 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 all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 22, 2021. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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

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

- A. Debtor failed to submit Social Security Number at the Meeting of Creditors.
- B. Debtor admitted at the First Meeting of Creditors that they were required to file 2019 and 2020 tax returns and has not done so.
- C. Debtor's Plan relies on Motion to Value Collateral. Debtor has failed to file a Motion to Value Collateral.
- D. Debtor failed to provide profit and loss statements, bank statements for all bank



accounts, and proof of license and insurance.

- E. First payment plan will be due on November 25, 2021

## **DISCUSSION**

Trustee's objections are well-taken.

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

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

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

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2019 and 2020 tax years has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **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 Credit Acceptance Corporation. Debtor has failed to file a Motion to Value the Secured Claim of Credit Acceptance Corporation, however. Without the court valuing the claim, the Plan is not feasible. 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. Six months of profit and loss statements,
- B. Six months of bank account statements,
- C. Proof of license and insurance or written statement that no such documentation exists

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

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.

8. <a href="#">21-23555</a> -E-13 <a href="#">DWE-1</a>	<b>TRACI HAMILTON</b> <b>Richard Jare</b>	<b>OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL TRUST ASSOCIATION</b> <b>11-29-21 [34]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and Chapter 13 Trustee on November 29, 2021. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

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<b>The Objection to Confirmation of Plan is sustained.</b>
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U.S. Bank Trust National Association, not in its individual capacity, but solely as Trustee of LSF8 Master Participation Trust (“Secured Creditor”), as serviced by Fay Servicing, LLC, (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Secured Creditor's claim is secured by the property.
- B. Pursuant to 11 U.S.C. § 1325(a)(6), the Plan appears infeasible.
- C. Pursuant to 11 U.S.C. § 1322(b)(5), the Plan fails to provide for the curing default under Secured Creditor's Claim within reasonable amount of time.

Creditor is in the process of preparing its Proof of Claim and claims they will file it on or before the Proof of Claim filing deadline of December 22, 2021. However, Creditor has not filed with their objection any exhibits or otherwise evidence, i.e. a Declaration, of their secured claim.

## **DISCUSSION**

Creditor's objections are well-taken.

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

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

### **Unreasonable Delay to Cure Arrearage of Creditor**

The objecting creditor holds a secured claim secured by Debtor's residence. Creditor has not yet filed a proof of claim, yet, they assert in their motion there are pre-petition arrearages. Pursuant to Debtor's Plan, Creditor has a Class 1 claim with \$49,500.00 in arrears. The first payment to pay these arrears does not commence until month fifteen (15). Dckt. 4 at 3. Creditor claims without Debtor providing an explanation for this delay, it is an unreasonable delay to cure the arrearage of Creditor, pursuant to 11 U.S.C. § 1322(b)(5). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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 Trust National Association ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 30, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

Isidro Rodrigo Flores ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 20-24902-A-13C) was dismissed on November 16, 2021, after delinquency in payments under the debtor's confirmed chapter 13 plan. *See* Order, Bankr. E.D. Cal. Dckt. 95, November 18, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and states the previous case was dismissed because of financial hardship exacerbated by COVID-19.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C.

§ 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

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

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

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 29, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

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<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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Laszlo Lukacsik ("Creditor") holding an unsecured claim opposes confirmation of the Plan on the basis that:

- A. Debtor ineligible for Chapter 13 Relief under 11 U.S.C. § 109(e)
- B. Debtor Chapter 13 plan infeasible because the plan lists Creditor's claim as \$344,984.00 when it is at least \$683,190.64.

## DISCUSSION

Creditor's objections are well-taken.

## Section for 109 Amount of Debt Compliance

Debtor does not qualify for Chapter 13 treatment because the unsecured debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe “on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200.” Debtor’s Summary of Schedules indicates that Debtor was outside the limits of § 109(e) as of the petition date, owing \$425,605.00 to unsecured creditors, and an additional amount of \$4,458.00 to Synch for an unsecured debt. Debtor amended Schedules E/F to add Las Vegas Legal Solutions for \$4,500.00.

### **Good-Faith Filing**

Creditor alleges that the Plan was not filed in good faith due to listing Creditor’s claim as \$344,984.00 when the full amount is at least \$683,190.64. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy code;**
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief;**  
and
- 11) The burden which the plan's administration would place upon the trustee.

*In re Warren*, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

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

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

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

Creditor states Debtor's income and expense schedules contain inconsistencies and unreasonable expenses. These include:

- (1) Debtor's Schedule I indicating a gross income of \$6,259.07 where Form 122C-I indicates a gross income of \$5,588.01.
- (2) Debtor claims expenses for three vehicles in a household of two.
- (3) The combined living expenses total \$1,292.00 where categories in Schedule J result in Debtor claiming expenses in excess of that.
- (4) Debtor includes \$300.00 monthly expenses for the DMV with no explanation why.
- (5) Debtor lists an expense on Schedule J of \$2,044.00 for VA Disability with no explanation why.

Debtor can and should devote more of their net disposable income to repaying creditors.

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 Laszlo Lukacsik ("Creditor") holding an unsecured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 24, 2021. 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 -----  
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<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Ineligible under 11 U.S.C. § 1325(a)(1); 11 U.S.C. § 1325(a)(3); and 11 U.S.C. § 109(e).

## DISCUSSION

Trustee's objections are well-taken.

### Section for 109 Amount of Debt Compliance

Debtor does not qualify for Chapter 13 treatment because the unsecured debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular

income who owe “on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200.” Debtor’s Summary of Schedules indicates that Debtor was outside the limits of § 109(e) as of the petition date, owing \$425,605.00 to unsecured creditors, and an additional amount of \$4,458.00 to Synco for an unsecured debt. Debtor amended Schedules E/F to add Las Vegas Legal Solutions for \$4,500.00.

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

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

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

The Plan proposes less than 100% to unsecured claims. The amount on the means test does not include income Debtor may have received in the amount of \$2,276.74 (\$2,044.00 for VA Disability and \$232.74 for Reserve Duty Pay). If income was received in the six months prior to filing and is included in the means test, Debtor would be over \$2,364.30/month, or \$141,858.00, which leaves 33% available as an unsecured dividend over the life of the Plan.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 22, 2021. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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

- A. Failure to appear at First Meeting of Creditors

## **TRUSTEE'S STATUS REPORT**

The Chapter 13 Trustee, David Cusick ("Trustee") filed a status report, maintaining their objection pursuant to 11 U.S.C. § 1325(b) and that it does not appear the debtor can afford to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6).

## **DISCUSSION**

Trustee's objections are well-taken.

### **Delinquency**

Debtor is \$2,100.00 delinquent in plan payments, which represents one month of the \$2,100.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **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).

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).**

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 29, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

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<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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Lakeview Loan Servicing, LLC, Creditor with a secured claim ("Creditor") opposes confirmation of the Plan on the basis that:

- A. Plan underestimates pre-petition arrears
- B. Loan modification provision fails to provide for the correct post-petition payment
- C. Debtor unable to fund a feasible plan

## DISCUSSION

Creditor's objections are well-taken

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

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$130,604.58 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

### **Modification of an Obligation Secured Only by Principal Residence**

Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$483,183.58, secured by a first deed of trust against the property commonly known as 4132 FOLSOM DRIVE, ANTIOCH, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

### **Insufficient Plan Payments / Infeasible Plan**

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor's Schedule J filed in the Bankruptcy Action lists \$0.00 in expenses attributed to home mortgage or rental payment and indicates that Debtor has a net disposable income of \$2,100.00 to fund the Plan which includes her post-petition secured installments. The post-petition payment owed to Secured Creditor totals \$2,952.70 per month, which eclipses all of Debtor's disposable income leaving nothing to address administrative costs or other secured/unsecured creditors. Additionally, Debtor under-states the pre-petition arrears owed to Secured Creditor and would need to increase her Plan payment by over \$200.00 a month. Thus, the Plan may not be confirmed.

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 Lakeview Loan Servicing, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**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 creditors on November, 30 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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**The Motion to Incur Debt is denied without prejudice.**

Richard A Acosta and Stephanie Marie Acosta ("Debtor") seeks permission to purchase a 2018 Chevy Equinox, with a total purchase price of \$33,961.00 and monthly payments of \$457.00 with a 11.70% fixed interest rate over seventy-one (71) months. Debtor currently leases the vehicle and its payments are \$636.00. John L. Sullivan Chevrolet pre-approved Debtor to convert their lease to purchase.

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

**Trustee's Response**

On December 7, 2021, Chapter 13 Trustee, David P. Cusick, filed a response stating they do not oppose Debtor refinancing the vehicle, however, they would prefer a new Schedule I and J to fully ascertain whether the transaction is in the Debtor's best interest.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable.

However, the court notes, however, that the attached "term sheet" exhibit is not legible. As such, the court cannot ascertain the actual terms of the agreement. Debtor having only an illegible agreement to be approved, the Motion is denied without prejudice.

~~There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.~~

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

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

~~The Motion to Incur Debt filed by Richard A Acosta and Stephanie Marie Acosta ("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 Richard A Acosta and Stephanie Marie Acosta ("Debtor") is authorized to incur debt pursuant to the terms of the agreement ~~filed as Exhibit XXXXXXXX, Dekt. XXXXXXXX-~~~~



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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 2, 2021. By the court's calculation, 12 days' notice was provided. 14 days' notice is required.

Under the facts and circumstances of this Motion, the court shortens the time to the 12 days given.

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>
---

Westgate Flamingo Bay, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's Chapter 13 Plan incorrectly lists the monthly payment amount

## DISCUSSION

Creditor's objections are well-taken. Debtor's Chapter 13 Plan values the monthly payments to Creditor at \$250.00 per month. Dckt. 39. However, Creditor's Proof of Claim values the monthly

payment at \$270.04. Proof of Claim 5-1. As such, the Plan is not feasible.

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 Westgate Flamingo Bay, LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~————— **IT IS ORDERED** that the Objection to Confirmation of the Plan is **XXXXXXX**, and the proposed Chapter 13 Plan is **not** 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.~~

**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 Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 6, 2021. By the court’s calculation, 8 days’ notice was provided. The court required 8 days’ notice. Dckt. 44.

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

<p><b>The Motion to Incur Debt is granted.</b></p>
--

Oleksandr Zhdanyuk (“Debtor”) seeks permission to refinance primary residence known as 6383 Wexford Cir, Citrus Heights, California with United Wholesale Mortgage, LLC. The new principal balance would yield \$147,537.00 for 360 months with a 2.789% interest rate. The previous principal balance on Debtor’s home was for \$59,733.22 with CitiMortgage, Inc. The new monthly payment would be \$605.35, where the previous monthly payment was or \$407.46. Plan, Dckt. 5. The Motion would allow Debtor to take out \$86,772.00 in order to replace aging automobiles and perform needed maintenance and repairs on their home.

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

W.D. Ky. 2007).

### **Best Interest of Debtor**

Here, it is not clear to the court whether this transaction is in the best interest of the Debtor. Debtor has not provided evidence of their aging vehicles and necessary repairs to their home. Without this evidence, the court does not know whether increasing the principal balance by \$86,772.00 is justified.

However, this is a case where the Plan has been completed and has not yet closed. Under those circumstances, the court authorizes Debtor incurring the debt.

The Motion is granted.

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

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

The Motion to Incur Debt filed by Oleksandr Zhdanyuk (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and Debtor is authorized to incur debt on the terms and conditions stated in Exhibit A, Dckt. 41.

**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 Debtor, Debtor's Attorney, and Office of the United States Trustee on December 7, 2021. By the court's calculation, 7 days' notice was provided. The court required 7 days' notice. Dckt. 169.

The Motion to Amend Order on Motion to Compel 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 Amend Order on Motion to Compel is granted.</b></p>
---

David P. Cusick, the Chapter 13 Trustee ("Trustee"), makes a request to amend the order on Debtor's Motion to Compel, pursuant to either Federal Rules of Bankruptcy Procedure § 2023 or § 9024. Trustee states based on the current status of the case, there is a surplus of funds to be returned to the Debtor in the amount of \$352,786.27, not the previously reported amount of \$362,049.95. This is due to a mathematical error on behalf of Trustee's staff. As such, the Court's order, Dckt. 120, should be amended to reflect the proper amount of "\$352,786.27 or whatever the remaining balance the Trustee has on hand after completion of the confirmed Chapter 13 plan." Dckt 164.

Pursuant to Federal Rules of Civil Procedure § 60(b)(1) as incorporated into the Federal Rules of Bankruptcy Procedure § 9024, grounds for relief are allowed for mistake, inadvertence, surprise, or excusable neglect. The court finds the inadvertent error in the Trustee's office creates grounds for relief under § 60(b)(1). As such, the Motion is granted.

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

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

The Motion to Amend Order on Debtor's Motion to Compel filed David P. Cusick, the Chapter 13 Trustee ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the Order on Debtor's Motion to Compel, Dckt. 160, will be amended to state the Chapter 13 Trustee is authorized to immediately release to Debtor \$352,786.27 or whatever the remaining balance the Trustee has on hand after completion of the confirmed Chapter 13 plan.

18. [21-23045](#)-E-13      CURTIS/PEGGY COWGILL      **CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
9-29-21 [19]**  
[DPC-1](#)

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, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2021. By the court's calculation, 34 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.

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXXXXXXXXX</span>.</b>
--

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

A. The plan is not be feasible.

## **DISCUSSION**

Trustee’s objections are well-taken.

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that the feasibility of the Plan depends on Debtors’ being able to obtain a forbearance and selling their real property within the forbearance time period. Debtors testified at the Meeting of Creditors that they were in the process of trying to obtain a forbearance to allow enough time to sell the real property. Trustee states Debtors are currently delinquent on their mortgage. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable. The court notes that the Order approving Debtor’s Motion to Employ Lisa McKee as Realtor to sell Debtor’s real property was issued on October 4, 2021. Dckt. 26.

The Trustee agreed to a continuance in light of Debtor diligently working on the loan modification and the sale of the property.

### **December 7, 2021 Hearing**

At the hearing, counsel for the Debtor reported that Debtor has listed the property for sale and an offer has been accepted, the sale approved, and the sale closed today. The parties reported that if the sale has closed and the monies disbursed, the Objection to Confirmation is resolved and can be dismissed.

### **December 14, 2021 Hearing**

The Courts Order granting the Motion to Sell was entered on November 14, 2021. At the hearing, **XXXXXXXXXX**

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

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

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

**IT IS ORDERED** that the Objection to Confirmation is **XXXXXX**.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 9, 2021. By the court's calculation, 54 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 XXXXXXXXXXXX.**

BCMB1 Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The plan is not feasible.

## **DISCUSSION**

Creditor's objections are well-taken.

## **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor contends the plan is not feasible because it fails to properly provide for Creditor's secured claim. Debtors' Schedule I and J identify a net monthly income of \$1,988.43, but also identifies



\$0.00 going to mortgage payments. As such, Debtors' new monthly income is likely overstated. Furthermore, Debtors identify Creditor's claim to be \$82,500.00, however, the correct claim amount is \$84,187.04. Debtors' proposed plan includes monthly plan payments of \$1,990.00. Debtors do not have sufficient income to fund the plan as their monthly net income is less than the monthly plan payment amount. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtors filed an Response to Creditor's Objection on October 11, 2021. Dckt. 27. Debtors contend that the Plan understates Creditor's secured claim by \$1,687.04. However, Debtors state that their current Chapter 13 Plan is sufficient to pay Creditor with approximately \$28.00 a month to go towards the understated amount.

Furthermore, Debtors state they are working to employ a realtor to sell their real property and if the property is sold, Creditor will be paid in full. The court notes that the Order approving Debtors' Motion to Employ Lisa McKee as Realtor to sell Debtors' real property was issued on October 4, 2021. Dckt. 26. While the Debtors state the Plan should be confirmed, the court does not have an accurate picture of Debtors' financial reality and thus, cannot determine whether the Plan is confirmable.

The Parties agreed to a continuance as Debtor works to address these issues.

#### **December 7, 2021 Hearing**

At the hearing, counsel for the Debtor reported that Debtor has listed the property for sale and an offer has been accepted, the sale approved, and the sale closed today. The parties reported that if the sale has closed and the monies disbursed, the Objection to Confirmation is resolved and can be dismissed.

#### **December 14, 2021 Hearing**

At the hearing, **XXXXXXXXXX**

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

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

The Objection to the Chapter 13 Plan filed by BCMB1 Trust ("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 is **XXXXXXX**

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

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

-----

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 6, 2021. By the court's calculation, 8 days' notice was provided. The court required 8 days' notice. Dckt. 23.

The Motion to Extend the Automatic Stay 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 -----

-----

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

Jack Michael Jodoin and Maryanne Susan Jodoin ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 2019-23669) was dismissed on November 3, 2021, after Debtor was under the mistaken belief that Debtor was current on their payments. *See* Order, Bankr. E.D. Cal. No. 19-23669, Dckt. 100, November 3, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor claims they had no knowledge they missed a payment. When another payment was missed in 2021, the trustee filed a motion to dismiss.

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

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

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

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

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

The Motion to Extend the Automatic Stay filed by Jack Michael Jodoin and Maryanne Susan Jodoin (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

**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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 10, 2021. By the court's calculation, 4 days' notice was provided. The court required 4 days' notice. Dckt. 207.

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

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<b>The Motion to Incur Debt is denied.</b>
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Rafael Palos De La Torre ("Debtor") seeks permission to purchase a vehicle and trade-in his current vehicle.

The vehicle Debtor is seeking to buy is a 2022 GMC Sierra 2500HD. Debtor is receiving \$68,000.00 for the 2019 Ram 2500, of which approximately \$59,390.31 will be used to pay off the balance of the loan owed to TD Auto Finance for the 2019 Ram. The estimated net trade-in amount that will be credited towards the new vehicle purchase is \$8,609.69. The total amount that will be financed is \$82,932.61. The monthly payments will be \$1,450.03 for 72 months, this is \$157.03 more per month than what Debtor is currently paying. The interest rate is 7.90%. Debtor's current loan on the 2019 Ram is 8.4%. Debtor states this loan is in his best interest because pursuant to the Tax Cuts and Job Act, he can utilize a business write off on his 2021 tax returns.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement,

“including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

### **Reasonableness**

Debtor does not address the reasonableness of incurring debt to purchase a brand vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor owns a 2019 Dodge Ram. Debtor would receive \$8,609.69 in proceeds from the 2019 Dodge Ram and rather than using the proceeds to purchase an affordable vehicle, Debtor seeks to borrow an additional \$82,932.61 to purchase a \$91,542.30 vehicle (after costs, taxes, and fees).

The Motion is denied.

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

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

The Motion to Incur Debt filed by Rafael Palos De La Torre (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

# FINAL RULINGS

22. [20-23835-E-13](#) [MRL-3](#) ROYLEE/FLORENCE WOOLFORD  
Mikalah Liviakis MOTION FOR COMPENSATION FOR  
MIKALAH RAYMOND LIVIAKIS,  
DEBTORS ATTORNEY(S)  
11-16-21 [\[62\]](#)

**Final Ruling:** No appearance at the December 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 16, 2021. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Under the facts and circumstances of this Motion, the court shortens the time to the 28 days given.

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

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Mikalah Raymond Liviakis, the Attorney ("Applicant") for Roylee Woolford and Florence Maureen Woolford, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 22, 2021, through November 16, 2021. Applicant has been employed by Client since the petition filing. Applicant requests fees in the amount of \$2,502.50 and costs in the amount of \$0.00.

## TRUSTEE'S NONOPPOSITION

On November 29, 2021, Chapter 13 Trustee, David P. Cusick, filed a nonopposition stating the fees are reasonable. Dckt. 71.

## APPLICABLE LAW

### Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### 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 an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An

attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [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 Applicant's services for the Estate include: (1) Case Administration; (2) Fee Applications; and (3) Asset Disposition. The court finds the services were beneficial to Client and the Estate and were reasonable.

#### **"No-Look" Fees**

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

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

...

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

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



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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$6,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 37. Applicant prepared the order confirming the Plan.

### **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti*

*& Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

General Case Administration: Applicant spent 1 hour in this category. Applicant's services included responding to Trustee's Motion to Dismiss Debtor's case.

Fee Applications: Applicant spent 1 hours in this category. Applicant's services included one application for compensation.

Asset Disposition: Applicant spent 4.5 hours in this category. Applicant's services included drafting motions to approve the sale of Debtor's real estate and to employ Debtor's real estate agent.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Mikalah Raymond Liviakis, Attorney	6.5	\$385.00	\$2,502.50
<b>Total Fees for Period of Application</b>			\$2,502.50

## **FEES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$2,502.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee under the confirmed Plan.

The court authorizes the Chapter 13 to pay 100% of the fees allowed by the court.

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

Fees

\$2,502.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Mikalah Raymond Liviakis, the Attorney (“Applicant”), Attorney for Roylee Woolford and Florence Maureen Woolford, the Chapter 13 Debtor (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Mikalah Raymond Liviakis, the Attorney (“Applicant”) is allowed the following fees and expenses as a professional of the Estate:

Mikalah Raymond Liviakis, Professional employed  
by Chapter 13 Debtor

Fees in the amount of \$2,502.00

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay 100% of the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

**Final Ruling:** No appearance at the December 14, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2021. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Under the facts and circumstances of this Motion, the court shortens the time to the 28 days given.

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

Muoi Chea, the Attorney ("Applicant") for Shawn Robert Glass and Laura Ann Glass, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period November 9, 2019, to October 27, 2021. Applicant requests fees in the amount of \$2,600.00.

## APPLICABLE LAW

### Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s for the Estate performed general case administration for a Chapter 13 case. However, there was unanticipated legal services related to preparing and filing eight Ex Parte Motions relating to two automobile accidents of Debtor. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **“No-Look” Fees**

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

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

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 15. Applicant prepared the order confirming the Plan.

### **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v.*

*Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

Anticipated Chapter 13 Work: Applicant spent 41.1 hours in this category. Applicant performed the usual tasks associated with a Chapter 13 case.

Unanticipated Personal Injury and Workers Compensation Work: Applicant spent 25.7 hours in this category. Applicant corresponded with client and client’s personal injury and workers compensation attorney regarding the nature of these claims; prepared ex parte motions; read settlement agreement; amended Schedules for additional claims.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Muoi Chea	25.7	\$250.00	\$6,425.00
<b>Total Fees for Period of Application</b>			<b>\$6,425.00</b>



Although total fees for this period value \$6,425.00, Applicant is agreeing to fees in the amount of \$2,600.00.

## **FEES AND COSTS ALLOWED**

### **Fees**

The unique facts surrounding the case, including the unanticipated workers compensation and personal injury claims, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$2,600.00 approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay 100% of the fees and costs allowed by the court.

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

Fees	\$2,600.00
------	------------

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Muoi Chea, the Attorney (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Muoi Chea, the Attorney is allowed the following fees and expenses as a professional of the Estate:

Muoi Chea, Professional Employed by Shawn Robert Glass and Laura Ann Glass, the Chapter 13 Debtor (“Client”)

Fees in the amount of \$2,600.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that David Cusick (“the Chapter 13

Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of under the confirmed Plan.

24. [21-21546](#)-E-13      **CHRISTOPHER KEENER**      **MOTION TO MODIFY PLAN**  
[PSB-2](#)      **Paul Bains**      **11-5-21 [43]**

**Final Ruling:** No appearance at the December 14, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2021. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Christopher Steven Keener (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on November 9, 2021. Dckt. 54. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Christopher Steven Keener (“Debtor”) having been presented to the court,

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on November 5, 2021, 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 Trustee will submit the proposed order to the court.

25. [20-23866-E-13](#)      **ANNE PRICE**      **MOTION TO INCUR DEBT**  
[MDA-3](#)                      **Mary Anderson**      **11-29-21 [61]**

**Final Ruling:** No appearance at the December 14, 2021 hearing is required.

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Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 29, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

<p><b><a href="#"><u>The Motion to Incur Debt is granted.</u></a></b></p>
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Anne Marie Price ("Debtor") seeks permission to purchase a 2014 Chevrolet Camaro, with a total purchase price of \$29,046.48 and monthly payments of \$571.88 to Ron Dupratt Used Cars over 5.5 years with a 9.70% fixed interest rate.

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

On December 7, 2021, Chapter 13 Trustee David Cusick filed a nonopposition. Dckt. 70. Chapter 13 Trustee does not oppose Debtor's Motion to Authorize the Debtor to Incur Post-Petition Debt. However, Trustee requests that the amended schedules I and J, provided as Exhibit 1 be filed with

the Court as separate documents.

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

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

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

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

The Motion to Incur Debt filed by Anne Marie Price (“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 Anne Marie Price is authorized to incur debt pursuant to the terms of the agreement, Exhibit 2, Dckt. 64.

**IT IS FURTHER ORDERED** that the amended schedules I and J, provided as Exhibit 1, Dckt. 64, be filed with the Court as separate documents.

**Final Ruling:** No appearance at the December 14, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, and parties requesting special notice on October 27, 2021. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion).

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

<p><b>The Motion to Confirm the Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Joseph Humberto Espana and Martha Eugenia Espana ("Debtor") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition November 29, 2021. Dckt. 90. Additionally, Secured Creditor JPMorgan Chase Bank, N.A. withdrew their opposition on December 3, 2021. Dckt. 94. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Joseph Humberto Espana and Martha Eugenia Espana ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended

Chapter 13 Plan filed on October 27, 2021, 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.

27. [21-23683](#)-E-13      **ANGELA BEASLEY-BAKER**      **MOTION TO CONFIRM PLAN**  
[TJW-2](#)      **Timothy Walsh**      **11-29-21 [29]**

**Final Ruling:** No appearance at the December 14, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 29, 2021. By the court's calculation, 15 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

Under the facts and circumstances of this Motion, the court shortens the time to the 15 days given.

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

<b>The Motion to Confirm the Plan is granted.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Angela Renee Beasley-Baker ("Debtor") has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Angela Renee Beasley-Baker (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on November 18, 2021, 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.