

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 11, 2022 at 2:00 p.m.

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1. [21-23606-E-13](#) STACEY VANNUCCI **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) Mikalah Liviakis **PLAN BY DAVID P. CUSICK,**
1 thru 3 **TRUSTEE**
12-8-21 [30]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on December 8, 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. 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. The Plan does not appear feasible because it is underfunded, Debtor's funds are unclear, Debtor failed to provide a Declaration of support, and the plan does not provide for mortgage payments.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide for a Priority Claim

Trustee asserts that the Internal Revenue Service has a claim for \$29,915.41 in priority unsecured debt. Claim 10-1. IRS' total claim is for \$33,126.70. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The non-filing spouse's Schedule J shows Debtor's separate monthly expenses as \$4,830.00, with \$1,600.00 as the mortgage expense. Debtor's net total income, however, is \$2,243.00. The Plan does not provide for the ongoing mortgage payments even though Schedule D shows Chase Mortgage has a secured claim for real property.

Additionally, Debtor has failed to provide Declaration or other evidence from the non-filing spouse as proof he can and will contribute \$380.00 to the Debtor over the duration of the Plan.

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee on December 2, 2021. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained and the Chapter 13 Plan is not confirmed.

JPMorgan Chase Bank, National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The proposed Plan does not list or identify Creditor's secured claim in Section C of the Plan.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$57,160.74 in this case. The Plan does not provide for treatment of this claim because Debtor asserts their spouse will fund it.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

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

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

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

When a plan does not provide for a secured claim, the remedy may not be denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

In the related case of William Vannucci, 21-21883, (Debtor's Spouse), there is a confirmed Chapter 13 Plan. Debtor states on Original Schedule J that Debtor's Spouse will pay this claim, but does not so provide in the Plan.

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.

- A. Debtor's proposed Plan fails to provide any treatment of Creditor's claim.

Debtor's Reply

Debtor filed a reply and attached a proposed order amending the Plan to add creditor to Class 4 of Debtor's Plan. Dckts. 21, 22.

DISCUSSION

Creditor's objections are well-taken.

Debtor's proposed Amendment to the Plan would resolve Creditor's concerns. However, given the Chapter 13 Trustee's Objection to the Plan and the JPMorgan Objection to Confirmation have been sustained, the proposed amendment has not plan to amend.

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 Ford Motor Credit Company ("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 not confirmed.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 2021. By the court’s calculation, 25 days’ notice was provided. 14 days’ notice is required.

The Motion to Refinance 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 Refinance is granted.

Louis Frank Brown (“Debtor”) seeks permission to refinance their loan to the residence where Debtor resided when the Chapter 13 case was filed and on which Debtor’s representative is on title. Debtor's representative has been approved for a refinance through Nations Direct Mortgage. The terms of the refinance are below:

- A. Amount - \$350,000.00
- B. Length - 11 month fixed rate
- C. Interest - 9.00%
- D. Payment - \$2,625.00 per month interest only payment, with an impound for taxes and insurance of \$307 .00, for a total monthly payment of \$2,932.00.

The loan is all due in 11 months. Debtor states it allows their representative to pay off the

Chapter 13 plan.

The Motion is supported by the Declaration of Lewis G. Brown. Dckt. 231. The Declaration affirms Debtor's desire to obtain the credit and provides evidence of Debtor's ability to pay off the Plan with this refinance.

A motion to refinance 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 Refinance filed by Louis Frank Brown ("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 Louis Frank Brown is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 232.

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 2, 2021. By the court's calculation, 40 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 Rules 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the ~~Modified Plan~~ is granted.

The debtor, David De Vaughn Howerton ("Debtor") seeks confirmation of the Modified Plan because they are behind in plan payments and want to remit payments of \$1,955.00 per month starting December 25, 2021. Declaration, Dckt. 103. The Modified Plan provides \$1,955.00 per month for the remainder of the plan (forty-five months) and a zero percent dividend to unsecured claims totaling \$0.00. Modified Plan, Dckt. 100. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 28, 2021. Dckt. 107. Trustee opposes confirmation of the Plan on the basis that:

- A. Attorney Fees are Incorrect - The Plan states attorney fees are to be \$4,000.00, \$965 paid prior to filing and \$3,035.00 paid through the plan. However, fees have already been approved to equal \$5,500.00, \$4,000.00 was approved in the order confirming and \$1,500.00 was approved after Debtor passed away and the son substituted in.

- B. The reason for the plan may not be clear from the Motion so the Court may not be able to tell if it was proposed in good faith. The Debtor is current as of December 3, 2021. The Trustee believes that Debtor's Schedule I, which shows income from the Debtor's son and six other individuals, probably has good cause for the modification.

DEBTOR'S RESPONSE

Debtor filed a response on January 4, 2022. Dckt. 110. Debtor states "The Trustee is Correct that the 'additional fees' to be paid through the plan are the original \$3,035.00, plus the thereafter approved amount of \$1,500.00, totaling \$4,535.00 to be paid through the plan."

The court believes this may resolve Trustee's concerns as Debtor is stating attorney fees will be \$4,535.00, not the approved \$5,500.00. At the hearing, ~~XXXXXXXXXX~~

Debtor also confirmed that Debtor and Family are able to pay TFS by January 24, 2022, which allows Trustee to receive timely payments thereafter. The court believes this also may resolve Trustee's concerns as to whether the Motion was filed in good faith. At the hearing, ~~XXXXXXXXXX~~

~~————— Considering Debtor has addressed and clarified Trustee's concerns, 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, David De Vaughn Howerton ("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 Motion to Confirm the Modified Plan is granted and the Chapter 13 Plan filed on December 1, 2021, as amended to state that Debtor's counsel's fees to be paid through the plan are \$4,535.00, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which state the forgoing amendments, 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.

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 January 11, 2022. The court recognizes this is more than likely a typographical error by Debtor’s Counsel. The Proof of Service was filed on December 4, 2021. Dckt. 65. Therefore, the Motion was likely served on or before December 4th.** By the court’s calculation, at least 38 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). At the hearing, Debtor’s Counsel confirmed the proper date of service was **XXXXXXX**

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

The Motion to Confirm the Amended Plan is granted.

The debtor, Antionette Michelle Woods (“Debtor”) seeks confirmation of Amended Plan. The Amended Plan provides for:

- a. Debtor has moved the claim of creditor Post City Financial Credit Union from Class 2(A) to Class 2(B).
- b. Debtor has amended the amount owed to creditor Northern California Collection Service on Class 2(C), which is to be avoided via motion to avoid lien.
- c. Debtor has added an IRS priority claim amount in §3.12(c).

- d. Debtor amended the amount owed to unsecured creditors in §3.14.
- e. Debtor increased the plan payment to \$500.00 per month beginning December 25th, 2021.

Amended Plan, Dckt. 63. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 21, 2021. Dckt. 71. Trustee opposes confirmation of the Plan on the basis that:

- A. It is based on Debtor's Motion to Value and Motion to Avoid Lien.

DISCUSSION

Given the motions of which Trustee's objections are based on have been granted, Trustee's concerns are resolved.

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, 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, Antionette Michelle Woods ("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 December 4, 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.

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 2, 2021. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Post City Financial Credit Union (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$18,000.00.

The Motion filed by Antionette Michelle Woods (“Debtor”) to value the secured claim of Post City Financial Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 49. Debtor is the owner of a 2014 Mercedes Benz CLA (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$18,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See FED. R. EVID. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee’s Nonopposition

On December 21, 2021, the Chapter 13 Trustee, David P. Cusick filed a nonopposition in which he requested the court grants this motion. Dckt. 74.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on April 29, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$23,859.88. Proof of Claim, No. 6-1. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$18,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Antionette Michelle Woods ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Post City Financial Credit Union ("Creditor") secured by an asset described as 2014 Mercedes Benz CLA ("Vehicle") is determined to be a secured claim in the amount of \$18,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$18,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Creditor on December 3, 2021. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Northern California Collection Service, Inc. (“Creditor”) against property of the debtor, Antionette Michelle Woods (“Debtor”) commonly known as 2132 Heger Way, Elk Grove, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,771.72. Exhibit A, Dckt. 56. An abstract of judgment was recorded with Sacramento County on March 14, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$725,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$482,221.00 as of the commencement of this case are stated on Debtor’s Amended Schedule D. Dckt. 52. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$300,000.00 on Amended Schedule C. Dckt. 52.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Antionette Michelle Woods (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Northern California Collection Service, Inc., California Superior Court for Sacramento County Case No. 34-2014-00163903, recorded on March 14, 2019, Document No. 201903140917, with the Sacramento County Recorder, against the real property commonly known as 2132 Heger Way, Elk Grove, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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.

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 22, 2021. By the court’s calculation, 50 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 Rules 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

The debtor, Paul Gerard Ulbrich (“Debtor”) seeks confirmation of the Modified Plan because he wants his payment reduced because previous contributions to household and family expenses from family members have been Reason Stated in Debtor’s Declaration. Declaration, Dckt. 65. The Modified Plan provides that the Plan shall be considered current, with \$153,737.99 paid in through month forty (40) (November 2021) and payments shall be \$2,827.66 for months forty-one (41) through sixty (60) with 100% dividend to unsecured claims. Modified Plan, Dckt. 64. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 28, 2021. Dckt. 68. Trustee opposes confirmation of the Plan on the basis that:

- A. Feasibility - There is no evidence of current income and expenses and

the Debtor is delinquent \$2,852.32 in Plan payments to date.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not filed updated Schedules I and J or other evidence of their current budget. Debtor has only submitted them as Exhibits for this Motion. Dckt. 66. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Delinquency

Debtor is \$2,825.32 delinquent in plan payments, which represents one month of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Paul Gerard Ulbrich ("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 Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

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

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

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 on December 8, 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. 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. Plan is overextended

DISCUSSION

Trustee's objections are well-taken.

Overextended Plan

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 73 months due to the Plan listing Lighthouse at Bridgeport Owner's Association's claim as \$15,000.00 when the Proof of Claim shows the amount as \$21,725.33. The Plan exceeds the maximum sixty months allowed under 11

U.S.C. § 1322(d).

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.

- C. § 704.020 - Debtor claims a rifle as exempt but has not identified the type of rifle so Trustee cannot determine if ordinarily and reasonably necessary.
- D. § 704.020 - It is unclear what Debtor is claiming as exempt for Caza Flooring Solution, Inc. Debtor states: “- floor [installation] = \$2000 - hand tools, 2008 Toyota [Tundra] = \$8000 started in 2017, 4480 Valverde Way, Sacramento, CA”. Debtor appears to either be claiming the company or hand tools and a Tundra as exempt. For all three, stock is not a tool of the trade and is not exemptible under this statute, the hand tools are not specified so the court does not know if they are used in Debtor’s trade, and Debtor has already exempted a vehicle under this statute. So, all are disallowed under § 704.020.

Debtor’s Opposition

Debtor filed an opposition only addressing the homestead exemption. Debtor states they occupy the trailer that is on the property at 0 Blazeford Gulch Dr. Additionally, they were living in the trailer on the property on the petition date.

DECISION

In reviewing Debtor’s Schedules, the court noted “creative” statement of information that causes serious concerns regarding Debtor and Debtor’s experienced bankruptcy counsel. On Schedule A/B, Debtor states under penalty of perjury that the 0 Blazeford Gulch Dr. Property was purchased “with the intent” to build a home for family. It states that in 2019 a trailer was purchased to “facilitate dwelling.” This was to allow for preparing the land for the future dwelling, but that the “family remains [resides] in Sacramento” while a future dwelling is being prepared.

Debtor then lists another property in Sacramento, 7961 Orenza Way, which Debtor states under penalty of perjury was rented, but then is not rented. Dckt. 14, p. 4. Debtor then states that the Orenza Way property is “never occupied.” No rental income is shown on Schedule I. *Id.* at 22-23.

In the proposed Chapter 13 Plan, Debtor is surrendering the Orenza Way Property. Plan, § 3.09; Dckt. 15.

On Schedule A/B Debtor lists owning stock in Caza Flooring Solution, Inc. Sch. A/B, Question 19; Dckt. 14. Debtor then lists specific assets owned by the corporation - a separate legal entity from Debtor - as if they were assets owned by Debtor.

Then, on Schedule C, Debtor lists the stock in Caza Flooring Solution, Inc., and the assets owned by that corporation - which is a separate legal entity from Debtor – as an exempt personal assets of Debtor, contending they are tools of the trade as provided in California Code of Civil Procedure § 704.060. Sch. C, Dckt. 14 at 11. That provision of California law provides, in pertinent part,:

§ 704.060. Personal property used in trade, business, or profession

(a) Tools, implements, instruments, materials, uniforms, furnishings, books,

equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) **Eight thousand seven hundred twenty-five dollars (\$8,725)**, if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) Eight thousand seven hundred twenty-five dollars (\$8,725), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

Cal Code Civ Proc § 704.060 (emphasis added).

Notwithstanding the \$8,725.00 limit for the exemption, under penalty of perjury and subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, Debtor asserts the right to claim a \$10,000.00 exemption in the stock of the Caza Flooring Solution, Inc., and the assets owned by Caza Flooring Solution, Inc. (which assets are not owned by Debtor.). Sch. C, Dckt. 14.

On Schedule I, Debtor states under penalty of perjury that he is employed by Caza Flooring Solutions, Inc. Dckt. 14 at 22. He also states under penalty of perjury that his non-filing spouse is not employed (both checking the “not employed” box and not listing the name of any employer and not stating any years for “how long employed.” Debtor then states that he has gross income of \$3,293.00 a year gross wages from Caza Flooring Solution, Inc., and after withholding, having \$1,829.00 in take home income. *Id.*

Though stating that the non-debtor spouse is not employed, Debtor states on Schedule I that the non-debtor Spouse has \$3,744.00 in wages from her non-employment, and after paying taxes on her non-employment wages, the non-debtor Spouse has \$3,060.00 in take home income – eclipsing that of the Debtor.

On Schedule J, Debtor states under penalty of perjury having “reasonable” and necessary monthly expenses of (\$5,619.00) for his family unit of two adults and three children. Dckt. 14 at 24-25. Some of these expenses follow the “creative” approach to claiming stock in a corporation and assets of the corporation as personally owned tools of the trade.

Debtor is surrendering his two late model vehicle and manage with two high mileage vehicles 140,000 miles 2005 Chevy Express and 200,000 miles 2012 Jeep Cherokee. For these long in the mileage tooth vehicles, Debtor states that there will be only \$300 a month in expense for fuel, regular maintenance, and repairs for these two well traveled vehicles. If this was used only for gas, with

\$150.00 a month for gas at \$4.50 a gallon, Debtor could purchase only 33 gallons of gas. At 20 miles to the gallon, that would allow for travel of only 22 miles per day in a thirty-day month. After paying for maintenance and repairs, it is likely that the daily travel would be down to a single digit of miles per day.

While claiming that the Blazeford Gulch Property is a residence of the future, there are no expenses on Schedule J indicating that this would ever be a residence in the next 60 months. Rather, it appears to be property that Debtor would hope, that sometime in the future, when Debtor's income gets better, that a residence to be occupied in the future could exist.

In his Declaration, Debtor's testimony under penalty of perjury in opposition to the Objection to Claim of Exemption includes the following:

- A. The 0 Blazeford Gulch Property was purchased sometime in 2019 (Debtor not providing the actual purchase date). Dec. ¶ 2; Dckt. 46.
- B. Debtor "intended" (stated in the past tense as to something which was intended, not something that was done) to make the property "our home." *Id.*, ¶ 3.
- C. Debtor plans (sometime in the future) to start building a future home on the 0 Blazeford Gulch Property. *Id.*, ¶ 4.
- D. Debtor states that he moved on the Property "to start building our home." *Id.* ¶ 5.
- E. Debtor testifies that he moved a trailer on the property so that he would "have a place to sleep." *Id.*, ¶ 6.
- F. Debtor testifies that since putting the trailer on the Property, he has built a 40 foot long cement block, with the name CAMP PLANTA on it. *Id.* ¶ 8.
- G. Debtor then states a conclusion that he "resides" on the Property in the Trailer, *Id.* ¶ 9. He states that he "resides" in the Trailer so he can build on the Property, have a place to store his tools, and that any construction will take time as he has to "work full-time." *Id.*
- H. Debtor testifies that he has dug a pond on the Property, to get to a spring, so that the Property has "natural water." He further testifies that he has had to clear the land as it was not suitable to build a home on the Property because of the fires in Northern California. *Id.* ¶ 10.
- I. Debtor testifies that "I (we) [the 'we' not identified] rented an apartment for my wife and child so they do not have to live on the property until I have the house up." *Id.* ¶ 13.
- J. Debtor testifies that as of the filing of the bankruptcy case he "declares" the Property to be his homestead and will "reside" there while building a home. *Id.*, ¶ 15.

Debtor has provided pictures of the Property as an Exhibit. Dckt. 47. The first picture is of

the big, cement entrance wall and gate to the Property built by Debtor. *Id.* at 2. This appears to be the entrance to a large residence neighborhood to be constructed by a developer for the sale residential properties as part of a commercial making venture. The other pictures show an undeveloped land, pools of water, and no habitable structures for anyone to reside in. What is conspicuously absent in the picture is the Trailer in which Debtor states he purports to reside, documentation of him residing there. There is no showing of any kitchen or cooking facilities, no bathroom, toilet, or sewage facilities, and now power, gas, or other utilities.

Debtor's testimony is not credible and unbelievable. It appears to be constructed by Debtor and counsel to create the appearance of Debtor stating legal conclusions that he "resides" on the Property that is to be used for some future commercial development of residences for sale. This compounds Debtor's "incredible" (as in not credible) statements under penalty of perjury concerning information stated in the Schedules (when represented by knowledgeable, experienced bankruptcy counsel) such as purporting to own not only the stock in a corporation but the assets of that corporation, and then claiming that the shares of stock and the assets owned by the corporation were Debtor's personal "tools of the trade."

Based on the testimony of Debtor, the court concludes that his statements of having the 0 Blazeford Gulch Property as his residence are not credible. Given that declaration testimony can be some of the best prepared testimony (as opposed to a person being in the witness box and providing answers not written by the person's attorney), Debtor's falls woefully short of providing credible evidence that he does and has actually made the Property his residence.

Debtor's Opposition does not attempt to tie any facts to the law, but merely provides a "treatise" of basic California homestead exemption law. Presumably, if there were grounds/facts which in good faith could be set forth to credibly show that the 0 Blazeford Gulch Property could qualify that a homestead exemption could be claimed therein, it would have been stated. Rather, there is merely a "treatise dump" of the law without regard to the facts for the Objection before the court.

Also, Debtor does not provide any response to the other exemptions which were improperly claimed on Schedule C. With no attempt being made, it appears that Debtor acknowledges being caught red handed in trying to slip improper exemptions by the court.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Here, the Trustee has rebutted the presumptive validity, and Debtor has failed to provide credible evidence and application of law to demonstrate that the claimed exemptions are proper.

The Chapter 13 Trustee's Objection is sustained and the following claimed exemptions are disallowed in their entirety: Cal. C.C.P. § 704.060 - 2005 Chevy Express; Cal. C.C.P. § 704.020 - Rifle; Cal. C.C.P. § 704.020 - Interest in Caza Flooring Solution, Inc.; and Cal. C.C.P. § 704.730 - 0 Blazeford Gulch Dr., Oroville, California Property.

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

- A. Unsecured claims would be paid more in a Chapter 7.
- B. Trustee was not provided the complete Income Tax Return or W-2 forms to determine what deductions are and any scheduled or statements attached.
- C. Debtor’s Plan provides for \$5,000.00 in attorneys fees but Debtor’s Attorney should not receive more than \$4,000.00 unless the Court rules that a wholly owned corporate business qualifies as a business case.
- D. Debtor is not complying with duties imposed in Debtor’s Plan § 6.02 as no social security number has been provided and no pay advices have been provided.
- E. Debtor failed to provide six months of profit and loss statements and six months of bank statements for all bank accounts.
- F. Debtor failed to identify accounts with Bank of America which were admitted at Debtor’s First Meeting of Creditors.
- G. Debtor failed to identify a Creditor’s Name and Collateral Description in Class 4 of the Plan even though Debtor states a monthly contract amount of \$1,835.69.

Debtor’s Reply

Debtor filed a reply on December 28, 2021. Dckt. 42. Debtor states:

- 1. Debtor agrees to the \$4,000.00 attorney fee limit.
- 2. Debtor shall comply with 11 U.S.C. § 1325(a)(6) and intends to make all payments to comply with plan.
- 3. Debtor is obtaining a copy of their Social Security Number but had to apply for a new card.
- 4. Debtor has provided required pay-stubs.
- 5. Debtor has provided requested 11 U.S.C. § 521 Documents.
- 6. Debtor has amended schedules B and C to list missing bank account.

Debtor providing some of the basic required documents when faced with this Objection appears to be part of a larger not in good faith pattern of conduct and inaccurate information provided under penalty of perjury. The court has addressed this in the Civil Minutes sustaining the Trustee’s

Objection to Debtor's claim of exemptions.,

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that the unsecured creditors would receive a higher distribution in a Chapter 7 Proceeding. Trustee states Debtor appears to undervalue their business at \$10,000.00, when the business had a gross income of \$3,022,787.00 in 2020. Thus, the total value of non-exempt property exceeds \$2,210.17 based on cash and business value.

It is interesting to see that in the documents belatedly provided by Debtor that the corporation he owns 100% of had more than \$3,000,000 in gross income in 2020. Debtor, on Schedule I, states that the corporation is only able to pay him a wage of \$3,293 a month, and there are no dividends or other profits distributed to the 100% shareholder. Schedule I, Dckt. 14 at 22-23.

In responding to the Trustee's Objection to Confirmation, Debtor's testimony under penalty of perjury consists of stating: (1) Caza Flooring Solutions, Inc. employs both Debtor and his non-Debtor Spouse, (2) this Corporation that generated more than \$3,000,000 in gross income has assets of only \$500 in hand tools, a saw tile cutter worth \$300, knees pads with a value of \$200, and 2008 Toyota Tundra with a value of \$9,000. Dckt. 43, ¶ 3. It appears that the Corporation has not bank accounts, no accounts receivable, or any other assets for a business generating \$3,000,000 in gross income. Debtor also testifies that it does not maintain a stock of materials, but the Corporation purchases it as it needs it. *Id.*, ¶ 4.

With that testimony, Debtor rests in providing evidence in opposition to the Objection to Confirmation .

In addition to the Corporation which appears to have a value well in excess of \$10,000, Debtor has some substantial non-exempt assets given the court has sustained the objection to exemptions.

As discussed in the Ruling on the Objection to Exemptions, Debtor has made an number of grossly inaccurate statements under penalty of perjury. This was done with the assistance of his counsel. Debtor clearly, and falsely attempted to claim stock in the Corporation as a "tool of the trade" and purports to include some of the assets of the Corporation in his bankruptcy case.

Debtor has demonstrated that he has not prosecuted this case in good faith. He has provided clearly false information under penalty of perjury. Only when facing the Objection to Confirmation did Debtor provide the basic financial information to the Trustee.

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 at 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.

13. [09-39848-E-13](#) **RYAN/JAMIE GORDON** **MOTION TO VALUE COLLATERAL OF**
[DBJ-4](#) **Douglas Jacobs** **FRANKLIN W. JOHNSON**
11-24-21 [116]

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.

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, Creditor, parties requesting special notice, and Office of the United States Trustee on November 24, 2021. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Value Collateral and Secured Claim of Franklin W. Johnson (“Creditor”) is denied without prejudice.

The Motion to Value Collateral filed by Ryan Conrad Gordon and Jamie Lynn Gordon (“Debtor”) to value the secured claim of Franklin W. Johnson (“Creditor”) is accompanied by Debtor’s Declaration. Declaration, Dckt. 118. Debtor is the owner of the subject real property commonly known as 20375 Reeds Creek Rd., Red Bluff, California (“Property”). Debtor wishes to value Creditor’s secured claim as \$0.00.

Debtor completed their Plan payments in 2013. Dckt. 95. This Motion to Value was filed in 2021. Dckt. 116. Creditor was listed on Debtor's Mailing Matrix, however, Creditor failed to file a Proof of Claim. Creditor was not included on Debtor's list of secured claims on the Plan or Amended Plan. Dckts. 5, 50. Debtor states they "believed" Creditor's claim was unsecured. However, the Motion admits that Creditor's interest in the property is a Deed of Trust. Motion at ¶ 11, Dckt. 116. Therefore, it is unclear why Debtor was under the false impression that Creditor's interest in the real property was unsecured.

Debtor also states that Creditor was listed as an unsecured claim under the Plan and received payments as an unsecured claim pursuant to the Plan. Motion at ¶ 10, Dckt. 116. However, since no Proof of Claim was filed, no payments could have been made by Trustee to Creditor under the plan. Plan at § 3.01, Dckt. 50. Even further, the Plan and Amended Plan provided for a zero percent dividend to unsecured creditors. Plan at § 3.20, Dckt. 5, 50. As such, no unsecured creditor received payments under the Plan. This is evidenced by Trustee's Final Report which indicates not only did Creditor not get paid, but no unsecured claims were paid under the Plan. Dckt. 99 at 2-3.

DISCUSSION

Pursuant to Federal Rules of Bankruptcy Procedure 9014, a lien that secures a claim is not void simply due to the failure to file a proof of claim. As such, Creditor's secured claim is not void simply due to their failure to file their proof of claim.

Valuation of Secured Claim

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

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

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

11 U.S.C. § 506(a) (emphasis added). Therefore, the property at issue is valued in light of the purpose of the valuation. See *In re 1441 Veteran St. Co.*, 144 F.3d 1288, at 1292 (9th Cir. 1998), opinion amended on denial of reh'g, 154 F.3d 1103 (9th Cir. 1998).

For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2

(case or controversy requirement for the parties seeking relief from a federal court). .

The right and purpose of the valuation at hand is to determine the value of Creditor's secured claim in the Property. At the time of filing the petition, there was a first deed of trust of Litton Loan Servicing and second deed of trust of Litton Loan Servicing. Claims 3-1 and 1-1. It is correct to value the Property as of the date of filing to determine whether at the time of the petition filing, Creditor's secured claim was under-collateralized. This is the date which would have been used had Creditor timely filed a Proof of Claim. If the court were to value the property today, after over twelve years have passed, the Property's presumable appreciation in value could very well leave much more equity than it would have at the date of the petition. Creditor's secured interest could potentially have much more collateral if using the 2022 property value. It would be inequitable if, just because Creditor omitted their Proof of Claim, they now can have a claim properly secured by collateral. As such, pursuant to 11 U.S.C. § 506(a), the Property's value is determined based on the petition date.

Debtors valued their home at \$218,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Declaration, Dckt. 118.

At the time of the bankruptcy filing, the senior in priority first deed of trust secured a claim and had a balance of approximately \$246,998.72. Proof of Claim 3-1. The second in priority deed of trust secured a claim and had a balance of \$66,791.27. Proof of Claim 2-1.

Here, as Creditor did not file a Proof of Claim, the court needs evidence of the secured claim. Debtor states in their motion that Creditor has a Deed of Trust in the amount of \$6,493.50. The only evidence Debtor directs the court to is Debtor's Schedule "F". This is insufficient to evidence the alleged lien against the Property. Additionally, the secured lien referenced on Schedule "F" is in consideration for a "personal loan secured by rental property" on Debtor's rental property located at **1126 Franklin Street** in Red Bluff. Dckt. 1. The Motion is inconsistent with Schedule "F", as the Motion states the lien is a "Short Form Deed of Trust and Assignment of Rents" in the amount of \$6,493.50 against Debtor's residential property at **20375 Reeds Creek Rd.** in Red Bluff. Therefore, it appears to the court that the lien referenced to in Schedule "F" is an entirely separate claim from the one at issue in this Motion.

The court cannot identify from the evidence provided the lien for which the secured claim is to be valued. As such, the valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) cannot be granted.

It should also be noted that Debtor is requesting the court rule Creditor's Deed of Trust is of "no effect." Motion at 4, Dckt. 116. Pursuant to 11 U.S.C. § 105(a), the court can only value of the secured lien. As such, even if proper evidence were provided, the court is unable to make the determination as to whether the Deed of Trust in itself is of no effect.

The court denies the Motion without prejudice, which then allows Debtor to assemble the required information, file a new motion, and properly seek relief from the court. Though the court could deny the Motion with prejudice, concluding that if a lien actually existed Debtor would have provided it, it does not. Also, the court does not merely allow supplemental pleadings as it would appear to then be "rewarding" Debtor with a, "yeah, you tried to sneak this by the court with insufficient evidence, ha ha, now do it correctly."

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

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

The Motion to Value Collateral and Secured Claim filed by Ryan Conrad Gordon and Jamie Lynn Gordon (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is denied without prejudice.

14. [18-24372-E-13](#) **JOHN MARTIN** **MOTION TO MODIFY PLAN**
[RJ-7](#) **Richard Jare** **11-4-21 [89]**

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 4, 2021. By the court’s calculation, 68 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 Rules 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

The debtor, John J. Martin (“Debtor”) seeks confirmation of the Modified Plan to resume payments with December 25th, 2021 at \$150 a month to pay unsecured claims in full at 100%. Declaration, Dckt. 92. The Modified Plan provides periodic payments in the first forty (40) months to be

paid in the aggregate sum of \$8,750.88 then a monthly sum of \$150.00 to be paid through sixteen (16) payments for twenty (20) months, and a one-hundred (100) percent dividend to unsecured claims totaling \$11,150.88. Modified Plan, Dckt. 91. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on December 28, 2021. Dckt. 97. Trustee opposes confirmation of the Plan on the basis that:

- A. Declaration is not sworn under penalty of perjury as true and correct.
- B. No current Schedules I & J have been filed to reflect Debtor’s current financial situation.

DISCUSSION

Inadequacy of Witness Information and Belief Testimony

The court has been presented with a declaration in which the witness has not sworn under penalty of perjury as true and correct. That declaration is the testimony of a witness presented in writing in lieu of the witness being put on the stand. Non-expert witness testimony must be based on the personal knowledge of the witness. FED. R. EVID. 602. As discussed in Weinstein's Federal Evidence § 602.02:

A witness may testify only about matters on which he or she has first-hand knowledge. Because most knowledge is inferential, personal knowledge includes opinions and inferences grounded in observations or other first-hand experiences. The witness’s testimony must be based on events perceived by the witness through one of the five senses.

Recently, the Ninth Circuit Court of Appeal addressed this personal knowledge issue, stating:

Under Rule 602, “[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” FED. R. EVID. 602. Rule 602 requires any witness to have sufficient memory of the events such that she is not forced to ‘fill[] the gaps in her memory with hearsay or speculation.’ 27 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE Evidence § 6023 (2d ed. 2007). Witnesses are not ‘permitted to speculate, guess, or voice suspicions.’ *Id.* § 6026. However, ‘[p]ersonal knowledge includes opinions and inferences grounded in observations and experience.’ *Great Am. Assurance Co. v. Liberty Surplus Ins. Co.*, 669 F. Supp. 2d 1084, 1089 (N.D. Cal. 2009) (citing *United States v. Joy*, 192 F.3d 761, 767 (7th Cir. 1999)). Lay witnesses may testify about inferences pursuant to Rule 701:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on

the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

FED. R. EVID. 701.

United States v. Whittemore, 776 F.3d 1074, 1082 (9th Cir. 2015).

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: “I declare (or certify, verify, or state) **under penalty of perjury** under the laws of the United States of America **that the foregoing is true and correct**. Executed on (date).

(Signature).”

(2) If executed within the United States, its territories, possessions, or commonwealths: “**I declare** (or certify, verify, or state) **under penalty of perjury** that the **foregoing is true and correct**. Executed on (date).

(Signature).”

28 U.S.C. § 1746 (emphasis added).

Here, the Declaration of Debtor has not been sworn under penalty of perjury that their declaration is true and correct. As such, the unsworn declaration does not comply with 28 U.S.C. § 1746 and cannot be used as evidence to support this Motion.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor’s financial situation is unclear, Debtor should file supplemental Schedules I and J that reflect her current financial situation. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, John J. Martin (“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 Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

15. [21-21572-E-13](#) **CINDY FORGRAVE** **MOTION TO CONFIRM PLAN**
[PGM-3](#) **Peter Macaluso** **11-19-21 [139]**

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.

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 19, 2021. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Cindy Ann Forgrave (“Debtor”) seeks confirmation of the Amended Plan. The Amended Plan provides a plan payment of \$200.00 for December 2021, then increasing to \$1,930.00 starting January 2022 for fifty-two (52) months to complete the Plan. Amended Plan, Dckt. 143. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 28, 2021. Dckt. 147. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not shown their ability to make payments.
- B. Debtor is not paying unsecured creditors in full and may not be Debtor’s best effort as if Debtor was receiving income since the case was filed, Debtor could have paid \$1,930.00 per month for the first eight (8) months.
- C. Debtor has not proposed the plan in good faith because they originally proposed \$200.00 per month for thirty-six (36) months, and now can pay \$1,930.00 per month. The good faith of the Debtor is in question where suddenly Debtor can pay \$77,000.00 more.

DEBTOR’S REPLY

Debtor’s counsel filed a reply on January 4, 2022. Dckt. 150. Debtor states:

- A. Door Dash income started October 2021, and that this income will continue because of the market.
- B. Social Security was approved on November 18, 2021 and will start January 12, 2022.
- C. Significant other will provide assistance starting January 2022.
- D. Property taxes have increased because they were delayed due to COVID-19.
- E. Debtor’s receipt of social security and changing of jobs shows Best Effort and Good Faith.

This is supported by Debtor’s Declaration. Dckt. 15.

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not provided their start date for working with Door Dash, nor evidence to

support that Door Dash will provide \$715.00 per month. Debtor has not provided information as to when they started to receive Social Security and why it was not projected on the original Schedule I. Debtor has provide no information as to their income from Peter and whether he is willing to commit to the sixty (60) months. Debtor has failed to provide information as to the increase in Debtor's property taxes. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Disposable Income / Not Best Effort

The Chapter 13 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 to pay a zero percent dividend to unsecured claims, which total \$378,860.16. During Debtor's first eight (8) months, Debtor paid \$200.00 per month. However, it is unclear whether Debtor was receiving the amount of his current income during the first eight (8) months. If he was, Debtor would have been able to pay \$13,840.00 more than proposed. Therefore, Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) may have totaled much more in the first eight (8) months of the plan.

At the hearing, **XXXXXXXXXX**

Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *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).

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

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

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

~~_____ The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Cindy Ann Forgrave (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2021. By the court’s calculation, 39 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.

The Motion to Sell Property is granted.

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

The Bankruptcy Code permits Eduardo M Ortega and Marie E Ortega, 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 2481 Bent Tree Drive, Roseville, California (“Property”).

The proposed purchaser of the Property is Sukhdeep Singh Nagra, and the terms of the sale are:

- A. Purchase Price: \$900,000.00
- B. Commission to Listing Broker: \$18,000.00
- C. Commission to Selling Broker: \$18,000.00

- D. Down Payment: \$175,000.00
- E. Close of Escrow: Sixty (60) Days After Acceptance

Creditor's Conditional Nonopposition

On December 28, 2021, Wells Fargo Bank, N.A. filed a Conditional Nonopposition. Dckt. 179. Creditor requests their claim shall be paid of in full before Creditor releases its lien and Creditor shall be permitted to submit an updated payoff demand to the applicable escrow or title company.

Trustee's Conditional Nonopposition

On December 29, 2021, the Chapter 13 Trustee, David P. Cusick, filed a nonopposition on the condition that Trustee approves the Title and Escrow Company used as well as the estimated closing statement. Dckt. 182.

Debtor's Reply

On January 4, 2022, Debtor filed a reply stating they support Creditor's Conditional Nonopposition and agree to the following provisions to be included in the court's Order:

1. Creditor's claim shall be paid in full before their lien is released.
2. Creditor is permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale.

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 allows Debtor to complete the Plan in full.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court to allow the Trustee to issue a demand and fund the Plan from the proceeds of the sale.

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

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

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

The Motion to Sell Property filed by Eduardo M Ortega and Marie E Ortega, 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 Eduardo M Ortega and Marie E Ortega, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Sukhdeep Singh Nagra or nominee (“Buyer”), the Property commonly known as 2481 Bent Tree Drive, Roseville, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$900,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 180, 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. Creditor Wells Fargo Bank, N.A.’s claim shall be paid in full before their lien is released. Creditor Wells Fargo Bank, N.A. is permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale.
- D. The Chapter 13 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale, and must first approve of the Title Company and Escrow Company used, as well as the estimated closing statement.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2021. By the court’s calculation, 34 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Jonathan Douglas Wieneke (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for \$4,134.13 for months 1-4 then \$4,099.00 for months 5-60. Amended Plan, Dckt. 39. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 28, 2021. Dckt. 45. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is \$4,217.26 delinquent in Plan payments.
- B. Debtor’s Plan may not be best effort as they appear over the median income and Trustee believes they can pay more to unsecured claims.
- C. No business income and expense statements have been filed.
- D. Amended form 122C has not yet been signed.

DEBTOR'S REPLY

Debtor filed a reply on January 6, 2022. Dckt. 48. Debtor states they are caught up on payments and have actually overpaid. Debtor agrees they are above the median income and it is proposed they will split their disposable income between Trustee's office and unsecured creditors. Additionally, Debtor states it appears the three tax credits may not be available to Debtor going forward. Also, for the additional business income, Debtor states their separate businesses are doing better than when the bankruptcy case began, which may lead to more funds being available in the future. Debtor states the Profit and Loss for Debtor's businesses were sent as Exhibits B & C in support of the Motion to Confirm the Second Amended Chapter 13 Plan. Also, Debtor attached the signed 122C Form as Exhibit G.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$4,217.26 delinquent in plan payments, which represents over one month of the \$4,099.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **XXXXXXX**

Failure to Provide Disposable Income / Not Best Effort

The Chapter 13 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 states Amended Form 122C-I indicates the Debtor is above median income and has projected disposable income of \$684.17 per month over a sixty (60) month period. Additionally, Debtor received \$10,716.00 refund from the Internal Revenue Service. This income is not reflected in Amended Schedule I. Also, Debtor attached Profit and Loss Statements for two businesses that give Debtor an additional \$837.45 per month.

Failure to File Business Documents Required by Schedule I

The Chapter 13 Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Amended Official Form 122C

The court notes Exhibit G, Dckt. 48, is signed by Debtor. Therefore, the court has received a signed copy of Debtor's Amended Form 122C.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and 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 Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Jonathan Douglas Wieneke ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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 on December 8, 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. At the hearing -----

-----.

The Objection to Confirmation of Plan is sustained.

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

- A. Debtor failed to appear at the First Meeting of Creditors.
- B. Debtor only gave fifteen (15) days’ notice to parties in interest of the Amended Plan.
- C. Debtor is delinquent \$11,420.00 in Plan payments.
- D. 521 Documents of Debtor’s pay advices and tax returns have not been provided.

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 the Chapter 13 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).

Inadequate Notice

Motions to Confirm Amended Plans are 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). 35 days' notice is required. Fed. R. Bankr. P. 2002(a)(9); Local Bankr. R. 3015-1(d)(1). Debtor only provided 16 days notice for the originally set December 14, 2021 hearing on the Motion to Confirm.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$11,420.00 delinquent in plan payments, which represents multiple months of the \$5,710.00 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 Pay Stubs & Tax Returns

Debtor has not provided the Chapter 13 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, the Chapter 13 Trustee argues that 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.

19. [21-23683-E-13](#) ANGELA BEASLEY-BAKER CONTINUED MOTION TO
[TJW-2](#) Timothy Walsh CONFIRM
PLAN
11-29-21 [29]

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).

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).

The Motion to Confirm the Plan is denied without prejudice as moot.

December 14, 2021 Hearing

The Trustee appeared at the hearing and notified the court that the Parties agreed to continue the hearing to allow the Parties to address issues relating to confirmation.

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.

However, Trustee filed an objection to confirmation which was heard in conjunction with this Motion. Docket Control No. DPC-1. Trustee's Objection was sustained. As such, the Motion to Confirm Plan is denied without prejudice as moot.

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 denied without prejudice as moot.

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

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

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

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

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

The Objection to Confirmation of Plan is sustained.

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

- A. Chapter 13 Documents, fail to contain the proper spelling of their last name.

DISCUSSION

Trustee’s objections are well-taken. All relevant documents and filings have the improper spelling of Debtor’s last name. Debtor should amend their Plan to have to correct spelling of their last name “Rodriguez” not “Rodriquez”.

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.

[TJW-1](#) Timothy Walsh

DEBTOR DISMISSED:

11/12/2021

JOINT DEBTOR DISMISSED:

11/12/2021

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

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

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

Sufficient Notice Not Provided. No Proof of Service has been attached to the Motion. The court does not see the Proof of Service inadvertently attached to another document. It is likely Debtor’s Counsel inadvertently forgot to file the Proof of Service with the court. At the hearing, **XXXXXXXXXXXX**

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

The Motion to Reconsider Dismissal is denied.

Jaime Galgana Umali and Josephine Dial Umali (“Debtor”) filed the instant case on July 6, 2021. Dckt. 1. A plan was never confirmed. However, an Amended Plan was filed on November 9, 2021, the day before the hearing on the Motion to Dismiss. Dckt. 35.

On October 13, 2021, the Chapter 13 Trustee, David Cusick (“Trustee”), filed a Motion to Dismiss the Case due to delinquency and no plan pending. Dckt. 31. On November 10, 2021, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 37. No opposition to the Motion to Dismissed was filed by Debtor.

On December 9, 2021, Debtor filed this instant Motion to Reconsider Dismissal, which the court interprets as a Motion to Vacate Dismissal, claiming Debtor filed a First Amended Plan on

November 9, 2021, and they resolved the delinquent payment prior to the hearing. Additionally, Debtor states their Amended Plan resolves issues taken by the court and Trustee's Objection to Confirmation heard by the court on September 14, 2021. Debtor states because the court issued a Final Ruling, the matter was ineligible to be called at the November 10, 2021 hearing.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1)

whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The sole grounds for the Motion to Dismiss was delinquency in plan payments and no pending plan. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor’s counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument. Although Debtor filed an Amended Plan the day prior to the hearing, there is no indication that they attempted to inform the court or Trustee of this last minute filing. It seems a reasonable Debtor and Debtor’s Attorney would put out all the stops to prevent the case from getting dismissed, especially if they had filed an Amended Plan one day before the hearing. The Debtor and Debtor’s Attorney made no such attempt.

Debtor states that the court’s ruling on the Motion to Dismiss was a final ruling, so the matter was “ineligible” to be called. When the court posts a final ruling, it states, “no appearance required.” If the court made an error or there was additional information, attorneys know to contact the courtroom deputy and state that they will be appearing at the hearing to request the matter be heard.

The court’s order dismissing the case was entered on November 12, 2021. Dckt. 37. Debtor and counsel were aware of the “final” ruling on November 10, 2021. However, Debtor did not immediately seek to have the order vacated, did not seek an order shortening time, and waited until December 9, 2021 to file the Motion to Vacate. Dckt. 40. Then, the hearing on the Motion to Vacate was stretched out until mid-January 2022.

Debtor has little invested in this case. No plan was confirmed. Debtor has slipped through two months in limbo with no plan and no plan payments. If prosecuting this dismissed case was proper, Debtor would have acted promptly to vacate the dismissal, not live outside of bankruptcy for two and one-half months.

Debtor may file a new case and start fresh. Debtor could have filed a new case in November 2021, in December 2021, or January 2022, to prosecute a bankruptcy case in good faith. Debtor did not, further showing that vacating this dismissal is neither necessary or proper.

Therefore, in light of the foregoing, the Motion is denied.

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

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

The Motion to Vacate filed by Jaime Galgana Umali and Josephine Dial Umali (“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, and the case remains dismissed.

22. [21-22190-E-13](#) **KENNETH SNOWDER** **MOTION TO CONFIRM PLAN**
[JLK-1](#) **James Keenan** **11-19-21 [22]**

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.

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 19, 2021. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Kenneth Wayne Snowder (“Debtor”) seeks confirmation of the Amended Plan. The Amended Plan provides for a priority claim by the IRS that was higher than debtor originally scheduled when he filed the bankruptcy. Debtor shall pay \$1,500.00 a month and the priority claim shall begin on the eighth (8) month of the plan. Amended Plan, Dckt. 25. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on December 28,

2021. Dckt. 27. Creditor opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent \$850.00 in Plan payments.
- B. Debtor has not provided sufficient evidence of how they can increase their monthly payment by \$150.00.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$850.00 delinquent in plan payments, which represents less than one month of the \$1,500.00 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 Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not amended schedules nor has he filed a declaration stating if there is any additional debt belonging to the non-filing spouse or to show how they will obtain the extra \$150.00 in increased plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

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

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

FINAL RULINGS

23. [20-24800-E-13](#) **JOE MATTHEWS** **MOTION TO MODIFY PLAN**
[MMM-1](#) **Mohammad Mokarram** **11-18-21 [26]**

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 18, 2021. By the court's calculation, 54 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.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Joe Orlando Matthews ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 22, 2021. Dckt. 32. 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, Joe Orlando Matthews ("Debtor") having been presented to the court, and

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 23, 2021. By the court’s calculation, 49 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 Rule 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). 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.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Marivic G. Garcia and Elbert E. Garcia, Jr. (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on December 20, 2021. Dckt. 77. The 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 Chapter 13 Plan filed by the debtor, Marivic G. Garcia and Elbert E. Garcia, Jr. (“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 Chapter 13 Plan filed on November 23, 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.

26. [21-23323-E-13](#) **DAVID FLYNN** **MOTION TO CONFIRM PLAN**
[MJD-1](#) **Matthew DeCaminada** **11-16-21 [22]**

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2021. By the court’s calculation, 56 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 Rule 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). 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.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, David Ryan Flynn (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a statement of non-opposition on November 22, 2021. Dckt. 27. The 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 Chapter 13 Plan filed by the debtor, David

The Chapter 13 Trustee, David P. Cusick, filed a response noting that there may be typographical errors in the Motion and Declaration. Both state attorney was paid \$900.00 prior to case filing but the confirmed plan shows attorney was paid \$542.00. Additionally, the Motion and Exhibits state the fees requested are in the amount of \$2,903.00 and costs of \$10.79; but the Declaration shows fees requested in the amount of \$4,839.00 and costs \$9.96.

Applicant's Response

Applicant clarified they have \$542.00 held in trust pending court approval from the retainer pre-filing. Additionally, Applicant states the fees and costs should have been read \$2,903.00 and \$10.79, respectively. Dckt. 26.

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 case preparation and administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

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 and Preparation: Applicant spent 9.3 hours in this category. Applicant evaluated the option of bankruptcy filing, collected necessary documents for a bankruptcy case, reviewed and filed the required bankruptcy documents, and administered the bankruptcy case.

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:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Chad Johnson - Attorney	5.50	\$400.00	\$2,200.00
Tina Perez - Paralegal	3.80	\$185.00	<u>\$703.00</u>
Total Fees for Period of Application			\$2,903.00

Pursuant to applying credit for the monies paid by Debtor to Applicant for a retainer in the amount of \$542.00.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$10.79 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Postage	\$6.89
Printing and Envelopes	\$3.90
Total Costs Requested in Application	\$10.79

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Interim Fees in the amount of \$2,903.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Interim Costs in the amount of \$10.79 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the 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	\$2,903.00
Costs and Expenses	\$10.79

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

Chad M Johnson, the Attorney (“Applicant”) for William Louis Pitts, the Chapter 13 Debtor (“Client”), makes an Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 4, 2019 to November 11, 2021. Applicant requests fees in the amount of \$2,903.00 and costs in the amount of \$10.79.

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 Chad M Johnson (“Applicant”), Attorney for William Louis Pitts, 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 Chad M Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M Johnson, Professional employed by Chapter 13 Debtor

Fees in the amount of \$2,903.00
Expenses in the amount of \$10.79,

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 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay fees and costs allowed by this Order, after allowing credit for the \$542.00 retainer that Applicant is authorized to apply to these allowed interim fees, from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2021. By the court’s calculation, 50 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 Rule 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). 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.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Jesse Farley (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a statement of non-opposition on December 28, 2021. Dckt. 27. The 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 Chapter 13 Plan filed by the debtor, Jesse Farley (“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 Chapter 13 Plan filed on November 22, 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.

29. [21-23236-E-13](#) **GLENDA MCLEOD** **MOTION TO CONFIRM PLAN**
[CDL-1](#) **Colby LaVelle** **11-10-21 [22]**

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2021. By the court’s calculation, 63 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 Rule 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). 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.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Glenda Fay McLeod (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on December 6, 2021. Dckt. 29. The 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 Chapter 13 Plan filed by the debtor, Glenda Fay McLeod (“Debtor”) having been presented to the court, and upon review of

fees in the amount of \$1,365.00.

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 services for the Estate include preparing and executing the Motion to Modify a Confirmed Plan. 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. 85. 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.

Contested the Motion to Dismiss: Applicant spent 1.75 hours in this category. Applicant prepared, filed an opposition, and appeared at the hearing for the Motion to Dismiss.

Prepared and Executed Motion to Modify: Applicant spent 3.1 hours in this category. Applicant prepared, filed, appeared at the hearing, and prepared the Order for Debtor’s Motion to Modify.

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:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
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Legal Assistant	0.40	\$75.00	\$30.00
Peter Macaluso, Attorney	4.45	\$300.00	<u>\$1,335.00</u>
Total Fees for Period of Application			\$1,365.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including contesting the Motion to Dismiss and prosecuting the Motion to Modify, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,365.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$1,365.00
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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 Peter G. Macaluso (“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 Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by James David Oliver and Heather L. Oliver, the Chapter 13 Debtor (“Debtor”)

Fees in the amount of \$1,365.00

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

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

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

31. [21-23343-E-13](#) **MAHAGONY BONAFIDE** **MOTION TO CONFIRM PLAN**
[JNV-2](#) **Jason Vogelpohl** **12-1-21 [20]**

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 1, 2021. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 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). 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.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Mahagony Bonafide (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on December 28, 2021. Dckt. 31. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Mahagony Bonafide (“Debtor”) having been presented to the court, and

The Motion is supported by the Declaration of Debtor Barry Scott Geddes. Dckt. 19. 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.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), 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 BARRY SCOTT GEDDES and PHYLLIS KATHLEEN GEDDES ("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 BARRY SCOTT GEDDES and PHYLLIS KATHLEEN GEDDES to amend the terms of the loan with RoundPoint Mortgage Servicing Corporation ("Creditor"), which is secured by the real property commonly known as 7200 Amsterdam Avenue, Citrus Heights, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 22).

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2021. By the court’s calculation, 53 days’ notice was provided. 28 days’ notice is required.

The Motion/Application for Substitution as the Representative 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 Substitution as the Representative is granted.

Jennifer Madsen (“Movant”) requests the Court enter an order which substitutes Movant as representative for the Debtor, Forrest Sylvan Gardens, in this case. Dckt. 48. Movant is the wife to Debtor. Movant provides a Declaration under penalty and perjury that Debtor is alive but having major health problems and is in a medical facility and is prevented from working on his finances. Dckt. 50. Movant states they are familiar and knowledgeable about the financial affairs of Debtor.

Trustee’s Nonopposition

David P. Cusick, Chapter 13 Trustee, filed a nonopposition for the Motion for Substitution. Dckt. 52.

Under 11 U.S.C. § 1016, a Chapter 13 case may be dismissed upon death or incompetency of a debtor. This is largely due to Chapter 13 plans being dependent on the debtor’s future earnings. 9 Collier on Bankruptcy P 1016.04 (16th 2021). However, if further administration is possible and in the best interest of the parties, the case may proceed and concluded in the same manner, so far as possible, as though death or incompetency had not occurred, with the court appointing a personal representative successor to the late debtor.. 11 U.S.C. § 1016.

Here, Movant provides evidence under penalty and perjury that Debtor is experiencing medical problems preventing him to proceed with the bankruptcy case on his own. However, further administration is possible as Movant can proceed as the representative to handle Debtor's finances and effectively prosecute this case.

Based on the foregoing, cause exists to substitute Movant for Debtor. 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 Substitute as the Representative, filed by Jennifer Madsen ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Substitute as the Representative is granted, and the bankruptcy case shall proceed as Jennifer Madsen as representative for Debtor Forrest Sylvan Gardens.

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2021. By the court’s calculation, 56 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.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Nida Hurtado Madarang (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on December 28, 2021. Dckt. 31. 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, Nida Hurtado Madarang (“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 16, 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.

35. [20-23595-E-13](#) **JESUS AVILA** **MOTION TO MODIFY PLAN**
[DBJ-2](#) **Douglas Jacobs** **11-8-21 [41]**

Final Ruling: No appearance at the January 11, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2021. By the court’s calculation, 64 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.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Jesus Avila (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on December 28, 2021. Dckt. 52. 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:

Gerald L. White, the Attorney (“Applicant”) for Natalia V. Jeffs, the Chapter 13 Debtor (“Client”), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 12, 2017, through November 15, 2021. Applicant requests fees in the amount of \$1,440.00.

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 case management and reviewing claims. The court finds the services were beneficial to Client and the Estate and were reasonable.

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.

Case Management: Applicant spent 2.20 hours in this category. Applicant reviewed various letters and notices from the client, creditors, and Trustee and corresponded with the client.

Review of Claims: Applicant spent 2.60 hours in this category. Applicant reviewed various claims and corresponded with Trustee and the client.

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:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Gerald L. White, Attorney	4.80	\$300.00	<u>\$1,440.00</u>

Total Fees for Period of Application	\$1,440.00
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Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$9,045.00	\$9,045.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$9,045.00	

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$1,440.00 and prior Interim Fees in the amount of \$9,045.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

The attorney is not requesting additional costs. Prior interim costs were approved for \$324.00. Dckt. 57.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the 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	\$1,440.00
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pursuant to this Application and prior interim fees of \$9,045.00 and interim costs of \$324.00 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 Gerald L.

White (“Applicant”), Attorney for Natalia V. Jeffs, 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 Gerald L. White is allowed the following fees and expenses as a professional of the Estate:

Gerald L. White, Professional employed by Chapter 13 Debtor

Fees in the amount of \$1,440.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.

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

37. [21-23479-E-13](#) **TRICIA ROJAS** **CONTINUED ORDER TO SHOW CAUSE
- FAILURE TO PAY FEES
11-8-21 [\[16\]](#)**

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 8, 2021. The court computes that 58 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: the amount of \$78.00, due on 11/3/21.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court’s docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

38. [21-23479-E-13](#) TRICIA ROJAS

**CONTINUED ORDER TO SHOW CAUSE
- FAILURE TO PAY FEES
12-8-21 [35]**

Final Ruling: No appearance at the January 11, 2022 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 8, 2021. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: the amount of \$78.00, due on 12/3/21.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.