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

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

**January 25, 2022 at 2:00 p.m.**

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| **1.** | **18-26407-E-13**<br>**RWH-5** | **NICHOLE MORGAN**<br>**Ronald Holland** | **MOTION TO REFINANCE**<br>**1-8-22 [97]** |

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2022. By the court's calculation, 17 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, **----------**.

**The Motion to Refinance is granted.**

Nichole Cleveland Morgan ("Debtor") seeks permission to purchase real property commonly

known as 8351 Soucran Ct., Sacramento, California 95829, with a total purchase price of $459,910.00 and monthly payments of $2,001.56 to Willamete Valley Bank over thirty years with a 3.250% fixed interest rate.

**Trustee's Response**

On January 18, 2022, Chapter 13 Trustee filed a Response to Debtor's Motion stating Debtor has combined two matters along with this Motion:

1. Debtor's confirmed plan calls for 0% dividend to unsecured creditors. Dckt. 84. According to Debtor's declaration, she seeks to modify plan to pay all unsecured claims in full.

2. Debtor asserts that her 2015 Ford Explorer was involved in an accident and deemed a total loss by Allstate Insurance who will pay the balance of the debt directly to Travis Credit Union. Dckt. 99. Travis Credit Union is and should remain classified as Class 2. A Letter of Instruction was sent to Allstate Insurance by the Trustee's office on January 10, 2022 advising all insurance funds will need to be made payable to Trustee.

**DISCUSSION**

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.

**MULTIPLE RELIEF REQUESTED IN ONE MOTION**

Local Bankruptcy Rule 9014-1(d)(5) states that "[e]very application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules."

Debtor's Declaration states, "I am requesting that the plan be modified to pay all of the unsecured creditors that filed claims with the court to be paid in full instead of getting paid nothing as the plan says now." Dckt. 99 at ¶ 7. Additionally, in Debtor's Declaration, Debtor states, "My insurance company, Allstate Insurance, has determined that the car is a total loss. As a result, they are paying the

entire balance of the debt to Travis Credit Union directly. I am requesting that the trustee pay nothing more on the claim of Travis Credit Union, since it will be paid the they will have to cancel their claim filed with the court." Debtor is attempting to modify the Plan to pay Travis Credit independently from the Plan. This essentially reclassifies Travis Credit as a Class 4 claim.

Debtor has requested relief arising from different sections of the Code, containing separate notice requirements for a motion and hearing. Debtor's request to modify the Plan to pay unsecured creditors in full and pay Travis Credit independent from the Plan should be brought as a separate motion. The request for additional relief is denied without prejudice.

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 Refinance filed by Nichole Cleveland Morgan ("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 Nichole Cleveland Morgan is authorized to Refinance pursuant to the terms of the agreement, Exhibit 1, Dckt. 100.
>
> **IT IS FURTHER ORDERED** that Debtor's request to modify the Plan to pay all unsecured creditors and reclassify Travis Credit is denied, such request must be made by separate motion.

**2.** **21-20109-E-13 RPH-3** **LARRY/DEBRA JACKSON** **Robert Huckaby** **CONTINUED OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 9-1 8-18-21 [90]**

**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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 18, 2021. By the court's calculation, 55 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 9-1 of Internal Revenue Service is xxxxxxx.**

Larry John Jackson and Debra Ann Jackson, Chapter 13 Debtors ("Objectors") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority unsecured in the amount of $54,439.42 and $29.00 in arrears. Objector asserts that the amount claimed is in error because it duplicates the Civil Penalty against each of the debtors, therefore the actual amount owed by the joint debtors herein is one-half of the total amount claimed. Furthermore, Debtor claims that the payment should be made secured, and have filed for them accordingly.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie

validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Debtors seeks to put forth an objection on the ground that the unsecured priority claim—for Civil Penalties for failure to remit payroll taxes— from the IRS asserts a claim against each debtor individually, erroneously doubling the value of the IRS' claim against Debtors. Dckt. 90. Debtors argue that the claim should only be asserted once, as a singular joint claim against both debtors, halving the value asserted. Finally, Creditor already has a Class 2A claim with a lien against their real property at 1847 Hekpa Drive, South Lake Tahoe, El Dorado County ("Real Property"). Debtor has filed a secured claim on September 17, 2021 for the Creditor of the $54,439.42 and $29.00 in arrears, with the language that the secured claim is only to be collected once. Claim #9-2. For these reasons, Debtor's object to the claim.

Creditor agrees with Debtor's argument that the debt should be made secured, and that the previously unsecured claim should be made secured as per the September 17, 2021 claim. Dckt. 97. Creditor agrees with Debtors reasoning, but Creditor seeks to deny Debtors' objection because it is moot due to the filing of Claim 9-2 correcting the issues presented in Debtors' motion to object.

Trustee has filed a non-opposition to Debtor's objection, and agrees with their reasoning. Dckt. 99.

**Amended Proof of Claim 9-2**

On September 17, 2021, Creditor filed Amended Proof of Claim 9-2. The claim asserted in Amended Proof of Claim 9-2 is:

A. The amount of the claim is stated to be $54,468.42. This is comprised of the following civil penalties:

1. $29.00 for the tax period September 30, 2018;

2. $4,501.47 for the tax period December 31, 2018;

3. $4,501.47 for the tax period December 31, 2018;

4. $6,508.20 for the tax period March 31, 2019;

5. $6,508.20 for the tax period March 31, 2019;

6. $7,626.65 for the tax period June 30, 2019;

7. $7,626.65 for the tax period June 30, 2019;

8. $7,937.39 for the tax period September 30, 2019;

9. $7,937.39 for the tax period September 30, 2019;

10. $1,292.00 for Interest on the Tax Penalties.

B. Copies of Lien Notices filed with the El Dorado County Recorder are attached, one for each of the two debtors.

Debtor asserts that the Proof of Claim amount is overstated, as one tax penalty is owed by both of the debtors. The $54,439.42 doubles the obligation.

**Creditor Response Re Amount of Claim**

Creditor responds, asserting that contention is incorrect. However, the explanation by Creditor confuses the court:

> The correct amount of the secured claim is $54,468.42. The claim is for Trust Fund Recovery Penalties against both Debtors, but should only be collected once. IRS will amend the proof of claim to include the correct amount with the following language: "TFRP assessed against both spouses will only be collected once."

Opposition, p. 2:15-19; Dckt. 97. No Declaration is provided explaining the correct computation of this amount. While stating that the $54,468.42 is the "correct amount," the Opposition then states that the penalties are imposes against both debtors, but is to be collected only once.

Looking at the penalties assessed in the Attachment to Amended Proof of Claim 9-2, it appears that duplicate penalties were assessed, but "only to be collected once," it appears that the $54,468.42 states duplicate amounts.

At the hearing, counsel for the Internal Revenue Service provided Debtor's counsel with a contact at the Service to address the claim computation issues and whether debt owed by the corporation could be asserted as a claim in this case.

The court also addressed with the parties the need to confirm whether one $27,234.21 penalty is jointly and several liability of the two Debtors, or whether there are two debts owed for a total of $54,468.42.

**November 23 Hearing**

At the hearing, the Parties requested a further continuance to try and workout a settlement or Debtor proceeding in a unilateral manner.

Creditor stated that the debt secured by the property, for which Debtor wants a proof of claim filed, is the debt of Debtor's corporation. Included in this amount is the portion of the tax liability for which each of the two debtors have for the "trust tax" liability. Creditor states that this property was transferred to Debtor shortly before the bankruptcy case.

The concern relates to Debtor using the Chapter 13 case to "buy" the corporation's property, paying more than Debtor's personal tax liability, and not make any payments on general unsecured claims in this case. If Debtor did not pay the corporate tax liability (in excess of their personal liabilities) and be able to have the corporation's property free of such tax lien, Debtor could make an almost 100% dividend payment on general unsecured claims in this case. However, with the Plan in this case, Debtor provides for a 0.00% dividend to creditors in this case.

**January 25, 2022 Hearing**

At the hearing xxxxxxxx

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 Claim of Internal Revenue Service ("Creditor"), filed in this case by Larry John Jackson and Debra Ann Jackson, Chapter 13 Debtor ("Objectors") 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 Proof of Claim Number 9-1 of Internal Revenue Service is xxxxxxx.

**3.** **21-23927-E-13 LBG-3** **3 thru 4**

**JACK/MARYANNE JODOIN**
**Lucas Garcia**

**MOTION TO CONFIRM PLAN**
**12-17-21 [31]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 2021. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

**The Motion to Confirm the Plan is denied.**

The debtor, Jack Michael Jodoin and Maryanne Susan Jodoin ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides to pay $250.00 in monthly payments to the Trustee for 60 months, pay $225.00 starting on Month 19 for their Class 2B claim, and provides to pay the allowed unsecured claims an amount not less than they would have been paid if the estate of the Debtors was liquidated under the provisions of a Chapter 7 case. Plan, Dckt. 30. 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 January 11, 2022. Dckt. 40. Trustee opposes confirmation of the Plan on the basis that:

A. Debtors cannot afford to make the payments or comply with the Plan because the Plan relies on a Motion to Value Collateral being filed for

Wheels Financial, listed in Class 2B. However, Debtors have failed to file the motion.

B. The Plan is underfunded because Debtors listed priority claims in Section 7 of the Plan at $2,000.00. However, the IRS filed a Proof of Claim for $2,262.42 for tax year 2018, (Claim 3-1), and the Franchise Tax Board filed a Proof of Claim for $2,995.81 for tax years 2015 and 2016, (Claim 4-1). The Trustee estimates it will take approximately 71 months to pay the total priority claims of $5,258.23.

C. The Plan payment may not be the Debtor's best efforts because they appear to be below the median income and appear to have additional disposable income. The Debtors received a $4,943.00 refund form the IRS and a $1,321.00 refund from the Franchise Tax Board to their 2020 tax returns.

D. The Plan payment may not be the Debtor's best efforts because the Debtors have provided the Trustee a pay advice dated October 1, 2021 through October 31, 2021, which shows a gross income of $3,621.00 for Maryanne Jodoin. However, Schedule I does not reflect this income nor does Form 122C-1.

E. The Plan payment may not be the Debtor's best efforts because the Plan states the administration fee is $4,225.00 and the attorney received $225.00 prior to the filing of this case, which is $225.00 more than is allowed under the rule. However, the Rights and Responsibilities and Disclosure of Attorney Compensation both show the Attorney received $0.00 as an administrative fee prior to the filing of the case. Further, the Debtors testified at the First Meeting of Creditors that no fees were paid to the attorney prior to the filing of this case. Additionally, the Debtor paid fees in a prior Chapter 13 case that was dismissed on November 3, 2021 but the Statement of Financial Affairs does not show Debtors having paid any attorney any funds, within the last year, either for the current Chapter 13 case or the previous Chapter 13 case.

**DISCUSSION**

**Debtor's Reliance on Motion to Value Secured Claim**

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

~~Debtor corrected this short coming, having a Motion to Value filed and set for hearing on January 25, 2022, to be heard in conjunction with this hearing on Objection to Confirmation. The court has granted the Motion, valuing the secured claim to be $7,500. This is the amount of the Class 2 Claim~~

~~for Creditor provided in the proposed Chapter 13 Plan.~~

**Failure to Provide for a Priority Claim**

The Chapter 13 Trustee asserts that the Franchise Tax Board has a claim for $2,995.81 in priority unsecured debt. Proof of Claim 4-1, filed on December 21, 2021. Also, the Chapter 13 Trustee asserts that the Internal Revenue Service has a claim for $2,262.42 in priority unsecured debt, and $4,798.95 in general unsecured debt. Proof of Claim 3-1, filed on December 16, 2021. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

**Failure to Complete Plan Within Allotted Time**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 71 months due to paying the total priority claims of $5,258.23. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

**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 payment may not be the Debtor's best efforts because they appear to be below the median income and appear to have additional disposable income. The Debtors received a $4,943.00 refund form the IRS and a $1,321.00 refund from the Franchise Tax Board to their 2020 tax returns.

Further, the Debtors have provided the Trustee a pay advice dated October 1, 2021 through October 31, 2021, which shows a gross income of $3,621.00 for Maryanne Jodoin. However, Schedule I does not reflect this income nor does Form 122C-1.

In looking at Schedule I, Debtor states under penalty of perjury that they have tax free wage income of $6,200.00 a month. Dckt. 28 at 29-30. On Schedule J, Debtor states under penalty of perjury that their reasonable and necessary monthly expenses for a family of four (two adults and two minor children) are ($4,225), leaving Debtor only $271 a month to fund a plan. Some of the necessary expenses appear questionable. Debtors have three older vehicles with high mileage: (1) 2006 Toyota Tacoma with 170,000 miles, (2) 2008 Honda Civic with 160,000 miles, and (3) 1971 Datsun 5-10 with an unknown amount of miles. *Id*. at 3-4. Assuming that the Datsun is a "classic fixer upper," the two debtors are driving to high mileage vehicles that require high mileage vehicle maintenance and repairs.

But on Schedule J Debtor provides only $325 a month for repairs, maintenance, registration, and gas. This is for the sixty months of the plan. It is likely that in addition to repairs and maintenance, Debtor will have to buy eight new tires. Assuming modest maintenance of only $75 a month for the two vehicles and $25 for registration, that would leave $225 a month for gas for two vehicles. At a fuel price of $4.25 a gallon, that would allow for the purchase of only 52 gallons a month, or 26 gallons for each vehicle a month. Assuming 25 miles to the gallon for this "well aged vehicles," that allows for only 21.6 miles of driving a day for each vehicle – clearly an insufficient amount of miles for work and necessary travel (not including fun or vacation) for a family of four.

The Plan payment may not be the Debtor's best efforts because the Plan states the administration fee is $4,225.00 and the attorney received $225.00 prior to the filing of this case, which is $225.00 more than is allowed under the rule. However, the Rights and Responsibilities and Disclosure of Attorney Compensation both show the Attorney received $0.00 as an administrative fee prior to the filing of the case. Further, the Debtors testified at the First Meeting of Creditors that no fees were paid to the attorney prior to the filing of this case. Additionally, the Debtor paid fees in a prior Chapter 13 case that was dismissed on November 3, 2021 but the Statement of Financial Affairs does not show Debtors having paid any attorney any funds, within the last year, either for the current Chapter 13 case or the previous Chapter 13 case.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the debtor, Jack Michael Jodoin and Maryanne Susan Jodoin ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

**4.** **19-26029-E-13** **DEBRA THOMPSON**
**PGM-4** **Peter Macaluso**

**MOTION FOR COMPENSATION BY THE LAW OFFICE OF LAW OFFICES OF PETER G. MACALUSO; FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)**
**12-11-21 [147]**

**Final Ruling:** No appearance at the January 25, 2022 hearing is required.
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2021. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Peter G. Macaluso, the Attorney ("Applicant") for Debra LaChele Thompson, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period July 6, 2021, through October 19, 2021. Applicant requests fees in the amount of $1,500.00

**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 Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

**Reasonable Fees**

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

**Reasonable Billing Judgment**

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

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

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

A review of the application shows that Applicant's for the Estate include litigating against the motion to Dismiss and executing a Motion to Modify. 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. 105. Applicant prepared the order confirming the Plan.

**Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-

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

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

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

Motion to Dismiss: Applicant spent 1.75 hours in this category. Applicant defended against the Motion to Dismiss and appeared at the hearing.

Motion to Modify: Applicant spent 4.55 hours in this category. Applicant prepared, filed, and appeared at the hearing for the Motion to Modify.

Although Applicant accumulated 6.30 hours of substantial and unanticipated work, they are only requesting compensation for 5.0 hours.

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 |
|---|---|---|---|
| Peter G. Macaluso, Attorney | 5.0 | $300.00 | $1,500.00 |
| **Total Fees for Period of Application** | | | $1,500.00 |

The unique facts surrounding the case, including Debtor being placed in a material financial hardship due to the COVID-19 pandemic, 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 $1,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

Fees $1,500.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by 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 Debra LaChele Thompson ("Debtor")
>
> Fees in the amount of $1,500.00,
>
> 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 in a Chapter 13 case.

**5.** **19-22933-E-13 SLE-4** | **MATTHEW RUBB** **Steele Lanphier** | **MOTION TO MODIFY PLAN** **12-13-21 [76]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 13, 2021. By the court's calculation, 43 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, Matthew Kent Rubb ("Debtor") seeks confirmation of the Modified Plan to give them "small reprieve" to make the plan work as Debtor and Debtor's fiancé have encountered financial difficulties. Declaration, Dckt. 78. The Modified Plan provides $12,300.00 to be paid in through November 2021, $100.00 per month from months December 2021 through April 2022, and $300.00 per month until Plan completion. Modified Plan, Dckt. 79. This will extend the Plan by fifteen (15) additional months. 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 January 5, 2022. Dckt. 86. Trustee opposes confirmation of the Plan on the basis that:

A. Feasibility - Debtor is delinquent in $100.00 Plan payments; Plan duration is not specifically stated in the Modified Plan; moving Creditor Wells Fargo Dealer Services to Class 2A from Class 3 overextends the Plan.

**DISCUSSION**

**Delinquency**

The Chapter 13 Trustee asserts that Debtor is $100.00 delinquent in plan payments, which represents one month of the $100.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

**Failure to Complete Plan Within Allotted Time**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 78 months if Creditor Wells Faro Dealer Services remains Class 3 and 104 months if Creditor Wells Fargo Dealer Services is moved to Class 2A. Trustee states the case appears to qualify under the Cares Act for an extension up to 84 months, however, Debtor makes no mention of Cares Act. If Debtor is attempting to extend to 104 months, the Plan will complete longer than the Code allows. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 Modified Chapter 13 Plan filed by the debtor, Matthew Kent Rubb ("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.

**6.** **21-23833-E-13 DPC-1** **ELENA GONZALEZ** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 12-21-21 [34]**

**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 21, 2021. By the court's calculation, 35 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 has failed to provide her Social Security Number

**DISCUSSION**

Trustee's objection is well-taken.

**Failure to Provide Social Security Number**

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exists.

FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

| | | | |
|---|---|---|---|
| **7.** | **21-24047-E-13**<br>**CYB-1**<br>**7 thru 9** | **LAWRENCE/GENEVA IRBY**<br>**Candace Brooks** | **MOTION TO VALUE COLLATERAL OF SYNCHRONY BANK**<br>**1-6-22 [15]** |

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

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

Sufficient Notice Not 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 January 6, 2022. By the court's calculation, 19 days' notice was provided. 28 days' notice is required for this Motion noticed for hearing as provided in the Federal Rule of Bankruptcy Procedure 9014-1(f)(1).

At the hearing, **XXXXXXX**

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 hearing on the Motion to Value Collateral and Secured Claim of Synchrony Bank ("Creditor") ~~is continued to 2:00 p.m. on February xxxxxxx, 2022~~ is ~~granted, and Creditor's secured claim is determined to have a value of $400.00.~~**

The Motion filed by Lawrence David Irby and Geneva Fae Irby ("Debtor") to value the secured claim of Synchrony Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 18. Debtor is the owner of a living room set - couch, loveseat, and recliner ("Property"). Debtor seeks to value the Property at a replacement value of $400.00 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**

Chapter 13 Trustee filed a nonopposition to Debtor's Motion on January 11, 2022. Dckt. 35. The Trustee states Creditor has not filed a claim to date.

**Discussion**

~~The lien on the Property secures a purchase-money loan incurred on or about February 2018, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $1,162.00. Schedule D, Exhibit B, Dckt. 17. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $400.00, 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 Lawrence David Irby and Geneva Fae Irby ("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 ~~hearing on the Motion to Value Collateral and Secured Claim of Synchrony Bank ("Creditor") is continued to 2:00 p.m. on February xxxxxxx, 2022~~

~~Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Synchrony Bank ("Creditor") secured by an asset described as living room set - couch, loveseat, and recliner ("Property") is determined to be a secured claim in the amount of $400.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $400.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

**8.** **21-24047-E-13 CYB-2** | **LAWRENCE/GENEVA IRBY** **Candace Brooks** | **MOTION TO VALUE COLLATERAL OF SYNCHRONY BANK** **1-6-22 [20]**

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

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

Sufficient Notice Not Provided. 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 January 6, 2022. By the court's calculation, 19 days' notice was provided. 28 days' notice is required.

At the hearing, **xxxxxxx**

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 ~~hearing~~ on the Motion to Value Collateral and Secured Claim of Synchrony Bank ("Creditor") is ~~continued to 2:00 p.m. on February~~ ~~xxxxxxx~~~~, 2022~~**

**~~granted, and Creditor's secured claim is determined to have a value of $400.00.~~**

The Motion filed by Lawrence David Irby and Geneva Fae Irby ("Debtor") to value the secured claim of Synchrony Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 23. Debtor is the owner of a Bedroom Set - one bed and two dressers ("Property"). Debtor seeks to value the Property at a replacement value of $ 400.00 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**

Chapter 13 Trustee filed a nonopposition to Debtor's Motion on January 11, 2022. Dckt. 31. The Trustee states Creditor has not filed a claim to date.

**Discussion**

~~The lien on the Property secures a purchase-money loan incurred in August of 2019, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $1,162.00. Schedule D, Dckt. 1. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $400.00, 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 Lawrence David Irby and Geneva Fae Irby ("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 ~~hearing~~ on the Motion pursuant to 11 U.S.C. § 506(a) is ~~continued to 2:00 p.m. on February~~ ~~xxxxxxx~~~~, 2022~~
>
> ~~granted, and the claim of Synchrony Bank ("Creditor") secured by an asset described as Bedroom Set - one bed and two dressers ("Property") is determined to be a secured claim in the amount of $400.00, and the balance of the claim is a~~

~~general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $400.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

| | | | |
|---|---|---|---|
| **9.** | **21-24047-E-13 CYB-3** | **LAWRENCE/GENEVA IRBY Candace Brooks** | **MOTION TO VALUE COLLATERAL OF COMENITY BANK 1-6-22 [25]** |

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, excluding Synchrony Bank, and Office of the United States Trustee on January 6, 2022. By the court's calculation, 19 days' notice was provided. 28 days' notice is required.

At the hearing, **xxxxxxx**

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 ~~hearing on the~~ Motion to Value Collateral and Secured Claim of Comenity Bank ("Creditor") is ~~continued to 2:00 p.m. on February~~ xxxxxxx ~~, 2022~~**

**~~granted, and Creditor's secured claim is determined to have a value of $300.00.~~**

The Motion filed by Lawrence David Irby and Geneva Fae Irby ("Debtor") to value the

secured claim of Comenity Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 28. Debtor is the owner of a ring ("Property"). Debtor seeks to value the Property at a replacement value of $300.00 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**

Chapter 13 Trustee filed a nonopposition to Debtor's Motion on January 11, 2022. Dckt. 33. Trustee notes there is a typographical error in the value of the asset. Pages 3-4 lines 4-5 of the Motion state the value to be $400.00, where the rest of the Motion and supported pleadings, including Debtor's Schedules state the value to be $300.00. The court reads the $400.00 as a typographical error. Additionally, Trustee states Creditor has not filed a claim to date.

**Discussion**

~~The lien on the Property secures a purchase-money loan incurred on or about March 3, 2020, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $1,262.00. Schedule D, Dckt. 1. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $300.00, 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 Lawrence David Irby and Geneva Fae Irby ("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 ~~hearing on the~~ Motion pursuant to 11 U.S.C. § 506(a) is ~~granted, and the claim of Comenity ("Creditor") secured by an asset described as a ring ("Property") continued to 2:00 p.m. on February xxxxxxx ,~~ ~~2022~~
>
> ~~determined to be a secured claim in the amount of $300.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $300.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

**10.** **21-23865-E-13 CLB-1** | **CHELSEA SMITH/JAYLYNN KNUTSON** | **OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.**
**Carl Gustafson** | **12-8-21 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 8, 2021. By the court's calculation, 48 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~~.**

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

A. Failure to provide for their Secured Claim, secured by a Honda Civic, VIN # 12762 ("Vehicle").

**Debtor's Response**

On December 30, 2021, Debtor Jaylynn Knutson filed a response stating she intends to surrender her interest in the Vehicle and will list Creditor as a Class 3 creditor. Debtor wishes to have the order language in the Order Confirming Plan to list Creditor as a Class 3 creditor and indicate her "intent" to surrender the Vehicle. Additionally, Debtor states at the Meeting of Creditors on December 16, 2021, the Chapter 13 Trustee indicated agreeing to this proposal. Debtor also states Creditor's

Counsel indicated agreement to this proposal.

Trustee and Creditor have not filed supplemental declarations evidencing their approval of these terms. Additionally, adding Debtor's "intent" to surrender the Vehicle in the Order Confirming Plan is not sufficient to indicate Debtor will, in fact, surrender the Vehicle. At the hearing, XXXXXXXXXX

**DISCUSSION**

~~**Failure to Provide for a Secured Claim**~~

~~Creditor asserts a claim of $6,263.25 in this case. Debtor's Schedule D does not estimate the amount of Creditor's claim, however, Creditor filed Proof of Claim for the secured amount of $6,263.25. Proof of Claim 4-1. The Creditor indicates that it is secured by the Vehicle. The Plan does not provide for treatment of this claim.~~

~~When a plan does not provide for a secured claim, the remedy is not 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).~~

~~Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.~~

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

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

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

~~The Objection to the Chapter 13 Plan filed by Bank of America, N.A. ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

**11. 21-23468-E-13 DPC-2 BRANDON MOORE Stephan Brown OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 12-17-21 [28]**

**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 and Debtor's Attorney on December 15, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 hearing on the Objection to Claimed Exemptions is continued to xxxxxx.**

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Brandon Tyler Moore's ("Debtor") claimed exemptions under California law because the Debtor has misused a California Civil Procedure exemption. The Trustee asserts that the Debtor is attempting to use California Civil Procedure § 706.050 for Wage Garnishments. However, California Civil Procedure § 706.050 does not apply to bankruptcy cases. The Court has reviewed Debtor's Schedule C and confirms the Debtor used California Civil Procedure improperly § 706.050 to exempt $4,665.20 in Wage Garnishments. Dckt. 1 at 18.

**Review of Schedule C**

On Schedule C Debtor states the following as being a wage garnishment exemption asset:

| Brief description of the property and line on *Schedule A/B* that lists this property | Current value of the portion you own<br>Copy the value from *Schedule A/B* | Amount of the exemption you claim<br>*Check only one box for each exemption.* | Specific laws that allow exemption |
|---|---|---|---|
| **Cash**<br>Line from *Schedule A/B*: **16.1** | **$20,149.00** | ■ **$4,665.20**<br>☐ 100% of fair market value, up to any applicable statutory limit | **C.C.P. § 706.050** |

Debtor is not asserting that a levying officer has enforced a garnishment from Debtor's employer, but that there is $4,665.20 in cash lying around. Where Debtor has the cash is not disclosed.

California Code of Civil Procedure § 706.050 does not provide for an exemption in "cash," but "[t]he maximum amount of disposable earnings of an individual judgment debtor for any workweek that is subject to levy under an earnings withholding order. . . ." There is no levy and there is no wage garnishment from which the levying officer is holding monies which were levied upon.

Debtor confirms that there are no monies levied on, at least during the one-year period preceding the commencement of this bankruptcy case, stating in response to Question 10 on the Statement of Financial Affairs "NO" in response to where there was any of Debtor's "[p]roperty repossessed, foreclosed, garnished, attached, seized, or levied?"

It appears that this claim of exemption is not "[w]arranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; . ." as required by Federal Rule of Bankruptcy Procedure 9011.

Though the Trustee set this hearing using the 28 day notice procedure for which a written opposition (L.B.R. 9014-1(f)(1)), Debtor has chosen not to respond and address what appears to be a clearly improper.

Debtor's conduct in using a clearly improper exemption puts into question Debtor's good faith in filing and prosecuting this Chapter 13 case. This is in addition to appearing to be in serious violation of the certifications made by Debtor and Debtor's counsel arising under Federal Rule of Bankruptcy Procedure 9011

At the hearing, **xxxxxxx**

The Objection to Claim of Exemption of $4,665.20 in cash in the amount of $20,149.00 is sustained and the exemption is disallowed in its entirety.

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 Claimed Exemptions 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 Objection to the claim of exemption in the amount of $4,665.20 pursuant to California Code of Civil Procedure § 706.050 is sustained and the exemption is disallowed in its entirety.

**12.** **21-23775-E-13 DPC-1** **12 thru 13**

**DIANA EVANS**
**Pro Se**

**OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK**
**12-21-21 [25]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), on December 21, 2021. By the court's calculation, 35 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 did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. The meeting is continued to February.

B. Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); Fed. R. Bankr. P. 4002(b)(2)(A). Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A)(I); Fed. R. Bankr. P. 4002(b)(3).

C. Debtor used the wrong plan form.

D. Debtor's plan is infeasible because of numerous deficiencies in Debtor's Petition, Schedules, and Statement of Financial Affairs.

**DISCUSSION**

Trustee's objections are well-taken.

**Failure to Appear at 341 Meeting**

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

Debtor did not appear at the first meeting due to technological issues. The Continued Meeting of Creditors is continued to February 17, 2022

**Failure to Provide Pay Advices and Tax Return**

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); Fed. R. Bankr. P. 4002(b)(2)(A). Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A)(I); Fed. R. Bankr. P. 4002(b)(3). Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

**Wrong Plan Form**

Trustee argues that the Debtor has not utilized the mandatory Chapter 13 Plan standard form. This is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

**Bad Faith: Failure to Disclose Prior Bankruptcy Case**

Trustee reports that Debtor failed to disclose prior bankruptcy cases identified as 15-27853, 15-21350, 20-22996, 17-26013, 19-24939, and 21-20525, filed on October 7, 2015, February 23, 2015, June 12, 2020, September 9, 2017, August 6, 2019, and February 16, 2021, respectively. The court notes Trustee made a typographical error for Debtor's previous Case No. 15-27853, the proper case number is 15-27855.

Debtor was required to report any bankruptcy cases filed within the prior eight years. Debtor indicated that she has filed for bankruptcy within the last eight (8) years, however she failed to list when and the case numbers. Petition, Dckt. 1 at 3. Debtor must list the prior bankruptcy filings as requested in the Petition.

**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). Schedule D fails to list the value of Debtor's real property. Additionally, Debtor's expenses appear to be lower than average expenses for a family of two. Debtor states both Debtors expenses equal $3,243.00. The court is concerned Debtor lists expenses for food and household supplies as $125.00 for each Debtor and $0.00 for transportation. Both seem unreasonably low. Also, Debtor failed to complete the Statement of Financial Affairs apart from stating she is married. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

**Improper Treatment of Creditor "Recology"**

Trustee states Recology is improperly listed as a secured creditor. However, Trustee does not indicate why Recology should not be entitled to this treatment. Upon review of Schedule D, Recology is listed as a secured claim for $800.00. Dckt. 11. However, Debtor gives no information as to the nature of the lien, the value of the collateral supporting the claim, and the unsecured portion. Additionally, Recology has not filed a Proof of Claim. From the evidence provided, it does not appear to the court that Recology should be treated as a secured creditor.

**Improper Treatment of Signature Student Loan**

Trustee states Signature Student Loan is improperly listed as a priority claim. Student loans are nonpriority unsecured debts. However, Debtor lists Signature Student Loan as a Priority Unsecured Claim with a total claim of $300,000.00, priority amount of $0.00, and nonpriority amount of $0.00. It appears to the court that Debtor improperly listed Signature Student Loans as a priority unsecured claim. They should be listed in Part 2 of Schedule E/F for "Nonpriority Unsecured Claims," not Part 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 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 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.** **21-23775-E-13 KMM-1** **DIANA EVANS** **Pro Se** **OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY 11-29-21 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on November 29, 2021. By the court's calculation, 57 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.**

Deutsche Bank National Trust Company, as Trustee for GSR Mortgage Loan Trust 2006-OA1, Mortgage Pass-Through Certificates, Series 2006-OA1 ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The Plan fails to provide for Creditor's secured claim.

B. The Plan fails to provide how Debtor will be able to make all payments under the Plan.

**DISCUSSION**

Creditor's objections are well-taken.

**Failure to Provide for a Secured Claim**

Creditor asserts a claim of $479,607.00, including arrearage in the amount of $181,891.79 in this case. Debtor's Schedule D does not estimate the amount of Creditor's claim or indicate that it is secured by a deed of trust on Debtor's residence.

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 is not 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).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for

a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

**Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Plan, Debtor will make monthly payments of $800.00 for 60 months to the Trustee for a base plan amount of $48,000.00. However, according to Debtor's Schedules, Debtor has a monthly net income of an unknown amount. Debtor will be insufficient to fund the Plan once, Secured Creditor's claim, an additional $479,607.00 with $181,891.79 in arrears, is fully provided for. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Upon review of Debtor's Schedules I and J, it appears Debtor has "whited out" their monthly income. The total income for Debtor and the non-filing spouse is $3,577.00. Under Schedule J, Debtor has again omitted their monthly net income. However, the combined monthly expenses for Debtor and the non-filing Spouse is $3,243.00. Although there appears to be a clerical error on behalf of Debtor, if the Schedules were amended to have the proper information filled in, there seems to be a net income of $334.00.

Even if Schedules I & J are properly amended, due to Trustee's Objections in Docket Control No. DPC-1, there are substantial reasons to still deny confirmation. Creditor's Objection is sustained. If Debtor wishes to confirm a Plan, they are to address the shortcomings of this Plan as addressed by Trustee and Creditor.

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 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 Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company, as Trustee for GSR Mortgage Loan Trust 2006-OA1, Mortgage Pass-Through Certificates, Series 2006-OA1 ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

**14. 21-23479-E-13 DPC-2 TRICIA ROJAS Peter Macaluso**

**OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
**12-6-21 [31]**

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

---

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 and Debtor's Attorney, on December 6, 2022. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is overruled.**

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Tricia Tami Rojas's ("Debtor") claimed exemptions under Federal law because the Debtor has not resided in California for at least two years prior to filing the petition or the plurality of the six months prior to that date. Therefore, Trustee states, Debtor is not entitled to use California Exemptions under 11 U.S.C. § 522(b)(3)(A).

It is not clear to the court what claimed exemptions Trustee is objecting to. Trustee states "Schedules A/B (DN 1, pages 11-16) lists personal and real property totaling $556,703.00." The next sentence, Trustee states "Schedule C (DN 1, pages 17-18) claims exemptions under [CCP] §704.140." It is unclear if Trustee is objecting to the personal and real property totaling $556,703.00 under California Code of Civil Procedure § 704.140. However, the court notes California Code of Civil Procedure § 704.140 relates to "a cause of action for personal injury." There is no such claimed exemption in Debtor's Schedule C. Additionally, the $556,703.00 worth of personal and real property do not relate to any cause of action for personal injury.

**Debtor's Opposition**

On January 11, 2022, Debtor filed an Opposition to Trustee's Objection to Exemptions. Dckt. 51. The Debtor states that she did temporarily leave the state based on a pending divorce. The

family home is located in California and her spouse continuously remained in the family home. Debtor returned to the family home in California as intended.

Additionally, Debtor correctly states that California has opted out of the federal exemptions scheme and permits only the exemptions allowable under state law. California Civil Procedure § 703.130. Further, California applies an automatic homestead exemption. California Civil Procedure §§ 703.100(b)(1) & 704.710(c). Additionally, California Civil Procedure § 704.710(c) has a "Temporary Absence Doctrine."

**Discussion**

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*.

Pursuant to 11 U.S.C. § 522 (b)(2), a state has the power to "opt-out" of the Uniform Federal Exemption List. When determining which state exemption laws to apply, pursuant to 11 U.S.C. § 522(b)(3)(A), the court looks to:

> the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place.

Here, pursuant to Debtor's Opposition, Debtor only temporarily left the state but "intended" to return to California. Since the debtor intended to stay in California, although she left temporarily, California should still be considered her domicile. As such, California's laws governing exemptions should govern.

Under California Code of Civil Procedure § 703.130, California Code provides "the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state." California undoubtedly has "opted-out" of the Uniform Federal Exemption List.

Under California Code of Civil Procedure § 704.710(c), Homestead means the principal dwelling:

> (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

Here, Debtor claims her and her spouse are in the process of dissolving their marriage. On page two of Debtor's Statement of Current Monthly Income, Debtor indicates she is married and her spouse is not filing with her. Dckt. 1 at 40. As such, evidenced by Debtor's petition and the Opposition, Debtor and Debtor's spouse are still married. Therefore, since Debtor's spouse resided in the residence continuously and currently, it is still considered Debtor's Homestead, regardless of whether Debtor continuously and currently lives there.

However, a review of the Debtor's Schedule C shows that the Debtor is not attempting to exempt any real property and has specifically stated, per Question 3, that the Debtor will not be claiming a homestead exemption. Further, the Debtor's Schedule C does not indicate any usage of California Civil Procedure § 704.140, as the Trustee indicates. The Court is confused as to why the Trustee would object to an exemption under California Civil Procedure § 704.140 when the Debtor's Schedule C makes no indication of such exemption. The court presumes this is a typographical error, and Trustee intended to object to a Homestead Exemption. Yet, pursuant to California Code of Civil Procedure § 704.710(c), even if Debtor claimed a Homestead Exemption (which she did not), it would be valid.

As such, the Chapter 13 Trustee's Objection is overruled.

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 Objection to Claimed Exemptions 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 Objection is overruled.

**15.** **21-22085-E-13 BMV-2** **15 thru 16**

**SHARRON WINGHAM**
**Bert Vega**

**MOTION TO CONFIRM AMENDED PLAN**
**12-17-21 [45]**

**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 December 13, 2021. By the court's calculation, 43 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, Sharron Renee Wingham ("Debtor"), seeks confirmation of the Second Amended Plan. The Amended Plan provides for a proposed plan payment of $934.50 per month for 60 months to pay for Debtor's Homeowner's Association arrears, her regular monthly Homeowner Association fees and all priority claims, except those in Section 7 of the plan.

Debtor shall pay her monthly mortgage of $973.17 outside of the plan to New Rez LLC dba Shellpoint Mortgage ("Creditor"). Arrears owed to Creditor of $2,686.12 have been added to the unpaid principal balance of $113,962.04, therefore making the new unpaid principal balance $116,648.16. Amended Plan, Dckt. 45. 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 29, 2021. Dckt. 59. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may not be able to make all payments under the plan and comply with the plan.

B. Creditor is still improperly listed as a Class 4 claim.

**DISCUSSION**

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

Trustee states Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee's reasoning is because § 7.03 of the Plan under Nonstandard Provisions modifies § 2.01 of the Plan. The modification allows Debtor to pay their delinquent plan payment and December 2021 payment on or before December 30, 2021. Trustee has not provided evidence as to whether Debtor has made these two payments. It is not clear to the court whether Trustee is concerned if Debtor will be able to continue making plan payments or if Trustee is only concerned regarding the delinquent payment and the December 2021 payment.

At the hearing, XXXXXXXXXX

**Improperly Listed Creditor**

The court, numerous times, denied confirmation of Debtor's plan because Creditor was improperly treated as a Class 4 claim. *See* Civil Minutes and Order from Trustee's Objection to Confirmation of Plan, Docket Control No. DPC-1, Dckts. 21, 22 and Civil Minutes and Order from Motion/Application to Confirm Chapter 13 Plan, Docket Control No. BMV-1, Dckts. 39, 40. Under the Plan's provisions of § 3.07, "Class 1 includes all delinquent secured claims". This would include Creditor.

In this Second Amended Plan (Dckt. 51) the nonstandard provisions state in part that "the arrears of $2,683.12 has been added by Creditor to the unpaid principal balance of $113,962.04 therefore making the new unpaid principal balance $116,648.16." Creditor has not amended their Proof of Claim (Proof of Claim 4-1) to change the arrears amount or the principal balance amount. Even if Creditor did amend their Proof of Claim to reflect the $2,683.12 credits towards the arrears, Creditor's Proof of Claim listed the arrearage amount of $4,700.20. This would leave $2,017.08 worth of arrears still not accounted for. Creditor would still need to be listed as Class 1.

Creditor remains in Class 4 despite the Court's rulings that the claim is improperly listed on the plan as a Class 4. Debtor does not comply with the Plan under 11 U.S.C. §§ 1322; 1325(a)(1).

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, Sharron Renee Wingham ("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.

**16.** **21-22085-E-13 DPC-2** | **SHARRON WINGHAM** **Bert Vega** | **CONTINUED MOTION TO DISMISS CASE** **12-6-21 [41]**

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

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 6, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is xxxxxxxxxxxxx.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Sharron Renee Wingham ("Debtor"), is delinquent and no plan is pending.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 21, 2021. Dckt. 54. Debtor states they will cure their delinquency on or before December 30, 2021 and they filed their Second Amended Plan on December 17, 2021. The Motion to Confirm is set for hearing on January 25, 2022. Dckt. 46.

The court notes these filings are reflected on the docket. As such, this cures Trustee's concern for no plan pending.

**TRUSTEE'S STATUS REPORT**

Trustee filed a status report on December 29, 2021. Dckt. 58. Trustee states a motion to modify is set for January 25, 2022 but no payment has been received in December to date although an electronic payment is pending. Trustee requests that the matter be continued.

**January 25, 2022 Hearing**

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to be heard in conjunction with the Motion to Modify on **January 25, 2022 at 2:00 p.m.** in Department E.

**17. 20-20690-E-13 SS-3 JUSTIN/ANGELA ROBINSON Scott Shumaker MOTION TO MODIFY PLAN 12-21-21 [150]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2021. By the court's calculation, 35 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 debtors, Justin and Angela Robinson ("Debtor") seek confirmation of the Modified Plan mainly to become current on the arrears on their first mortgage. Declaration, Dckt. 152. The Modified Plan provides $17,728.00 to be paid through month twenty-two (22), then payments of $3,800.00 for months twenty-three (23) through twenty-five (25), then payments of $5,575 for months twenty-six (26) through sixty (60), and a 0.00% percent dividend to unsecured claims totaling $0.00. Modified Plan, Dckt. 154. 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 January 11, 2022. Dckt. 156. Trustee opposes confirmation of the Plan on the basis that:

A. Schedules I and J are filed as exhibits only, and not Amended Schedules.

B. It is not clear whether the Proposed Plan what amount is to be paid on

the prepetition mortgage arrearage dividend and whether the payments are the same as the Prior Plan confirmed on October 29, 2020. Dckt. 95 If it is the same, Trustee requests the order confirming states the amount that the pre-petition arrearage claim is to be paid per month. Per the Prior Plan, the amount is $797.82. Dckt. 85.

C. Docket Control Number is a duplicate from a previous Motion to Modify, dated September 16, 2020. Dckt. 81.

**DISCUSSION**

**Schedules I and J**

Trustee is concerned that Schedules I and J are only filed as exhibits. If Debtor wishes to filed Supplemental Schedules to provided current information or Amend their schedules to correct errors, they must be filed as separate documents using the Amendment Cover Sheet EDC 2-015.

**Prepetition Mortgage Arrearage**

Creditor Nationstar holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $47,869.20 in pre-petition arrearages. The Plan does not propose to cure those arrearages, rather, it states to "See Add'l Provisions." Modified Plan, Dckt. 154 at 3. The Additional Provisions at the end of the Modified Plan do not address the Pre-Petition Arrearages of Creditor Nationstar. [Fn.1.] However, the Prior Plan confirmed on October 29, 2020 did propose to cure the pre-petition default with payments of $797.82. First Amended Plan, Dckt. 85 at 3.

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FN. 1. The totality of the Additional Provisions for the Modified Plan consists of the following:

§ 7.01 Non-Standard Provision:

The Plan will be considered current with $17,728 paid in through December 2021 (month 22), then payments shall be $3,800 per month for months 23 through 25; then payments shall be $5,575 for months 26 through 60.

Mod. Plan, § 7.01; Dckt. 154 at 7.

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The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages. Debtor needs to redraft the Modified Plan proposing to cure the pre-petition default.

**Reused Docket Control Number**

The moving party is reminded that the Local Rules require the use of a new Docket Control

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

The 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, Justin Lee Robinson and Angela Alyssa Robinson ("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.

# FINAL RULINGS

| | | | |
|---|---|---|---|
| **18.** | **20-21305-E-13**<br>**SLH-1** | **RICHARD/CATHY BURNETT**<br>**Seth Hanson** | **MOTION TO MODIFY PLAN**<br>**12-13-21 [46]** |

**Final Ruling:** No appearance at the January 25, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2021. By the court's calculation, 47 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, Richard Anthony Burnett and Cathy Lynn Burnett ("Debtor"), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on January 5, 2022. Dckt. 53. 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, Richard Anthony Burnett and Cathy Lynn Burnett ("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 December 9, 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.

**19. 21-23907-E-13 JTN-1 — MORGAN/FREDERICA REYES — Jasmin Nguyen — MOTION TO VALUE COLLATERAL OF EXETER FINANCE LLC — 12-14-21 [15]**

**Final Ruling:** No appearance at the January 25, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 13, 2021. By the court's calculation, 43 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 Exeter Finance LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $16,500.00.**

The Motion filed by Morgan Reyes and Frederica Leyba Reyes ("Debtor") to value the secured claim of Exeter Finance LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 17. Debtor is the owner of a 2012 GMC Acadia ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $16,500.00 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 January 5, 2022, Chapter 13 Trustee David Cusick filed a nonopposition. Dckt. 35.

**DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred on February 16, 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $21,151.86. Proof of Claim, No. 4-1. 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 $16,500.00, 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.

**Trustee's Non-Opposition**

On January 5, 2022, Chapter 13 Trustee, David Cusick, filed a Non-Opposition to Debtor's Motions to Value Collateral of Exeter Finance LLC. Dckt. 35.

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 Value Collateral and Secured Claim filed by Morgan Reyes and Frederica Leyba Reyes ("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 Exeter Finance LLC ("Creditor") secured by an asset described as 2012 GMC Acadia ("Vehicle") is determined to be a secured claim in the amount of $16,5000.00, 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 $16,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**20.** **21-23907-E-13 JTN-2** | **MORGAN/FREDERICA REYES** **Jasmin Nguyen** | **MOTION TO AVOID LIEN OF TIDEWATER FINANCE COMPANY 12-14-21 [20]**

**Final Ruling:** No appearance at the January 25, 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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 13, 2021. By the court's calculation, 43 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 Tidewater Finance Company ("Creditor") against property of the debtor, Morgan Reyes and Frederica Leyba Reyes ("Debtor") commonly known as 7548 Chappelle Way, Elk Grove, California 95757 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,910.97. Exhibit 4, Dckt. 23. An abstract of judgment was recorded with Sacramento County on June 18, 2020, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $680,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $5,911.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $239,185.00 on Schedule C. Dckt. 1.

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).

**Trustee's Non-Opposition**

On January 11, 2022, Chapter 13 Trustee, David Cusick, filed a Non-Opposition to Debtor's Motion to Avoid Lien of Tidewater Finance Company. Dckt. 40.

**ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute 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 Morgan Reyes and Frederica Leyba Reyes ("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 Tidewater Finance Company, California Superior Court for Sacramento County Case No. 34-2019-00254548, recorded on June 18, 2020, Document No. 202006181229, with the Sacramento County Recorder, against the real property commonly known as 7548 Chappelle Way, Elk Grove, California 95757, 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.

**21.** **21-23907-E-13 JTN-3** | **MORGAN/FREDERICA REYES** **Jasmin Nguyen** | **MOTION TO AVOID LIEN OF TD BANK USA, N.A.** **12-14-21 [25]**

**Final Ruling:** No appearance at the January 25, 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, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 13, 2021. By the court's calculation, 43 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 TD Bank USA, N.A. ("Creditor") against property of the debtor, Morgan Reyes and Frederica Leyba Reyes ("Debtor") commonly known as 7548 Chappelle Way, Elk Grove, California 95757 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,146.68. Exhibit 4, Dckt. 28. An abstract of judgment was recorded with Sacramento County on May 7, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $680,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $1,147.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $239,185.00 on Schedule C. Dckt. 1.

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).

**Trustee's Non-Opposition**

On January 11, 2022, Chapter 13 Trustee, David Cusick, filed a Non-Opposition to Debtor's Motion to Avoid Lien of TD Bank USA, N.A. Dckt. 38.

**ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute 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 Morgan Reyes and Frederica Leyba Reyes ("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 TD Bank USA, N.A., California Superior Court for Sacramento County Case No. 34-2018-00225613-CL-CL-GDS, recorded on May 7, 2019, Document No. 201905070002 with the Sacramento County Recorder, against the real property commonly known as 7548 Chappelle Way, Elk Grove, California 95757, 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.

**22.** **21-23907-E-13 DPC-1** **MORGAN/FREDERICA REYES** **Jasmin Nguyen** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** **12-21-21 [30]**

**Final Ruling:** No appearance at the January 25, 2022 hearing is required.
---

Local Rule 9014-1(f)(2)

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 21, 2021. By the court's calculation, 35 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. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

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

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

A. Debtors cannot afford to make payments or comply with the plan because the Plan relies on the confirmation of the Motion to Value Collateral of Exeter Finance, LLC and the Motions to Void Lien regarding Tidewater Finance Company and TD Bank US.

**DISCUSSION**

Trustee's objections are well-taken. However, since the three matters Debtor relies on are granted, Trustee's objections are overruled.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan 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 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 is overruled, and Morgan Reyes and Frederica Leyba Reyes' ("Debtor") Chapter 13 Plan filed on November 16, 2021, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**23. 21-23915-E-13 DPC-1 — LINDA GERMANY, Mikalah Liviakis — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK, 12-22-21 [15]**

**Final Ruling: No appearance at the January 25, 2022 hearing is required.**
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 22, 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.

**The hearing on the Objection to Confirmation of Plan is continued to 2:00 p.m. on February 14, 2022.**

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

A. The Debtor failed to appear at the First Meeting of Creditors on December 16, 2021. Instead, Debtor's son did appear on behalf of the Debtor and showed proof of Power of Attorney. However, Debtor's son was able to provide the Trustee with Debtor's identification and social security verification at the hearing. The Trustee is unclear if Power of Attorney is proper in this case and if the Court would allow the Power of Attorney document to authorize Mr. Germany, Debtor's son, to file a bankruptcy case on behalf of his mother.

B. The Debtor cannot make payments under the Plan because Schedule G was not completely filled out and is missing information. The Debtor has failed to state what the contract or lease is for in regards to Creditor American Honda Finance. Further, American Honda Finance is not listed in the Plan in Class 2 or in Section 4.

C. The Debtor's first Plan payment of $315.00 will be due on December 25, 2021 and a second payment of $315.00 will be due on the day of the hearing, January 25, 2022. The Debtor will need to pay a total of $630.00, by the hearing date to be current in Plan payments to the Trustee.

**Trustee's Status Report**

On January 18, 2022, Trustee filed a Status Report stating Debtor is current on plan payments and Debtor has amended Schedule G to include lease details for American Honda Finance. Dckt. 24. Trustee states the only remaining issues is for Debtor to appear at the Continued Meeting of Creditors on January 20, 2022 and for the Court to determine if the Power of Attorney is proper.

Trustee requests if Debtor appears at continued Meeting of Creditors and the Power of Attorney is allowed, the Debtor's Plan be confirmed.

At the hearing, Trustee reported Debtor did appear at the Meeting of Creditors and provided driver's license information, but could not provide Social Security Number confirmation. Dckt. 26. Trustee requests that the hearing be further continued until after the February 10, 2022 continued First Meeting of Creditor.

**Power of Attorney / Failure to Appear at 341 Meeting**

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

Federal Rules of Bankruptcy Procedure § 9010 governs representation, appearances, and power of attorneys in bankruptcy proceedings. Although on the face § 9010 is not abundantly clear, Collier on Bankruptcy 9010.02 (16th edition 2021) details who can appear on behalf of a party:

> A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act in the entity's own behalf, (2) appear in a case under the Code through an attorney authorized to practice in the court, (3) appear in a case under the Code through an authorized agent or attorney in fact, who may perform any act not constituting the practice of law, or (4) appear in a case under the Code by proxy.

10 Collier on Bankruptcy P 9010.02 (16th 2021). Under § 9010(c), any agent shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form and acknowledged before

one of the officers enumerated in 28 U.S.C. §§ 459 or 953 or Federal Rules of Bankruptcy Procedure 9012.

Here, Exhibit A provides Debtor's Power of Attorney, appointing John Richard Germany to act in Debtor's place. Dckt. 18. The document is clear, it gives Mr. Germany the power to act in Debtor's place on behalf of her debts, assets, creditors, or any other financial related items.

With respect to bankruptcy, it authorizes John Richard Germany to exercise the powers in "Managing and prosecuting a bankruptcy chapter 7 in the Eastern District of California, in any way necessary to serve my best interests to address my debts, asset, creditors, or any other financial related items." Power of Attorney, ¶ 2; Exhibit A, Dckt. 18.

Mr. Germany filed this bankruptcy case for Linda Germany, exercising his powers under the Power of Attorney. Mr. Germany is the real party in interest who must now not only prosecute the interests of Linda Germany, but fulfill the fiduciary duties to the bankruptcy estate in exercising the rights and powers of a trustee by a Chapter 13 debtor. 11 U.S.C. § 1303, § 1304(b).

As such, Debtor's Power of Attorney appears to conform with the requirements set forth in Federal Rules of Bankruptcy Procedure § 9010, and John Richard Germany is authorized to act as the agent for Debtor in commencing and prosecuting this bankruptcy case in the place of Linda Curnow Germany.

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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to **2:00 p.m. on February 15, 2022.**

**24.** **21-23927-E-13 LBG-4** | **JACK/MARYANNE JODOIN** **Lucas Garcia** | **MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC 1-11-22 [43]**

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. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, and Office of the United States Trustee on January 11, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The court notes the improper Trustee was served. Jan P Johnson was served, rather than David P. Cusick. Pursuant to 11 U.S.C. § 1302(b)(2)(A), the Trustee will be appearing at the hearing to present any concerns he has relating to the value of property that is subject to a lien. Additionally, the Trustee being a registered electronic filer, he has been served electronically by the Clerk of the Court as permitted under Federal Rule of Bankruptcy Procedure 9036. As such, proper notice is required under Federal Rules of Bankruptcy Procedure 9014.

Under the facts and circumstances of this Motion, because the Trustee did receive a Notice of Electronic Filing (Opposition, Dckt. 48), the court allows the Motion to be heard even though the requirements of Federal Rules of Bankruptcy Procedure 9014 were not satisfied.

The Motion to Value Collateral and Secured Claim 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, **----------**.

**The Motion to Value Collateral and Secured Claim of Wheels Financial Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $12,547.00.**

The Motion filed by Jack Michael Jodoin and Maryanne Susan Jodoin ("Debtor") to value the secured claim of Wheels Financial Group, LLC ("Creditor") is accompanied by Debtor's Declaration. Declaration, Dckt. 46. Debtor is the owner of a 2006 Toyota Tacoma ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $7,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

**Trustee's Opposition**

Chapter 13 Trustee, David Cusick, filed an opposition on January 18, 2022. Dckt. 48. Trustee states they were not properly served. Jan P. Johnson was served as Trustee, but that is not the proper Trustee in this case. Trustee received Notice of Electronic Filing.

Under the facts and circumstances of this Motion, because the Trustee did receive a Notice of Electronic Filing (Opposition, Dckt. 48), the court allows the Motion to be heard even though the requirements of Federal Rules of Bankruptcy Procedure 9014 were not satisfied.

Additionally, Trustee states a Proof of Claim by Creditor was not filed in this case. There is no record of a claim on behalf of creditor, but a claim was filed in Debtors' prior case. Case No. 19-23669-A-13, Proof of Claim 2-1. Upon the court's review of the Proof of Claim 2-1, Wheels Financial Group, LLC did in fact file a Proof of Claim for $13,519.80, $9,396.00 of which was secured. However, no such evidence was provided in this case. Therefore, the court uses the evidence provided in Debtor's Declaration to value the collateral.

**DISCUSSION**

The lien on the Vehicle's title secures a purchase-money loan incurred on December, 2017 but last active on April 30, 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $12,547.00. Declaration, Dckt. 46. 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 $7,500.00, 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 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 Value Collateral and Secured Claim filed by Jack Michael Jodoin and Maryanne Susan Jodoin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Wheels Financial Group, LLC ("Creditor") secured by an asset described as 2006 Toyota Tacoma ("Vehicle") is determined to be a

secured claim in the amount of $7,500.00, 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 $7,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

**25. 18-25370-E-13 PGM-8** **JESSE ORTIZ** **Peter Macaluso** **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)**

**Final Ruling:** No appearance at the January 25, 2022 hearing is required.
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2021. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Peter G. Macaluso, the Attorney ("Applicant") for Jesse Soto Ortiz, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period January 28, 2021, through March 23, 2021. Applicant requests fees in the amount of $1,500.00 and costs in the amount of $0.00.

**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 Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

**Reasonable Fees**

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

**Reasonable Billing Judgment**

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

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's for the Estate include meeting with client, reviewing, preparing and filing requisite pleadings and attending hearings on requisite pleadings. 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. 117. Applicant prepared the order confirming the Plan.

**FOOTNOTE**

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FN.1. There is a typographical error in the Order and Second Amended Plan, stating the full amount of attorney's fees to be $6,000.00. Dckts. 117, 92. The correct amount is $4,000.00 pursuant to Local Bankruptcy Rule 2016-1.

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**Lodestar Analysis**

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

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

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

Motion to Dismiss: Applicant spent 1.65 hours in this category. Applicant reviewing Motion to Dismiss, preparing and filing Opposition to Motion to Dismiss, reviewing Trustee's Response to Opposition to Motion to Dismiss, and attending hearings on Motion to Dismiss.

Motion to Modify: Applicant spent 2.85 hours in this category. Applicant preparing and filing Motion to Modify, reviewing Response to Motion to Modify, and attend hearing on Motion to Modify.

General Administration: Applicant spent 0.5 hours in this category. Applicant meet with client to discuss new Cares Act Plan.

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** |
|---|---|---|---|
| Peter G. Macaluso, Attorney | 5.0 | $300.00 | $1,500.00 |
| **Total Fees for Period of Application** | | | $1,500.00 |

**Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $0.00 pursuant to this application.

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The unique facts surrounding the case, including meeting with client, reviewing, preparing and filing requisite pleadings and attending hearings on requisite pleadings, 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 $1,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

**Costs & Expenses**

Costs in the amount of $0.00 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 in a Chapter 13 case.

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

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

| | |
|---|---|
| Fees | $1,500.00 |
| Costs and Expenses | $0.00 |

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by 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 Jesse Soto Ortiz ("Debtor")
>
> Fees in the amount of $1,500.00
> Expenses in the amount of $0.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.