UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice
The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 26.

January 29, 2019 at 3:00 p.m.

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1. **18-26402-E-13** **MET-3** | **DENNIS/ROBIN COBB** **Mary Ellen Terranella** | **MOTION TO VALUE COLLATERAL OF RENT-A-CENTER** **12-29-18 [36]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on December 29, 2018. By the court's calculation, 31 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of Rent-A-Center ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $500.00.

The Motion filed by Dennis Samuel Cobb and Robin Karen Cobb ("Debtor") to value the secured claim of Rent-A-Center ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various furniture described as: a headboard, nightstand, 2 end tables, coffee table, and a sectional ("Property"). Debtor seeks to value the Property at a replacement value of $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).

On January 14, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition to the Motion. Dckt. 46.

The lien on the Property secures a purchase-money loan incurred in March 2017 to secure a debt owed to Creditor with a balance of approximately $1,200.00. 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 $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 Dennis Samuel Cobb and Robin Karen Cobb ("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 Rent-A-Center ("Creditor") secured by an asset described as a headboard, nightstand, 2 end tables, coffee table, and a sectional ("Property") is determined to be a secured claim in the amount of $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 Property is $500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

2. **18-26906-E-13** **OLIVERIO PADILLA** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Richard Jare** **PLAN BY DAVID P. CUSICK**
12-11-18 [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 and Debtor's Attorney on December 11, 2018. By the court's calculation, 49 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 may fail the liquidation test because:

(1) Debtor's listed property 701 Julian Drive, West Sacramento, California, is not his residence, and Debtor appears to have an interest in property not listed on the filed schedules. Debtor asserts that despite being on title, the property "is in trust by parole." Debtor has not provided sufficient information to demonstrate having no interest in the property despite being on title.

(2) Debtor indicated being married with 3 dependants, but lists

Debtor's spouse's income as "unknown." Debtor further clarified having been separated from his spouse for three years, and filed his 2017 tax return as single with no dependents.

B. Debtor's proposed plan is not his best efforts. Debtor is paying the claim of Mr. Cooper as a Class 1. That claim is secured by property commonly known as 904 Cummins Way, West Sacramento, California, which Debtor clarified is his wife's home. Debtor states he pays the mortgage on the home in lieu of support, but has not provided supporting documentation.

Furthermore, Debtor's possible interest in the 904 Cummins Way property creates additional concerns over Debtor's best efforts where Debtor is obligated on the mortgage on behalf of his brother, Javier Padilla.

C. Debtor's first payment of $1,000.00 will come due before the date of this hearing.

D. Debtor lists his name as being "Oliverio Padilla Padilla" where his name appears to be simply "Oliverio Padilla."

DISCUSSION

Trustee's objections are well-taken.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee bases this assertion on Debtor having a possible interest in property (being on title), and Debtor representing having a spouse without providing that spouse's income into the plan. The court agrees with the Trustee's concerns here; despite Debtor's belief that he has no interest in the 904 Cummins Way property, without actual evidence the court cannot come to the same conclusion. Further, there is no explanation why Debtor's spouse's income is not being put into the plan as community property. Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4), and also has not been show to be feasible under 11 U.S.C. § 1325(a)(6).

The Chapter 13 Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

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

plan.

The Plan proposes to pay a 0 percent dividend to unsecured claims, which total $36,000, though Debtor may be making Class 1 payments to Creditor Cooper he is not obligated to, as well as payments to the debt securing the 904 Cummins Way property. Thus, the court may not approve the Plan.

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

The court shall issue 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.

3. **18-26708-E-13 PGM-1** | **SAYTHAMMA SAYAMNATH** **Peter Macaluso** | **MOTION TO VACATE SPOUSAL WAIVER OF EXEMPTIONS 1-15-19 [39]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and creditors on January 15, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Vacate 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 Vacate is denied without prejudice.

Saythamma Sayamnath ("Debtor") filed the present Motion seeking to vacate the Spousal Waiver of Exemptions filed on November 26, 2018. Dckt. 19. Debtor relies on Federal Rule of Civil Procedure 60(b)(4) and (6) for the requested relief.

In the Motion, the sole grounds for relief are as follows:

> Here, the filing of dual exemptions was a "mistake" and the accompanying "Waiver" was a mistake, which the are grounds for relief pursuant to Rule 60(b).

Motion, Dckt. 39 at 7:5-7(emphasis in original). Debtor's counsel asserts the mistake occurred due to Debtor's counsel's routine practice of obtaining and filing Spousal Waivers for married couples. *Id.* at 2:4-6.

No testimony under penalty of perjury or other evidence supporting a "mistake" was provided.

However, Debtor states that Debtor intended to claim the California Code of Civil Procedure § 704 exemptions. As stated in the Trustee's response, " The Trustee concedes the spousal waiver does not appear to make financial sense where the Debtor exempted $2,550.00 of assets under CCP §703.140(b) and $175,600.00 under CCP §703.140 et seq." Response, p. 1:28, 2:1-2; Dckt. 46.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion on January 17, 2019. Dckt. 46. Trustee notes the Debtor presents no evidence or analysis supporting the Motion. However, Trustee argues the spousal waiver here did not make financial sense.

APPLICABLE LAW

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

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

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

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to

prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

Trustee's arguments are well-taken. While Debtor may (or may not) be entitled to the relief here, no evidence or argument was presented. The court is told the waiver was filed by "mistake," and that Debtor's counsel has a routine practice of obtaining and filing waivers. However, Debtor failed (or refused) to attest to this explanation under penalty of perjury in a declaration.

The Local Bankruptcy Rules provide "Every motion or other request for relief **shall** be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." LOCAL BANKR. R. 9014-1(d)(3)(D)(emphasis added). This rule is not permissive. Not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

The court notes Debtor argues in the Motion " federal law authorizes amending the exemptions in this case." Dckt. 39 at 4:23-24. However, the present Motion does not request approval of an amendment, instead requesting the Spousal Waiver be treated as Moot.

What is clear is that the Spousal Waiver, Dckt. 19 is in conflict with the Amended Schedule C. Dckt.28. It also conflicts with Original Schedule C. Dckt. 10 at 9-10.

What appears to be missing this exemption quandary is an amended waiver of exemptions.

Xxxxxxxxxxxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Saythamma Sayamnath ("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 **xxxxxxxxxxxxxxxxxx**

4. **18-26708-E-13 DPC-2** **SAYTHAMMA SAYAMNATH** **Peter Macaluso** **AMENDED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **1-2-19 [36]**

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 on December 18, 2018. By the court's calculation, 42 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 XXXXXXX.

David Cusick ("the Chapter 13 Trustee") objects to Saythamma Sayamnath's ("Debtor") use of the California Code of Civil Procedure § 704 exemptions because Debtor filed the spousal waiver for California Code of Civil Procedure § 703.140. Dckt. 19.

DEBTOR'S RESPONSE

Debtor filed a Response in Opposition to the Trustee's Objection on January 15, 2019. Dckt. 43. Debtor states a Motion to Vacate Spousal Waiver of Exemptions was filed by Debtor and is set to be heard the same day as the hearing on this Motion. *See* Dckt. 39.

DISCUSSION

The court's review of the docket reveals that Debtor filed a Motion To Vacate the filed Spousal Waiver, which is set to be heard the same day as the hearing on the present Motion.

At the hearing, XXXXXXXXXXXX.

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 David Cusick ("the Chapter 13 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 **XXXXXXXXXXXX**.

5. **18-21114-E-13 GW-1** **SANDRA MENDOZA** **Gerald White** **MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTOR'S ATTORNEY 12-31-18 [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.

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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2018. By the court's calculation, 29 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); Fed. R. Bankr. Proc. 9006(d) (providing that written opposition may be filed up to one day prior to the minium twenty-one day notice); and Local Bankr. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

At he hearing, Applicant **xxxxxxxxx**

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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is xxxxxxxxx.

Gerald L. White, the Attorney ("Applicant") for Sandra Marie Mendoza, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 28, 2018, through December 28, 2018. Applicant requests fees in the amount of $5,715.00 and costs in the amount of $310.00. Applicant seeks the funds be paid through the deposited pre-petition retainer of $3,310.00, with the remaining $2,715.00 in total fees and costs to be paid through the plan.

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.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

TASK BILLING ANALYSIS

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

The following summary is provided in the Motion:

SUMMARY OF ATTORNEY FEES AND COSTS

PREPARATION OF PETITION AND SCHEDULES	13.30 Hours x $300.00	$ 3,990.00	
CONFIRMATION OF PLAN	2.95 Hours x $300.00	$ 885.00	
CASE MANAGEMENT	.55 Hours x $300.00	$ 165.00	
REVIEW OF CLAIMS	2.25 Hours x $300.00	$ 675.00	
TOTAL ATTORNEY FEES	19.05 Hours	$ 5,715.00	
COURT FILING FEE		$ 310.00	
TOTAL ATTORNEY FEES AND COSTS			$ 6,025.00
PRE-PETITION RETAINER			($ 3,310.00)
BALANCE DUE			$ 2,715.00

Dckt. 20 at 2.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Gerald L. White	19.05	$300.00	$5,715.00
Total Fees for Period of Application			$5,715.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $310.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Court Filing Fee	$310.00	$310.00
Total Costs Requested in Application		$310.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $5,715.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. Applicant may withdraw funds from the pre-petition retainer that Client deposited, thereby allowing the Applicant to be paid $2,715.00 from the funds paid through the plan.

Costs & Expenses

First Interim Costs in the amount of $310.00 [pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Plan Administrator under the confirmed plan from the available retainer funds and Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Plan Administrator under the confirmed plan to pay 80% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and Plan Administrator under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$5,715.00
Costs and Expenses	$310.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Gerald L. White ("Applicant"), Attorney for Sandra Marie Mendoza, the Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Gerald L. White is allowed the following fees and expenses as a professional of the Estate:

Gerald L. White, Professional employed by the Chapter 13 Debtor

Fees in the amount of $4,572.00
Expenses in the amount of $310.00,

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

IT IS FURTHER ORDERED that the Applicant is authorized to pay or have paid pre-petition the fees and costs allowed by this Order from the available retainer funds and the Chapter 13 Trustee shall pay the balance a manner consistent with the confirmed Chapter 13 Plan in this case.

6. **18-26824-E-13 DPC-1** **LEE WUERZBURGER Seth Hanson** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-11-18 [24]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 11, 2018. By the court's calculation, 49 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 is delinquent $3,400.00 in plan payments, having paid $0.00 into the plan to date.

B. Debtor failed to disclose a prior bankruptcy case, No. 18-23937 filed June 22, 2018 and dismissed September 28, 2018.

C. Debtor admitted at the First Meeting of Creditors that he sold his business for $60,000.00 and a 30 percent interest in the cashflow from the business. While a 100 percent plan is proposed, this asset was not disclosed on Debtor's Schedules A/B.

D. Debtor failed to verify his identity with proof of social security numbers. The Meeting of Creditors was continued to January 17, 2019 to allow Debtor to supply verifying information.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $3,400.00 delinquent in plan payments. Debtor has no paid into the plan to date, and before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Trustee reports that Debtor failed to disclose a prior bankruptcy case (Case No. No. 18-23937 filed June 22, 2018 and dismissed September 28, 2018) on the petition. Debtor was required to report any bankruptcy cases filed within the prior eight years. Debtor did not report any prior bankruptcy cases. Dckt. 1 at p. 3.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor has undisclosed assets, including $60,000.00 from the sale of his business, as well as an ongoing 30 percent interest in profits. Debtor having significant additional income and assets to be put towards the plan, Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4).

Debtor failed to verify his identity with proof of social security numbers. Further, Debtor failed to appear at the Continued Meeting of Creditors. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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.

7. **19-20125-E-13 PGM-1** **ROBERT/DONNA DECELLE** **Peter Macaluso** **MOTION TO EXTEND AUTOMATIC STAY** **1-11-19 [9]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 11, 2019. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is denied.

Robert Arthur DeCelle and Donna Marie DeCelle ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 16-27454) was dismissed on January 16, 2019, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 16-27454, Dckt. 124, January 16, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed due to expenses, including an AC unit needing replacement, vehicles needing repairs, and Debtor's daughter having traffic accidents. Dec., Dckt. 11 at ¶ 2. Debtor explains the Debtor Robert and Debtor Donna have both established better jobs. *Id.* at ¶ 3.

CREDITOR'S OPPOSITION

Creditor Ford Motor Credit Company, LLC ("Creditor") filed an Opposition to the Motion on January 23, 2019. Dckt. 16. Creditor argues Debtor failed to rebut the presumption of bad faith in this case because (1) the Chapter 13 Trustee was required to file 3 motions for dismissal in the prior case, (2) Debtor filed a skeletal petition in this case, (3) Debtor's current case was filed the same day the prior case was dismissed making it impossible circumstances changed, (4) Creditor had a pending motion for relief from automatic stay when Debtor's prior case was dismissed, and (5) Debtor's do not provide any detail about expenses causing the prior case to be dismissed, or the increased income from new employment.

Creditor has filed a "Supplemental Opposition" in which it explains a $100 difference in net monthly income, Debtor's challenges in filing income and expense schedules, and increases in Debtor's unsecured debt.

DISCUSSION

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

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

Debtor claims under penalty of perjury the prior case was dismissed due to expenses, including an AC unit needing replacement, vehicles needing repairs, and Debtor's daughter having traffic accidents. However, the court is left to guess what these expenses actually were, and whether they were unexpected and substantial, which might indicate that Debtor's prior good faith efforts were overcome due to factors out of their control.

Debtor also indicates circumstances have changed as both Debtor Robert and Debtor Marie have secured improved employment since their prior case. As Creditor points out, the present case was filed before the Order dismissing the prior case was even issued. *See* Order, Bankr. E.D. Cal. No. 16-27454, Dckt. 124, January 16, 2019. Thus, such increased income was available in the prior case.

In the prior case, the First Modified Plan required monthly plan payments of $1,345.00. 16-27454; Modified Plan, Dckt. 77. The case was dismissed when the Debtor was at least three months in default on plan payments. *Id.*; Points and Authorities, Dckt. 12.

In the current case, Debtor's Plan now requires a monthly plan payment of $2,160.00. Dckt. 20. This is 60% higher than in the prior case - in which Debtor could not make the payments.

It appears that Debtor, in the exuberance of filing of the current case (before the ink was put on the order dismissing the prior case (dismissed on January 16, 2019), Debtor (both Robert and Donna Decelle) was willing to make the falling statements under penalty of perjury:

> 2. We are refiling bankruptcy due to financial hardship. We previously fell behind on our mortgage and bankruptcy payments due to our AC unit going out on our house. Both vehicles needing repairs. Our daughter has been in a few traffic accidents as well.

Declaration ¶ 2, Dckt. 11. No specifics are provided. Was the repair merely recharging the coolant or buying a $7,000 new HVAC unit. Then, a vague reference to "both vehicles" needing repair. What vehicles? What repair? Then, they have a daughter in "a few" traffic accidents. Two accidents or twenty? A fender bender or crashing into several school buses of kindergartners on a field trip.

> 3. Since our previous case was dismissed, our circumstances have changed. Donna has recently transferred to a closer location for work. Donna was also promoted with a higher position and raise. Robert has also established a better job as well. We feel we will succeed this time.

Id. ¶ 3. For this testimony, the Declaration was signed on January 9, 2019, a week before the prior case was dismissed. Clearly these events could not have occurred since case 16-27454 was dismissed a week in the future on January 16, 2019.

Debtor is careful not to advise the court when this substantial increase in income occurred.

Quite possibly it was for months, or years in the prior case, in which Debtor was not providing the full projected disposable income into the Plan in the prior case.

Comparing the current income of Debtor in this case to the prior case:

	Schedule I, Current Case 19-20125, Dckt. 19 (Identified as "Supplemental Schedule I as of 11/15/2017)	Supplemental Schedule I, Prior Case 16-27454, Dckt. 79 (11/15/2017)
Debtor Robert Gross Income	$4,062.00	$0.00
Debtor Robert Disability	($648.00)	$2,452.00
Debtor Robert Anticipates Return Work 11/26	N/A	$748.00
Debtor Robert Tax Returned (FTB/IRS)	N/A	$175.00
Debtor Donna Gross Income	$4,683.00	$4,683.00
Pay Roll Deductions	($1,639.00)	($1,639.00)
Take Home Income	$6,458.00	$6,419.00

For income, comparing the two Schedules I, there is a negligible increase in income stated in the current case.

Moving to Schedule J, which is also identified as a "Supplemental Schedule" as of 11/15/2017 (Dckt. 19 at 33-34), for the family of two adults and three teenage children, Debtor states having monthly expenses of ($4,437)). For the prior bankruptcy case, Debtor stated having higher expenses o f($5,070) per month. 16-27454; Dckt. 79 at 6-7.

> 5. We have hired attorney, Peter Macaluso, and we are confident of his ability to represent us and propose a solid Chapter 13 Plan that will allow us to pay my creditors to the best of our ability.

Id. ¶ 5. Mr. Macaluso was Debtor's attorney in the prior bankruptcy case, so that is not a change for this case.

The information provided in the Declaration about income is inconsistent with the information provided on Schedule I in this case under penalty of perjury. There has been no increase in income.

The Opposition of Ford Motor Credit Company, LLC chronicles the multiple defaults of Debtor in the prior case. Opposition, p. 2; Dckt. 16.

What has been shown here is that Debtor's were unable to propose a feasible plan, defaulting in the prior plan, filing a modified plan, and then defaulting again. Debtor has not provided the court with sufficient evidence to rebut the presumption of bad faith.

Unfortunately, Debtor's testimony is inconsistent and appears to be perfunctory conclusions at best.

Debtor has not rebutted the presumption of bad faith arising under 11 U.S.C. § 362(c)(3). The motion is denied and the court does not extend the automatic stay, which is **terminated as to the Debtor** by operation of law pursuant to 11 U.S.C. § 362(c)(3)(B).FN.1.

FN.1. As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to the Debtor**, and nothing more. In 11 U.S.C. § 3622(c)(4) Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate expressly provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to the Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only the Debtor.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Robert Arthur DeCelle and Donna Marie DeCelle ("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 extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

8.	**18-23227-E-13 PSB-1**	**KIMBERLI HECK AND DAVID HECK, JR. Paul Bains**	**CONTINUED MOTION TO MODIFY PLAN 11-8-18 [26]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2018. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

Kimberli Beth Heck and David Keith Heck, Jr. ("Debtor") seek confirmation of the Modified Plan because debtor Kimberli Heck is teaching less classes and has decreased income. Dckt. 28. The Modified Plan provides for $17,400 to have been paid in months 1-5, and for payments of $5,870 for months 6-60. Dckt. 30. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 3, 2018. Dckt. 34. Trustee opposes the Motion on the basis that Debtor is delinquent $3,870 under the proposed plan terms. Debtor has paid $19,400 into the plan where $23,270 has become due.

Trustee further opposes the Motion on the basis that it is unclear whether Debtor intends not to assume the leases of Ford Motor Credit Company, LLC and River Edge Student Living. Those executory agreements were previously listed in section 4.02. Plan, Dckt. 5. Despite the executory

agreements being absent (and therefore rejected by the terms of the proposed Modified Plan), Debtor's Supplemental Schedule J still adds an aggregate expense towards these leases in the amount of $1,300.00. Exhibit A, Dckt. 29.

DECEMBER 18, 2018 HEARING

At the December 18, 2018 hearing the court continued the hearing on the Motion to allow Debtor to address Trustee's opposing grounds. Dckt. 37.

DEBTOR'S STATUS REPORT

Debtor filed a Status Report on December 19, 2018. Dckt. 39. Debtor clarifies in the Report that Debtor intends to assume the leases of Ford Motor Credit Company, LLC and River Edge Student Living. *Id*. at ¶ 7.

Along with Debtor's Status Report, Debtor filed an "updated version" of Debtor's First Modified Plan set for confirmation. Dckt. 40.

DISCUSSION

Debtor has now sought to alter the plan to provide for the assumption of the leases of Ford Motor Credit Company, LLC and River Edge Student Living. Debtor has done this through filing as an exhibit an altered First Modified Plan which the court construes as illustrative and not a newly filed plan–the court would provide changes sought through the order confirming if the plan is suitable.

However, Debtor has not addressed the delinquency under the proposed Modified Plan. As of the prior hearing, Debtor was $3,870 delinquent. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **XXXXXXX**.

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 Kimberli Beth Heck and David Keith Heck, Jr. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

9. **18-26945-E-13** **ARACELY RIVAS** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Peter Macaluso** **PLAN BY DAVID P. CUSICK**
12-12-18 [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 and Debtor's Attorney on December 12, 2018. 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 the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on March 5, 2019 to be heard in conjunction with the Motion To Value the Secured Claim of TitleMax**.**

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

A. Debtor's plan relies on a Motion To Value Collateral of Wells Fargo Bank, N.A.

B. The Plan proposes to pay the secured claim of Title Max in full where the collateral is valued at less than the claim.

DEBTOR'S REPLY

Debtor filed a Reply on January 21, 2019. Dckt. 37. Debtor argues the Motion To Value Collateral of Wells Fargo Bank, N.A. was heard and granted on January 15, 2019. Dckt. 30. Debtor further notes a Motion To Value Collateral of TitleMax was filed January 21, 2019 (Dckt. 32), and requests the court continue the hearing on Trustee's Objection to March 5, 2019 to be heard alongside the Motion To Value.

DISCUSSION

In light of Debtor's plan relying on a Motion To Value Collateral of TitleMax, the court shall continue the hearing on the Objection to March 5, 2019 to be heard alongside the Motion To Value.

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 3:00 p.m. on March 5, 2019 to be heard alongside the Motion To Value Collateral of TitleMax**.**

10. **18-25851-E-13** **ROBERT HUNTER** **MOTION TO CONFIRM PLAN**
PGM-1 **Peter Macaluso** **12-16-18 [42]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2018. By the court's calculation, 44 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.

Robert Paul Hunter ("Debtor") seeks confirmation of the Plan which would constitute the first Amended Plan in this case. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 9, 2019. Dckt. 60. Trustee opposes Confirmation on the following grounds:

1. Debtor is delinquent $15.00 in plan payments.

2. Debtor lists Bayview Loan Servicing as a Class 1 with arrearages stated as "see add'l provisions," but does not address the creditor in the additional provisions.

3. Debtor proposes paying full value on Debtor's two claims secured by vehicles which are worth less than owed, which constitutes unfair discrimination.

4. Debtor's Schedule C claims exemptions using CCP section 704 and CCP section 703.

5. Debtor has not provided a statement of property or business income to support Amended Schedule I. Debtor admitted at the Meeting of Creditors he works for Uber. Furthermore, Debtor's spouse is shown as having no income for the prior year (Dckt. 49 at p. 14), but is estimated to have a net income of $850.04 on Amended Schedule I.

6. Debtor's Amended Schedule I indicates he has been employed with NCS Pearson, Inc. as a "scorer" for 9 years. However, Debtor has not reported wages from that employment for the prior two years.

7. Debtor has not filed a Statement of Rights and Responsibilities of Chapter 13 Debtor and Their Attorney's.

DEBTOR'S REPLY

Debtor filed a Reply on January 22, 2019. Dckt. 63. Debtor states only that he will file, set, and serve a new amended plan.

DISCUSSION

The court interprets Debtor's Reply to be a concurrence with Trustee's Opposition. 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 Robert Paul Hunter ("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.

11. **18-27157-E-13 DPC-1** **LATOYA KAMILAH SMITH** **George Burke** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-8-19 [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 and Debtor's Attorney on January 8, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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 is delinquent $2,500.00 in plan payments, Debtor having paid $0.00 into the plan to date.

B. Debtor's plan proposed to pay student loan claims directly, but does not identify any creditor. Schedule J shows a Student loan expense of $120.00; Trustee does not oppose the language in the order confirming plan to clarify the U.S. Department of Education (Proof of Claim, No. 2) and Navient Solutions, LLC (Proof of Claim, Nos. 6-8) are being provided for.

Trustee's objections are well-taken.

The Chapter 13 Trustee asserts that Debtor is $2,500.00 delinquent in plan payments, Debtor having paid $0.00 into the plan to date. Before the hearing, another plan payment of $2,500.00 will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Furthermore, Debtor in Section 7.02 of the proposed plan does not identify what student loan creditor's are being paid directly. Without knowing which creditors are being paid, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

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.

12. **18-27160-E-13 DPC-1** **CLAUDIA/EDWARD JENKINS** **Peter Macaluso** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-8-19 [23]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 Debtors and Debtors' Attorney on January 8, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of Claudia Jenkins and Edward Riley Jenkins's ("Debtor") proposed Plan on the basis that:

A. Debtor's plan relies on the valuation of collateral of the Internal Revenue Service, but no motion to value collateral has been filed.

B. Debtor is current under the plan, but another payment will come due before the time of the hearing.

C. Debtor (both Claudia Jenkins and Edward Riley Jenkins) failed to verify identity through proof of social security numbers at the Meeting of Creditors. The Meeting was continued to January 24, 2019 for further

verification.

DISCUSSION

Trustee's objections are well-taken.

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

The Trustee's Report at the 341 Continued Meeting of Creditors indicates Debtor appeared. At the hearing, Trustee stated Debtor **XXXXXXX** provided documents to verify identification.

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. 16-24661-E-13 DAO-5 — RONNETTE ROGERS RUNNINGS, Dale Orthner — MOTION TO MODIFY PLAN, 12-15-18 [75]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 15, 2018. By the court's calculation, 45 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~~.

Ronnette Lorea Rogers Runnings ("Debtor") seek confirmation of the Modified Plan to (dependant on approval of refinancing) modify the plan to pay the remaining claims and additional attorney fees of $1,575.50 at the rate of $280.00 per month, and to also modify the plan from 60 months to 36 months. Dckt. 77; *See Also* Modified Plan, Dckt. 78. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 14, 2019. Dckt. 89. Trustee opposes confirmation on the basis that:

1. Debtor is proposing a 3 year term, where Debtor's Form 122C-1 indicates a 5 year term.

2. Debtor's Proof of Service does not indicate all interested parties were

served.

3. The proposed Modified Plan does not authorize payments of $37,229.14 already made by the Trustee to PNC Bank, N.A.

4. The Modified Plan relies on Debtor's Motion To Approve Refinance.

DISCUSSION

A review of the docket shows the court issued an Order granting Debtor's Motion To Approve Refinance on January 17, 2019. Dckt. 93.

The Motion states that Debtor will shorten her plan term to thirty-six months from the sixty months in the original plan for this over median income debtor. Debtor's gross income is $4,600 a month as show on Supplemental Schedule I. Dckt. 74 at 4. This is an increase from the $4,000 a month stated on Original Schedule I. Dckt. 1 at 30.

What the current Motion states that has been lost in income is $2,000 a month that Debtor was receiving from her "friend," that friend having become disabled and will now only contribute $100.00.

On Original and Supplemental Schedules J Debtor lists no dependants. Dckt. 1 at 30, Dckt. 74 at 6.

On the Statement of Current Monthly Income (Form 122C-1) Debtor identifies the median family income for a household of 1 to be $50,579. Dckt. 1 at 44. If when the case was filed Debtor had gross income of $4,000, then her annual income was $48,000.00. But Debtor included $2,000 a month in contributions from others, such as unmarried partner or other members of the household. Thus, showing $6,000 a month in gross income, Debtor was over the $50,579 median income for a household of one.

Debtor does not explain why her "friend," Randy Ellis was giving her $2,000 a month. She does not identify if he is a roommate and this is for his share of the rent and living expenses. If not, then it appears that she has been receiving a gift of $24,000 a year, a high enough number to trigger gift tax obligations.

Debtor does not offer an explanation as to why she now can, and the court should allow her to, shorten the plan term to thirty-six months. If so, Debtor would complete the modified plan in the next five months.

Debtor also elected to not serve the Plan and Motion on all parties in interest. Cert. of Serv., Dckt. 80.

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 Ronnette Lorea Rogers Runnings ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **Denied**.

14.	**16-24661-E-13 DAO-6**	**RONNETTE ROGERS RUNNINGS Dale Orthner**	**MOTION FOR COMPENSATION FOR DALE ORTHNER, DEBTOR'S ATTORNEY 1-11-19 [85]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on January 11, 2018. By the court's calculation, 18 days' notice was provided. The court issued an Order setting the matter for hearing on December 31, 2018. Dckt. 84.

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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 for Allowance of Professional Fees is ~~Denied~~.

Dale Orthner, the Attorney ("Applicant") for Ronnette Lorea Rogers Runnings, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for an unspecified period. Applicant requests fees in the amount of $1,593.00.

ORDER SETTING HEARING

Applicant filed its Original Application and Declaration RE: Additional Fees and Expenses on December 15, 2018. Dckt. 79.

Applicant not having set the Motion for hearing or noticed any party in interest (the Motion requesting more than $1,000.00 in fees (*See* FED. R. BANKR. P. 2002(a)(6))), the court treated the Motion as *ex parte* and set the matter for hearing January 29, 2019.

Applicant then re-filed the Motion (*See* Dckt. 85), which the court interprets to be an Amended Motion. [FN.1.]

FN.1. In its Order, the court required Applicant provide notice and file evidence supporting the already filed motion "which shall not be refiled." Order, Dckt. 84. The court's Order was merely for the benefit of counsel to avoid incurring additional fees.

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.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

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 analyzing the claims filed in Debtor's case, drafting motions for approval of refinance and plan modification, determining ongoing viability of the Confirmed Plan, and communicating with various parties regarding the aforementioned. 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. 47. 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 asserts that 18.9 hours have been expended working on this case, with Applicant's standard rate being $295.00 hourly. Therefore, Applicant argues fees of $5,575.00 are appropriate ($4,000.00 approved through the Order confirming plan, and the remaining $1,593.00 sought in the present Motion).

The fact that Applicant has worked 18.9 hours on the case and has a "no-look fee" of $4,000 allowed is not a relevant calculation of what additional fees can be properly allowed for substantial and unanticipated work.

The court ordered Applicant to provide supplemental pleadings and evidence establishing the substantial and unanticipated work.

In his supporting Declaration, Applicant states the unanticipated and substantial services performed include analysis of the viability of Debtor's confirmed plan after the heart attack of third party giving contributions to Debtor (Dec., Dckt. 87 at ¶¶ 4-7); drafting, filing, and advocating at hearing a Motion to Approve Refinancing (*Id.* at ¶ 8); and drafting and filing a Modified Plan. *Id.*

No time records or documentation of the time spent for the substantial and unanticipated work are provided by Applicant. The above Declaration merely provides general testimony that there was work done.

When Applicant filed his Ex Parte Application, without any supporting evidence documenting the substantial and unanticipated work, given the modest dollar amount sought, the court issued an order setting a hearing and requiring supplemental pleadings, rather than Applicant having to start from scratch. That order clearly stated what was required and how an attorney seeks allowance of additional fees and costs above the no-look fee for substantial and unanticipated work. This direction to Applicant includes:

As provided in Local Bankruptcy Rule 2016(c)(3), when allowed the above fees in a Chapter 13 case, counsel may request additional fees and costs for substantial and unanticipated legal services provided the debtor. Such additional amounts are determined above and beyond the no-look fees.

> The additional fees and costs must be requested by motion. Fed. R. Bankr. P. 9013, L.B.R. 2016(c)(3). **Such motion for fees must be properly supported by evidence** and provide the court with the necessary information for the allowance of attorney's fees for such "necessary" and "unanticipated" legal services. Such motion, when in excess of $1,000 must be set for hearing unless such notice is waived by the court. Fed. R. Bankr. P. 2002(a)(6); L.B.R. 9014-1.
>
> The present motion has not been filed jointly with the Chapter 13 Trustee, has not been filed with a statement of non-opposition of the Chapter 13 Trustee, has not been served on parties in interest, has not requested that he court

> waive the required notice and hearing, **is not supported by the declaration of counsel, and does not include any billing records or evidence of the legal services which are above and beyond those included in the no-look fees previously authorized by the court.**
>
> . . .
>
> Rather than requiring counsel to start over, the court: set the motion for hearing at 3 :00 p.m. on January 29, 2019, to be conducted in conjunction with the pending motion to confirm a modified Chapter 13 Plan in this case. Additionally, the **court orders that counsel shall file** and serve on the Chapter 13 Trustee and U.S. Trustee the motion for additional compensation and **supporting evidence (counsel declaration and billing records)** on or before January 11, 2019.

Order, Dckt. 84 (Emphasis added).

No billing records have been provided by Applicant. Applicant's Declaration (Dckt. 87) provides testimony that:

a. "4. Additionally, the work required by the unanticipated heart attack of, and drop in plan payment support by, Randy Ellis, has been extensive." Declaration ¶ 4, Dckt. 87.

b. "5. Much discussion between myself and Debtor has been required to assess Debtor's ability to continue in the current plan, which pays off her 2nd mortgage entirely through the plan, versus the option to refinance the remaining balance over 30 years, but at a higher interest rate." *Id.* ¶ 5.

c. "7. The number of emails between myself and Debtor alone total over 60 since May 25, 2018, many of which were quite lengthy, in addition to phone conversations regarding the above. The factors were quite numerous in the required analysis in Debtor's choice to try to somehow continue in the current plan and be free of her 2nd mortgage, as opposed to paying a substantial net dollar cost of refinancing but at a much lower monthly cash outflow." *Id.* ¶ 7.

d. "8. The crafting of the motion to refinance, including separate declarations of Debtor and Randy Ellis, along with the new plan and associated documents, in addition to the previous work, far exceed the total number of hours for which compensation is currently sought, as stated in the filed Application and Declaration Re: Additional Fees and Expenses in Chapter 13 Cases, Document # 79, signed by both myself and Debtor." *Id.* ¶ 8.

No billing records are reference, just statements that Applicant has done more work and concludes that he should be paid more money.

~~**FEES AND COSTS & EXPENSES ALLOWED**~~

~~**Fees**~~

The unique facts surrounding the case, including significant post-confirmation work, 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 $1,593.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $1,593.00

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 Dale A. Orthner ("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 Dale A. Orthner is allowed the following fees and expenses as a professional of the Estate:

Dale A. Orthner, Professional Employed by Ronnette Lorea Rogers Runnings ("Debtor")

Fees in the amount of $1,593.00

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.

15.	**16-24661-E-13 DAO-6**	**RONNETTE ROGERS RUNNINGS Dale Orthner**	**MOTION FOR COMPENSATION FOR DALE ORTHNER, DEBTOR'S ATTORNEY 12-17-18 [79]**

The Motion for Allowance of Professional Fees is dismissed without prejudice and the matter is removed from the calendar .

Dale Orthner, counsel for Ronnette Runnings ("Debtor") filed this Application and Declaration RE: Additional Fees and Expenses on December 15, 2018. Dckt. 79.

Applicant not having set the Motion for hearing or noticed any party in interest (the Motion requesting more than $1,000.00 in fees (*See* FED. R. BANKR. P. 2002(a)(6))), the court treated the Motion as *ex parte* and set the matter for hearing January 29, 2019.

Applicant then re-filed the Motion (*See* Dckt. 85), which the court interprets to be an Amended Motion which moots the present Motion.

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 for Allowance of Professional Fees filed by Dale Orthner ("Applicant"), Attorney for Chapter 13 Debtor having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Allowance of Professional Fees is dismissed without prejudice.

16. **18-27069-E-13** **JAN SCHUMANN** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Pro Se** **PLAN BY DAVID P. CUSICK**
1-8-19 [22]

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

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 January 8, 2019 [FN.1]. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

FN.1. The Proof of Service states "JANUARY 8, 2018." Dckt. 25(Emphasis in original). The court finds this to be a scrivener's error, the actual date of service being January 8, 2019.

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. The proposed plan payment of $30.62 is insufficient to fund the plan disbursements which are proposed to be $1,151.37.

B. Debtor's proposed plan treats the claim of Wells Fargo Bank, N.A as a Class 1, though Trustee is not certain this creditor is entitled to interest

under 11 U.S.C. § 1322(e).

C. Debtor has not provided Trustee with a copy of her tax returns or transcript, or a statement that no such documentation exists.

D. Debtor has not provided Trustee with employer pay advices for the 60 days prior to filing.

DISCUSSION

Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes plan payments which are less than the amounts proposed to be disbursed to creditors. Furthermore, Debtor proposes treating the claim of Wells Fargo Bank, N.A as a Class 1, where it is not shown this creditor is entitled to interest under 11 U.S.C. § 1322(e). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

The court shall issue 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.

17. **18-26573-E-13 DPC-1** **FRANCIS NELSON** **Chad Johnson** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **12-12-18 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 12, 2018. 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.

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

A. Debtor is delinquent $2,620.00 in plan payments, having paid $0.00 into the plan to date.

B. Debtor has not provided Trustee with a copy of her tax returns or transcript, or a statement that no such documentation exists.

C. Debtor's plan does not provide for the claims of the Internal Revenue Service totaling $22,542.18 (Proof of Claim, No. 6) and Franchise Tax Board totaling $2,363.48. Proof of Claim, No. 9. Without providing for these claims, the proposed plan would complete in 94 months.

Trustee's objections are well-taken

The Chapter 13 Trustee asserts that Debtor is $2,620.00 delinquent in plan payments, Debtor having paid $0.00 into the plan to date. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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 94 months due to Debtor's failure to provide for the claims of the Internal Revenue Service totaling $22,542.18 (Proof of Claim, No. 6) and Franchise Tax Board totaling $2,363.48. Proof of Claim, No. 9. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

The court shall issue 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.

18. **18-26477-E-13 DPC-2** **JEANNE RENNERT** **Jeffrey Meisner** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
11-20-18 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 20, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to appear at the Meeting of Creditors on November 15, 2018.

Trustee also filed a Status Report on December 4, 2018. Dckt. 51. The Report states Debtor is $68.34 delinquent under the proposed plan, having made a partial contribution to the first payment due. The Report states further that Debtor admitted at the Meeting of Creditors she cannot afford the plan payments in her current living situation. Declaration, Dckt. 52.

DECEMBER 18, 2018 HEARING

At the December 18, 2018, hearing the court continued the hearing on the Motion to January 29, 2019. Dckt. 54.

DISCUSSION

Trustee's objections are well-taken.

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. However, the Continued Meeting of Creditors was held on November 30, 2018, and Trustee's Report indicates Debtor appeared. Therefore, Trustee's grounds for objection here have been resolved.

Still remaining is Debtor's delinquency and Debtor's admission that she cannot make plan payments. Both of these factors suggest the plan is not feasible and are grounds to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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.

19. **19-20187-E-13** **SARAH WELLS** **MOTION TO EXTEND AUTOMATIC STAY**
MS-1 **Mark Shmorgan** **1-15-19 [10]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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).

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 15, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required [FN.1.] .

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2).

The Notice of Motion states "pursuant to Local Bankruptcy Rule 9014-1(f)(2) opposition, if any, shall be presented at the hearing said motion. No written opposition is required since motion was filed less than 28 calendar days." Therefore, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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

The Motion to Extend the Automatic Stay is granted.

Sarah Wells ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 15-27944) was dismissed on January 16,

2019, after Debtor fell delinquent in plan payments. *See* Order, Bankr. E.D. Cal. No. 15-27944, Dckt. 84, January 16, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because she was out work and placed on temporary disability, significantly reducing Debtor's monthly income. Dckts. 11, 12. As of January 1, 2019, debtor has recovered from her disability and has returned to full time work. *Id.*

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

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

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has recovered from her disability and has returned to full time work.

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

The court shall issue 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 Extend the Automatic Stay filed by Sarah Wells ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

20. **19-20187-E-13 MS-2** | **SARAH WELLS** **Mark Shmorgan** | **MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.** **1-15-19 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 15, 2019 By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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 Americredit Financial Services, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $7,500.00.

The Motion filed by Sarah Wells ("Debtor") to value the secured claim of Americredit Financial Services, Inc. ("Creditor"), is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Nissan Murano SL Sport Utility 4D ("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).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on January 24, 2019. Dckt. 24. Creditor asserts the value of the Vehicle is $9,550.00 as stated in its Proof of Claim, No. 1. Creditor argues that Debtor fails to provide

any evidence supporting her opinion or showing the condition of the Vehicle.

DISCUSSION

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). As part of its burden of producing substantial evidence to rebut the presumptive validity, the objecting party bears the burden of producing substantial evidence as to the value of the collateral securing any portion of the claim. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). 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. *Id.* 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.

Here, Debtor's Declaration states "I believe and assert that the reasonable, fair market value of the ASSET is $7,500.00." Dec., Dckt. 16, at ¶ 5(emphasis in original). Debtor's Declaration presents a mere conclusion, not supported by financial information or factual arguments. *In re Austin*, 583 B.R. at p. 483. Therefore, Debtor did not present substantial evidence to rebut Credit's Proof of Claim.

While Proof of Claim No. 1 is prima facie evidence of a claim, the Creditor has the actual burden of proof on the claim if that prima facie evidence is rebutted. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74

(3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Proof of Claim No. 1 in which it is asserted that the claim is a secured claim in the amount of $9,950.00 is based upon that amount being stated in the Proof of Claim. The Proof of Claim is singed by Mandy Youngblood, an Assistant Vice-President of AmeriCredit Financial Services, Inc. As opposed to the books and records of AmericCredit Financial Services, Inc. in which the amount of the debt and the various transactions are maintained, there is nothing to indicate a high probative value as to the statement of the value of this six model year old 2013 Nissan Murano.

Debtor, as the owner of the vehicle, states her opinion as to value, concluding that it is $7,500. Declaration, Dckt. 16. As the owner, the 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). While Debtor could have made more of an effort in her testimony to describe the condition of the vehicle, any deferred maintenance, damage, required clean-up, such lack of attention to her testimony does not render it irrelevant or not probative. It is akin to Creditor not bothering to include a KBB or NADA authenticated valuation with the Proof of Claim, which would enhance the probative value to be overcome.

The lien on the Vehicle's title secures a purchase-money loan securing a debt owed to Creditor with a balance of approximately $21,413.42. 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 Sarah Wells ("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 Americredit Financial Services, Inc. ("Creditor") secured by an asset described as 2013 Nissan Murano SL Sport Utility 4D ("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.

21. **18-21488-E-13 CLH-2** | **DANIEL/ALLISON BRENNAN** **Charles Hastings** | **CONTINUED MOTION TO CONFIRM PLAN** **11-2-18 [92]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 2, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtor") seek confirmation of the Amended Plan, which would be the first confirmed plan in this case. The Amended Plan provides for payments of $0.00 for 1 month; $5,000 for 13 months; $5,450 for 24 months; $6,000 for 12 months; $6,550 for 10 months; and a lump sum payment of $359,000 in month 15. Dckt. 93. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on December 3, 2018. Dckt. 107. Trustee opposes the Motion on the following grounds:

1. The secured claim of JP Morgan Chase Bank, N.A. should be treated as a Class 1and not a Class 4. The claim totals $725,003.24 and includes $25,019.46 in arrears and a monthly payment of $5,985.57. The Trustee

further asserts the plan provides for sale of Debtor's residence (and lump sum payment) by no later than the 15th month (June 2019) or December 25, 2018 (the 21st month); Trustee requests clarification as to the lump sum deadlines.

2. Debtor proposes to pay the IRS as though it has a secured claim of $298,423.20. The court granted a Motion To Value Collateral securing IRS' claim at a value of only $54,996.76. Dckt. 79. Debtor proposes to pay the FTB as though it has a secured claim of $5,465.35. The court granted a Motion To Value Collateral securing FTB's claim at a value of only $0.00.

3. Trustee is concerned Debtor's Motion indicates an intent to end the plan after the lump sum in month 15, where Debtor may be required to complete the full 60 month term if this is not a 100 percent plan.

4. Debtor's Motion conflicts with the plan terms. The Motion indicates a 100 percent dividend to unsecured claims, whereas the plan proposes a 0 percent dividend.

CREDITOR'S OPPOSITION

JPMorgan Chase Bank, National Association ("Creditor") filed an Opposition to the Motion on December 4, 2018. Dckt. 115. Creditor opposes confirmation on the following grounds:

1. Debtor's plan was not proposed in good faith. Creditor has previously objected to similarly proposed treatment in the Debtors First Amended Plan. The Debtors have proposed this Plan that seeks to possibly extend the time period that the Debtors have to sell the Property to Month 21 with no explanation as to why such a long period is needed if the original intent was to sell by Month 15. The Debtors have filed no motions to employ a real estate broker to list the Property and there is no evidence that the Debtors have made any good faith efforts to market and sell the Property since the filing of their petition on March 14, 2018. The Plan also seeks to allow the Debtors to have an unspecified period to obtain confirmation of yet another plan if they fail to sell the Property by as late as Month 21. Lastly, Creditor's claim is again incorrectly classified as a Class 4 secured claim.

2. Debtor's proposed Amended Plan does not provide for the full value of Creditor's claim. Creditor's claim for pre-petition arrears is in the total amount of $25,019.46. However, the Debtors' Chapter 13 Plan fails to provide for payment of the pre-petition arrears on Creditor's secured claim through arrearage dividends and instead proposes three difference scenarios to allegedly provide for the Creditor's pre-petition arrears that

may never cure the arrears within the 60 month term of the Plan.

3. Debtor's plan does not promptly cure Creditor's pre-petition arrears. Debtors' Plan provides for the cure arrears only if the Property can be sold by December 31, 2019 or that the Debtors can feasibly propose a modified plan that provides for ongoing, post-petition arrearage dividends after December 31, 2019 if the Property does not sell.

DECEMBER 18, 2018 HEARING

At the December 18, 2018 hearing the court continued the hearing on the Motion to January 29, 2019 to allow the Debtor to obtain signatures to modify terms of the plan. Dckt. 124.

DISCUSSION

The opposing grounds asserted by Trustee and Creditor are well-taken.

Trustee raises several grounds suggesting the plan is not feasible, including Debtor not correctly providing for Creditor as a Class 1, Debtor providing the secured claims of the IRS and FTB more than they are entitled, Debtor evincing an intent to end the plan early, and conflicting terms in the Motion and plan language. These are grounds to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $25,019.46 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Both Trustee and Creditor argue th plan was not proposed in good faith because Debtor has not addressed objections brought up as to the prior plan. That is additional grounds to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

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 Daniel Lawrence Brennan and Allison Lyn Brennan ("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.

22.	**18-27289-E-13** **DPC-2**	**SALVADOR CARABEO** **Thomas Gillis**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-8-19 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 8, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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. While Debtor's Schedule I indicates gross monthly wages of $5,729.00, Debtor admitted at the Meeting of Creditors January 3, 2019 that he is a seasonal worker and has been unemployed since September 10, 2018, only receiving unemployment compensation of $770.00 biweekly.

B. Trustee has objected to the exemption claimed as to Debtor's real

property commonly known as 430 Padre Pio Drive, Williams, California. *See* Dckt. 18.

Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the Meeting of Creditors January 3, 2019 that he is a seasonal worker and has been unemployed since September 10, 2018, only receiving unemployment compensation of $770.00 biweekly. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Furthermore, the plan relies on Debtor's exemption on his 430 Padre Pio Drive property. Trustee has filed an Objection to Debtor's claim of exemption set for hearing February 12, 2019. Dckt. 18. This is additional grounds showing the Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

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.

23. **18-27289-E-13 RAS-1** **SALVADOR CARABEO** **Thomas Gillis** **OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE SERVICES, LLC** **1-9-19 [22]**

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

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 January 9, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

Carrington Mortgage Services, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor's plan fails to provide for its secured claim, which indicates the Debtor either cannot afford the payments call for under the Plan because they have additional debtors, or that the Debtor wants to conceal the proposed treatment of a creditor.

DISCUSSION

Creditor identifies itself as a servicing agent authorized on the loan. Creditor asserts the note is in the principal amount of $242,526.00, secured by Debtor's property commonly known as 432 Cuppelo Drive, Williams, California.

No such property is listed on Debtor's Schedule A/B. Dckt. 1. Creditor has not filed a Proof

of Claim in this case, and none of the other Proofs of Claim are for a comparable amount as asserted here.

Creditor has filed no evidence with its Objection. The Local Bankruptcy Rules provide "Every motion or other request for relief **shall** be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." LOCAL BANKR. R. 9014-1(d)(3)(D)(emphasis added). This rule is not permissive. Not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

While the Creditor has failed to present grounds for a proper objection, the court notes the Trustee's Objection set for hearing the same day as the hearing on the present Objection has been sustained. Therefore, the Objection is overruled, and the court having sustained Trustee's Objection to Confirmation (Dckt. 14), the Chapter 13 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 Carrington Mortgage Services, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled; however, the court having sustained Trustee's Objection to Confirmation (Dckt. 14), the Chapter 13 Plan is not confirmed.

24. **18-27291-E-13** **MARIA CALDERAS** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Thomas Gillis** **PLAN BY DAVID P. CUSICK**
1-9-19 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on January 9, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor's plan relies on $950.00 identified as "help from children" without providing a supporting declaration or showing support on Debtor's Statement of Financial Affairs.

DEBTOR'S RESPONSE

Debtor filed a Response to the Objection on January 22, 2019. Dckt. 20. Debtor states the Statement of Financial Affairs was amended on January 22, 2019 to reflect support payments. Debtor further states the Trustee's Objection has been addressed by the Declaration of Carlos Calderas, filed concurrently with Debtor's Response.

The Declaration of Carlos Calderas states that it is actually Carlos' children, and Debtor's step-children, who are going to contribute $950 per month through the completion of the plan. Dckt. 21.

DISCUSSION

Trustee's objections are well-taken. Debtor's plan relies on support payments from Debtor's step-children. While there has been an Amended Statement of Financial Affairs and a Declaration of Debtor's husband shedding light on the circumstances here, no testimony under penalty of perjury is offered from the step-children who are purportedly committing $950 monthly for the life of the plan. (For the sixty months of the Plan, these $950 a month payments total $34,200 - not an insignificant sum and not an amount it is unreasonable to have the people purportedly paying the money to testify as to their ability to drop $34,200 into the Plan in this case.)

The proposed plan relies on contingent support payments which have not been demonstrated to be reliable. Without further evidence of the reliability of support payments, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

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.

25. **17-27692-E-13 PLC-8** **ELIZABETH MANZO** **Peter Cianchetta** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH LUIS MANZO 12-28-18 [129]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2018. By the court's calculation, 32 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise 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 for Approval of Compromise is granted.

Elizabeth Lopez Manzo, Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Debtor's Husband, Luis Manzo ("Settlor"). The claims and dispute to be resolved by the proposed settlement is Debtor's dissolution of marriage.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 131):

1. The parties will have a Judgment of Legal Separation entered.

2. Both parties waive spousal support.

3. Elizabeth Manzo will keep all of her Calpers retirement, Luis Manzo will remain the death beneficiary.

4. All real properties that were Elizabeth Manzo's separate property from the prior property stipulation are confirmed to her as her sole and separate property.

5. Each party to have confirmed to them the household personal property that is in their possession (including each parties' vehicles).

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on January 15, 2019. Dckt. 139.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Ruling

Movant has not provided discussion or analysis of the factors outlined in *A & C Props* and

Woodson, and merely argues Settlement here is in the best interest of the estate because it unconditionally resolves the matters in dispute related to the parties' dissolution of marriage and avoids further costly litigation.

Debtor's proposed Second Amended Plan provides for a 100 percent dividend to unsecured claims, totaling $6,433.93. Amended Plan, Dckt. 136. The Settlement here divides Debtor's assets and assigns Settlor's separate debts to him. Nothing suggests the Settlement here would interfere with Debtor's ability to complete this case, where further litigation of the marriage dissolution could exhaust assets of the estate.

The Trustee, having reviewed the Settlement and Debtor's finances, has filed a Response indicating non-opposition to the Settlement.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it resolves the marital dissolution and lets Debtor proceed with her Chapter 13 case without affecting her ability to provide for the claims of creditors. The Motion 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 Approve Compromise filed by Elizabeth Lopez Manzo, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Debtor's Husband, Luis Manzo ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 131).

FINAL RULINGS

26. **17-24713-E-13 DBJ-3** | **RICHARD/STACI LASBY** | **MOTION TO MODIFY PLAN**
Douglas Jacobs | **12-17-18 [54]**

Final Ruling: No appearance at the January 29, 2019, hearing is required.

The Motion To Modify Plan is dismissed without prejudice.

Richard K. Lasby and Staci M. Lasby ("Debtor") having filed a "Withdrawal of Motion", which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on January 22, 2019, Dckt. 62; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Cusick (" the Chapter 13 Trustee"); the Ex Parte Motion is granted, the Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Modify Plan filed by Richard K. Lasby and Staci M. Lasby ("Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 62, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion To Modify Plan is dismissed without prejudice.

27. **18-27132-B-13** **STUART KOPPLE** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-2 **Pro Se** **1-8-19 [28]**

CASE TRANSFERRED TO DEPT. B: 01/13/2019

Final Ruling: No appearance at the January 29, 2019, hearing is required.

The Objection to Confirmation of Plan was continued to January 29, 2019 at 1:00p.m. to be heard by Judge Christopher D. Jaime in Department B, courtroom 32, and the matter is removed from the Department E calendar.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed this Objection on January 8, 2019. 28.

On January 14, 2018, the court recognized a conflict and issued an Order Transferring Case, transferring the case to the **United States Bankruptcy Court, Sacramento Division, Department B, The Honorable Christopher D. Jaime** presiding**.**

The presiding Judge issued an Order continuing the hearing on the Objection to January 29, 2019 at 1:00p.m. to be heard by the presiding Judge Christopher D. Jaime in Department B, courtroom 32. Dckt. 50.

28. **18-22254-E-13** **DAVID TILLIS** **MOTION TO MODIFY PLAN**
RWH-1 **Ronald Holland** **12-20-18 [23]**

Final Ruling: No appearance at the January 29, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 20, 2018. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. Fed. R. Bankr. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); Local Bankr. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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. David Fletcher Tillis ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on January 14, 2019. Dckt. 28. 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 David Fletcher Tillis ("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 4, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("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.

29. 18-23567-E-13 PSB-2 TRAVIS/LUCELYN STEVENSON Paul Bains MOTION TO SELL 12-26-18 [48]

Final Ruling: No appearance at the January 29, 2019, hearing is required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 26 , 2018. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Sell Property is continued to February 12, 2019 at 3:00p.m..

The Bankruptcy Code permits Travis Jake Stevenson and Lucelyn Ann Stevenson, Chapter 13 Debtor ("Movant"), to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell Movant's 50 percent interest in Stevenson's Care Home, Inc. ("Property").

On January 22, 2019, the Movant and The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Joint *Ex Parte* Application seeking to continue the hearing. **The court issued an Order granting the *Ex Parte* Application on January 25, 2019 and continued the hearing on the Motion to February 12, 2019 at 3:00p.m. Dckt. 57.**

30. **18-20473-E-13 DPC-2** | **PATRICIA DI GRAZIA** **Peter Macaluso** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **12-3-18 [119]**

Final Ruling: No appearance at the January 29, 2019, hearing is required.

The Objection To Debtor's Claim Of Exemption is dismissed without prejudice.

David Cusick ("the Chapter 13 Trustee") having filed an Ex Parte Motion to Dismiss the pending Objection on January 14, 2019, Dckt. 141; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Patricia Frances Di Grazia ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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 Debtor's Claim Of Exemption filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 141, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection To Debtor's Claim Of Exemption is dismissed without prejudice.