UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 9, 2021 at 2:00 p.m.

1.	**20-23804-E-13** **DBJ-1**	**MARVIN/JEANINE BURGESS** **Douglas Jacobs**	**CONTINUED MOTION TO CONFIRM PLAN** **11-5-20 [41]**

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

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 5, 2020. By the court's calculation, 68 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 xxxxx.

The debtors, Marvin John Burgess and Jeanine Marie Burgess ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $2,495 from November 2020 through the remainder of the plan and a 100 percent dividend to unsecured claims totaling $1,450.00. Amended Plan, Dckt. 44. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 23, 2020. Dckt. 50. Trustee opposes confirmation of the Plan on the basis that the Plan exceeds the time allowed under the Bankruptcy Code.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, the Plan will complete in 72 months because the plan estimates unsecured claims of $1,450 to be paid 100%, where filed unsecured claims total $33,422.41. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Trustee notes that, according to Amended Schedule J, Debtor's net monthly expense is $4,555.00 and Debtor have the ability to increase the Plan payments, in or for the Plan to complete in 60 months.

Additionally, according to Trustee, Debtor does not specify the source of the lump sum payment in the amount of $120,000 identified in the plan as to be paid sometime during the first 12 months of the plan. Trustee does note that the Motion refers to an open escrow.

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

Debtor filed a Response on January 6, 2020 addressing Trustee's concerns. Dckt. 56. Debtor first suggests that the dividend paid to unsecured claims be reduced to no less than 10% and clarifies that the $120,000 lump sum comes from the sale of most of the tools of Napa Auto Parts, which after payment of $4,000 to the escrow company to complete that transaction, will leave $120,000 to pay to the bank, who has a secured purchase money lien on the tools. Debtor also notes that a motion for court approval to complete the transaction will be filed.

The interest rate for Umpqua bank 6.5% on its secured claim.

The court continues the hearing to allow Debtor to serve the proposed amendments on all parties in interest in this case.

SUPPLEMENTAL PLEADINGS

On January 19, 2021, Debtor filed a Supplemental Reply to Trustee's Objection. Dckt. 65. The next day on January 20, 2021, Debtor filed an Amended Response. Dckt. 67. The court thus discusses for purposes of this pre-hearing disposition, Debtor's latter Amended Supplemental Reply. Debtor proposes that Trustee's objections be addressed by incorporating the following additions in the order confirming the plan:

A. That the plan will pay the sum received from Napa Auto Parts for the purchase of the tools in the approximate amount of $120,000 to Umpqua

Bank on the secured note.

B. That the debtors will further pay interest at 6.5% to Umpqua Bank on the remaining balance of their loan and will retire the note within 18 months of the commencement of this bankruptcy case;

C. That the plan will pay no less than 10% to the unsecured creditors.

Trustee filed an Amended Supplemental Reply to Trustee's Objection. Dckt. 67. Trustee continues to object to confirmation on the following grounds:

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6) or the Plan may not be Debtor's Best Effort under 11 U.S.C. § 1325(b)(1). Trustee argues that if Debtor intends to pay Umpqua Bank in full within 18 months, with a due balance of $102,000, the Trustee calculates would require a $5,963.00 payment per month. However, the Plan calls for monthly payments of $2,495.00, and Trustee calculates that payments to Umpqua under the Plan may require $1,996.00 for a 60 month payout.

Additionally, Trustee argues that Debtor has failed to explain how they will retire the note and if paying directly, Debtor has not revealed the source and direct payment which is contrary to the terms of the plan. Trustee further objects on the basis that Debtor may not be paying more funds into the plan that could result in paying more monies to creditors with unsecured claim which Debtor now proposes to pay less than a 10% dividend.

Debtor filed a Reply to Trustee's Amended Reply. Dckt. 72. Debtor proposes that within 18 months from the filing of this bankruptcy Debtor will be able to refinance the money owed to Umpqua Bank to retire that loan an that the first part of the loan will be paid through the escrow for the sale of tools to Napa Auto Parts. *Id.*, at ¶ 3. Debtor states that this will leave an approximate balance due of $102,000, and the plan proposes adequate protection payments to the bank. *Id.*

February 9, 2021 Hearing

At the hearing, xxxxxxxx

2.	**19-25217-E-13 SLH-1**	**ANAIT MSRYAN AND ARA TSAROUKIAN Seth Hanson**	**MOTION FOR ORDER RATIFYING SALE OF VEHICLE 12-28-20 [22]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice on December 28, 2020. By the court's calculation, 43 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 Certificate of Service states to see attached list of served parties yet no such list was provided. The court is unable to determine whether all relevant parties were served. At the hearing xxxxxxxx

The Motion for Order Ratifying Sale of Vehicle 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 Order Ratifying Sale of Vehicle is ~~granted~~.

The Bankruptcy Code permits Anait Arutyunovna Msryan and Ara Tsaroukian, the Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the personal property identified as 2007 Chevy Tahoe ("Property"). Movant provides the Declaration of Anait Arutyunovna Msryan to provide evidence regarding the sale.

The proposed purchaser of the Property is Ramon (Last Name Unknown), and the terms of the sale are:

A. Cash payment of $5,000 to the Debtors in exchange for their used 2007 Chevy Tahoe with 123,000 miles.

B. Costs of the sale paid from the sale proceeds.

C. Debtor having relinquished possession of the Property and transferred the title upon payment in fully by Buyer.

According to Debtor's Schedule C, the car is exempted in the amount of $7,375.00 pursuant to 11 U.S.C. § 522(d)(2). Dckt. 1.

DISCUSSION

Local Rule 3015-1(h)(1)(D) provides:

> D) Sale of Property. The Court may approve an ex parte motion by the debtor to sell real or personal property with a value of $1,000.00 or more other than in the ordinary course of business if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:
>
> > (i) The sale price represents a fair value for the subject property;
> > (ii) All creditors with liens and security interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;
> > (iii) All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;
> > (iv) The sale price is all cash;
> > (v) The debtor will not relinquish title to or possession of the subject property prior to payment in full of the purchase price; and
> > (vi) The sale is an arm's length transaction.
> >
> > "Trading in" a vehicle as part of the purchase price for a new vehicle complies with the requirements of (v) and (vi) of this Subparagraph. The Court will not approve ex parte motions to sell property pursuant to 11 U.S.C. § 363(f).

LOCAL BANKR. R. 3015-1(h)(1)(D).

The court finds that Debtor meets the criteria set by Local Bankruptcy Rule 3015(h)(1)(D) except for Trustee's written consent which was not filed with the motion. However, Trustee has filed a Response stating that he does not oppose the sale.

Though Debtor refers to it as moving to ratify the sale, the motion seeks retroactive relief as the sale has already occurred. Debtor fails to cite the applicable law. A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor's estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in "exceptional circumstances." *Atkins*, 69 F.3d at 974.

Additionally, though again not cited by Debtor, section 105(a) of the Bankruptcy Code which allows the court to "issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a).

Here, Debtor testifies that they now realize that they should have sought court permission prior to the sale and are sorry they did not do so as they are fully committed to properly completing their bankruptcy. Declaration, ¶ 4. Debtor further testifies that the main reason for selling the property is to that may complete their bankruptcy sooner where the plan pays 100% dividend to the creditors with general unsecured claims and they are on track to finish their plan early and are over $9,000 ahead of schedule. *Id.*, at ¶ 5.

Trustee filed a Response noting that Debtor is current in plan payments and although Trustee did not receive the proceeds from the sale, the Trustee did receive a total of $18,900.00 in plan payments for the month of December 2020. Response, Dckt. 26, at ¶ 3. According to the Trustee's records this payment will allow Debtor to complete their plan early as indicated in their Declaration. *Id.*

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will allow Debtor to finish their plan early.

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 Sell Property filed by Anait Arutyunovna Msryan and Ara Tsaroukian, the 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 Anait Arutyunovna Msryan and Ara Tsaroukian, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. §§ 105(a) and 363(b) the personal property identified as 2007 Chevy Tahoe ("Property"), for $5,000.00.

3. **19-27823-E-13 MET-4**
3 thru 4

GURBAX/USHA SUNAK
MaryEllen Terranella

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH LEONEL CORTEZ, JR. ET AL
11-27-20 [84]

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 November 27, 2020. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

Gurbax Singh Sunak and Usha Rani Sunak, Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Leonel Cortez, Jr., George L. Reyes, Miguel Reyes, Daniel Cortez, and Araceli Cortez ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's objection to confirmation of Debtor's plan which was sustained by court on February 11, 2020; specifically the compromise provides for Settlor's secured claim as shown on Proof of Claim 11.

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. 87):

A. Debtor to pay $180,000 with a lump sum in the amount of $60,000 to be paid within 30 days of the effective date, which was October 1, 2020.

B. Creditor's claim in the amount of $321,827.00 is deemed satisfied by the $180,000 payment.

C. After payment of the lump sum, the remaining $120,000 of the settlement will be paid directly by Debtor as a Class 4 claim, in monthly increments of $2,5000 commencing January 15, 2021 and continuing each month thereafter for 48 months.

D. Upon completion of the settlement payments, Creditor is to provide Debtor with a Satisfaction of Judgment as to the Harbor Drive property.

E. Each party shall bear their own attorney's fees and costs associated with the agreement and its approval.

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).

Movant argues that due to the uncertain around the valuations of the Harbor Drive property, the parties agreed to compromise. The commercial property used to be a gas station with underground tanks still there. The environmental reports showed soil and water contamination. The parties were provided with two appraisals, one taking into account costs of environmental clean up and another if no environmental clean up was required. Although the higher valuation showed equity it was not the full amount of Creditor's claim.

Movant further argues that the Settlement Agreement is the best solution as further litigation of the commercial property or a forced sale may result in additional fees and costs which Debtor has no ability to pay. Further, the Agreement allows Debtor to retain the commercial property which produces the majority of their income; and, lastly, allows the Trustee to continue to administer the estate.

Supplemental Evidence

On December 27, 2020, Komal Sunak, a daughter of Debtor, filed her declaration. She testifies to providing $50,000 from her own monies to fund the $60,000 settlement payment. Dckt. 98. She testifies that this is money she has saved over the years for emergencies.

Her testimony does not include where she had saved these monies, copies of bank statements (assuming they were in a bank account or other location that could be documented), or the transfer of the monies from Komal Sunak's account to counsel for the Debtor.

A second Declaration was filed on December 27, 2020, by Simran Sunak, the younger daughter of Debtor. Dckt. 99. In it Simran Sunak testifies that she has saved all the cash gifts she has received from family and friends for birthdays and holidays since she was 18 years old. Simran Sunak does not testify as to her age when she states that she transferred $10,000 of such saved gifts to counsel for Debtor. When the bankruptcy case was filed, Debtor listed only one daughter who is a dependent, identifying her age as 22.

Simran Sunak testifies that she has bank records to document these monies, and has provided them to the Trustee. However, Simran Sunak has not provided them to the court.

The court was very clear to Debtor and Debtor's counsel that they would have to clearly document for the court the source of this $60,000 that their daughters had to gift them. The evidence presented is that the daughters never spent any of the gift monies they were given over the years, but squirreled it away. Other than that short statement, no documentation of such 60,000 acorns of money being squirreled away by the two daughters is provided to the court.

Continuance of the Hearing to Allow
Debtor to File Additional Supplemental Pleadings

At the hearing, Debtor's counsel reported that the $60,000 was all in cash, retained in cash by the two daughters. Counsel stated that the two daughters had either given the cash to the Debtor to deposit or had deposited it into the Debtor's account. Debtor's counsel was not sure. Additionally, Debtor's counsel could not identify what bank it is that the $60,000 cash was deposited.

Given the large dollar amounts at issue, the court questioned Debtor's counsel whether she had inquired with the bank of what records they had of the large cash deposit and the reporting of it to the federal regulators. Debtor's counsel was unaware of any such records or information.

While Debtor's counsel argued that the two Daughters testifying that they never spent any of their gift money and one kept $50,000 cash and the other (who was a dependent of Debtor) kept $10,000 cash in their possession and not a bank, the court does not find such summary testimony in the declarations drafted by Debtor's counsel to be credible.

Though the court expressly told counsel for Debtor that the trails of the $60,000 cash would need to be shown using bank records, none were provided to the court (though Debtor's counsel said some bank records were given to the Trustee).

Debtor's counsel repeatedly attempted to assuage the court's concerns regarding the $60,000

of cash coming from no accountable source by saying it was "cultural" that the two Daughters would keep $60,000 in the bottom dresser drawer (the court's characterization), merely stating that is not evidence that the daughters had the money and gifted it to Debtor.

The court continues the hearing to afford Debtor and Debtor's counsel a third opportunity to provide credible evidence that the $60,000 Debtor had in the bank account was not Debtor's (and the Bankruptcy Estate's) money.

David Finestone, counsel for the creditor who is a party to this agreement confirmed at the hearing that he is holding the $60,000 in his client trust account.

Trustee's Declaration

Trustee filed a Declaration on January 26, 2021. Dckt. 1141. Trustee testifies as to the Zoom meeting he conducted with Debtor's Attorney Mary Ellen Terranella, Debtor's daughter Komal Sunak, and Debtor's daughter Simran Sunak. Trustee explains that this was not a deposition but a series of questions, where each daughter was sworn in, to determine details provided by Debtor regarding the funds at issue. Trustee testifies to the following:

A. The first daughter to spoke was Simran Sunak, who verified that she had given $10,000 to her mother when requested. She verified that her parents had not gifted her with any gift worth more than $600 over the last two years and that she has received cash gifts through the years, for Indian and American holidays, and she takes reasonable precautions with the cash. She also testifies that she still has cash gift remaining from over the years, estimating that amount to be between $3,000 to $4,000. Simran also refers to an aunt as one of the contacts who has routinely given her gifts.

B. Trustee then interrogated Komal Sunak, who verified that she had given $50,000 to her mother when requested. She indicated that the bills were generally of higher denominations, and that the largest source of these bills was from her wedding. She also verified that her parents had not gifted her with any gift worth more than $600 over the last two years. She also testifies that she still has cash gift remaining from over the years, estimating that amount to be between $10,000 to $12,000. Komal also refers to her father in law as one of the contacts who has routinely given her gifts.

C. Trustee had been previously provided with the daughters' bank statement for October and November 2020. However, Trustee explains that it is his understanding that the money for the settlement did not come from the accounts, but he believes the statements are pertinent in part to the credibility of each daughter's testimony.

D. Trustee's Counsel testifies that Simran Sunak has a savings account with a over a $13,000 balance as of November 30, 2020 and that in this account she has over a $3,000 deposit in October and a $2,000 deposit in

November, both transfers from the checking account of "Sunak S."

E. Trustee's Counsel also testifies that Komal Sunak has what appears to have joint accounts with her spouse with over a $40,000 balance as of November 30, 2020 and she appears to have significant credit available on a HELOC, at almost twice that balance.

F. Lastly, Trustee's Counsel testifies that he believes the daughters to be telling the truth regarding the funds based on their answers to his questions and the financial information provided.

G. If Debtor's plan is confirmed, Counsel will request on behalf of Trustee that Debtor file a supplemental Schedule I & J each year as well as providing tax returns each year pursuant to 11 U.S.C. §521(f)(4.).

Declaration, Dckt. 114.

Debtor's Declaration and Accompanying Exhibits

Debtor filed a Declaration on January 29, 2021. Dckt. 116. Debtor testify under penalty of perjury to the following:

A. Debtor received the $60,000 by their two daughters: Komal Sunak and Simran Sunak from cash re3servs they have saved over the years.

B. Debtor do not have cash in that amount as they operate a small deli in Novato. They make deposits at least 3-4 times per week. Normal cash amounts held in the register at the close of daily business is between $500.00 - $700.00. Debtor do not keep excess cash in the store in the event of a robbery.

C. Debtor's main business account is with Umpqua Bank. When they first opened the account, a bank employee explained to them that if they made a bank of deposit $10,000, the bank would have to meet reporting requirement for such deposits. They assumed they were informed of these requirements because they were making deposits for a business. But they have not made any deposits in that amount on any day since first opening their business.

D. Debtor understand that a request was made to Umpqua Bank asking if any tax form had been filed the period of January 1, 2019 through January 1, 2021 and they responded that they had not filed such a tax form.

E. Debtor holds another business account with Wells Fargo but this account has very little activity and holds a balance of approximately $100.00 and $600.00. Debtor also has a personal account with Westamerica Bank

where their social security checks are deposited.

F. Debtor refers to the November 2020 bank statement provided as Exhibit B and explains that there are multiple small deposits because they deposited the funds given by their daughters with the business deposits because of what the bank employee told them regarding the reporting requirements. They also explain that their tax preparer told them that the tax form they were concerned about would not apply to funds given to them by their daughters. However they remained concerned about the reporting requirement and were also concerned that the bank would put a hold on such a large deposit and the payment to the Cortez family would not be made timely.

G. Debtor has not made cash gifts to their daughters in the past two years due to their financial situation.

H. Debtor are aware that their daughters have received cash gifts over the year given on Indian and American tradition holidays. Specifically, they are aware that Komal, who is married, receives numerous cash gifts from her in laws and that this is a common practice in Indian culture.

I. They will provide Trustee current income and expense statement each year as well as tax returns each year that they are in this bankruptcy case.

Declaration, Dckt. 116.

Debtor also filed Exhibits A, Subpoena to Umpqua Bank and Response, and Exhibit B, November 30, 2020 Umpqua Bank Statement. Dckt. 117. According to Exhibit A, Umpqua Bank "does not possess any of the records as described in the above referenced legal order," in response to the subpoena requesting documents or objects related to "IRS Form(s) 8300 issued for account number 991027269 for the period 01/01/19 through 01/01/2021." Exhibit A, at 2-6.

The November 2020 Umpqua Bank Statement reflects eight (8) deposits marked with a circle for various amounts that the court assumes are the deposits referred to by Debtor in their declaration as the funds deposited which included both the business deposits and the funds provided by their daughters. Exhibit B, at 8.

The court had been presented with a credibility issue. Debtor has filed declarations and the daughters have been interrogated by Trustee. Daughters explain the source of the funds and that they take reasonable precautions in keeping those cash reserves. Trustee has presented his findings regarding the daughters' financial information and his conclusion that the daughters' testimony regarding the source of the funds seems to be truthful.

Debtor's counsel has responded to the court's concerns as to whether she had inquired with the bank of what records they had of the large cash deposit and the reporting of it to the federal regulators. In providing the bank records and through their Declaration, Debtor has also addressed how their business bank account did not include a large cash deposit.

Now, the court is presented with testimony that while lump sums of $10,000 and $50,000 were requested from the daughters, those monies were not deposited in such lump sums, but deposited in smaller amounts along with Debtor's business income.

> We received those funds at the end of October or beginning of November. Remembering what the teller had told us years ago, Mr. Sunak deposited the funds from our daughters over several days, with other deposits of cash from our deli business. Our tax preparer told us the tax form we were concerned about would not apply to gifts from our daughters. However, we were still remembering what the teller had said, so Mr. Sunak deposited the funds over several days. We were also concerned that, if there was such a large cash deposit, the bank might put a hold on our account and the payment to the Cortez family's attorney would not be timely made.

Declaration, p.3:6.5-13; Dckt. 116. In reading the above, while Debtor appear to present themselves as less sophisticated business people with limited financial resources, they were very careful to launder the deposit of the $60,000 to keep it "below the radar." They profess that this was based on an off-hand comment a teller made to them years ago. Thus, they have made sure not to make any large deposits into their bank accounts. This reporting of large deposits should be of little concern to legitimate business persons. Someone with legitimate income - whether from business, the sale of a home, an inheritance, and the like will immediately deposit money they are receiving into their bank accounts and not "hide it in a shoe box" and dribble deposit it over days and months to avoid a reporting of legitimate income or money received.

This careful, cleansed depositing of the monies, in conjunction with depositing business income, leaves the court questioning the good faith and credibility of the Debtor in testifying how this $60,000 of cash has appeared. The "trust us," we are simple people who have very carefully deposited this money to avoid any reporting of it does not comport with acting in good faith.

At the hearing, **xxxxxxx**

4.	**19-27823-E-13 MET-3**	**GURBAX/USHA SUNAK MaryEllen Terranella**	**CONTINUED MOTION TO CONFIRM PLAN 10-24-20 [67]**

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 October 24, 2020. By the court's calculation, 45 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 xxxxx.

The debtors, Gurbax Singh Sunak and Usha Rani Sunak ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for monthly payments of $4,675 for 12 months, followed by $4,940.00 for 48 months, and a zero (0) percent dividend to unsecured claims totaling $211,723.00. Plan, Dckt. 70. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 24, 2020. Dckt. 81. Trustee opposes confirmation of the Plan on the basis that:

A. There is not sufficient evidence and information to properly assess the non-standard provisions dealing with the treatment of "secured creditor Leonel Cortez, et al."

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee notes that the plan calls for "secured creditor Leonel Cortez, et al." to be paid directly by Debtor a lump sum of $60,000 followed by $2,500 monthly payments for the last 48 months of the plan. Trustee. At this juncture Trustee is concerned by the source of the $60,000 and if it is non-exempt then those funds should be paid to creditors holding unsecured claims.

Moreover, Trustee is unsure as to the accuracy of Debtor's Schedules where the December 2019 Schedules showed a $8,075 income but is now projected at $10,575.00. Trustee requests that Debtor file a detailed business income and expense statement so as to accurately assess whether Debtor can afford to make the proposed plan payments.

Trustee asks the court to continue the motion to allow for supplemental evidence and pleadings.

Pending Motion to Approve Settlement

On November 27, 2020, Debtor filed a Motion to Approve Settlement with Cortez et al. Dckt. 84. Under the Settlement, Cortez et al. reduce the amount of their claim to $180,000.00 from $321,827.00. The Motion states that Debtor has paid $60,000.00 to Cortez et al. prior to November 20, 2020. The source of these funds are stated in the Motion to be from Debtor's daughters. Motion, Dckt. 84 at 2. [Fn.1.]

FN. 1. It is not clear whether one of the two daughters includes the adult daughter who is a dependent of the Debtor. Schedule J and Supplemental Schedule J; Dckts. 1, 72.

The Motion states that Cortez et al. recorded a judgment lien against the Pebble Beach Drive Property. The court has already issued a final order avoiding Cortez et al.'s judicial lien on the Pebble Beach Drive Property. Order, Dckt. 76.

The Motion further states that a judgment lien was also recorded against the Debtor's Harbor Drive Property. No order avoiding that judgment lien has been issued. In the Declaration filed in support of the Motion to Approve Settlement, Debtor testifies that the value of the Harbor Drive Property may be more (in an unstated amount) than the senior encumbrances, or the value may be less than the senior encumbrances. No copy of the appraisers valuations are provided.

The court does have Debtor's statement under penalty of perjury on Schedule A/B that the Harbor Drive Property has a value of $375,000. Dckt. 1 at 13. On Schedule D, Debtor states that Northeast Bank has a claim of $347,930.00 (this is consistent with Proof of Claim No. 15-1 filed by Northeast Bank), and $19,994.00 in property taxes secured by the Property. Thus, based on Debtor's information, it appears that Cortez et al.'s secured claim has a value of $0.00.

It appears that Debtor, Cortez et al., and their respective counsel have chosen to "approve" and implement their settlement without the need for any court approval. They have chosen to move substantial monies around, purportedly from Debtor's daughters, outside the transparency of the federal judicial process. Also, they have chosen to act without any federal court authorization.

It further appears that Debtor and Cortez et al., and their respective attorneys, are seeking retroactive approval/cramming down on the court their pre-approved, already implemented settlement, which works to divert monies to Cortez et al. on their unsecured claim and discriminate improperly against other creditors with unsecured claims. While Debtor may wish to prefer Cortez et al. and favor Cortez et al. over the other creditors with unsecured claims – a good faith, *bona fide*, based on the Bankruptcy Code basis for such discrimination is not identified for the court.

Additionally, no testimony is provided by Debtor's daughters as to the source of the $60,000 gift to Debtor.

At the hearing, counsel for Cortez et al. reported that the $60,000.00 is being held in his client trust account pending court approval of the Settlement. Therefore, it appears that this may not be a retroactive approval request.

Funding of Plan

Looking at Supplemental Schedule J, Debtor appears to have at least $7,400 a month to fund a plan. Dckt. 72. Over sixty months, that totals $444,000. After deducting 10% for Chapter 13 Trustee Fees and $5,000 for Debtor's counsel's fees, that leaves $395,000 for payment of creditor claims.

Using the proposed Plan, the waterfall of payments for claims provided in the Plan would be as follows:

Plan Payments Total For Disbursement on Claims	$395,000
Class 1 Secured Claim - Pebble Beach Drive Property Collateral	($216,440)
Class 2 City Property Tax Claim Pebble Beach Property Collateral	($3,600)
Class 2 County Property Tax Claim Harbor Drive Property Collateral	($57,780)
Class 5 IRS Priority Unsecured Claim Proof of Claim No.	($11,081)
	==========
Plan Funds For General Unsecured Claim Disbursement	$106,099

Thus, it appears that there would be $106,099 available to disbursement to creditors holding general unsecured claims.

In addition to the Cortez et al. claim (for which there appears to be a $0.00 § 506(a) secured claim) in the unsecured amount of $321,827 (duplicate Proofs of Claim Nos. 11-1, 12-1), the other general unsecured claims total $42,213, for a total of $364,040 in aggregate general unsecured claims. With $106,099 to distribute on the general unsecured claims, that would be a 29.2% dividend for creditors holding general unsecured claims.

From such a dividend, Cortez et al. would receive a distribution of $93,651 and the other creditors holding general unsecured claims would receive $12,284, not an insignificant amount for general unsecured claims in a Chapter 13 case.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Further, no settlement has been approved by the court (though chosen to be independently implemented by Debtor and Cortez et al.), which settlement appears to discriminates against creditors with general unsecured claims and to favor the general unsecured claim of Cortez et al.

Continuance of Hearing

Debtor's counsel requested that this hearing be continued to be heard in conjunction with the Motion to Approve the Settlement. Debtor will be filing supplemental pleadings addressing the issues concerning the settlement, the treatment of Cortez et al.'s claim, and confirmation of this plan.

January 12, 2021 Hearing

Trustee filed a Response on December 29, 2020. Dckt. 102. Trustee notes that Debtor have filed a motion to compromise to be heard on the same date as the instant motion and asserts that if the compromise is not granted, Debtor will not be able to comply with the plan under 11 U.S.C. § 1325(a)(6). *Id.*

Debtor having not been able to provide the court with credible evidence of the source of the $60,000.00 cash, the hearing was continue to afford Debtor a third opportunity to provide the court with credible evidence that the $60,000 is holiday and gift monies they received and never spent.

February 9, 2021 Hearing

XXXXXXX

5. **20-24824-E-13 DPC-1** **GURINDER BAINS**
Douglas Jacobs

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-29-20 [18]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on December 29, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor cannot make the plan payment.

DISCUSSION

As addressed below, Trustee's objection is well-taken.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee argues that Debtor has failed to properly account for self-employed taxes on his income on the basis that the Debtor shows $1,000.00 in expenses, on Schedule J, for taxes on his income of $6,500.00, which would be 15.4%. Trustee argues that this appears too low for a self-employed individual.

Additionally, Trustee asserts that Debtor's stated gross income on his Statement of Financial Affairs is wrong. In reviewing Debtor's tax returns for 2019 and 2018, Trustee found that Debtor had a gross income of $177,314.00 for 2019, where Debtor reported $24,000 in the Statement of Financial Affairs, and a gross income of $215,692 in 2018, where Debtor reported $30,000 in the Statement of Financial Affairs.

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

At the hearing Counsel for the Debtor requested the hearing be continued. The Trustee concurred in the request.

Debtor's Declaration

Debtor filed a Declaration on January 21, 2021 testifying that although his income seems high, after accounting for work related expenses, his actual net income is low as can be seen by the tax returns submitted to the Trustee; and noting that he has amended his Statement of Financial Affairs to show his gross income for 2018 and 2019. Dckt. 24.

Trustee's Reply to
Debtor's Declaration

Trustee filed a Reply on January 28, 2021 stating that Trustee is not certain Debtor has provided sufficient evidence to show that the Plan is confirmable. Dckt. 27. Trustee requests the court take into consideration the following: Debtor has amended the Statement of Financial Affairs indicating that his year-to-date income for 2020 is "Unknown," 2019 was $177,314.00 and 2018 was $215,692.00; although the deadline for creditors to file a claim has passed, the deadline for government entities to file a claim is April 19, 2021; and that West Coast Servicing, Inc., secured by a second deed of trust, filed a Proof a Claim on December 28, 2020 in the amount of $143,567.23, which shows the Debtor is delinquent in the amount of $108,492.60.

February 9, 2021 Hearing

In reviewing the Schedules and Debtor's Declaration, it appears that Schedule I provides inaccurate information under penalty of perjury and is incomplete. On Schedule I, Debtor states under penalty of perjury that he is "Employed" and his "Employer" is Western Ag Incorporated. Dckt. 1 at 25. Further, he is paid gross "wages, "salary," and "commissions" of $6,500 a month. Though "employed," his "employer" does not withhold any state or federal income taxes, Medicare, or Social Security. *Id*., at 26. On Schedule J, Debtor states that out of his $6,500 a month in wages, salary, and/or commissions, he pays $1,000 of "taxes on income." *Id*. at 28.

No statement of gross income and expenses are attached to Schedule I, which is required if the debtor is self-employed and generates from operating a business. Schedule I, Question 8; *Id*.

However, in his Declaration filed on January 21, 2021, (Dckt. 24) Debtor testifies under penalty of perjury, which includes (identified by Paragraph Number used in the Declaration):

2. I am a truck driver and operate as an independent contractor. I receive a 1099

at the end of each year. This is what I use to calculate my taxes.

This is not consistent with stating that he is employed, and there is no required information as to gross income and expenses provided as part of Schedule I.

> 3. Although my Gross income as shown on schedule C of my taxes is high, after all expenses for diesel fuel, repairs and other expenses are taken out, my actual net income is much lower as can be seen by my tax returns submitted to the trustee.

While some information appears to be provided to the Trustee, the court and other parties in interest are left in the dark as to Debtor's "necessary" expenses due to the failure to disclose such on the required attachment to Schedule I.

In Class 2 of the Plan Debtor lists West Coast Servicing as having a secured claim in the amount of $107,948, and that claim will be paid in full with 4% interest over the five years of the Plan with monthly payments of $1,988.03. However, West Coast Servicing, Inc. has filed Proof of Claim 5-1, in which the secured claim is stated to be ($143,567.23), of which ($108,492.60) is asserted to be the pre-petition default amount. If Creditor's computation is correct, it appears that Debtor has only provided for the pre-petition arrearage as part of the "amount claimed by Creditor" and not provide for paying the actual claim in full.

At the hearing, xxxxxxxx

6. **19-26943-E-13 MMM-2** **6 thru 7**

DARIO AZAR
Mohammad Mokarram

MOTION TO EMPLOY EXP REALTY OF CALIFORNIA INC. AS BROKER(S)
1-19-21 [28]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2021. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 Employ is xxxxx.

Dario Manzur Azar ("Debtor") seeks to employ Amir Cackovic of eXp Realty of California Inc ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to assist Debtor in the sale of the Property.

TRUSTEE'S RESPONSE

Trustee filed a Response on January 25, 2021. Dckt. 36. Trustee does not oppose the Motion. However, Trustee asks the court to consider the discrepancy between Debtor's motion, Dckt. 28 at 2:8, stating a 6% commission to Broker, and Seller's Statement, Exhibit 2, Dckt. 27, stating a 5% commission.

DISCUSSION

Debtor argues that Broker's appointment and retention is necessary to assist Debtor to determine fair market value, market, and sell the Property. The Broker will procure and submit to

Debtor all purchase offers. In consideration for these services, and upon consummation of any sale, Broker will receive a real estate broker's commission equal to 6% of the purchase price.

No Listing Agreement is provided. Instead, Debtor provides the Purchase Agreement which does not state the commission to be paid or any other relevant details as to employment terms. Moreover, in support of Debtor's Motion to Sell to be heard on the same date and time, Debtor filed a Seller's Statement, which shows Broker's estimated commissions totaling 5%, with Seller's broker receiving 2.5% and listing broker receiving 2.5%. Exhibit 2, Dckt. 27.

Amir Cackovic, a realtor employed by eXp Realty of California Inc, testifies that he is a licensed California Realtor holding license number 01484623; has 18 years experience as a realtor, and is familiar with selling homes in the Sacramento area. Dckt. 30. Amir Cackovic testifies he and eXp Realty of California Inc. do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.*

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Amir Cackovic as Broker for the Chapter 13 Estate. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by Dario Manzur Azar ("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 Employ is granted, and Debtor is authorized to employ Amir Cackovic as Broker for Debtor, with compensation computed in an amount not to exceed 5% of the gross sales price of the Property.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by agent in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

7. **19-26943-E-13** **DARIO AZAR** **MOTION TO SELL**
MMM-1 **Mohammad Mokarram** **1-19-21 [22]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Dario Manzur Azar, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 6129 Ranger Way, Carmichael, CA ("Property").

The proposed purchaser of the Property is Michelle Tarantino, and the terms of the sale are:

A. The purchase price of the property is $510,500.00.

B. Initial deposit is $5,100.

C. Close of escrow shall occur 21 days after acceptance.

D. Buyer and Seller to split payment of escrow fee.

E. Seller shall pay: owner's title insurance policy, county transfer tax or fee, city transfer tax or fee, and natural hazard disclosure report.

F. Buyer's agent to purchase: upgraded one-year home warranty not to exceed $500.00 including coverage for air conditioner

G. Seller is to finish prior to close of escrow the construction related to a concrete step and walkway in the property.

CREDITOR'S NON-OPPOSITION

Lakeview Loan Servicing LLC ("Creditor") filed a Non-Opposition on January 27, 2021. Dckt. 38. Creditor is entitled to payment of a Promissory Note in the principal amount of $398,154.00, secured by a First Deed of Trust for the Property. Creditor has no opposition to the sale so long as the lien of Creditor is paid off in full satisfaction of the debt.

TRUSTEE'S RESPONSE

Trustee filed a Response on January 25, 2021. Dckt. 34. Trustee states the following concerns:

1. Debtor is delinquent on $24,738.46 in plan payments to the trustee, and the next payment of $3,535.94 is due on January 25, 2021. Debtor has paid $21,227.76 into the plan as of January 25, 2021.

2. Debtor has a Motion to Employ Real Estate Broker pending hearing the same date of this motion. Motion does not appear to be opposed; however, if the Motion fails, Trustee requests the Motion for Order Approving Sale should call for the broker fee to be held until approval.

3. Debtor's Schedule C list $1.00 exemption on the Property. Whereas, Debtor's Motion states there is an exemption of $100,000 claimed. Dckt. 22 at 2:9.

4. Debtor's motion states there will be sale proceeds of approximately $80,000. Debtor's declaration is silent to the amount of proceeds and Seller's Statement shows proceeds of $40,523.27. Dckt. 27. Although Debtor's motion and declaration state Trustee is to receive proceeds, Trustee is unsure which is the correct amount.

DEBTOR'S RESPONSE

Debtor filed a Response to Trustee's Response on February 5, 2021. Dckt. 40. Debtor's Response is as follows:

1. Debtor acknowledges delinquency, and states "hence the selling of the property."

2. Debtor states they did not switch the exemption because "plan will pay 100% to creditors and complete the plan, with a surplus to go to the Debtor."

3. The Seller's Statement has the more accurate figure of distribution by the trustee.

4. Once the sale completes and mortgage is paid, there will only be approximately $13,400.00 outstanding to pay creditors 100% and complete the plan.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

The court is concerned by the various amounts stated by the various parties. First, the Motion states the sale is for $510,000. The Purchase Agreement states $510,500. Debtor states in the Motion there being sale proceeds in the amount of $80,000, where as the Declaration states $40,523.27. Debtor responds that the more accurate figure of distribution is that of the Seller's Statement. Dckt. 40. Where Debtor first argued that the sale would pay 100% of the plan, now the Debtor clarifies that there will be approximately $13,400 outstanding to pay creditors in full and complete the plan. *See id*. Debtor does not explain how she will provide for this outstanding amount when she is already delinquent in plan payments.

At the hearing, xxxxxxxx

Though not referenced in the Motion, the Seller's Statement estimates a 5% percent broker's commission from the sale of the Property will equal approximately $25,525.00, with the listing agent receiving $12,762.50 and the selling agent receiving $12,762.50. Exhibit 2, Dckt. 27. In Debtor's Motion to Employ Broker, Dckt. 28, to be heard the same date and time as the hearing on this matter, the commission percentage is stated as 6%. At the hearing, Counsel for Debtor clarified **xxxxxxx**

~~As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5% percent commission to be divided between the Buyer's broker and the Seller's broker.~~

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow Debtor to keep moving forward with completing the Plan.

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 Sell Property filed by Dario Manzur Azar, 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 Dario Manzur Azar, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Michelle Tarantino or nominee ("Buyer"), the Property commonly known as 6129 Ranger Way, Carmichael, CA 95608 ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $510,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 25, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

~~D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5% percent of the actual purchase price upon consummation of the sale. A 2.5% commission shall be paid to Chapter 13 Debtor's broker, eXp Realty of California and a 2.5% commission shall be paid to Buyer's broker, Lyon RE Downtown.~~

E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

8. **20-25460-E-13** **KELLY STEVENS**
ABA-1 **Mark Briden**

OBJECTION TO CONFIRMATION OF PLAN BY MATADORS COMMUNITY CREDIT UNION
1-19-21 [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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2021. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Matadors Community Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor fails to provide for a secured claim.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of $43,238.47 in this case. Debtor has listed Creditor and this obligation as an unsecured debt, specifically as an "overdue account" in Schedule E/F in the amount of $43,268.00. Debtor filed an amended petition on January 14, 2021, but does not amend Schedules D or E/F. Dckt. 20.

Creditor asserts the claim is secured by the recording of a UCC-1 fixture financing statement in the office of the County of Shasta recorder. Dckt. 24. The note also indicates that it is secured by Creditor's interest in solar panels and micro inverters. A copy of the Proof of Claim filed in this case, with Purchase and Security Agreement attached, is provided as Exhibit A in support of the Objection. *Id.*

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

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

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

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

A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

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

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

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

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 Matadors Community Credit Union ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

9.	**20-22066-E-13 DRE-3 9 thru 11**	**GREGORY/CHERIE BORGERSON Randall Ensminger**	**MOTION TO CONFIRM PLAN 12-23-20 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The debtor, Gregory Roger Borgerson and Cherie Marquez Borgerson ("Debtor") seeks confirmation of the Third Amended Chapter 13 Plan. The Plan provides eight (8) payments of $2,530.00, followed by 52 payments of $3,764.00, and a 0% dividend to creditors with unsecured claims totaling $18,313.15. Plan, Dckt. 89. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 26, 2021. Dckt. 109. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has not filed tax returns.

B. Plan exceeds the 60 months maximum under the bankruptcy code.

C. Debtor has not submitted a loan modification.

DISCUSSION

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2015, 2017, and 2019 tax years have not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 70 months because priority claims total $57,213.01, where Debtor estimated $21,053.71. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

No Loan Modification Documents Provided

Trustee points the court to the Plan's "Ensminger Provisions" included in the Plan providing for adequate protection payments to PHH Mortgage and Bosco/Franklin Financial Management Corp., as it did the prior three plans, but Creditor Bosco's objection reveals that Debtor have not submitted a loan modification since February 2019.

Trustee adds that Debtor could have provided documents as an exhibit showing the application has been made or submitted, which the court may have considered for the purpose of confirmation and yet Debtor failed to do so.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the debtor, Gregory Roger Borgerson and Cherie Marquez Borgerson ("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.

10. **20-22066-E-13 LBJ-2** | **GREGORY/CHERIE BORGERSON** | **OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY**
Randall Ensminger | **1-25-21 [105]**

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, and Chapter 13 Trustee on January 25, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Deutsche Bank National Trust Company, as certificate trustee on behalf of Bosco Credit II Trust Series 2010-1, its successors and/or assignees ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor improperly modifies Creditor's secured claim.

DISCUSSION

Modification of an Obligation Secured Only by Principal Residence

Creditor asserts that Debtor's treatment is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $252,330.70, secured by a second deed of trust against the property commonly known as 2105 Pimlico Ct., Lincoln,, California. Debtor's Schedules indicate that this is Debtor's primary residence.

Creditor argues that though the Plan states that Debtor will provide adequate protection payments, merely stating it does not make it so. According to Debtor's Plan, Debtor provides for an adequate protection payment of $1,027.19, while Debtor goes through the loan modification process and provides that in the event the loan modification does not go through, Debtor will file a modified plan to address payment of Creditor's secured claim. [Fn. 1.] This adequate protection amount is the same as Debtor's monthly loan payment to Creditor.

FN.1. As previously noted by the court, in the plan, both creditors with liens on the Property are provided Janus treatment, where both creditors are listed under Class 1 and under Section 7.02 of the Additional Provisions Debtor stating that the actual treatment are adequate protection payments pending determination of the loan modification.

Creditor points the court to Debtor's claims that they are applying for a loan modification. In the Declaration of Gina D'Elia filed in support of the objection, Creditor's representative testifies that Debtor have not submitted a complete loan modification and they are not being reviewed for a loan modification. Declaration, Dckt. 107. Creditor's representative also testifies that the last time Debtor were reviewed for a loan modification was in 2019 and they were denied such a modification for excessive delinquency. *Id.*

As noted by the Trustee in his opposition to Debtor's proposed Plan, Debtor has failed to provide documents proving that such an application has been submitted for consideration.

The court is concerned with this loan modification. A review of the proposed Plan refers to the loan modification application as if it is already going through the process. Specifically, the proposed Plan states:

> The Debtors are in process a Application for modification of the loan upon which the Bosco/Franklin Financial Management Corp secured claim. The application requests that the pre-petition arrearage, to the extent not waived, be included in a new principal amount to be amortized over the life of the loan as modified.

Plan, Dckt. 89, at 7. The Plan was filed on December 23, 2020. For the Motion for Relief filed by Creditor HSBC Bank USA, N.A., creditor holding the first deed of trust, Debtor's Declaration (filed December 29, 2020) to the relief requested Debtor testifies under penalty of perjury that:

> A completed loan application package was transmitted by facsimile to both **Franklin Credit** and PHH Mortgage Corporation on August 28, 2020 and updates have been timely provided as requested. Final decisions of both loan modification packages remain pending.

Declaration, Dckt. 95, ¶ 5 (emphasis added). At the hearing, Debtor and Debtor counsel addressed this discrepancy **xxxxxxxxxx**

This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

The confirmation of the Plan having already been denied based on Trustee's objections, the Plan is also denied confirmation based on Creditor's objection. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company, as certificate trustee on behalf of Bosco Credit II Trust Series 2010-1, its successors and/or assignees ("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 is sustained, and the proposed Chapter 13 Plan is not confirmed.

11. **20-22066-E-13 RAS-1** | **GREGORY/CHERIE BORGERSON** Randall Ensminger | **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY**

HSBC BANK USA, N.A. VS. | **12-10-20 [75]**

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, and Office of the United States Trustee on December 10, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is xxxxx.

HSBC Bank USA, N.A., as Trustee on behalf of ACE Securities Corp. Home Equity Loan Trust and for the registered holders of ACE Securities Corp. Home Equity Loan Trust, Series 2006-ASAP6, Asset Backed Pass-Through Certificates ("Movant") seeks relief from the automatic stay with respect to Gregory Roger Borgerson and Cherie Marquez Borgerson's ("Debtor") real property commonly known as 2105 Pimlico Court, Lincoln, California ("Property"). Movant has provided the Declaration of Miguel Baque to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three (3) post-petition payments, with a total of $4,192.96 in post-petition payments past due. Declaration, Dckt. 77.

CHAPTER 13 TRUSTEE'S RESPONSE

David P. Cusick ("the Chapter 13 Trustee") filed a Response on December 16, 2020. Dckt. 81. Trustee points out that Debtor have no confirmed plan and informs the court that Debtor are delinquent in plan payment under their last proposed plan. *Id.*, at 1. Trustee further states having disbursed a total of $9,515.14 towards Debtor's mortgage where Movant has filed Proof of Claim 7-1 for

the secured amount of $353,696.28 and $27,534.93 in arrearage. *Id.*, at 2.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 29, 2020. Dckt. 94. Debtor asserts that the motion should be denied on the basis that Debtor has filed a third amended plan which provides for on-going mortgage payments and post-petition arrearage payments to Movant and that a loan modification application is currently being considered by Movant. *Id.*, at 1-2. Adding that a loan modification has also been submitted with the creditor that has a second deed of trust on the Property. *Id.*, at 2.

According to Debtor, final decisions on both loan modifications are still pending and Debtor should be allowed to continue making adequate protection payments. *Id.* Moreover, Debtors argue that a small equity cushion exists if the court disallows Movant's collection of the $10,126.49 of cost arrearage claimed in Movant's motion. *Id.*

Debtor filed their Declaration is support of the Opposition. Dckt. 95. Debtors testify that their income position has improved dramatically and have filed new Schedules I and J which show that they are capable of making the mortgage payments on the two loans if they are provided loan modification relief on the arrearage. *Id.*, ¶ 7.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $331,270.11 (Declaration, Dckt. 77). Debtor values the Property at $575,179.00, as stated in Schedules A/B and D filed by Debtor, whereas Movant's Broker's Price Opinion values the Property at $558,900.00 (Dckt. 78).

11 U.S.C. § 362(d)(1)

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may

exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

Here, there are adequate protection payments in the plan proposed by Debtor and filed on December 23, 2020. Dckt. 89. A motion to confirm has been set for hearing on February 9, 2021. Dckt. 85. The plan provides for adequate protection payments to Movant in the amount of $1,958.30. [Fn.1.]

FN.1. In the plan, both creditors with liens on the Property are provided Janus treatment, where both creditors are listed under Class 1 and under Section 7.02 of the Additional Provisions Debtor stating that the actual treatment are adequate protection payments pending determination of the loan modification.

Moreover, Debtor testifies that they are pursuing loan modifications with both creditors submitted August 2020 which are still pending. The court notes that Movant does not address this in their motion for relief. Counsel for Debtor reports that documentation is submitted and awaiting a response.

At the hearing, counsel for Movant reported that his client has not processed it yet.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted to the court, it appears that there may be some equity and Debtor are addressing it through adequate protection payments. In light of the prosecution of the plan, the court denied relief under 11 U.S.C. § 362(d)(2).

It seems the court can present Movant with two options. The court may deny the relief requested without prejudice or, with the concurrence of Movant's counsel, continue the hearing on this motion to the same date as the motion to confirm the proposed plan and rule on Movant's request then.

At the hearing, Movant consented to continuing the hearing to the February 9, 2021 confirmation hearing date and time.

Request for Attorneys' Fees

In the Motion, Movant requests that it be allowed attorneys' fees. The Motion alleges contractual grounds for such fees, in that under the loan documents Movant is entitled to its costs and

expenses in enforcing its interest to the extend not prohibited by applicable law. Specifically, Page 2
Section 7(E) of the Note states:

> If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsuit is brought, to the extent not prohibited by Applicable Law. Those expenses include, for example, reasonable attorneys' fees.

Exhibit 1, Dckt. 78, at p. 5.

Movant is seeking $1,231 in attorney's fees as a result of the fees incurred in the filing of this motion. Part of those fees include a $181 filing fee while the remaining balance can be attributed to the amount incurred by Movant's attorneys in drafting this Motion.

At the hearing, Movant agreed to continue the hearing in light of the ongoing loan modification application efforts.

February 9, 2021 Hearing

As of the preparation of this pre-hearing disposition, no further documents have been filed updating the court regarding the loan modification.

At the hearing, xxxxxxxx

12. **19-27175-E-13** **ADAM/SHERRI NEWLAND** **MOTION TO MODIFY PLAN**
PGM-2 **Peter Macaluso** **12-30-20 [54]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 30, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Adam S. Newland and Sherri A. Newland ("Debtor"), have filed evidence in support of confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a conditional Non-Opposition Response on January 19, 2021. Dckt. 64. The Trustee's Non-Opposition is conditioned on the Debtor providing Trustee with copies of their savings and checking account statements for October 1, 2020 through December 31, 2020 and a copy of their tax returns as soon as they are available.

At the hearing, xxxxxxxx

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Adam S. Newland and Sherri A. Newland ("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 30, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

13. **20-24280-E-13 GSJ-1** **SHELISA TURNER** **Grace Johnson** **MOTION TO CONFIRM PLAN** **12-23-20 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is denied.

The Debtor, Shelisa Kay Turner ("Debtor") seeks confirmation of the First Amended Chapter 13 Plan. The Plan provides monthly plan payments of $6,471.00 per month for 60 months, and 100% dividend to creditor with unsecured claims totaling approximately $15,585.75. Plan, Dckt. 43. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on January 26, 2021. Dckt. 46. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has not filed all business related tax returns.

B. Debtor may not be able to make the payments under the plan.

DISCUSSION

Failure to File Tax Returns

Debtor shows 100% ownership of two LLCs and admitted at the Meeting of Creditors that she has not filed all her business tax returns, having only filed personal returns for the past 4 years. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan calls for adequate protection payments for the claim of the Carrington Company for 11 months, with no class specified. The provision also calls for a motion to sell or refinance by July 1, 2021, but does not specify a result if no motion is filed. The plan calls for the Creditor to be treated as Class 3 if no sale or refinance occurs by September 15, 2021. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

On Schedule I Debtor states that she is employed as a Care Taker and her employer is "IHSS." Further, that Debtor has been so employed for 20 years as a care taker. From her $5,860.00 in monthly wages, Debtor has $643.36 withheld for federal and state income taxes, Medicare, and Social Security. Dckt. 12 at 24. Debtor lists having an additional $2,136.33 in monthly net income from operating a business or rental property. *Id*.

At the end of the Statement of Financial Affairs a Business Income and Expenses Statement. *Id*. at 52. On it Debtor states having $6,136.33 in monthly gross business income. Debtor lists the following expenses for the business:

Purchase of Feed/Fertilizer/Seed/Spray	($900)
Utilities	($800)
Repairs and Maintenance	($100)
Vehicle Expense	($400)
Travel and Entertainment	($300)
Total	($4,000)

After these ($4,000) in necessary expenses, Debtor has net income of $2,216.33. Debtor's expenses are running 65% of gross income.

On the Statement of Financial Affairs Debtor states she is a member of two limited liability companies - Royal Hearts Transportation, LLC.

It does not appear that any provision is made for the additional $25,635 of the limited liability income, which is on top of Debtor's $70,320 in wages for IHSS.

In looking at the expenses stated on Schedule J, even though Debtor has no dependents, it appears that her ($876) in monthly expenses are unreasonably low. Debtor states having ($266) in real

estate taxes, but no property insurance, repair, maintenance, utilities, phone, or internet expenses. For food and housekeeping supplies, Debtor lists only $250 a month. Debtor's transportation expenses are only $100 a month. Though owning three vehicles, Debtor has no vehicle insurance. Schedules A/B and J; Dckt. 12. Though Debtor owns "horses" (Schedule A/B, Dckt. 12 at 5), Debtor has no veterinary, fee, or stabling expenses.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the debtor, Shelisa Kay Turner ("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.

14. **20-24484-E-13 DPC-1** **ARTURO COUPE Michael Hays** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 11-10-20 [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 and Debtor's Attorney on November 10, 2020. 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.

The Objection to Confirmation of Plan is xxxxx.

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

A. Debtor failed to provide proof of social security number and identification at the Meeting of Creditors.

B. Debtor has failed to file all tax returns required.

C. Debtor failed to provide copy of the federal income tax return for the most recent tax year.

On November 18, 2020, Trustee filed a Status Report informing the court that Debtor appeared at the continue meeting of creditors held on November 12, 2020 and provided Trustee with identification and social security. Dckt. 32. Additionally, the meeting was continued to January 21, 2021, for the Debtor to file the tax returns required and provide Trustee with copies and proof that they

have been filed. *Id.*

DISCUSSION

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2015, 2018, and 2019 tax year has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Parties agreed to set the final hearing on the Motion.

January 12, 2021 Hearing

As of the court's January 8, 2021 review of the docket in preparing this pre-hearing disposition, no further updates regarding the tax returns has been provided.

At the hearing, the Trustee reported that the Debtor appeared at the First Meeting, which has been continued to January 21, 2021.

Trustee's Report

Debtor did not attend the January 21, 2021 Meeting of Creditors and has been continued to February 18, 2021. Trustee's January 21, 2021 Docket Entry Statement.

February 9, 2021 Hearing

At the hearing, xxxxxxxx

15. **18-21488-E-13 CLH-9** **DANIEL/ALLISON BRENNAN** **Charles Hastings** **CONTINUED MOTION TO MODIFY PLAN** **9-2-20 [203]**

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 September 2, 2020. By the court's calculation, 55 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 xxxxx.

The debtors, Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtors") seek confirmation of the Modified Plan due to a significant reduction in income that requires them to reduce the dividend to creditors with unsecured claims to 4% and to reduce the plan payment to an amount they can afford. Declaration, Dckt. 205. The Modified Plan provides payments of $1,000 for 29 months, and a four (4) percent dividend to unsecured claims totaling $462,762. Modified Plan, Dckt. 206. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 8, 2020. Dckt. 209. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. The plan is not feasible.

C. Plan **misstates the collateral value of the Internal Revenue** Service.

D. Attorney's fees remain due.

DISCUSSION

Delinquency

Debtor is $99,902.06 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan will complete in 30 months instead of the 29 months proposed due to the $423,644.95 IRS claim, $13,063.24 in priority claims, $1,917.22 in unsecured claims, and $2,507.06 in attorney's fees.

Additionally, the confirmed plan called for a lump sum payment estimated at $359,000 from the sale of Debtor's home. After the sale, Trustee received $252,672.94, significantly less than the estimated amount. The proposed modified plan misstates the lump payment as $336,225. Trustee argues that if corrected, Debtor would be delinquent under the proposed plan by $16,350.00.

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

Internal Revenue Service Claim

According to Trustee, the proposed plan misstates the collateral value of the Internal Revenue Service in Class 2 and proposes $0.00 monthly dividend. The Trustee's records reflect that this claim is $423,644.95.

Attorney's Fees

The proposed plan provides for $0.00 monthly payment for attorney's fees. Per Trustee's records, $2,507.06 remain due.

Debtor filed a Reply on October 20, 2020 requesting the court continue the hearing to November 24, 2020 to allow for Debtor's counsel to continue discussions with counsel for the Trustee and the representative for the Internal Revenue Service to sort out the remaining claims held by the IRS and a consensual plan for payment. Dckt. 212. According to counsel for Debtor, the parties had agreed that Debtor would request the continuance for approximately 28 days so they may continue the discussions. *Id.*

At the hearing, counsel for the Debtor reported that there is an accounting issue to be addressed and requested a continuance.

November 17, 2020 Status Report

Debtor filed a Status Report on November 17, 2020 requesting a continuance of the hearing until January 26, 2021 so that they may continue discussing the amount of status with the Internal Revenue Service after the IRS representative expressed an unwillingness to reach an agreement

concerning their claim until he knows that Debtors are current on their 2020 tax liability. Dckt. 214. Debtor's counsel adds that based on the discussions with the IRS representative, an agreement is possible even if the total amount of the IRS claim will not be paid in full during the plan term. *Id.*, at 2.

January 22, 2020 Status Report

Debtor filed a Status Report on November 17, 2020 requesting a continuance of the hearing until February 9, 2021 after Debtor made a timely January installment to the Internal Revenue Service but Debtor's Counsel has not heard back from the IRS representative in order to reach an agreement concerning Debtor's plan. Dckt. 217.

February 9, 2021 Hearing

At the hearing, xxxxxxxx

16. **19-24390-E-13 MRL-1** | **ROBERT PATTERSON** **Mikalah Liviakis** | **MOTION TO SUBSTITUTE PARTY, AS TO DEBTOR** **1-2-21 [40]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Substitute 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 Substitute is xxxxx.

Interested Party, Ma Teresa Patterson, the wife of the Debtor ("Interested Party"), seeks an order approving the motion to substitute Interested Party, for the deceased Debtor, Robert Earl Patterson.

Provision for such substitution to allow for the continued prosecution of a debtor's bankruptcy case is made in Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 13 on July 12, 2019. On September 11, 2019, Debtor's Chapter 13 Plan was confirmed. Dckt. 20. On November 29, 2020, Debtor Robert Earl Patterson passed away. Interested Party asserts that she has been the primary manager of Debtor's finances during the last several years and can continue to do so.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Interested Party requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party. A Suggestion of Death was filed on January 2, 2021. Dckt 41. Interested Party is the Spouse of the deceased party.

Interested Party's Declaration in Support of Motion does not clearly state that she will continue to prosecute this case in a timely and reasonable manner. Dckt. 42.

TRUSTEE'S RESPONSE

Trustee filed a Response on January 22, 2021. Dckt. 45. Trustee notes that the substitution does not expressly state that it is sought pursuant to Federal Rule of Bankruptcy Procedure 1016. Trustee does agree that Movant is a knowledgeable party but does not agree that further administration is possible or in the best interest of the parties unless the following matters are addressed:

1. Petition was filed under power of attorney by Movant. Debtor's Schedule I showed social security and long term disability benefits. The power of attorney was not filed with the court.

2. Debtor's address of record in Granite Bay, California is in conflict with the address in Quezon City, Philippines, shown on Debtor's Exhibit in support of Motion. Dckt. 43. Debtor's Schedule A/B does not schedule any property in the Philippines. Though required under the order confirming the Plan, no change of address has been filed.

3. Debtor appears to have conveyed property in Placer County, California to a revocable trust. No such trust or any transfers of real property interest had been disclosed.

4. Movant has not disclosed if they intend to proceed with the prosecution of the Plan.

5. Debtor has not disclose the face value, policy numbers, or beneficiaries of two life insurance policies scheduled by Debtor.

6. At Debtor's 341 meeting, Debtor represented he had been married ten years, that his whole life policy was payable to his ex-spouse per the dissolution judgement, that his alimony continued for at least three years, and expressed an intent to move abroad and rent his residence. Yet, no supplemental Schedule I & J have been filed disclosing whether the residence has been rented, the amount of the rent, and whether it was rented to a family member.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing

> of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, the Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 41.

However, Interested Party Ma Theresa Patterson has failed to provide sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor.

Trustee presents valid concerns that Interested Party must address before the court may grant this substitution. Interested Party must also file with the court the Power of Attorney which allowed for this case to be filed.

At the hearing, xxxxxxxx

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 Substitute After Death filed by 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 xxxxx.

17. **20-23890-E-13 TJW-2** **RICARDO CORTEZ** **Timothy Walsh** **MOTION TO VACATE DISMISSAL OF CASE** **1-25-21 [35]**

CASE DISMISSED: 01/07/2021

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

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 January 25, 2021. By the court's calculation, 15 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 Vacate is denied.

Ricardo J. Cortez ("Debtor") filed the instant case on August 11, 2020. Dckt. 1. A plan was never confirmed in this case, and the Order on Trustee's Objection to Confirmation of the Plan was entered on October 26, 2020. Dckt. 18. Debtor filed their First Amended Plan December 31, 2020. Dckt. 27.

On December 1, 2020, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to delinquency and no plan pending. Dckt. 21. On January 6, 2021, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 32.

On January 25, 2021, Debtor filed this instant Motion to Vacate, claiming that Debtor became current as of the date of the hearing, January 6, 2021, and that the reason for the delay in filing the First Amended Plan was in part because of unfiled tax returns and a delay in filing the tax claim by the IRS. The Debtor contends that the filing of the First Amended Plan was timely under the circumstances.

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

APPLICABLE LAW

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

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

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

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

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

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability

of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The first ground for the Motion to Dismiss was delinquency in plan payments. Civil Minutes, Dckt. 31. At the time of the hearing, Debtor was $2,817.47 delinquent in plan payments, which represented multiple months of the $1,972.49 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C.§ 1307(c)(1).

Debtor filed an Opposition to Trustee's Motion to Dismiss on December 7, 2020. Dckt. 25. Debtor stated that the delinquency would be cured prior to the hearing date. But the delinquency was not cured. In his Opposition to the instant motion, the Trustee contends that although Debtor had made payments, they did not cure the entire default.

The second ground for the Motion to Dismiss was that there was no Plan pending. Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 20, 2020.

On December 31, 2020, Debtor filed a plan, but no motion to confirm. On the morning of January 6, 2021, Debtor's counsel filed a motion to confirm and a declaration certified by counsel ("/s/ signature") purported to have been signed by Debtor. The motion failed to comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 as it did not state grounds upon which the court may grant the relief requested. Further, at the hearing, counsel for Debtor acknowledged (and apologized to the court) that he did not have an actual signed declaration from his client, but was hoping to get the one he drafted signed by the Debtor in the future. The court found that this was unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Lastly, Debtor claims that Debtor could not have filed a First Amended Plan any earlier than his receipt of the Amended Claims of the IRS, but Trustee asserts that Debtor omits that the first claim of the IRS was filed August 31, 2020, which showed no tax returns for 2015, 2016, 2018, and 2019 had been filed. Further, Trustee notes that Debtor also omits when these returns were filed and does not address why no objection to the IRS claim was filed.

Therefore, in light of the foregoing, the court finds there is no cause to vacate the dismissal. The court cannot find that the dismissal was entered or that Debtor's failure to address the grounds for dismissal were the result of mistake, inadvertence, surprise, or excusable neglect.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Ricardo J. Cortez ("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.

18.	**20-25496-E-13** **DPC-1**	**ANDRE SAINT-LOUIS** **Mark Shmorgon**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-21-21 [23]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 21, 2021. By the court's calculation, 19 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 xxxxx.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor fails liquidation analysis.

DISCUSSION

Trustee's objections are well-taken.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that while the plan proposes a 0% dividend to unsecured creditors, Trustee argues that Debtor has claimed an exemption for real property that may exceed the statutory maximum. While Debtor has

reported non-exempt equity in the amount of $175,000.00, Trustee believes that the Debtor may be only entitled to $75,000 under C.C.P. §704.730.

Trustee has filed an Objection to the Exemption on January 26, 2021. Dckt. 27. The motion is set for hearing February 23, 2021. Debtor has filed his Opposition to the Objection to Claim of Exemption, stating his asserted basis for claiming an exemption of $175,000.

Trustee requests that the hearing on this motion be continued until the Objection to Exemptions is heard.

At the hearing, xxxxxxxx

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 **xxxxx**.

FINAL RULINGS

19. **20-24105-E-13 DPC-1** | **SHELLY DESHAN** **Michael Hays** | **CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK 10-23-20 [33]**

Final Ruling: No appearance at the February 9, 2021 hearing is required.

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 October 23, 2020. By the court's calculation, 18 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.

The Objection to Confirmation of Plan is overruled and the Plan is confirmed.

The Chapter 13 Trustee, David Cusick ("Trustee") filed an original objection on September 9, 2020 opposing confirmation. Dckt. 28. Trustee opposed confirmation on the basis that the Debtor was delinquent in plan payments, Debtor's plan relied on a Motion to Value Collateral, and Debtor filed two Chapter 13 plans with the court that appeared to be identical. *Id*.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an amended objection and opposes confirmation of the Plan on the basis that:

A. Creditor with secured claim should not be under Class 4.

B. Debtor filed two plans.

DISCUSSION

Trustee's objections are well-taken.

Failure to Cure Projected Escrow Shortage of Creditor

Select Portfolio Services, ("Creditor") holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $1,279.18 in pre-petition arrearage. The arrearage is based on a projected escrow shortage. The Plan treats the Creditor as a Class 4 Creditor and Debtor will be making direct payments to the Creditor in the amount of $812.34 per month. Trustee asserts that based on the delinquency, this creditor should be treated as a Class 1.

Debtor filed a Response to Trustee's Amended Objection to Confirmation of the Plan on October 26, 2020. Dckt. 37. Debtor argues that there is no delinquency but a "projected escrow shortage" which "should not result in a Debtor forced to have their mortgage in Class 1 when they are actually current with their regular mortgage payment." *Id*., at 2.

This response raises a significant issue. The Trustee points to Proof of Claim No. 3-1 (misidentified as Proof of Claim 3-2 in the Objection), stating that Select Portfolio Servicing, Inc. (its representative) states under penalty of perjury that there is a $1,279.18 pre-petition arrearage that must be cured.

Looking at Proof of Claim No. 3-1, the Creditor stating that there is a pre-petition arrearage is Athene Annuity and Life Company. Proof of Claim 3-1 is signed under penalty of perjury by Robert Zahradka, Esq., as the Attorney for Creditor. Select Portfolio Servicing, Inc. is merely the entity to which notice is to be sent for Creditor and where the payments to be made to creditor are to be sent.

The Attorney for Creditor and Creditor clearly state under penalty of perjury:

> Amount necessary to cure any default as of the date of the petition: $1,279.18

Proof of Claim 3-1, § 9.

This statement of there being a pre-petition arrearage that must be cured is not "merely" made under penalty of perjury but also subject to significant statutory sanctions:

> A person who files a Fraudulent claim could be Fined up to $500,000, Imprisoned for up to 5 Years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Proof of Claim 3-1, Part 3.

In the Response, Debtor walks the court through the attachment to Proof of Claim No. 3-1 to show that the statement of there being a pre-petition arrearage of $1,279.18 is a false statement under penalty of perjury, and that such amount is for a future, "Projected escrow shortage." However, even on the portions of the attachment to Proof of Claim 3-1, it clearly states a "Total prepetition arrearage: $1,279.18."

By doing so in the Proof of Claim, such asserted prepetition arrearage amount controls, unless otherwise ordered by the court. Plan ¶ 3.02. The proceeding in which the court would order otherwise would be an objection to claim.

Thus, if Debtor is correct and the statement of a pre-petition arrearage is false, then Debtor will be put to the significant cost and expense of having to prosecute an objection to claim. While an initial expense to Debtor, presumably the Note and Deed of Trust upon which the claim is based has an attorney's fee provision, which provision is made reciprocal under California Law (Cal. Civ. § 1717). At the end of the day, it would be creditor who will have to pay all of those attorney's fees and costs if Debtor is correct.

Additionally, if Debtor is correct and the stated under penalty of perjury pre-petition arrearage is actually some future post-petition amount that will only be due in the future, more significant issues arise. First, those statements were made under penalty of perjury. Second, if it is done in this case, in how many other cases does this and other creditors misstate that there is a pre-petition arrearage, and then "double collect" the amount — getting paid for the alleged pre-petition arrearage and then raise the monthly payment in the future for the same "arrearage."

Thus, it appears that the hearing needs to be further continued to allow Debtor to prosecute a claim objection, including seeking to recover all attorney's fees and costs as permitted under applicable law.

Two Plans Filed

Debtor filed two Chapter 13 Plans with the Court, which are both identical. Dckt. 8, Dckt. 22. Debtor admitted at the First Meeting of Creditors, that the Plan filed on October 5, 2020, (Dckt. 22), was done in error and was meant to be an exhibit to accompany the Motion to Value Collateral. On October 9, 2020, Debtor filed Debtor's Notice of Withdrawal to withdraw the Chapter 13 Plan that was filed on October 5, 2020. Dckt. 26. Trustee asserts that the filing of a subsequent plan is usually a *de facto* withdrawal of the previous plan and that as a result, there is no plan pending for the Debtor. Dckt. 33.

In reply, Debtor's Attorney asserts that his "understanding is that a copy of the plan is supposed to be served on the creditor when a motion to value collateral is being filed and [he] mistakenly filed it again with the Court instead of just showing on the Proof of Service by Mail that a copy was being served on the creditor as part of the supporting documents." Dckt. 37, at 2. Debtor's Attorney states, "no one else was served with a copy other than the creditor in the motion and their designated agent." *Id*.

A review of the docket shows that Debtor filed a Notice of Withdrawal on October 9, 2020 explaining the error regarding the plan filed on October 5, 2020 and indicating that the plan filed on August 27, 2020, Dckt. 8, was the still operative plan. Dckt. 26.

The court finds that for the benefit of judicial economy, the Trustee's Objection allowing Debtor to properly explained the error via the Notice and the Response to this instant objection, and both plans being identical, there is no good cause for Debtor to have to refile a plan and a motion, and set it for hearing.

Trustee's Status Report

On January 19, 2021 Trustee filed a Status Report informing the court that Debtor has become current under the Plan and that now that Creditor Select Portfolio Servicing, Inc. has amended

its claim to reflect that Debtor is current under the mortgage, Trustee no longer opposes creditor being listed as a Class 4 claim. Dckt. 46.

Trustee's concerns now having been addressed, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Shelly Deshan ("Debtor") Chapter 13 Plan filed on August 27, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. **19-26112-E-13 PGM-2** | **MARCO PEDRAZA** **Peter Macaluso** | **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S) 1-7-21 [61]**

Final Ruling: No appearance at the February 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2021. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period June 9, 2020, through August 25, 2020. Applicant requests fees in the amount of $1,500.00.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee ("Trustee"), filed a Response on January 20, 2021. Dckt. 66. Trustee does not oppose the requested amount but notes that Applicant does not describe in detail the attorney work done, as the court might otherwise expect.

In reviewing the pleadings, the Declaration does not contain an extensive discussion of the need for the additional services, in the Motion the detailed time and billing information is provided

(rather than shown in an exhibit). Counsel assisted Debtor in opposing a motion to dismiss and then obtained confirmation of a modified plan.

The amount of fees requested is $1,500, which is facially reasonable for the work required.

In reviewing the Declaration, what the court notes is that Applicant never actually testifies that the billing and charges information are true and accurate information from his business records. Rather, it is merely "allegations" in the Motion, for which no evidence is filed.

Though not fatally defective for this Motion, Applicant should remember that evidence is necessary to support "allegations" in the pleadings - even when requesting the allowance of fees and expenses. It is curious that Applicant does not have a copy of his contemporaneous billing records for these services. The next time such an application is filed and there is not evidence of the services, billings, and time records, such application may be denied (and not without prejudice).

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or
(ii) services that were not—
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's for the Estate include Opposition to Motion to Dismiss, preparing Motion to Modify, and appearance at the hearing for Motion to Modify. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to

conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 27. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Dismiss: Applicant spent 2.35 hours in this category. Applicant reviewed the

Motion to Dismiss, met with Client to discuss the motion, prepared and filed Opposition to Motion to Dismiss, and appeared at the hearing.

Motion to Modify: Applicant spent 3.2 hours in this category. Applicant prepared and filed Motion to Modify, reviewed Opposition to Motion to Modify, filed Response to Opposition, appeared for hearing, prepared and sent order to Trustee, and sent letter to Client regarding outcome of hearing.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter G. Macaluso - Partner	5.15	$300.00	$1,545.00
Legal Assistant	.40	$75.00	$30.00
Total Fees for Period of Application			$1,575.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including opposing Motion to Dismiss and filing Motion to Modify, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

Fees $1,500.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by Marco D. Pedraza ("Debtor")

Fees in the amount of $1,500.00

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

IT IS FURTHER ORDERED that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

21. **18-25114-E-13** **DAVID HOWERTON** **MOTION FOR COMPENSATION FOR**
PGM-1 **Peter Macaluso** **PETER G. MACALUSO, DEBTORS ATTORNEY(S)**
1-6-21 [82]

Final Ruling: No appearance at the February 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 6, 2021. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period June 1, 2020, through August 25, 2020. Applicant requests fees in the amount of $1,500.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or
(ii) services that were not—
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's for the Estate include Opposition to Motion to Dismiss, preparing Motion to Modify, and appearance at the hearing for Motion to Modify. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys,

shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

. . .

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 21. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

F.2d 687, 691 (9th Cir. 1988).

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Dismiss: Applicant spent 2.35 hours in this category. Applicant reviewed the Motion to Dismiss, met with Client to discuss the Motion, prepared and filed the Opposition, and appeared at the hearing.

Motion to Modify: Applicant spent 3.35 hours in this category. Applicant prepared and filed Motion to Modify, reviewed Opposition to the motion, filed Response to Opposition, prepared and filed Supplemental Declaration and Exhibits, appeared at the hearing, prepared and sent order to Trustee, and sent letter to Client regarding outcome of hearing.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter G. Macaluso - Partner	5.3	$300.00	$1,590.00
Legal Assistant	.4	$75.00	$30.00
Total Fees for Period of Application			$1,620.00

In the Applicant's Application, the total number of hours spent on this matter are listed as 5.90. However, adding together the listed hours worked, the Court finds that the total for time spent on

this matter was 5.7 hours. Though the number of hours is incorrect, the total amount in fees calculated adds up to 5.7 hours.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including opposing the Motion to Dismiss, preparing Motion to Modify, and appearance at the hearing for Motion to Modify, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Applicant requests the reduced amount of $1,500 for the services provided. The request for additional fees in the amount of $1,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

Fees $1,500.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter G. Macaluso, Professional Employed by David De Vaughn Howerton ("Debtor")
>
> Fees in the amount of $1,500.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13

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

22. **16-22328-E-13 SS-7** **MARIA COLEMAN** **Scott Shumaker** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF LAW OFFICE OF SCOTT SHUMAKER FOR SCOTT SHUMAKER, DEBTORS ATTORNEY(S) 1-22-21 [128]**

Final Ruling: No appearance at the February 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 22, 2021. By the court's calculation, 18 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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.

Upon review of the pleadings, the very modest amount of fees requested, the documentation provided, and the non-opposition of the Trustee, the court determines that oral argument will not be of assistance to the court in ruling on this Motion.

The Motion for Allowance of Professional Fees is granted.

Scott D. Shumaker, the Attorney ("Applicant") for Maria Ann Coleman, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period July 2, 2018, through September 11, 2018. Applicant requests fees in the amount of $900.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an

examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or
(ii) services that were not—
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include filing and supporting Motion to Incur Debt and filing and supporting Motion to Modify Plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of

> Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 33. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Incur Debt: Applicant spent 3.75 hours in this category. Applicant discussed with Client the Motion to Incur Debt, filed the Motion to Incur Debt, and appeared at the hearing for Motion to Incur Debt.

Motion to Modify Plan: Applicant spent 3 hours in this category. Applicant reviewed the modified plan with Client, filed the Motion to Modify Plan, and responded to Trustee's Objection to Motion to Modify Plan.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Scott D. Shumaker - Partner	2.75	$350.00	$962.50
Piotr Reysner - Paralegal	4	$150.00	$600.00
Total Fees for Period of Application			$1,562.50

The court notes that in the Application, Applicant is listed 2.75 as the total number of hours

worked with a total fee of $927.50. However, when multiplying the hours worked by the hourly rate, the correct amount comes out to $962.50.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including filing and supporting Motion to Incur Debt and filing and supporting Motion to Modify Plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. Applicant requests a reduced amount of $900.00 to the extent that funds are available. 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 $900.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay 100% of the fees and costs allowed by the court tot the extent that funds are available.

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

Fees $900.00

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 Scott D. Shumaker ("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 Scott D. Shumaker is allowed the following fees and expenses as a professional of the Estate:
>
> Scott D. Shumaker, Professional Employed by Maria Ann Coleman ("Debtor")
>
> Fees in the amount of $900.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13

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

23. **18-24856-E-13 PGM-4** | **EVANGELINA CLARIZA** **Peter Macaluso** | **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)** **1-8-21 [119]**

Final Ruling: No appearance at the February 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2021. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period June 3, 2020, through August 11, 2020. Applicant requests fees in the amount of $1,410.00.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee ("Trustee"), filed a Response on January 20, 2021.

Dckt. 124. Trustee does not oppose the requested amount but notes that Applicant does not describe in detail the attorney work done, as the court might otherwise expect.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's for the Estate include Opposition to Motion to Dismiss, preparing Motion to Modify, and appearance at the hearing for Motion to Modify. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

> (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> . . .
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 40. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Dismiss: Applicant spent .95 hours in this category. Applicant reviewed the Motion to Dismiss, communicated with Client to review case and discuss Motion, prepared and filed Opposition, and reviewed rulings for Motion to Dismiss.

Motion to Modify Order: Applicant spent 4.05 hours in this category. Applicant prepared and filed Motion to Modify, reviewed Opposition to Motion, filed Response to Opposition, appeared for hearing, prepared and sent order to Trustee, and sent letter to Client regarding outcome of hearing.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter G. Macaluso - Partner	4.6	$300.00	$1,380.00
Legal Assistant	.4	$75.00	$30.00
Total Fees for Period of Application			$1,410.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including Opposition to Motion to Dismiss, preparing Motion to Modify, and appearance at the hearing for Motion to Modify, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,410.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

Fees $1,410.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter G. Macaluso, Professional Employed by Evangelina Gerales Clariza ("Debtor")

Fees in the amount of $1,410.00

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

IT IS FURTHER ORDERED that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

24. **19-26094-E-13 PGM-3** | **YVONNE JOHNSON** **Peter Macaluso** | **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)** **1-7-21 [95]**

Final Ruling: No appearance at the February 9, 2021 hearing is required.

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 January 7, 2021. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

In light of the actual notice given, the amount of fees requested, and Trustee's non-opposition, the court shortens the notice period to the 33 days actually given.

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period June 9, 2020, through August 11, 2020. Applicant requests fees in the amount of $1,155.00.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee ("Trustee"), filed a Response on January 20, 2021. Dckt. 100. Trustee does not oppose the requested amount but notes that Applicant does not describe in detail the attorney work done, as the court might otherwise expect. [Fn.1.]

FN. 1. The court has addressed this concern of the Trustee with Applicant in connection with other motions, resulting in the court not needing to have Applicant appear at this hearing on that point.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> > (I) reasonably likely to benefit the debtor's estate;
> > (II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's for the Estate include Opposition to Motion to Dismiss, preparing Motion to Modify, and appearance at the hearing for Motion to Modify. The court finds the services were beneficial to Client and the Estate and were reasonable.

"No-Look" Fees

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

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

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

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

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees.

> Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 56. Applicant prepared the order confirming the Plan.

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided,

which are described in the following main categories.

Motion to Dismiss: Applicant spent 1.6 hours in this category. Applicant reviewed the Motion to Dismiss, met with Client to discuss the motion, prepared and filed Opposition, prepared and filed Declaration of Debtor for Opposition, and reviewed ruling on Motion to Dismiss.

Motion to Modify Plan: Applicant spent 2.55 hours in this category. Applicant prepared and filed Motion to Modify, prepared and filed Amended Schedules, appeared at the hearing, prepared and sent order to Trustee, and sent letter to Client regarding outcome of hearing.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter G. Macaluso - Partner	3.75	$300.00	$1,125.00
Legal Assistant	.4	$75.00	$30.00
Total Fees for Period of Application			$1,155.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including Opposition to Motion to Dismiss, preparing Motion to Modify, and appearance at the hearing for Motion to Modify, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,155.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

Fees $1,155.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by Yvonne Johnson ("Debtor")

Fees in the amount of $1,155.00

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 the confirmed Plan.

25.	**20-25523-E-13 GB-1 25 thru 27**	**THOMAS EDWIN KNOERNSCHILD Robert Huckaby**	**OBJECTION TO CONFIRMATION OF PLAN BY CONSUMER PORTFOLIO SERVICES, INC. 1-25-21 [36]**

Final Ruling: No appearance at the February 9, 2021 hearing is required.

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 25, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Amended Plan is deemed to be an Opposition to the Motion to Confirm the Amended Plan filed on January 16, 2021.

The Opposition will be considered at the February 23, 2021 hearing set on the Motion to Confirm the Amended Plan**.**

Consumer Portfolio Services, Inc. ("Creditor") holding a secured claim opposes confirmation of the Amended Plan filed on January 16, 2021, on the basis that Debtor seeks to pay less than the full balance of the claim secured by a motor vehicle acquired for personal use within the 910-year period preceding the date of the bankruptcy filing.

The Debtor having filed the Amended Plan on January 16, 2021 and a Motion to Confirm the Amended Plan set for hearing on February 23, 2021, the court deems Creditor's Objection as an Opposition to Debtor's Motion to Confirm the Amended Plan.

The Opposition will be considered for the February 23, 2021 hearing on the Motion to Confirm the Amended Plan.

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 Consumer Portfolio Services, Inc. ("Creditor") holding a secured claim having been deemed an Opposition to Debtor's Motion to Confirm the Amended Plan filed on January 16, 2021,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Amended

Plan will be heard as Opposition to the Motion to Confirm the Amended Plan set for hearing February 23, 2021.

26.	**20-25523-E-13** **DPC-1**	**THOMAS EDWIN KNOERNSCHILD** **Robert Huckaby**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-21-21 [32]**

Final Ruling: No appearance at the February 9, 2021 hearing is required.

Local Rule 9014-1(f)(2) Objection— No 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 21, 2021. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan is overruled as moot, Debtor having filed an amended plan and motion to confirm.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on January 16, 2021. Dckts. 25, 22. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is overruled as moot, the Debtor having withdrawn the Plan that is the subject of the Objection.

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 Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled without prejudice as moot, Debtor having filed an amended plan, thereby withdrawing the original Plan that is the subject of this Objection.

27.	**20-25523-E-13 GB-1**	**THOMAS EDWIN KNOERNSCHILD Robert Huckaby**	**OBJECTION TO CONFIRMATION OF PLAN BY CONSUMER PORTFOLIO SERVICES, INC. 1-15-21 [19]**

Final Ruling: No appearance at the February 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 15, 2021. By the court's calculation, 25 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. 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 Objection to Confirmation of Plan is overruled as moot, Debtor having filed an amended plan and motion to confirm.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, Thomas E. Matlock Knoerschild ("Debtor"), filed a First Amended Plan and corresponding Motion to Confirm on January 16, 2021. Dckts. 25, 22. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is overruled as moot, the Debtor having withdrawn the Plan that is the subject of the Objection.

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 Confirmation of the Chapter 13 Plan filed by Consumer Portfolio Services, Inc. ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is the Objection is overruled without prejudice as moot, Debtor having filed an amended plan, thereby withdrawing the original Plan that is the subject of this Objection.