UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 23, 2021 at 2:00 p.m.

1.	**16-20300-E-13**	**IRENE SINGH**	**MOTION FOR HARDSHIP DISCHARGE**
	MS-2	**Mark Shmorgon**	**2-8-21 [42]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 8, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion for Entry of Hardship Discharge is granted.

Irene Singh ("Debtor") moves for entry of a hardship discharge on the grounds that Debtor no longer has the ability to keep funding the Chapter 13 Plan to completion due to existing medical conditions and the loss of income due to the COVID-19 pandemic and other personal circumstances. Declaration, Dckt. 44. Debtor argues 11 U.S.C. Section 1328(b) is satisfied because: "(1) Debtor's

medical condition and resulting finance condition is a circumstance for which the Debtor should not be justly held accountable to; (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid if the estate of the Debtor had been liquidated under Chapter 7; and (3) modification of the Debtor's plan under §1329 is not practicable given that the plan is currently on month 60." Motion, Dckt. 42 at 2:14.

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

> Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if–
>
> > (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
> >
> > (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
> >
> > (3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g.*, *In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden or proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). "Unsubstantiated and conclusory statements" about a debtor's inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g.*, *In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a "debtor is justly accountable for the plan's failure." *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;

B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;

C. Whether the intervening event or events were reasonably foreseeable at

the time of confirmation of the Chapter 13 plan;

D. Whether the intervening event or events are expected to continue in the reasonably foreseeable future;

E. Whether the debtor had control, direct or indirect, of the intervening event or events; and

F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id.

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event "such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments." *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) "requires that the circumstances leading to the debtor's failure to make payments be beyond the debtor's control." *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be "truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability." *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the "best interests" test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan "is not 'practicable' if there is no source of income to fund the modified plan." *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that "[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan." *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, "the availability of case closure does not eliminate a bankruptcy court's duty to ensure that a debtor complies with the Bankruptcy Code's 'best interests of creditors' test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan." *Id.* The Ninth Circuit found explicitly that a "bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter." *Id.*

DISCUSSION

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met.

While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a clear catastrophe in Debtor's life that prevents Debtor from complying with and completing the Plan. The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is entered for Debtor 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 Hardship Discharge filed by Irene Singh ("Debtor") having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the court shall enter a "hardship" discharge pursuant to 11 U.S.C. § 1328(b) for Irene Singh in this case based on the Plan as performed as of the February 20, 2021 hearing date on this Motion.

2. 21-20408-E-13 BLG-1 STEPHEN/PAULA MEYER

MOTION TO EXTEND AUTOMATIC STAY - O.S.T.
2-10-21 [12]

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2021. By the court's calculation, 13 days' notice was provided. The court set the hearing for February 23, 2021. Dckt. 18.

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

The Motion to Extend the Automatic Stay is granted.

Stephen Wilfred Meyer and Paula Rana Meyer ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-24259) was dismissed on July 16, 2020, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 19-24259, Dckt. 62, July 16, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Trustee does not oppose the relief requested. Dckt. 23.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because after having defaulted in plan payments due to injuries that resulted in disability for six (6) months for Debtor Paula and an injury for Debtor Stephen and two subsequent surgeries.

Upon motion of a party in interest and after notice and hearing, the court may order the

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

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

A. Why was the previous plan filed?

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Stephen Wilfred Meyer and Paula Rana Meyer ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

3.	**20-25496-E-13** **DPC-1** **3 thru 4**	**ANDRE SAINT-LOUIS** **Mark Shmorgon**	**CONTINUED 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.

The Objection to Confirmation of Plan is overruled.

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's Objection to Exemptions

Trustee's Objection to Exemption was overruled on the basis that Debtor is entitled to the $175,000 homestead exemption pursuant to C.C.P. §704.730 after having testified to his physical disabilities.

Trustee's objection to the exemption having been resolved in favor of Debtor, 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 an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Andre Saint-Louis's ("Debtor") Chapter 13 Plan filed on December 10, 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.

4. **20-25496-E-13 DPC-2** **ANDRE SAINT-LOUIS Mark Shmorgon** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 1-26-21 [27]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, on January 26, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is overruled.

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Andre Saint-Louis's ("Debtor") claimed exemptions under California law because the Debtor may have over-exempted the real property commonly known as 154 Bel Air Drive, Vacaville, California, $175,000.00.

DISCUSSION

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

C.C.P. § 704.730 at the date of filing allowed for a $175,000.00 homestead exemption under three circumstances: (A) a person 65 years of age or older, (B) a person physically of mentally disabled who as a result of that disability is unable to engage in substantial gainful employment, (C) a person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars or, if the judgement debtor is married, a gross annual income, including the gross annual income of the judgement debtor's spouse, of not more than thirty-five thousand dollars and the sale is involuntary.

Debtor testifies under penalty of perjury that he is physically disabled and is unable to engage in substantial gainful employment. Declaration, Dckt. 33. In his Declaration, Debtor testifies that he retired in 2018 because he could no longer work as a result of several surgeries: a right knee surgery, a left hand surgery, surgery on both left and right shoulder. *Id.*, ¶¶ 2-6. Debtor also suffers from arthritis, diabetes and is experiencing neuropathy on both feet. *Id.*, ¶¶ 7-9. Moreover, Debtor testifies that the he has been determined disabled by the Veteran Affairs and now received a monthly benefit as a result. *Id.*, ¶ 10.

Debtor having testified to his disability in detail, and thus showing that he is entitled to the $175,000 exemption pursuant to C.C.P. § 704.730(B), the Chapter 13 Trustee's Objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemptions for the real property commonly known as 154 Bel Air Drive, Vacaville, California under California Code of Civil Procedure § 704.730 are disallowed in their entirety.

5. **20-20430-E-13 BLG-13** **RAFAEL DE LA TORRE Chad Johnson** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S) 1-26-21 [180]**

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 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2021. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Movant failed to provide sufficient notice as required pursuant to Fed. R. Bankr. P. 2002(a)(6) and Local Bankr. R. 9014-1(f)(1)(B). At the hearing xxxxxxxx

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 xxxxx.

Chad M. Johnson, the Attorney ("Applicant") for Rafael Palos De La Torre, the Chapter 13 Debtor ("Client"), makes a first Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 28, 2019, through January 26, 2021. Applicant requests fees in the amount of $15,863.50 and costs in the amount of $756.76.

There being no confirmed Plan, the court has not yet approved employment of Applicant.

Debtor entered into an agreement with Applicant on November 7, 2019. Exhibit A, Dckt. 183.

TRUSTEE'S NON-OPPOSITION

Trustee does not oppose the fees and costs but notes that a plan has not been confirmed and the Motion to confirm the Plan will be heard the same day as the instant Application. Dckt. 188. Trustee further states that while the proposed amended Plan does not include an estimate of fees, the Trustee believes that the plan will work if the fees are granted. *Id.*

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include providing general case administration, filing several substantive motions, and drafting Complaint and subsequent settlement related to an adversary proceeding. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant prepared and filed Debtor's petition, schedules, statement of financial affairs and original plan; preparation and submission to the trustee of the required 521 documents, and preparing for and attending the required 341 meeting of creditors. Applicant also reviewed the claims filed to date. Applicant also prepared and filed an Amended Plan and Motion to Confirm the Amended Plan.

Significant Motions and Other Contested Matters: Applicant prepared and filed several motions including: a Motion to Value the claim of Independence Bank, three Motions to Value the claim of Yuba Sutter, two Motions to Avoid Judgement Liens of Quarter Spot, a Motion to Value a claim secured by solar equipment, and a Motion to Value the claim of Funding Metrics.

Adversary Proceeding: Applicant prepared and filed Complaint and communicated with Creditor's Counsel; prepared and filed a Motion to Approve the Settlement; and attended the hearing and related Status Conference.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Chad Johnson, attorney	32.8	$400.00	$13,120.00
Tina Perez, Paralegal	14.6	$185.00	$2,701.00
Jennifer (Last Name Unknown), Staff	.5	$85.00	$42.50
	0	$0.00	$0.00
Total Fees for Period of Application			$15,863.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $756.76 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$222.56
Copies	$0.05 per page	$134.20
UCC Request Charge		$14.00
Credit Report Fee		$45.00
Court Fees		$341.00
Total Costs Requested in Application		$756.76

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $15,863.50 are approved

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

Costs & Expenses

First Interim Costs in the amount of $756.76 pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 are approved, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$15,863.50
Costs and Expenses	$756.76

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Chad M. Johnson ("Applicant"), Attorney for Rafael Palos De La Torre, the Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:
>
> Chad M. Johnson, Professional employed by the Chapter 13 Debtor
>
> Fees in the amount of $15,863.50
> Expenses in the amount of $756.76,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. The Chapter 13 Trustee is authorized to pay such interim fees, after crediting the $900.00 retainer paid to Applicant, which Applicant may disburse and apply to these authorized interim fees.

6.	**20-23971-E-13 DPC-1**	**FARRIS COLLIER AND ALISA MELENDEZ-COLLIER Thomas Amberg**	**OBJECTION TO CLAIM OF RELIANT FINANCIAL CORPORATION, CLAIM NUMBER 15 1-14-21 [23]**

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

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on January 14, 2021. By the court's calculation, 40 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 15 of Reliant Financial Corporation for Robert Tatom Jones - A to B Cars is sustained, and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Reliant Financial Corporation for Robert Tatom Jones - A to B Cars ("Creditor"), Proof of Claim No. 15 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $3,000.00. Objector asserts that Claim Number 15 is a duplicate claim and does not provide any explanation as to what legal authority Reliant Financial Corporation has to file a claim on behalf of Robert Tatom Jones - A to B Cars where the creditor Robert Jones has already filed a claim, Proof of Claim 6-1.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party

in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

A review of Proof of Claim Number 15 appears to be indeed a duplicate of Proof of Claim Number 6. Both appear to be based on the financing for the purchase of a 2006 Ford Expedition, VIN ending #5195 on November 2, 2019.

Proof of Claim Number 15 asserts a secured claim for $3,000.00 and an unsecured claim for $1,011.00. Dckt. 26. Claim Number 6 asserts a secured claim for $5,545.00 and no unsecured claim. Dckt 26. Claim Number 15 shows the opening balance as $5,545.00 and includes various transactions which may show the balance of Claim Number 6 to be overstated, but does not reflect that Claim Number 15 is an amended claim.

Claim Number 15 does not provide any explanation as to what legal authority Reliant Financial Corporation has to file a claim on behalf of Robert Tatom Jones - A to B cars where the creditor has already filed a claim.

Based on the evidence before the court, Creditor's Proof of Claim 15 is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Reliant Financial Corporation for Robert Tatom Jones - A to B Cars ("Creditor"), filed in this case by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 15 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

7.	**19-25877-E-13** **DPC-1**	**SHANITA JEFFERSON** **Thomas Amberg**	**OBJECTION TO CLAIM OF PINNACLE SERVICE SOLUTIONS, LLC, CLAIM NUMBER 1** **1-14-21 [74]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on January 14, 2021. By the court's calculation, 40 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 1 of Pinnacle Service Solutions LLC is sustained, and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Pinnacle Service Solutions LLC ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $360.00. Objector asserts that the debt is not owed by the Debtor in this case.

DISCUSSION

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

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

A review of Proof of Claim Number 1, filed by Pinnacle Service Solutions LLC, shows the debt as being owed by "Jason Kirk Matthews" or "Kathryn Bringle." Neither of these names are the names of the debtors in this case.

Further, the claim attachments include a document titled "Bankruptcy Case Information," which states that a North Carolina case with 19-50991 as the case number. Under 11 U.S.C. § 101(10), a creditor must have a claim against the debtor, estate, or community. Based on the attachment to Claim Number 1, Creditor does not provide any evidence showing that Creditor has a claim against Debtor, in this case.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Pinnacle Service Solutions LLC ("Creditor"), filed in this case by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 1 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

8. **21-20245-E-13 JGD-2** | **AMY MCCLELLAN** **John Downing** | **MOTION TO EXTEND AUTOMATIC STAY** **2-9-21 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Amy Mary McClellan ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-27735) was dismissed on August 19, 2020, after Debtor failed to confirm a plan within a reasonable time. *See* Order, Bankr. E.D. Cal. No. 19-27735, Dckt. 51, August 19, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because they were unable to confirm a plan based on their income and difficulties with family who was to contribute to the plan.

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

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. In the declaration, Debtor asserts that she now has $1,838 a month in income., which she believes will be sufficient to fund the plan. Dckt. 14. However, Debtor does not explain the source of this "new consistent income."

The court, Trustee, and parties in interest are unable to review Debtor's Schedules as none have been filed. Debtor has filed a Motion to Extend the deadline to file Schedules to February 23, 2021. Dckt. 16.

The court grants the Motion on an interim basis through and including March 26, 2021, with the hearing continued to 2:00 p.m. on March 23, 2021.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Amy Mary McClellan ("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 on an interim basis , and

the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court, through and including 11:59 p.m. on March 26, 2021

IT IS FURTHER ORDERED that the final hearing on this Motion shall be conducted at **2:00 p.m. on March 23, 2021. Supplemental** written oppositions, if any, filed and served on or before March 9, 2021, and replies, if any, filed and served on or before March 16, 2021.

9. 19-24178-E-13 JOSE HERNANDEZ — MOTION TO MODIFY PLAN
PGM-3 Peter Macaluso — 1-8-21 [78]

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 8, 2021. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Jose Luis Hernandez ("Debtor") seeks confirmation of the Modified Plan because Debtor was unable to work during the Covid-19 lockdown as the various cities they worked in shut down and the city inspectors would not go out to sites. Declaration, Dckt. 80. The Modified Plan provides for monthly payments of $285.00 for 43 months commencing January 25, 2021, and 100 percent dividend to unsecured claims totaling $5,422.58. Modified Plan, Dckt. 81. 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 February 9, 2021. Dckt. 87. Trustee opposes confirmation of the Plan on the basis that Debtor is delinquent in plan payments.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $36,555.00 delinquent in plan payments, which represents multiple months of the $5,135.00 plan payment. Debtor is delinquent $285.00 under the terms of the proposed modified plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed a Reply on February 15, 2021. Dckt. 90. Debtor states the delinquency will be cured prior to the hearing date. Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

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

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

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

10. 20-21379-E-13 WW-2 RICHARD/CHANTIL RUSSO Mark Wolff MOTION TO SELL 2-2-21 [48]

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 Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 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 Richard Andrew Russo and Chantil Stephanie Russo, 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 8829 Saint Jude Court, Elk Grove, California ("Property").

The proposed purchaser of the Property is Christopher Bain and Lareina Bain, and the terms of the sale are:

A. The purchase price is $925,000.00.

B. Buyer to provide a deposit of $9,000.00.

C. Property to be sold as is.

D. The balance of $131,085.00 to be deposited to an escrow holder which shall close 45 days or sooner after acceptance.

E. Movant and Buyer are to split escrow fee. Movant shall pay for owner's title insurance, County transfer fee, and a one-year warranty plan.

Creditor New Rez's Limited Opposition

Creditor New Rez LLC dba Shellpoint Mortgage Servicing ("Creditor") does not oppose the sale provided that:

1. the sale is completed within six (6) months from date of the Order granting the Motion and that Creditor is paid in full out of escrow pursuant to an updated payoff demand, and

2. Debtor continues to make the ongoing monthly payments in accordance with the terms of the underling loan agreement. If Debtor should fail to make these payments, Creditor will file a Motion for Relief.

Dckt. 54.

Trustee's Response

The Chapter 13 Trustee, David P. Cusick ("Trustee"), filed a Response stating that Debtor is delinquent $1,200 on plan payments and noting that Debtor has not filed a Motion to Employ a Realtor. Dckt. 56, ¶¶ 1-2. Moreover, Trustee points out that although the motion states that Debtor's anticipated the lump sum to complete their plan would come from the sale of the residence, no Seller's Estimated Statement has been filed and thus Trustee is unable to ascertain whether there will be sufficient funds to complete the plan. *Id.*, ¶ 3. Trustee further notes that neither the motion nor the declaration state the name of the broker and real estate agent assisting in the sale or the amount of the commission to be received. *Id.*, ¶ 5.

Lastly, Trustee requests that Estimated Settlement Statement be filed with the court for review prior to the hearing date. *Id.*, ¶ 6.

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.

Movant did not provide the information pertaining to the broker's commission from the sale of the Property. On February 16, 2021, Debtor filed the Seller's Estimated Settlement Statement. Dckt. 59. The statement states a 5% commission, where the Listing Commission to Coldwell Banker Realty will receive $27,750.00 (which is approximately 3.0%), and the Selling Commission to Remax Gold will receive $18,500.00 (which is approximately 2.0%). *Id.*, at 2.

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 the Debtor to complete the plan with payment in full of all filed and allowed claims.

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

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

The Motion to Sell Property filed by Richard Andrew Russo and Chantil Stephanie Russo, 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 Richard Andrew Russo and Chantil Stephanie Russo, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Christopher Bain and Lareina Bain or nominee ("Buyer"), the Property commonly known as 8829 Saint Jude Court, Elk Grove, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $925,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 51, 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. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Escrow shall hold an amount equal to five percent (5%) of the gross sales price pending further order of the court for payment of real estate commissions if authorized by the court. The court grants a lien to the real estate brokers and agent entitled to be paid real estate commissions allowed by the court relating to this sale. The real estate commission identified by the Chapter 13 Debtor are in an amount not more than 5 percent of the actual purchase price upon consummation of the sale, with three (3) percent commission to be paid to the Listing broker, Coldwell Banker Realty, and two (2) percent selling commission to be paid to Remax Gold.

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.

11. 20-21181-E-13 TJW-2 — TANYA HALL — Timothy Walsh — MOTION TO CONFIRM PLAN — 12-30-20 [58]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 30, 2020. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Tanya Dorene Hall ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $3,034.40 for 60 months, and a 0% dividend to unsecured claims totaling $8,446.00. Amended Plan, Dckt. 60. 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 February 9, 2021. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor overextends the plan as it will take approximately 92 months.

B. Debtor misclassified a secured claim.

C. Debtor may not be able to comply with the Plan.

D. Debtor failed to list any information on Schedule I regarding her second employer.

E. Expenses may not be accurate on Schedule J as Debtor has not listed any information regarding her second employer.

F. Debtor fails to list assets on Schedule B.

DISCUSSION

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 92 months due to claims being filed for amounts higher than Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Class 4 Claim

Debtor lists Real Time Resolutions, Inc. As a Class 4 claim. However, Creditor's Proof of Claim shows that the debt matures during the bankruptcy and is in default $62,127.00. Proof of Claim 2. Class 4 claims are claims Debtor may pay directly provided they are not in default. This particular Creditor having filed a proof of claim showing a default, Debtor has misclassified this Creditor as a Class 4 claim.

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). Trustee asserts that at the Meeting of Creditors Debtor admitted she has a second job not listed on Schedule I nor its expenses listed on Schedule J. Moreover, Debtor also admitted to receiving a refund of $3,108.83 from previous case #19-20429, which was not disclosed on her current statements. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

12. **17-23850-E-13** **SHARON PHELPS** **MOTION TO SELL**
JLB-6 **James Brunello** **2-2-21 [87]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 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 Sharon M. Phelps, 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 6317 Main Avenue, Orangevale, California ("Property").

The proposed purchaser of the Property is Stonewater Holdings, LLC, and a summary of the terms of the sale are (the complete terms of sale can be found in the Standard Form Offer, Agreement and Escrow Instructions for Purchase of Real Estate, Exhibit B, Dckt. 91):

A. The purchase price is $930,000.00.

B. Buyer to provide a cash down payment of $279,000.00.

Trustee's Response

Trustee filed a Response on February 16, 2021 stating no opposition to the sale but noting the discrepancy in broker fees between what is stated in seller's broker declaration and the settlement statement. Dckt. 93.

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.

Broker Commission

According to the Declaration of Ruby Bitzer, Seller's broker, the brokers have agreed to a 4 percent broker's commission from the sale of the Property to be divided as follows: 1.5% for seller's broker and 2.5% to buyer's broker. The Estimate Seller's statement shows both the listing and selling broker each receiving $27,900.00, which equals 3%, and thus is more than the total 4.00% commission as stated in the Declaration of Ruby Bitzer.

At the hearing Counsel for Debtor clarified xxxxxxxx

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 xx percent commission.

Debtor requests that the escrow holder disburse all net proceeds to Debtor after all payouts, closing costs, and Trustee's demand are paid.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because there are an estimated net proceeds of $797,363.79 for the benefit of creditors, of which an estimated $99,000 will pay the allowed claims in full.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Sharon M. Phelps, 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 Sharon M Phelps, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Stonewater Holdings, LLC or nominee ("Buyer"), the Property commonly known as 6317 Main Avenue, Orangevale, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $930,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 91, 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 xx percent of the actual purchase price upon consummation of the sale. The xx percent commission shall be paid to the Chapter 13 Debtor's broker, Attorneys Real Estate Group.

E. After payment of the above liens and expenses, the next monies from escrow shall be disbursed to the Chapter 13 Trustee for the amount computed to pay 100% of all claims and expenses. The Chapter 13 Trustee shall make written demand to the escrow for disbursement of such amount necessary for payment of 100% of all claims and expenses.

F. After payment of all expenses, secured claims, taxes, other amounts, and the Chapter 13 Trustee's demand, the Escrow may disburse directly to the Chapter 13 Debtor all remaining net sales proceeds.

13. **19-27838-E-13 PLC-2** **TIAZJANAE WILRIDGE** **Peter Cianchetta** **CONTINUED MOTION TO CONFIRM PLAN** **12-18-20 [59]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 18, 2020. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is xxxxx.

The debtor, Tiazjanae Imani Wilridge ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for plan payments of $331.00 commencing January 25, 2021, and a zero percent dividend for unsecured claims totaling $31,539.00. Plan, Dckt. 62. 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 6, 2021. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that Debtor may not have sufficient income to make plan payments.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, it appears Debtor has lost $564 in income since the last Schedule I

and J provided to the court. Debtor's declaration in support of the plan states that Debtor is no longer receiving child support, $355.00, and relies on her family as a financial resource. Although Trustee also notes that Debtor is current in plan payments.

Debtor's financial situation appearing to have changed, Debtor should file amended or supplemental Schedules I and J that reflect her current financial situation.

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

The Trustee concurred in the request for a continuance.

Trustee's Supplemental Opposition

On February 10, 2021, Trustee filed a Supplemental Opposition and continues to oppose confirmation of the Plan as there is insufficient evidence to show Debtor can make the payments; specifically, Trustee states the following:

1. Schedule I shows that Debtor has a new job as a recovery coach with Schedule I contemplating that Debtor would go to full time. On January 12, 2021, Debtor's counsel notified the Trustee that Debtor started full-time employment on January 14, 2021 making $15.00 an hour, which contradicts Schedule I.

2. Thus, Debtor's current income is unclear. Trustee has requested pay advices to confirm Debtor's wages and hours.

3. Debtor's Schedule J has decreased her food expenses from $330 to $159. Debtor shows as having a one year old son, who may be two year old based on prior Schedule J. Trustee argues this food expenses seems unrealistic.

4. Debtor has not provided a declaration explaining the changes in income and expenses. Without more evidence, Trustee argues that it is unclear whether Debtor can make the plan payments.

5. Debtor is current in plan payments.

Dckt. 72.

February 23, 2021 Hearing

In looking at the Amended Plan, Debtor needs Chapter 13 relief to address the arrearage on her car loan and relief from the 18.55% interest rate imposed on her by the creditor making the loan. As the court has noted in other context, an 18.55% interest rate appears to be an admission by a creditor that he/she/it knows the consumer cannot afford the loan and the creditor wants to extract the last marrow

dollars from the consumer before repossessing the car, pound out additional 18.55% interest while selling the car at auction, and then getting a judgment to compound the 18.55% interest at 10% under the judgment.

At the hearing counsel for Debtor xxxxxxxx

14. **20-25523-E-13 RPH-1** **14 thru 15**

THOMAS EDWIN KNOERNSCHILD
Robert Huckaby

MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES INC.
1-13-21 [13]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 13, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Consumer Portfolio Services Inc. ("Creditor") is denied.

The Motion filed by Thomas Edwin Matlock Knoernschild ("Debtor") to value the secured claim of Consumer Portfolio Services Inc. ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 15. Debtor is the owner of a 2015 Jeep Grand Cherokee ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,728 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on January 20, 2021. Dckt. 27. Creditor states Debtor purchased the vehicle on February 10, 2020, with Debtor filing the instant petition on December 13, 2020, which is less than 910 days after the purchase of the vehicle. Creditor argues that pursuant to Section 1325(b)(5), Creditor's claim is not subject to cramdown. [FN.1.] Thus, Debtor must tender the full balance of the claim to Creditor.

FN.1. Creditor misstates, there is no subsection (b)(5) to 11 U.S. Code Section 1325. Though

Creditor is correct on substance, the correct citation is to Section 1325(a)(5)(B).

Creditor further states that the contract matures August 26, 2025, and as such, the entire claim must be paid through the Chapter 13 plan.

Alternatively, Creditor objects to Debtor's claim of a fair market value of $11,728.00 as significantly undervalued. Debtor's valuation does not comply with the applicable standards of 11 U.S.C. § 506(a) which utilizes a replacement value standard. Creditor proposes that if Debtor is afforded a cramdown, the Chapter 13 plan should reflect the retail value of the Vehicle of $17,975.00.

TRUSTEE'S RESPONSE

Trustee does not oppose the motion but notes that Debtor values the Vehicle at $12,000 in the Plan but the instant Motion lists the value of the Vehicle as $11,728.00. Dckt. 39. Trustee also notes having disbursed $222.00 to Creditor. *Id.*

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on February 10, 2020, which is 307 days prior to the filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,535.27. Proof of Claim, No. 1-1. This is less than 910 days prior to filing of the petition.

Section 1325(a)(5), with respect to each allowed secured claim provided for by the plan, provides in part:

> For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

Here, Creditor's claim is secured by a Vehicle that was purchased within the one year period preceding the filing and as such may not be subject to valuation. Debtor improperly seeks to value Creditor's secured claim.

The Motion is denied. [Fn.1.]

FN. 1. With respect to the evidence of value, it appears that Debtor's testimony is based on Kelly Blue Book and NADA Guide reports. He uses his 2020 purchase price of the vehicle as the starting retail value point - $17,095. Such is probably a higher, showroom floor ready, retail value in February 2021. Debtor then makes adjustments for needed repairs to get the used vehicle back to a retail sale value. Such is proper in determining the retail value as provided by Congress in 11 U.S.C. § 506(a)(2), which

states in relevant part (emphasis added):

> With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind **considering the age and condition of the property at the time value is determined.**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Thomas Edwin Matlock Knoernschild ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is denied.

15. 20-25523-E-13 RPH-2 | **THOMAS EDWIN KNOERNSCHILD** | **MOTION TO CONFIRM PLAN 1-16-21 [22]**

Robert Huckaby

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 16, 2021. By the court's calculation, 38 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, Thomas Edwin Matlock Knoernschild ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides for payments of $538.00 for 60 months, and a 0% dividend to non-priority unsecured claims totaling $42,825.00. Plan, Dckt. 25. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on February 9, 2021. Dckt. 41. Trustee notes that Debtor is current in plan payments to the Trustee and believes the plan satisfies 11 U.S.C. §1325.

CREDITOR'S OPPOSITION

Consumer Portfolio Services ("Creditor") holding a secured claim, filed an Objection to Debtor's Chapter 13 plan on January 20, 2021. Dckt. 19. On February 9, 2021, this court ordered Creditor's Objection to be heard as Opposition to Confirm the Amended plan filed on January 16, 2021. Dckt. 48.

Creditor opposes confirmation of the Plan 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.

DISCUSSION

Creditor's objections are well-taken.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Consumer Portfolio Services, Inc. Creditor argues that pursuant to Section 1325(b)(5), a claim secured by a purchase money security interest in a motor vehicle and incurred within 910 days of the commencement of the bankruptcy case is classified as a 910-day claim. Debtor purchased the Vehicle for personal use on February 10, 2020. Debtor filed for bankruptcy on December 13, 2020, less than 910 days after the Vehicle was purchased. As such, Creditor asserts that the Creditor's claim is not subject to cram down and Debtor must tender the full balance of the claim.

Section 1325(a)(5), with respect to each allowed secured claim provided for by the plan, provides in part:

> For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

Here, Creditor's claim is secured by a Vehicle that was purchased within the one year period preceding the filing and as such may not be subject to cramdown valuation. Debtor improperly sought to value Creditor's secured claim and the Motion to Value the Secured Claim was denied.

The court having denied Debtor's valuation, the Plan is not feasible.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a), and is not confirmed. [Fn.1.]

FN. 1. Unfortunately, it appears that Debtor and Creditor have not reached an agreed value of the vehicle. While Creditor cannot be forced to take less than the ($17,535.27) (amount of claim stated in Proof of Claim 1-1), repossessing the vehicle and reselling it at auction is not likely to recover such amount, which is in excess of the retail sale price in February 2020 - right at the start of the COVID-19 pandemic and financial woes impacting consumers and businesses.

Alternatively, Creditor may believe that Debtor could reasonably have anticipated his economic "woes" and they are not COVID-19 related. Therefore, the provisions of 11 U.S.C. § 1325(a)(5)(B) should be enforced. Looking at Debtor's Schedule J, Creditor may be questioning why it should waive its rights to be paid in full when Debtor's "necessary expenses" while seeking the extraordinary relief under Chapter 13 includes $7,200 a year for entertainment. Dckt. 1 at 27.

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

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

16. 20-23890-E-13 TJW-1 — RICARDO CORTEZ — Timothy Walsh — MOTION TO CONFIRM PLAN — 1-6-21 [28]

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

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

Sufficient Notice Not Provided. No Certificate of Service was filed for the instant Motion. Thus, the court is unable to determine whether service was proper.

At the hearing xxxxxxxx

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 debtor, Ricardo J. Cortez ("Debtor"), seeks confirmation of the Amended Plan. The

Amended Plan provides for monthly plan payments of $2,015.00 for sixty (60) months, and a 0% dividend to unsecured claims totaling $72,480.00. Amended Plan, Dckt. 27. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

Motion to Vacate the Dismissal

Debtor filed a Motion to Vacate Dismissal on January 25, 2021, that was set for hearing on February 9, 2021. Dckt. 35. At the hearing, this court found that in order to avoid additional litigation, claims, disputes, and emergency hearing in the days following the hearing, the court granted the Motion - subject to the condition that counsel for the Debtor deposit $2,000.00 of the $4,000.00 paid pre-petition for his fees and not yet allowed, to the Chapter 13 Trustee to hold pending further order of the court. Civil Minutes, Dckt. 46.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 5, 2021. Dckt. 43. Trustee opposes confirmation of the Plan on the basis that:

A. The case was previously dismissed and Trustee has filed an opposition to Debtor's Motion to Vacate the Dismissal.

B. Debtor is delinquent in plan payments.

C. The declaration was not signed by the Debtor.

D. The Plan was not filed in good faith.

DISCUSSION

Case Dismissed

On January 7, 2021, this court entered an order dismissing this Chapter 13 case. Dckt. 32. On February 12, 2021, this court entered an order vacating the prior order dismissing the case. Dckt. 47. The order was granted subject to the condition that counsel for the Debtor deposit $2,000.00 of the $4,000.00 paid pre-petition for his fees and not yet allowed, to the Chapter 13 Trustee to hold pending further court order.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $6,228.19 delinquent in plan payments, which represents multiple months of the $2,015.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing xxxxxxxx

Declaration Not Signed By Debtor

The Trustee notes in their objection that the Declaration in Support of Motion by the Debtor was filed with an electronic signature identified as "/S/ Ricardo J. Cortez." Dckt. 30. At the hearing on, on the Motion to Dismiss, held on January 7, 2021, Debtor's counsel admitted that the Declaration was filed without obtaining the Debtor's actual signature on the document.

On February 12, 2021, Debtor filed a second Declaration with his signature. Dckt. 49. Thus, this Objection is resolved in Debtor's favor.

Plan Not Filed In Good Faith

The Trustee notes that Debtor has not explained why they are proposing to pay less than the originally proposed $3,197.00. Dckt. 2. Debtor has not filed amended Schedules I & J and the current schedules still show that Debtor can still afford the higher plan payment. Dckt. 1.

In Debtor's Declaration, Debtor declares that the plan payment was changed to provide for the changes in the claims. Dckt. 49, ¶ B. Debtor refers to the amount of arrears of BSI Financial Services, which has been changed to Class 1 and to provide for the actual claim in the amount of $26,333.05, and has also been changed to account for the actual post petition mortgage in the amount of $1,166.37. *Id.*

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the debtor, 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 to Confirm the Plan is **xxxxx**.

17. **19-22991-E-13** **TASHA ROBINSON** **MOTION TO INCUR DEBT**
DJC-3 **Timothy Walsh** **1-26-21 [38]**

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 January 26, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is xxxxx.

Tasha Renee Robinson ("Debtor") seeks permission to obtain a Covid-19 Economic Injury Disaster Loan ("EIDL loan") with a total loan amount of $10,000.00 and monthly payments of $46.31 over 30 years with a 3.5% fixed interest rate.

DISCUSSION

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

Here, Debtor asserts that the loan is needed so that she may resume her business as a massage therapist by leasing a small office space as soon as the related Covid-19 pandemic stay-at-home orders are lifted. Declaration, Dckt. 40, ¶¶ 3-4. Debtor further testifies that she will use the funds to purchase equipment and supplies needed for the office. *Id.*, ¶ 4.

Trustee field a Response indicating that Debtor is delinquent one plan payment and noting that Debtor failed to provide supporting documentation, namely a copy of the loan agreement. Dckt. 49. Trustee cannot recommend approval of the loan without having been able to review the terms of the loan. *Id.*, ¶ 3. Trustee also notes that according to the information provided in the Small Business Administration website (Trustee provides the link), the fixed rate for the business loans is 3.75% whereas Debtor's rate is lower Trustee is uncertain what kind of loan Debtor is obtaining. *Id.*

Trustee's points are well-taken. Debtor's original application was denied and has filed with the court the denial letter but not the potential loan agreement. Without a copy of the loan agreement, the Trustee is unable to review the terms and provide the information the Small Business Administration requests Debtor show so that her application may be reconsidered.

At the hearing xxxxxxxx

The Motion is xxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Tasha Renee Robinson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is xxxxx.

18. **20-23804-E-13 DBJ-2 18 thru 19** | **MARVIN/JEANINE BURGESS** **Douglas Jacobs** | **MOTION TO SELL** **1-13-21 [58]**

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 January 13, 2021. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits Marvin J. Burgess and Jeanine M. Burgess, 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 commonly known as inventory and auto parts ("Property").

The Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the requested relief is based;

A. Debtor has operated an automobile repair and parts business for years. Motion, ¶ 1; Dckt. 58.

B. Over the years, Debtor purchased auto parts from "Napa Parts and other suppliers." *Id*.

C. Faced with an "overdue loan from Umpqua Bank," Debtor states that Debtor "negotiated and sold to Napa, approximately $126,000 worth of that inventory and parts. . . ." *Id*. This was a pre-petition sale of the personal property, with Debtor stating that "The sale predated the filing of this Chapter 13 bankruptcy by

approximately 2 months." *Id*.

D. The parts and inventory sold are subject to the lien of Umpqua Bank. *Id*.

E. An escrow for the sale was opened, but the sale was not completed when the bankruptcy sale was filed and the escrow company ceased attempting to close the sale for Debtor. *Id*., ¶ 2.

F. Debtor then states in the Motion that Napa received the parts and merchandise from the Debtor before the Chapter 13 case was filed – BUT HAS NOT PAID FOR THE PARTS. *Id*., ¶ 3.

This could be read to say that Debtor had a contract to sell the parts and merchandise, but there was no concluded sale. But Debtor then Debtor states that the parts and merchandise have been delivered, but "Napa Auto Parts" has not paid for the parts and merchandise purchased.

G. Umpqua Bank asserts a secured claim of ($220,389.29), and if the proceeds of the sale are paid to the Bank, its claim will be reduced to ($94,389.29). *Id*. ¶ 5.

H. Debtor then requests "permission from the bankruptcy court to conclude this "transaction" and pay any and all proceeds, after the costs of sale, directly to Umpqua Bank." *Id*., ¶ 6.

With this part of the Motion, it is unclear what "transaction" needs to be "concluded." The Motion clearly states that Debtor completed Debtor's part of the transaction – delivering the parts and merchandise to "Napa Auto Parts," but "Napa Auto Parts" has taken the parts and merchandise but is refusing to pay for them.

The Motion concludes with a request that the court authorize Debtor to "conclude this transaction and pay any and all proceeds, after the costs of sale [which are not disclosed] to Umpqua bank [sic.]." *Id*. ¶ 6.

From the grounds stated with particularity, it does not appear that there is any post-petition sale of property of the bankruptcy estate for the court to authorize. Rather, it appears that Debtor has completed the sale and is seeking to request extra-confirmed plan payment terms.

Debtor has not provided as an exhibit any contract stating the terms of the sale in support of the Motion. See Exhibits, Dckt. 60.

TRUSTEE'S OBJECTION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an objection on February 9, 2021. Dckt. 73. Trustee states the following:

1. It is not clear what the Debtor seeks to approve: a sale within 60 days of filing not in the normal course of business, or disbursement of an unknown amount of funds disbursed from an unidentified escrow account.

2. Debtor has failed to disclose the detailed sale and escrow information and it is unclear whether the payment that has not been made is the payment from Napa Auto Parts or from the escrow account.

3. Debtor has not disclosed if any portion of the funds have been paid into escrow by Napa Auto Parts.

4. Debtor did not disclose the transaction in the Statement of Financial Affairs, and "cutoff a profit and loss statement in June 2020," even though the documents were signed on August 3, 2020.

Trustee argues that without the full disclosure of the details of the transaction, the sale should not be approved. Trustee acknowledges that the transaction may be on reasonable terms; however, Debtor has failed to provide sufficient information.

DISCUSSION

Trustee's objections are well taken. At this time the court determines that it cannot approve the proposed sale. Though the sale may well be in the best interest of the estate, the court is unable to make such determinations without sufficient evidence supporting the proposed sale. There is no purchase agreement and it is unclear if Napa Auto Parts has paid any or all of the funds into escrow.

Morever, the court is especially concerned by Debtor's failure to disclose the transaction at the time of filing is concerning. This transaction having occurred within the time a Trustee may avoid a preferential transfer.

Though having notice of the obvious issues raised by the Trustee Debtor has not filed any Reply, provided a copy of the sale contract, or provide any evidence of the sale, the amounts paid by "Napa Auto Parts," and what are the "costs of sale" that Debtor seeks to pay off the top.

Exhibits in Response to Trustee's Objection to Confirmation

Debtor has provided a copy of a document titled "NAPA AUTO PARTS ACCOUNT NO: xxxxxxx" for a entity identified as "MIDVALLEY DIST CO, 609 7TH ST, WILLIAMS, CA," for which the account is stated to have been closed "09/30/2020." Exhibit A, Dckt. 78. This document states that the Amount Due from MIDVALLEY DIST CO is ($126,350.45). *Id*. at 3.

Included in this document is a section identified as a "AGED ACCOUNT STATUS," which appears to list a series of transactions, the most recent of which is March 25, 2020.

This exhibit has not been authenticated.

The second exhibit is identified as a Settlement Statement, Estimated, which is on Capitol City Escrow, Inc. letterhead. Exhibit B, *Id*. at 7. This document is dated February 18, 2021, with a closing date of December 31, 2019 (closing date is eight moths before the August 4, 2020 filing of Debtor's bankruptcy case). The Settlement Statement states that the Buyer has not paid $122,238.00 of the purchase price. *Id*. at 8.

This exhibit has not been authenticated.

Upon review of the Motion and supporting pleadings, including those filed in connection with the Objection to Confirmation, the court does not see a "sale to be authorized," but a contract to enforce. It may be that Umpqua Bank is making demands on "Napa Auto Parts," asserting lien rights. It may be that "Napa Auto Parts" is asserting its lien rights against the escrow.

However Umpqua Bank is asserting its rights, "Napa Auto Parts" has acquired more than $125,000 of parts and merchandise that it has not paid for.

Even if the court were to grant the request to "approve" a pre-petition sale of property by the pre-bankruptcy Debtor to Be, it would not terminate Umpqua Bank's lien in the parts and merchandise sold, as well as the proceeds from such a sale. Debtor has not requested a "sale" free and clear of the liens of Umpqua Bank, nor has Umpqua Bank been served with this Motion as required by Federal Rule of Civil Procedure 4, Federal Rule of Bankruptcy Procedure 7004, 9014.

At the hearing xxxxxxxx

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Sale of Property filed by Marvin and Jeanine Burgess, the Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

19. 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 denied without prejudice.

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.

Response of Debtor

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 Opposition. 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 opposition 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's counsel 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 and 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, counsel for the Debtor reported that this matter should be continued to February 23, 2021, at 2:00 p.m. to be heard in conjunction with a motion to sell.

February 23, 2021 Hearing

In a Supplemental Reply, Dckt. 77, stating that with the court approving the sale of the auto parts, the plan is sufficiently funded. At the February 23, 2021 hearing, the court denied without prejudice the Motion to Sell.

The proposed Amended Chapter 13 Plan does not comply with 11 U.S.C. § 1322 and § 1325; the Motion is denied without prejudice 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 Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Marvin and Jeanine Burgess ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and

good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

20.	**20-25605-E-13** **DPC-1** **20 thru21**	**CURTIS/CARMEN BURKS** **Candace Brooks**	**AMENDED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK** **1-28-21 [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 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 28, 2021. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor cannot afford to make the payments or comply with the plan.

B. Debtor improperly uses an exemption pursuant to C.C.P. § 704.70.

DISCUSSION

Trustee's objections are 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). According to Trustee, Debtor's Plan relies on a forbearance agreement with the creditor holding the first deed of trust over their primary residence. Debtor lists Creditor Dovenmuehle as a Class 4 claim; yet, the Non-Standard Provisions indicate that Debtor is currently in forbearance due to COVID-19 emergency relief and intends to either modify their loan or commence ongoing payments, directly to Creditor in the amount of $2,734.44 beginning July 2021. Thus, the Plan cannot be confirmed unless Creditor agrees to this treatment.

Additionally, Trustee argues that Debtor may have improperly classified Creditor Village Capital & Investments, LLC, as a Class 4 claim, where Creditor Village has filed a proof of claim identifying ongoing payments of $2,813.19 and arrears of $29,454.08. Proof of claim, 7-1. Moreover, Trustee points to Creditor Village's Objection to the plan stating Debtor's forbearance ended October 31, 2020 and no further forbearance has been extended. Dckt. 19, 2:7. Trustee is unclear if this claim is misclassified as Class 4, with nonstandard provisions, or if Creditor should be listed as Class 1 in the Plan.

Trustee also argues that Debtor's budget is insufficient to pay mortgage. Schedule I indicates Debtor's net monthly income is $4,948.34, and Schedule J shows Debtor's net monthly income after expenses is $908.00. Dckt. 1. Debtor's Schedule J is silent on Debtor's making any monthly mortgage payment. Debtor's income is insufficient to fund the plan and pay Village Capital & Investments, LLC the ongoing mortgage payment and the arrears identified in their proof of claim.

Exemption

Lastly, Trustee states that Debtor has overused the exemptions they may be entitled to under C.C.P. § 704.070. Debtor has claimed the full amounts of their JP Chase Bank checking and savings accounts as exempt. Pursuant to C.C.P. § 704.070, Debtor may claim only 75% of the paid earnings that can be traced to deposit accounts as exempt.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is

sustained, and the proposed Chapter 13 Plan is not confirmed.

21.	**20-25605-E-13 PPR-1**	**CURTIS/CARMEN BURKS Candace Brooks**	**OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR VILLAGE CAPITAL & INVESTMENT, LLC 1-13-21 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 13, 2021. By the court's calculation, 41 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.

Village Capital & Investment, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan is not feasible because the plan fails to require the maintenance of the correct ongoing post-petition monthly payment as required by 11 U.S.C. §1322(b)(5).

DISCUSSION

Infeasible Plan

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtor sought and

received forbearance, due to Covid-19, from Creditor for the dates August 2, 2020, through October 31, 2020. That period has expired and no further forbearance has been offered to Debtor.

However, under the Non-Standard Provisions of the Plan, Debtor's plan proposes forbearance to continue until July, 2021 and does not provide for payments through that date. Thus, according to Creditor, Debtor's plan does not provide for adequate protection of Creditor's interest.

Creditor further claims that a Proof of Claim, to be timely filed, will show arrearage of approximately $70,000. A review of Debtor's disposable income shows Debtor has insufficient income to make the correct post-petition monthly payment to Creditor. As such, the Plan may not be confirmed.

DEBTOR'S RESPONSE

Debtor disputes the date upon which monthly mortgage payment are to resume and asserts a right to forbearance pursuant to the CARES Act.

Debtor points the court to Section 4022(b) ("CARES Act") which states:

(b) FORBEARANCE.—

(1) IN GENERAL.—During the covered period, a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency may request forbearance on the Federally backed mortgage loan, regardless of delinquency status, by—

(A) submitting a request to the borrower's servicer; and
(B) affirming that the borrower is experiencing a financial hardship during the COVID–19 emergency.

(2) DURATION OF FORBEARANCE.—Upon a request by a borrower for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower's request, either the initial or extended period of forbearance may be shortened.

(3) ...

(c) REQUIREMENTS FOR SERVICERS.—

(1) IN GENERAL.—Upon receiving a request for forbearance from a borrower under subsection (b), the servicer shall with no additional documentation required other than the borrower's attestation to a financial hardship caused by the COVID–19 emergency and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance, provide the forbearance for up to 180 days, which may be extended for an additional period of up to 180 days at the request of the borrower, provided that, the borrower's request for an extension is made during the covered period, and, at the borrower's

request, either the initial or extended period of forbearance may be shortened.

Section 4022(b) of the CARES Act.

Debtor contends that the loan in question is a federally backed Veterans Administration loan, and thus qualifies for forbearance under the CARES Act. Declaration, Dckt. 36, ¶ 15. Debtor's declaration states Debtor's employment has been affected by COVID-19. *Id.* at ¶¶ 4-9, 15. Debtor requested and was granted initial forbearance from August 1, 2020, through October 31, 2020. *Id.* at ¶ 10. Both Creditor and Debtor agree as to this specific period of forbearance.

Debtor testifies, under penalty of perjury, that on October 23, 2020 Creditor was contacted, through the mortgage servicer (Dovenmuehle), to request further forbearance entitled under the CARES Act. *Id.* at ¶ 11. Debtor further testifies they were advised by the representative that the forbearance would be extended for an additional three months, until January 31, 2021. *Id.* at ¶ 11.

Debtor adds that the mortgage servicer verbally confirmed such extension through January 31, 2021 when they received a call on December 3, 2020 from a representative informing them that their account had been updated and accurately reflected the extension to January 31, 2021. *Id.* at ¶ 13.

Debtor also testifies that on January 19, 2021 they requested in writing, and were granted, further extension through May 31, 2021. *Id.* at ¶ 14. Creditor states that no further forbearance has been offered to Debtor after the period which expired on October 31, 2020. Lopez Declaration, Dckt. 21.

Debtor provides a copy of the forbearance granted to them by Creditor for the period of March 1, 2020 through August 1, 2020. Exhibit A, Dckt. 37.

While it seems that Debtor may be entitled to the protection of Section 4022(b) of the CARES Act, Debtor does not provide the court with such request for an extension. Debtor testifies that they requested an extension in writing on January 19, 2021 and that it has already been approved. Yet no evidence has been presented showing that Creditor or the mortgage servicer has in fact received the application or that they have approved or denied such an extension.

With respect to this Creditor, if Debtor has requested and is entitled to further forbearance, but is improperly being denied such by Creditor, then such may have to be addressed through adversary proceeding litigation, with can be made part of a Chapter 13 plan.

At the hearing xxxxxxxx

~~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 and 1325(a). The Objection is sustained, and the Plan is not confirmed.~~

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

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

hearing.

The Objection to the Chapter 13 Plan filed by Village Capital & Investment, LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is xxxxx.

22. **20-23738-E-13 PGM-3** | **KIMBERLY GORDON** **Peter Macaluso** | **CONTINUED MOTION TO CONFIRM PLAN** **11-19-20 [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 Not 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 November 19, 2020. By the court's calculation, 54 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 debtor, Kimberly Marie Gordon ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for plan payments of $350.00 for four (4) months, followed by $740.00 for 56 months starting December 2020, and a 100 percent dividend to unsecured claims totaling $11,338.70. Amended 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 December 29, 2020. Dckt. 47. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Plan exceeds the permitted number of months under the bankruptcy code.

C. Debtor failed to file tax returns.

D. Debtor's plan was not filed in good faith.

E. Debtor fails the liquidation analysis.

Debtor filed a Reply on January 5, 2020. Dckt. 50. The reply is discussed below.

DISCUSSION

Delinquency

Debtor is $740.00 delinquent in plan payments, which represents one month of the $740.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the January 12, 2021 hearing, the Trustee reported that only a partial payment has been received.

Plan Exceeds 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 88 months if the Department of Education files a claim as scheduled by the Debtor within the governmental bar date of January 27, 2021. According to Trustee, if the claim is not filed the plan can complete within 60 months.

The Department of Education having filed a proof of claim in Debtor's prior case, it is likely that they will do so again this time.

Failure to File Tax Returns

According to the proof of claim filed by the Internal Revenue Service, it seems that Debtor failed to file the federal income tax return for the 2018 tax year. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor asserts that the tax return was filed but that the Internal Revenue Service, now working from home, has yet to reconcile the actual return filed and the estimated amount included in the presently filed Proof of Claim. Reply, ¶ 1. Debtor also informs the court that Debtor's counsel will continue reaching out to the Internal Revenue Service so that the proof of claim be amended. *Id.*

Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

1) The amount of the proposed payments and the amounts of the debtor's surplus;

2) The debtor's employment history, ability to earn, and likelihood of future increases in income;

3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy code;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

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

Here, Trustee asserts that Debtor has failed to disclose in her Schedules her actual interest in real property 500 Bremner Way, Sacramento, California. Moreover, Trustee notes that Debtor continues to make "mini mortgage" payments of $166.67 and has now amended her schedules to $0.00 for rent or home ownership expenses where it was originally $500.00. Trustee also notes that Debtor's counsel filed a proof of claim for property taxes prior to the expiration of the governmental bar date and failed to attach documents.

In her Reply, Debtor states that Debtor purchased the home with her father's help, who paid the initial down payment but did not secure the debt with a note. Reply, ¶ 2A. Debtor explains that the term "mini mortgage" is used to identify the $500.00 payment to her father but that she has now stopped this payment and is instead paying $4,166.67 to cover the on-going property taxes. *Id.* Further, Debtor states that she will provide a title report to clarify who has title to the property and will file a claim for OneMain Financial, if such service was in error. *Id.*, ¶ 2B.

Additionally, Trustee asserts that most unsecured claim have not filed, possibly because Debtor's initial plan proposed no less than 0% to unsecured claims. Adding that Debtor does not appear to have served creditors OneMain Financial and the U.S. Department of Education, which had filed claims in Debtor's prior case.

In her Reply, Debtor agrees to include the Federal Judgment Interest rate in the order confirming the plan if allowed by the court. Reply, ¶ 3. Debtor will also correct her payroll deduction to address Trustee's concerns regarding future increased tax deductions. *Id.*, ¶ 4.

Debtor also states that both OneMain Financial and the U.S. Department of Education were served at the addresses provided in the proofs of claim filed in the prior case. *Id.*, ¶ 6.

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor does not propose interest to unsecured claims in the plan proposed and may fail the liquidation test on the basis that Debtor continues to make "mini mortgage" payments to her father.

In her Response, Debtor requests the court continue the hearing until after January 27, 2021, to ascertain whether the U.S. Department of Education / Fedloan Servicing has filed a claim.

At the hearing, the Trustee concurred with Debtor's request.

February 23, 2021 Hearing

As of the court's February 17, 2021 drafting of this pre-hearing disposition, no other documents or pleadings have been filed.

At the hearing xxxxxxxx

23. **20-25169-E-13 AP-1** **JOSEPH OLHEISER** **Jennifer Lee** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY METROPOLITAN LIFE INSURANCE COMPANY**
12-28-20 [15]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 28, 2020. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxxx.

Metropolitan Life Insurance Company ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that Debtor fails to provide for the curing of pre-petition arrearage in the amount of $9,933.70.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $13,907.64 in pre-petition arrearages. The Plan does not

propose to cure those arrearages. Instead, the plan classifies Creditor's claim as a Class 4 claim to be paid directly by Debtor, where these claims mature after the completion of the plan and are not in default.

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

At the hearing Debtor stated possible grounds to resolve the Objection, and the hearing is continued for supplemental pleadings.

SUPPLEMENTAL PLEADINGS

On February 9, 2021, Debtor filed a Supplemental Pleading with Debtor and Creditor Bayview Loan Servicing suggesting the following two options in order to resolve Creditor Metropolitan's Objection to Confirmation:

1. Adding the COVID-19 forbearance amount to the end of the loan (which the Debtor prefers and is pending reviewing by the Creditor); or

2. that language be added to the Order Confirming Plan providing that the Debtor make direct payments to Bayview to cure the arrears starting in May 2021 through the pendency of the plan until they are paid in full.

Dckt. 25.

Trustee filed a Response on February 12, 2021 informing the court that Debtor is current in plan payments and further stating the following regarding Debtor and Creditor Bayview's proposed resolutions of the issues:

1. As to what seems to be the proposition of a loan modification adding the forbearance period arrearage to the end of the loan, Trustee believes that this option is speculative since Creditor is still reviewing this option. Moreover, this option would require the court's approval to ensure that the Plan is feasible.

2. Trustee argues that the second option would require amending the Plan (and setting it for hearing) since this option has the Debtor paying Creditor directly for the forbearance arrearage and listing Creditor as a Class 1 creditor where a Class 4 would no longer be the proper classification for this creditor.

3. Trustee does not oppose the first option provided the parties come up with an agreement that is approved by the court.

4. Trustee opposes the second option on the grounds that it does not comply with our Local Bankruptcy Rules or the language in the Form

Plan itself.

5. Trustee does not oppose a continuance of this Objection's hearing for 60-90 days to allow for Debtor and Creditor to come to or finalize an agreement under the first option.

Dckt. 26.

February 23, 2021 Hearing

At the hearing xxxxxxxx

24. **17-23287-E-13** **ROBERT AMADOR** **MOTION TO MODIFY PLAN**
MRL-3 **Mikalah Liviakis** **1-7-21 [153]**
24 thru 25

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

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 7, 2021. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Robert Marciano Amador ("Debtor") seeks confirmation of the Modified Plan because he seeks to increase his plan payment and demonstrate he has entered into a repayment plan with his mortgage company. Declaration, Dckt. 157. The Modified Plan provides the following:

1. payment of $2,150.00 for 1 month,
2. $2,650.00 for 23 months,
3. $3,250.00 for 19 months,
4. $4,300.00 for 12 months,
5. $5,700.00 for the remaining 5 months,
6. and a 42 percent dividend to unsecured claims totaling $47,208.00.

Modified Plan, Dckt. 155. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CREDITOR'S OPPOSITION

Schools First Federal Credit Union ("Creditor") holding a secured claim filed an Opposition

on January 29, 2021. Dckt. 164. Creditor opposes confirmation of the Plan on the basis that:

A. The proposed Plan changes Creditor's interest rate from 5.00% to 1.00%.

B. The proposed Plan does not mention the ordered adequate protection payments under the previously confirmed plan.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on February 9, 2021. Dckt. 168. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has not received court approval of the forbearance repayment agreement.

B. Plan will complete in more than 60 months.

C. Trustee is not convinced Debtor's plan has been proposed in good faith.

D. The proposed Plan does not incorporate adequate protection payments.

DEBTOR'S REPLY TO OPPOSITION

Debtor filed a Reply to Creditor's Objection on February 10, 2021 and a Reply to Trustee's Objection on February 16, 2021. Dckts. 171, 173. Both replies are discussed below.

DISCUSSION

Adequate Protection Payments

Trustee and Creditor allege that under the proposed Plan, Debtor has omitted the monthly adequate protection payments of $1,700.00, as required by the court's October 19, 2017 order. Dckt. 90. In Debtor's Reply to Creditor's Objection, Debtor has agreed to the adequate protection payments previously made to Creditor and such will be included in the order confirming plan. Dckt. 171.

Thus, this objection is resolved in favor of Debtor.

Change in Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 1.00%. Creditor's claim is secured by a lien on real property. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for

the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

In Debtor's Reply to Creditor's Objection, Debtor has agreed to 5.00% interest rate on Creditor's claim and such interest will be included in the order confirming plan. Dckt. 171.

Thus, this objection is resolved in favor of Debtor.

Forbearance Repayment

Debtor is proposing to modify his plan to increase his plan payments and to demonstrate that he has entered into a forbearance repayment with NewRez LLC. Debtor has not received court approval of the repayment agreement.

NewRezLLC d/b/a Shellpoint Mortgage Servicing filed a Notice of Mortgage Payment Change/Notice of Temporary Forbearance on May 14, 2020 indicating that due to a financial hardship either directly or indirectly related to COVID-29, the lender had provided a temporary suspension of mortgage payments effective April 1, 2020 for a period of 3 months.

Debtor filed a copy of the Repayment Plan but Trustee is unsure if this is the actual agreement on the basis that it not signed and appears to be missing pages. *See* Exhibit A, Dckt. 156.

In Debtor's Reply to Trustee's Objection, Debtor explains that the Forbearance Agreement is not a modification of the terms of the loan but a payment schedule that will allow Debtor to pay the lender over the next 12 months. Dckt. 173, ¶ 1.

At the hearing xxxxxxxx

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 63 months due to low Plan payments. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor indicates that Debtor will increase the plan payments by $120 per month effective with the March 25, 2021 payment to resolve this issue raised by the Trustee and that such an increase will be reflected in the order confirming the Plan. Dckt. 173, ¶ 2.

Thus, this objection is resolved in favor of Debtor.

Plan Not Filed in Good Faith

Trustee argues that Debtor has not adequately explained why he was unable to make the mortgage payments which resulted in a forbearance agreement when Debtor's monthly gross income alone is $19,769.00. Debtor's current gross income is $6,069.00 greater than his prior Schedule I filed July 18, 2017 where his gross income was $13,700.00.

The Notice of Temporary Forbearance indicates the forbearance period was to begin on April 1, 2020 for a period of 3 months. According to the Repayment Plan Debtor filed as Exhibit A, Dckt. 156, Debtor's regular monthly mortgage payment is $1,502.34, and the total past due amount is $20,857.66, which represents more than 13 mortgage payments.

Debtor indicates that he had unexpected expenses due to his wife's illness and funeral expenses for his father-in-law who passed in July. However, Trustee argues that Debtor does not indicate he was out of work or experience a reduction in income over this period of time, nor does Debtor explain specifically why he was so far behind on mortgage payments resulting in the need for a forbearance.

In the reply, Debtor does not directly address this point. At the hearing xxxxxxxx

Debtor's Supplemental Schedules I and J filed January 7, 2021 make a number of adjustments resulting in an increase in monthly expenses from $7,429.34 to $9,704.48. Dckt. 158. Specifically, Trustee points the court to Debtor's failure in explaining why his voluntary retirement contribution has increased from $150.00 to $437.00, or why Debtor now budgets $450.00 per month for a vehicle payment that was previously $0.00, and does not appear to have court approval.

In the Reply, Debtor asserts that the retirement contribution of $437.00 represents approximately 3% of Debtor's gross income, and Debtor is over 50 years of age. Dckt. 173, ¶ 3d. Moreover, Debtor explains that the vehicle was purchased by the non-filing spouse, with her mother co-signing the loan, because the non-filing spouse needed a vehicle transporting the children, work, and groceries. *Id.*, ¶ 3e; Declaration, Dckt. 174.

At the hearing xxxxxxxx

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

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

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

25. 17-23287-E-13 RTD-2 — ROBERT AMADOR, Mikalah Liviakis — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR

SCHOOLSFIRST FEDERAL CREDIT UNION VS.

MOTION FOR RELIEF FROM CO-DEBTOR STAY
11-30-20 [136]

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)(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, Co-Obligor, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 30, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxx.

SchoolsFirst Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to Robert Marciano Amador's ("Debtor") real property commonly known as 12121 Gold Pointe Lane, Gold River, California ("Property"). Movant has provided the Declaration of Dioselin Hernandez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

A Motion for Relief from the Automatic Stay filed by NewRez LLC, creditor with the first deed of trust over the Property, was set to be heard on December 8, 2020. Dckt. 125. Movant argues that their security interest is not adequately protected and may be lost of the motion is granted.

Movant also provides evidence that there are 85 pre-petition payments in default, with a pre-petition arrearage of $74,789.74. Declaration, Dckt. 1396.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David P. Cusick ("the Chapter 13 Trustee") filed an Opposition on December 7, 2020. Dckt. 145. Trustee asserts that Debtor is delinquent $3,250 in plan payments and that Movant is included in the confirmed plan. *Id.* Trustee notes that Trustee to date has been paid a total of $90,243.88 to Movant. *Id.* Trustee further notes that Movant requests relief from the co-debtor stay as to Olga Amador, where co-debtor is listed as a borrower on the Note and trustor on the Deed of Trust, but

Debtor's Amended Schedule D does not list co-debtor as also owing the debt. *Id.*

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 $132,356.63 (Declaration, Dckt. 139), while the value of the Property is determined to be $390,000.00, as stated in Schedules A/B and D filed by Debtor. The property is encumbered by a senior lien securing an obligation of $226,000.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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).

Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because the superior deed of trust is in default and Movant is seeking relief to protects its interest in the entire property.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court generally does not grant additional relief merely stated in the prayer.

Continuance of Hearing

At the December 8, 2020 hearing on the Motion for Relief From the Automatic Stay filed by New Rez, LLC (DCN: RAS-1) Counsel for SchoolsFirst Federal Creditor Union, which holds the junior deed of trust on the Property, appeared and agreed on the record to continue the hearing on this Motion to 1:30 p.m. on January 12, 2021 as well, to afford Debtor the opportunity to focus on the cure proposal.

January 12, 2020 Hearing

As of the January 6, 2020 review of the docket in preparing this pre-hearing disposition, no further documents or pleadings have been filed by the parties.

At the hearing, Movant agreed to continue the hearing in light of the agreement with the senior lien holder and the Debtor having a plan set for confirmation.

February 23, 2021 Hearing

Debtor filed a Modified Plan and a Motion to Confirm the Modified Plan on January 7, 2021 and set for hearing February 23, 2021. Dckts. 155, 153.

In Debtor's Reply to Movant's Opposition to confirmation of the Modified Plan, Debtor contends that after conferring with Creditor, the parties have agreed that the interest rate on Creditor's claim shall be 5% and any adequate protection payments previously made to Creditor pursuant to Debtor's prior confirmed plan are also authorized and ratified by Debtor's new pending plan. Dckt. 171.

At the hearing Counsel for Movant xxxxxxxx

26. **20-23896-E-13 MET-3** **MILTON PEREZ** **MaryEllen Terranella** **CONTINUED MOTION TO CONFIRM PLAN** **12-4-20 [47]**

26 thru 27

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, and Office of the United States Trustee on December 4, 2020. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the 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 hearing on the Motion to Confirm the Amended Plan is continued to 2:00 p.m. on June 21, 2021.

The debtor, Milton Raul Perez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $1,600.00 for 36 months, and a 100 percent dividend to unsecured claims totaling $5,894.00. Amended Plan, Dckt. 49. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S OPPOSITION

1 Oak Ventures Step Fund LLC ("Creditor"), holding a secured claim, filed an Opposition on December 28, 2020. Dckt. 55. Creditor opposes confirmation of the Plan on the basis that the plan does not provide for full payment of Creditor's pre-petition arrearage.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 12, 2021. Dckt. 61. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor fails to explain why the plan proposes refinance within 12 months of the order confirming the plan.

B. Debtor misclassifies a creditor with a secured claim as a Class 4 where Creditor has filed a proof of claim claiming Debtor is in default.

Debtor filed a Reply addressing Trustee's Opposition. Dckt. 66. The Reply is discussed below.

DISCUSSION

Failure to Cure Arrearage of Creditor and Proposed Refinance Procedure

Creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $128,194.64 in pre-petition arrearage.

Creditor argues that the Plan does not propose to cure those arrearage in their entirety and does not offer to pay the arrears in equal monthly installments. According to Creditor, Debtor's Amended Plan proposes to pay an "arrearage dividend" of $595.99 monthly along with an adequate protection payment of $815.86 together with a proposal to refinance to pay off Creditor in full within 12 months of confirmation.

In the Amended Plan, Debtor puts this Creditor in both Class 1, as if Debtor is paying the claim as a Class 1 Claim, but also providing for it in the Additional Provisions. Plan, § 3.07 and Additional Provisions; Dckt. 49.

Debtor seeks to make an adequate protection payment of $815.86, which is identified as the currently monthly mortgage installment, and the arrearage and Creditor's claim accelerated and paid in full within 12 months.

Refinance Procedure

Trustee objects to confirmation on the basis that Debtor's plan proposes a refinance within 12 months of the order confirming the plan and provides evidence that Debtor may qualify for such refinancing but fails to explain why the plan proposes potentially to wait up to 12 months for the refinance and not sooner.

In the Reply, Debtor does not expect the refinance to take this long but argues that the potential wait of up to 12 months was stated in abundance of caution allowing for the current pandemic conditions that may affect the process from appraisal taking longer, underwriting professionals working from home, and loan approval taking longer due to current low mortgage rates and increases in demand.

Addressing Creditor's Secured Claim

In looking at the Plan in this case, Debtor's only "problem" is addressing Creditor's claim. Debtor states that the obligation due PHH Mortgage Services is current and there are only ($5,894) that will be paid a 100% dividend through this thirty-six month plan. Debtor is also using the Plan to reduce

the claim secured by a 2007 Yamaha Dirt Bike from ($2,211) to ($365), which would appear to add around $1,900 to general unsecured claims. Plan, Dckt. 49.

The monthly plan payment is $1,600. *Id.*, ¶ 2.01. From that, the necessary payments during the first year would be:

Plan Payment	$1,600
Chapter 13 Trustee Fee (10%)	($ 160)
Debtor's Counsel Fees ($3,000) Amortized Over 12 Months	($ 250)
Creditor Current Monthly Payment	($815)
Class 2 Dirt Bike Payment	($365)
Surplus Plan Payments Before Beginning Unsecured Claim Dividend	$ 10

During the first year of the Plan there would be an "extra" $10 a month that could go to accelerating the claim of Creditor and reducing the amount of the refinance, but it would only be a very modest amount.

Class 4 Misclassification

Trustee further objects on the basis that creditor PHH Mortgage Corporation holding the first mortgage for Debtor's residence has filed a proof of claim stating that the Debtor is delinquent $6,715.47, showing no payment for May, June, July 2020, or August 2020, as well as accrued fees from the prior bankruptcy, accrued interest from August 1, 2020 to August 11, 2020, as well as a projected escrow shortage.

In the Reply, Debtor explains that PHH Mortgage was classified as a Class 4 claim because Debtor made the pre-petition payments in August of 2020 but that PHH Mortgage has not amended its proof of claim to reflect the payments made. Debtor further asserts that counsel has communicated with PHH Mortgage to ascertain whether a further amended claim will be filed but has not received a response and that Debtor may have to file an objection to the claim if it is not amended.

It is unclear whether Creditor is adverse to any reasonable time period for Debtor to either "put up or shut up" on getting a refinance done, or that Creditor is opposed to locking Debtor into a reasonable time line to have Creditor being repaid.

Looking at Proof of Claim 5-1 filed by Creditor, it acquired the claim from Westwood Associates. The Proof of Claim states that the Property securing the Claim has a value of $450,000. Proof of Claim 5-1, ¶ 9. The interest rate on the secured claim is stated in Proof of Claim 5-1 to be 11.5%, which is 283% higher than the current 30 year residential loan interest rate of 3% available for good residential borrowers.

It appears that the claim of U.S. Bank, N.A. is secured by the senior deed of trust recorded against the Property is in the amount of ($87,757.22), less any payments made on that amount. Proof of Claim No. 2-1. The court says "appears" in that the deeds of trust attached to Claim No. 2-1 and Creditor's Claim 5-1 are recorded on the same day at the same time in 2007, but the Document Recording Number for Creditor's deed of trust is one number higher than that for the deed of trust attached to Proof of Claim 2-1.

The $450,000 value stated by Creditor is consistent with the $450,000 value stated by Debtor on Schedule A/B. Dckt. 1 at 11.

With a value of $450,000 and a senior secured debt of ($87,757.22), there is projected to be $362,242.78 in value securing Creditor's stated claim of ($215,350.41), Proof of Claim 5-1, providing an equity cushion of $147,000 (63.8% equity cushion). Even taking into account costs of foreclosure, taking possession of property, and post-foreclosure resale costs, there is significant adequate protection for Creditor to be considered for a diligent, good faith refinance effort. [Fn.1.] If the Debtor were to sell the Property for $450,000, after costs of sale (estimated at 8%) and paying the secured claims, Debtor would pocket around $110,000, and have no other significant debt to pay.

FN. 1. On Schedule D, Debtor lists Creditor as having a secured claim of ($120,755). Dckt. 1 at 20. No objection to Proof of Claim 5-1 has been filed by Debtor, indicating that there may have been an error by Debtor in computing Creditor's claim.

Debtor commenced this case on August 11, 2020. Interest rates for residential real estate mortgages are at historically low - at least when one considers the 20th and 21st Centuries - rates. If Debtor can refinance, then now is the time. If Debtor cannot refinance, then he has the "hard" decision to make of whether he wants to sell with real property at historically high values (fueled in part by the historically low interest rates) and maximize his exemption recovery and any surplus, or delay, have interest rates rise and the value of the Property drop as he tries to sell it with a foreclosure sale pending outside of bankruptcy.

At the hearing, Debtor's counsel and Creditor's counsel did not present an agreed to reasonable period, during which Debtor would make adequate protection payments, for the Debtor to obtain a refinance.

Debtor's Objection to Claim of PHH Mortgage

Debtor filed an Objection to the Claim of PHH Mortgage on February 9, 2021. Dckt. 72. The Objection is set for hearing on March 30, 2021. Debtor objects to the Proof of Claim on the basis that Debtor made the pre-petition payments in the amount of $4,189.68 in August of 2020 but that PHH Mortgage has not amended its proof of claim to reflect the payments made.

February 23, 2021 Hearing

On February 16, 2021, Debtor filed a Status Report. Dckt. 76. Debtor seeks to shorten the time period to complete the refinance to June 30, 2021.

On February 18, 2021, Creditor Oak Ventures filed a Supplemental Opposition addressing the Status Report. Dckt. 80. Oak Ventures first asserts that the Plan cannot be confirmed because Debtor's objection to the U.S. Bank N.A. (PHH loan servicer) claim stating that no pre-petition arrearage existed has not been adjudicated.

Second, Oak Ventures adamantly states that it refuses to agree to a deadline of June 30, 2021 to be paid in full through a refinance, notwithstanding monthly adequate protection payments of $815.86 a month pending the June 30, 2021 deadline.

Oak Ventures does acknowledge that this court may consider some adequate protection factors in giving a debtor a commercially reasonable time in which to either refinance or sell property so as to not forfeit a large equity to a creditor such as Oak Ventures. If the court were to do so, Oak Ventures suggests that "to be fair," the time period should be shortened 30 days to May 31, 2021, and not the (apparently) excessive period to June 30, 2021.

Oak Ventures then suggests that if it put to the test of having to wait until the May 31, 2021, deadline, the stay should be automatically terminated and it should not be burdened with having to file an ex parte motion requesting that such relief is proper.

Oak Ventures' Supplemental Opposition raises significant concerns with this case – significant concerns as to Oak Ventures and its good faith. U.S. Bank, N.A. Proof of Claim No. 1-1 states a claim of ($89,344.38). Oak Ventures' claim is ($219,614.10). Proof of Claim 5-1. Oak Ventures also states (admits) in Proof of Claim 5-1 the real property of the Bankruptcy Estate securing its claim and the U.S. Bank N.A. claim to have a value of $420,000. Proof of Claim 5-1, ¶ 9.

Thus, Oak Ventures demonstrates that it has an equity cushion of $111,041.52 – a 50% equity cushion.

Debtor has, using Oak Ventures' statement of value in Proof of Claim 5-1, claimed a $75,000 exemption in this asset (Schedule C, Dckt. 1 at 18), which leaves a substantial equity above the exemption for the bankruptcy estate. The equity for the bankruptcy estate may be even higher Debtor stating a value of $416,000 on Schedule A/B (which also states that the property was purchased for $420,000 in March of 2007, which the court notes was a the peak of the last real estate boom). It appears that Debtor's statement of value may be understated or a "net sales price" after deducting 8% for costs of sale. If so, then the value would be $450,000 ($450,000 - (8% x $450,000) = $414,000).

The evidence presented indicates that Debtor may not be able, due to the lack of commercial finance knowledge, to reasonably prosecute a refinance of the property. If the court were to set the May 31, 2021, or even the June 30, 2021 deadline, it might be signing the financial death warrant for the bankruptcy estate and allowing Oak Ventures to pocket the additional $111,000 + of equity in the property, in addition to its 11.25% interest

Oak Ventures has convinced the court that confirmation of the Plan at this time is not appropriate. Rather, the court must continue the hearing to determine whether Debtor is legally competent to seek and obtain a refinance to protect the $111,000+ equity for the bankruptcy estate. The best way, as shown by Oak Ventures, to determine that is see whether Debtor can accomplish this. If not, after a commercially reasonably period of time, the court can then consider whether the appointment of a limited purpose representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of

Bankruptcy Procedure 7025, 9014 to address the legal incompetency to obtain refinancing should be appointed.

Rather than denying confirmation and throwing the case into a dollar and time wasting limbo, and to protect Oak Ventures during this period, the court continues the hearing, with Debtor having to continue to make the plan payments thereunder, and the Trustee making the disbursements to U.S. Bank, N.A. and Oak Ventures (guaranteeing receipt of the adequate protection payment) while the Debtor, and then any limited purpose representative obtains the refinance to protect the $111,000+ equity in the property for the bankruptcy estate.

At the hearing xxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Confirmation of the Amended Plan filed by Milton Perez having been presented to the court, evidence of a substantial equity in property of the bankruptcy estate having been presented by Debtor and Creditor Oak Ventures Step Fund, LLC, the representative of the bankruptcy estate (whether the Debtor, or if demonstrated that Debtor does not have the commercial financial competency to, a limited purpose representative of the estate) diligently prosecuting a refinance or sale of the property to preserve more than $111,000 in equity for the bankruptcy estate, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to **2:00 p.m. on June 21, 2021**.
>
> During the continuance period Debtor shall continue to make the payments to the Chapter 13 Trustee, who shall make the disbursements to creditors holding secured claims, whether regular monthly payments, arrearage cure payments, or adequate protection payments, provided for in the proposed plan.

27. **20-23896-E-13 HDP-3** **MILTON PEREZ** **MaryEllen Terranella** **CONTINUED AMENDED MOTION TO DISMISS CASE 12-28-20 [59]**

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 28, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on June 21, 2021.

1 Oak Ventures Step Fund LLC ("Creditor"), seeks dismissal of the case on the basis that the debtor, Milton Raul Perez ("Debtor"), does not provide for full payment of Creditor's pre-petition arrearage.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 12, 2021. Dckt. 64. Debtor contends that the proposed amended plan provides for a refinance of Creditor's claim, which will pay it in full. *Id.*, at 2. Additionally, Debtor asserts that there is significant equity to support the refinance of the second mortgage where Debtor's residence is valued at $450,000 and the first mortgage has a balance of $89,344.00. *Id.*

DISCUSSION

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts $128,194.64 in pre-petition arrearage.

Creditor argues that the Plan does not propose to cure those arrearage in their entirety and does not offer to pay the arrears in equal monthly installments. According to Creditor, Debtor's Amended Plan proposes to pay an "arrearage dividend" of $595.99 monthly along with an adequate protection payment of $815.86 together with a proposal to refinance to pay off Creditor in full within 12

months of confirmation. Creditor does not consent to these terms.

The court has addressed Debtor's prosecution of this case in the Civil Minutes for the hearing on Debtor's Motion to Confirm the Amended Plan (DCN: MET-3).

At the hearing, Debtor's counsel and Creditor's counsel did not present an agreed to reasonable period, during which Debtor would make adequate protection payments, for the Debtor to obtain a refinance. The court addressed with the parties the concept of adequate protection and the use of an Ensminger like provision for the diligent prosecution of a refinance or sale of the Property.

Creditor expressed concern/skepticism over the Debtor being able to diligently seek either a refinance or sale, noting the history of defaults.

The court noted that a substantial equity exists in the Property above the lien and homestead exemption, and that conversion of this case to Chapter 7 and a trustee pursuing a sale of the Property appeared to be in the best interests of all creditors. If Debtor is unable, as Creditor argues/fears, to diligently prosecute a refinance or sale, it would not be proper to just dismiss and allow creditor to take the substantial value in the property in excess of its lien as extra "profit" for Creditor.

February 23, 2021 Hearing

As discussed in the Civil Minutes from the hearing on the Motion to Confirm the Chapter 13 Plan in this case, the court has determined that the hearing should be continued to determine whether Debtor is legally competent to obtain a refinance of the real property in which the estate has an equity of more than $111,000, or if a limited purpose personal representative needs to be appointed because Debtor lacks the legal competency to obtain such refinancing or to sell the property if necessary.

The court continues the hearing on the Motion to Dismiss to allow the bankruptcy estate to protect the $111,000+ in equity in property of the bankruptcy estate.

28. 20-25072-E-13 JHH-1 28 thru 30 | **RICHARD MYRE Judson Henry** | **OBJECTION TO CLAIM OF LAUREN HAYES, CLAIM NUMBER 1 1-6-21 [28]**

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on January 6, 2021. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 1-1 sustained and claim of Lauren Hayes is disallowed as a secured claim in its entirety, and such claim is an unsecured claim.

Richard Eugene Myre, Chapter 13 Debtor, ("Objector") requests that the court disallow the secured claim of Lauren Hayes ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $62,680.62. Objector asserts that Proof of Claim Number 1 does not provide *prima facie* evidence that the claim is secured and that Creditor bears the burden in proving that the claim is secured.

APPLICABLE LAW

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means

such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

DISCUSSION

Debtor's Argument

Debtor maintains that California Code of Civil Procedure § 674 requires certain information, to a standard of strict compliance, be present in an abstract of judgment. The information that Debtor contends is missing from Creditor's abstract of judgment is (1) the correct case number of the action from which the underlying judgment was issued, and (2) the name and address of to whom and where the summons was personally served or mailed. The missing information coincides with C.C.P. §§ 674(a)(1) and (3), respectively.

Debtor acknowledges that a proof of claim is presumed to be *prima facia* valid under 11 U.S.C. § 502(a). However, Debtor contends that the allegations of the proof of claim must set forth all the necessary facts in order to *prima facia* establish the claim. Debtor further acknowledges that a judgement on real property is created by recording an abstract of a money judgement with the county recorder.

Debtor points to *Longview Int'l, Inc. v. Stirling* 35 Cal.App.5th 985, 988-989 (Cal. Ct. App. 2019) citing *Keele v Reich* 169 Cal.App.3d 1129, 1133 (1985), which concluded that "[f]or a judgment lien to be valid, an abstract of judgment must be properly recorded and contain all the information required by statute." For this point, Debtor contends that "all the information required by status [sic]" is thus established under C.C.P. § 674.

Debtor notes that the Respondent in *Keele* argued that the standard for determining whether an abstract of judgment complies with C.C.P. § 674 was "substantial" not "strict compliance." *Keele v. Reich*, 1132. Debtor points again to *Keele,* showing that the court noted several opinions that found a lien upon "substantial compliance" with C.C.P. § 674 always involved an abstract of judgment that contained all of the statutorily required date and were challenged for containing extraneous symbols or data, an unusual format, or the like. *Keele v Reich,* 1132. Finally, Debtor notes that "strict compliance" is the standard regarding the inclusion of all information expressly required by C.C.P. § 674, and in the court in *Keele's* words "no court has validated a judgment lien where mandated information was omitted from an abstract." *Keele v. Reich*, 1133.

Debtor then argues that because the abstract of judgment is lacking mandatory information, the abstract fails to create a judgment lien that secures Creditor's claim, whether the Subject Real Property, or any other property. Debtor also argues that the Judgement is noncompliant with itself as the judgement states that "[p]laintiff shall prepare a new Abstract of Judgment" and that "[c]ase CU17-082402 shall be the lead file. All future court filings shall have this case number." When Creditor prepared the new Abstract of Judgment, she failed to include the case number as ordered. Thus, Creditor's claim is not secured and not allowable as a secured claim in any amount, and is only an unsecured claim in its entirety.

Lastly, Debtor argues that when a claim is not prima faciae valid, Debtor only needs to object

to the claim in order to place the burden back on the claimant. *In re Wells,* 407 B.R. 873, 882 (Bankr. N.D. Ohio 2008), citing *Raleigh v. Illinois Dep't of Revenue,* 530 U.S. 15, 20-21 (2000).

Creditor's Argument

Creditor on the other hand argues that the proof of claim executed and filed in accordance with Fed. R. Bankr. P. 3001(f) shall constitute *prima facia* evidence of the validity of the claim and that under C.C.P. § 697.310, a judgement lien is created by recording an abstract of a money judgement with the county recorder. Creditor contends that because the abstract of money judgement was recorded, the lien was perfected.

Creditor argues that the requirements of CCP § 674 must be substantially complied with. *Huff v. Sweetser*, 8 Cal. App. 689, 696-97 (1908); *see generally Keele v. Reich*, 169 Cal. App. 3d 1129 (1985). Creditor points the court to *Robbins Inv. Co. V. Robbins*, 49 Cal. App. 2d. 446, 448-449 (1942), where the court there stated that the "requirements are of substance, not of form[,]" and that it is "unnecessary to copy into the document words of the judgment beyond those actually essential to state the data required, their presence in the abstract does not vitiate it [citation] or render its recordation ineffective." Creditor argues, that because the proof of claim shows that the judgment containing all of the related case numbers was recorded with the abstract of judgment, the case number is not missing from the abstract.

Creditor then points to *In re Marriage of Orchard*, 224 Cal. App. 3d. 155, 159 (1990), where the court found a valid lien under C.C.P. § 697.320 where a mandated document was attached as "an exhibit" to the principal document, or otherwise not the face document that was recorded. The court explained that the issue was a formality rather of substance because the mandatory document was recorded and could be found after the face document. *In re Marriage of Orchard*, 159. Creditor further argues that the necessary information of who and where the summons was served is provided in the abstract and the additional section on the form provides no additional information. Lastly, Creditor points out that C.C.P. § 674(a)(3) states the abstract should contain the information. Creditor contends that, because the abstract contained the Debtor's address where he was served, it contained all the necessary information, complying with the statutory requirements and perfecting the lien.

Creditor also asserts that the second page of the judicial council form is provided for additional information about judgment creditors and judgment debtors. Because there was no additional information to provide, the absence of the second page does not affect the lien's validity.

Lastly, the Creditor argues that, even if problematic, the errors are clerical and may be corrected, which would still perfect the lien before the Debtor's bankruptcy. Creditor points to *Commonwealth Land Title Co. V. Kornbluth*, 175 Ca. App. 3d. 518, 531 (1985), where the court stated "[t]he trial court has inherent power to correct clerical errors in its records, whether made by the clerk, counsel or the court itself, 'so that such records will conform to and speak the truth.'" In that case, the court considered whether an abstract was void for omitting information. The court noted, "Appellants, by a very technical argument, are simply seeking to escape the effects of a judgement lien on the properties which they purchased with knowledge of the lien." *Commonwealth Land Title Co. V. Kornluth*, 530. Creditor notes, that the court in *Commonwealth* distinguished *Keele* in that the creditor in *Commonwealth* "did not purposefully withhold information on the abstract; the omission was obviously an inadvertent clerical error." *Commonwealth Land Title Co. v. Kornbluth*, 531.

Creditor requests an opportunity to seek relief from the stay and correct the clerical error if the court determines that the clerical issues are problematic.

Debtor's Response

Debtor argues that Creditor's noncompliance with C.C.P. § 674 is not merely clerical and Creditor cannot travel back in time to retroactively create a lien. Debtor points to *Sanger v. Ahn (In re Ahn)*, No. 18-16794 (9th Cir. Feb. 28, 2020), in which the court found that:

> [t]he relevant inquiry, however, is "not whether there was notice of the lien, but whether the [Sangers'] abstract complied with statutory provisions enacted to insure [sic] notice." *Keele v. Reich*, 215 Cal. Rptr. 756, 758 (Ct. App. 1985). The text of section 674(a)(4) is plain and unambiguous and requires the judgment creditor's name and address appear on the abstract of judgment. *See* Cal. Civ. Proc. Code § 674(a)(4). The substantial compliance standard has only been applied where "all of the required data was included," and "[n]o court has validated a judgment lien where mandated information was omitted from an abstract." *Keele*, 215 Cal. Rptr. at 758-59.

Debtor argues that while in *Sanger* it was the judgment creditor's name and address that was omitted from the abstract, the only difference between it and the instant case, if that the omitted information was mandated by C.C.P. § 674(a)(4) rather than C.C.P. § 674(a)(3).

Debtor also notes that as noted by the *Sanger v. Ahn* court, the *Commonwealth* opinion is the sole decision that deviates from the standard in *Keele* and this was due to the unique fact pattern in that case.

Lastly, Debtor again restates that Creditor is unable to meet the burden of proving her claim is secured because the abstract fails to meet the strict compliance standard as it is missing information required by C.C.P. § 674, and thus her claim should be allowed an entirely nonpriority unsecured claim.

DECISION

The court begins with a consideration of an objection to claim. Here, if the objection is sustained, then it "merely" means that the claim will not be paid through the bankruptcy plan. An objection to claim does not adjudicate the lien rights of a creditor. For that, an adversary proceeding is required (unless the parties consent to such adjudication in a contested matter, such as an objection to claim). Fed. R. Bankr. P. 3007(b), 7001(2).

At January 12, 2021 hearing on the Objection to Confirmation (DCN: RJM-1), the Parties Stipulated to have this matter determined as a contested matter through the Objection to Claim, waiving the adversary proceeding requirement of Federal Rule of Bankruptcy Procedure 7001(2).

California Law re Abstract of Judgment

A review of Creditor's Proof of Claim 1-1 shows that the Abstract of Judgment is missing page 2. That page is included in the Abstract of Judgment provided as Exhibit 1 attached to Debtor's Declaration. There is no information on page 2 of the Exhibit 1.

California Code of Civil Procedure § 674 provides as follows regarding the required information for abstracts of judgment that are issued by the Clerk of the Superior Court:

> § 674. Abstract of judgment
>
> (a) Except as otherwise provided in Section 4506 of the Family Code, an abstract of a judgment or decree requiring the payment of money shall be certified by the clerk of the court where the judgment or decree was entered and shall contain all of the following:
>
> (1) The title of the court where the judgment or decree is entered and cause and number of the action.
>
> (2) The date of entry of the judgment or decree and of any renewals of the judgment or decree and where entered in the records of the court.
>
> (3) The name and last known address of the judgment debtor and the address at which the summons was either personally served or mailed to the judgment debtor or the judgment debtor's attorney of record.
>
> (4) The name and address of the judgment creditor.
>
> (5) The amount of the judgment or decree as entered or as last renewed.
>
> (6) The last four digits of the social security number and driver's license number of the judgment debtor if they are known to the judgment creditor. If either or both of those sets of numbers are not known to the judgment creditor, that fact shall be indicated on the abstract of judgment.
>
> (7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.
>
> (8) The date of issuance of the abstract.

Comparing the requirements of California Code of Civil Procedure § 674(a) to the Abstract of Judgment attached to Proof of Claim 1-1 yields the following:

California Code of Civil Procedure § 674(a) Requirements:	Abstract of Judgment Attached to Proof of Claim 1-1, p. 4.
(1) The title of the court where the judgment or decree is entered and cause and number of the action.	Superior Court - Nevada County Case No. Of Action - CU18-083268 (Action No. CU18-083268 is one of the three "Case Numbers" on the Amended Judgment attached to Proof of Claim 1-1.)

(2) The date of entry of the judgment or decree and of any renewals of the judgment or decree and where entered in the records of the court.	Judgment Entered on September 2, 2020
(3) The name and last known address of the judgment debtor and the address at which the summons was either personally served or mailed to the judgment debtor or the judgment debtor's attorney of record.	Judgment Debtor - Richard Eugene Myre Grass Valley Address of Debtor Stated Service of Summons Address Not Stated
(4) The name and address of the judgment creditor.	Judgment Creditor - Lauren Hayes P.O. Box Address Given
(5) The amount of the judgment or decree as entered or as last renewed.	Amount of Judgment Stated to be $62,680.62
(6) The last four digits of the social security number and driver's license number of the judgment debtor if they are known to the judgment creditor. If either or both of those sets of numbers are not known to the judgment creditor, that fact shall be indicated on the abstract of judgment.	Last For Digits of SSN listed
(7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.	States That No Stay of Enforcement Ordered
(8) The date of issuance of the abstract.	Abstract Issued on September 2, 2020

Case Number Stated on Abstract of Judgment

As identified above, the Abstract of Judgment states that the State Court Case Number is CU18-083268. This is one of the three Case Numbers for the three State Court actions that were consolidated into the one judgment. *See* Amended Judgement After Stipulation attached to Proof of Claim No. 1-1, at 5.

Debtor has filed his Declaration under penalty of perjury testifying which includes the following:

A. Prior to November 3, 2020, Debtor received the Amended Judgment After Stipulation and the Abstract of Judgment. Declaration, ¶ 2; Dckt. 30. Debtor authenticates them as Exhibit 1, which are attached to his Declaration (as opposed

to being filed as a separate exhibit document as required by the Local Bankruptcy Rules).

B. Debtor testifies that on January 5, 2021, he reviewed Proof of Claim 1-1 filed by Creditor, and states that he is informed and believed that it was filed on December 16, 2020. *Id*., ¶ 4.

C. Debtor then provides his opinion that the Exhibits attached to his Declaration are the same as the Abstract of Judgment and Amended Judgment After Stipulation are "substantially the same" as those attached to Proof of Claim 1-1. *Id*.

D. Debtor then testifies that he has reviewed the Amended Judgment After Stipulation and "notes" for the court that it provides that "[c]ase CU17-082402 shall be the lead file. All future court filing shall have this case number. . . ." *Id*., ¶ 5. He then states his opinion that the Abstract of Judgment lists the Case Number as CU18-083268, and then states his legal conclusion that such is a "contradiction" to the Amended Judgment After Stipulation. *Id*.

E. Debtor concludes his testimony stating that he (as opposed to his attorney) also concludes that the Abstract of Judgment does not include information stating the address at which the summons was served or mailed. *Id*., ¶ 6.

The court does not see anything in the file for this case indicating that Debtor is an attorney or has legal training. The California State Bar does not list on its online attorney search page a Richard Myre as an attorney licensed, or formerly licensed to practice law. Debtor does not testify that he has legal training or understands the requirements for an abstract of judgment.

It appears that the "testimony" is merely an attorney constructed "sign so you can win" declaration. Other than authenticating the two exhibits improperly attached to the Declaration, the Debtor testifies what he "hears the written documents say" is not of assistance to the court.

Application of California Law

The Parties present the court with various California District Court of Appeal and a non-precedent Ninth Circuit decision. Beginning with *Keele v. Reich*, 169 Cal.App. 3d 1129 (2nd DCA 1985), which provides the following overview of the requirements for an abstract of judgment:

> There is no ambiguity in section 674 in terms of the required contents of an abstract of judgment. A debtor's social security number is mandatory. . .
>
> An examination of the legislative history of section 674 shows a concern by the Legislature over the problem of identifying a judgment debtor in an abstract as opposed to a property owner who has the same or similar name as that of the judgment debtor. . .
> . . .
> Our ruling is applicable only to the situation where an abstract of judgment contains no social security number of the judgment debtor and the judgment creditor has knowledge of the number. We do not rule that an abstract which does

> not contain a social security number is automatically void. The issue of compliance with statutory provisions for liens must be addressed on a case-by-case basis. (*Harold L. James, Inc. v. Five Points Ranch, Inc., supra*, p. 8.)

Keele v. Reich, 169 Cal.App. 3d 1129, 1132 (2nd DCA 1985).

The District Court of Appeal in *Keele* also addressed the argument that there did not need to be strict compliance with the requirements of California Code of Civil Procedure § 674, but only substantial compliance. The *Keele* Decision reviewed the prior substantial decision cases, and then concluded:

> We disagree. The issue is not whether there was notice of the lien, but whether respondent's abstract complied with statutory provisions enacted to insure notice. **Moreover, the brief history of case law with regard to the proper contents of an abstract of judgment indicates the substantial compliance standard has been applied to situations where all of the required data was included.** (*Weadon v. Shahen, supra;Robbins Invest. Co. v. Robbins, supra*, 49 Cal.App.2d 446.) **No court has validated a judgment lien where mandated information was omitted from an abstract**. (*Ellrott v. Bliss, supra*, 147 Cal.App.3d 901; *Huff v. Sweetser, supra*, 8 Cal.App. 689.)
>
> Respondent concludes section 674 should be liberally construed. However, the application of a liberal construction to the statute would frustrate legislative intent regarding the specific contents of abstracts. (§ 1858, supra.) We find respondent has not substantially complied with statutory formalities. (*Huff v. Sweetser, supra*, 8 Cal.App. 689.)

Id., 1133.

While stated in *Keele* as an absolute, the California Court of Appeal for the Second District concluded that there is a "clerical error" exception. Multiple abstracts of judgment which had been prepared by counsel for the judgment creditor had been issued by the court, and for one the date the judgment was entered was not included. In *Commonwealth Land Title Co. v. Kornbluth*, 175 Cal.App. 3d 581 (2nd DCA 1985), the Second Court of Appeal panel concluded:

> Appellants' final contention is that the abstract of judgment in favor of Virginia Emeline Creech, reflecting the amount of principal as $ 35,000, is void because the **abstract erroneously fails to state a date on which the judgment was entered**. The contention lacks merit. **Appellants, by a very technical argument, are simply seeking to escape the effects of a judgment lien on the properties which they purchased with knowledge of the lien**. However, contrary to their contention, **the abstract is not void**.
>
> The trial court has inherent power to correct clerical errors in its records, whether made by the clerk, counsel or the court itself, "so that such records will conform to and speak the truth." (7 Witkin, Cal. Procedure (3d ed. 1985) Judgment, § 68, pp. 502-503; Code Civ. Proc., § 473.) A clerical error, as opposed to a

> noncorrectable judicial error, is one that is made inadvertently. (7 Witkin, Cal. Procedure, supra, Judgment, § 67, pp. 500-501.) Moreover, clerical errors are correctable at any time. (*In re Marriage of Kaufman* (1980) 101 Cal.App.3d 147, 151; Estate of Goldberg (1938) 10 Cal.2d 709, 716, 717 [76 P.2d 508].)
>
> **Here, the date of entry of judgment was omitted from only one of the five abstracts of judgment which all were recorded on the same date the judgment was entered**. Since this error was obviously an inadvertent clerical error, it can be corrected by the trial court.

Commonwealth Land Title Co. v. Kornbluth, 175 Cal. App. 3d 518, 530-531 (2nd DCA 1985).

For questions of state law, a federal court is bound by the decisions of the highest court of that state. In the absence of such a decision, a federal court must predict how the highest state court would decide the issue using intermediate appellate court decisions, decisions from other jurisdictions, statutes, and treatises. *Vestar Dev. II, LLC v. Gen. Dynamics Corp.*, 249 F. 3d 958, 960 (9th Cir. 2001).

Under settled canons of statutory construction, the California Supreme Court[1] ascertains the meaning of a statute by applying the usual and ordinary meaning of the words. *Kimmel v. Goland*, 51 Cal. 3d 202, 208 (Cal. 1990). The statute's plain meaning controls the court's interpretation unless the words are ambiguous. *Green v. State of California*, 42 Cal. 4th 254, 260 (Cal. 2007). When more than one statutory construction is arguably possible, the Supreme Court selects the construction that comports most closely with the apparent legislative intent, seeking to promote, rather than defeat, the statute's purpose. *Imperial Merchant Services, Inc. v. Hunt*, 47 Cal. 4th 381, 388 (Cal. 2009).

This court has not been presented with, nor has been able to locate, a Supreme Court decision interpreting the requirements of California Code of Civil Procedure § 674. Beginning with the "plain language of the statute," the California Legislature has stated that an abstract of judgment shall be certified by the clerk of the court "[a]nd contain all of the following: [stating the eight required items of information cited above in this court's review of the statute] . . . ."

The information shall, not may, might, or electively include, both the case number and the service of summons information. As discussed in *Keele*, the California Legislature has determined what information is necessary to have the judgment debtor correctly identified and not sow confusion in connection with California real property ownership and records. As also discussed in *Keele*, the substantial compliance decisions as of that time were situations in which the abstract of judgment contained additional information beyond that required by the statute. *Keele v. Reich*, 169 Cal.App. 3d at 1133.

Here, Creditor omitted one piece of required information, the service of summons, and entered an incorrect case number for the other. While Creditor might possibly be able to argue that the case number is a mere clerical error (information being provided) and if a party went to that case file it would tie back to the consolidated case number CU17-082402, there has been no compliance with the requirement to provide the name and address for service of the summons.

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[1] Unless otherwise stated, references to "Supreme Court" are to the California Supreme Court.

While Creditor obtained a substantial Amended Judgment After Stipulation in the amount of $62,680.62, Creditor did not comply with California law in having the clerk of the court certify the Abstract of Judgment.

Though Creditor argues that it is merely "clerical" that necessary information was omitted and it can be "corrected" as merely a "clerical error," failing to include information is not a mere typo. While the Court of Appeal in the *Commonwealth* Decision held that omitting the date of judgment on one of eight abstracts of judgment was a clerical error, such is inconsistent with the plan language of the statute. Even if consistent, the facts presented to this court are not one in which Creditor was pounding out multiple abstracts of judgment, correctly putting the information on all of them except for one.

The Bankruptcy Appellate Panel for the Ninth Circuit addressed this issue in *Alcove Inv., Inc. v. Conceicao (In re Conceicao)*, 331 B.R. 885 (B.A.P. 9th Cir. 2005), in a case where the judgment creditor failed to include the judgment debtor's social security or driver's license number when known. The Panel concluded that it concurred with the *Keele* strict compliance requirement, and that failure to comply with the California Code of Civil Procedure § 674 resulted in no lien being created. *Alcove Inv., Inc. v. Conceicao (In re Conceicao)*, 331 B.R. 885, 891 (B.A.P. 9th Cir. 2005). The Bankruptcy Appellate Panel also noted that if the *Kornbluth* clerical error correction was the correct interpretation, and concluded that even if such applied it could not save a judgment lien, the automatic stay or discharge injunction blocking corrections to create a lien. *Id*. at 892.

Creditor not having complied with California Code of Civil Procedure § 674, no lien was created. Thus, this is not a situation in which the lien is avoidable (such as 11 U.S.C. §§ 544, 547, and 548), but one in which no lien exists as of the commencement of this case.

The Objection is sustained and the court determines that a judgment lien for Creditor was not created by the recording of the abstract of judgment form recorded on September 21, 2020, with the Nevada County, California County Recorder, Document No. 20200024316, a copy of which is attached to Proof of Claim 1-1, p. 4. There being no lien to secure the Claim, it is disallowed as a secured claim, with the obligation owed thereon being an unsecured claim in this case.

The court shall issue a Chambers Prepared Order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Lauren Hayes ("Creditor"), filed in this case by Richard Eugene Myre, Chapter 13 Debtor, ("Debtor") having been presented to the court, these Parties stipulating to the court determining the extent, validity, and priority of the lien asserted by Creditor in Proof of Claim 1-1 in this Contested Matter, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 1 of Creditor is sustained as to it being a secured claim, the court determining that the Abstract of Judgment recorded on September 21, 2020, with the Nevada County, California County Recorder, Document No. 20200024316, a copy of which is attached to hereto as Addendum A, is of no legal force and effect, it not

complying with the requirements of California Code of Civil Procedure § 674.

IT IS FURTHER ORDERED that the claim of Creditor asserted in Proof of Claim 1-1 is a general unsecured claim.

29.	**20-25072-E-13** **RJM-1**	**RICHARD MYRE** **Judson Henry**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LAUREN C. HAYES** **12-17-20 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 16, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemption in the real property identified as 10343 Lime Kiln Road, Grass Valley, California claimed in the amount of $100,000.00 is disallowed for all amounts in excess of $75,000.00.

Lauren C. Hayes ("Creditor") objects to Richard Eugene Myre's ("Debtor") claimed exemptions under California law because Debtor is not married and does not claim any dependents reside with the Debtor in his residence. The California "homestead" exemption pursuant to California Code of Civil Procedure ("C.C.P.") § 704.730(a)(2) allows a Debtor to claim an exemption of $100,000 where "the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a

community property interest with the judgment debtor."

Debtor filed a Response on January 5, 2020. Dckt. 26. Debtor argues that he is not required to be married or have dependents in order to claim the exemption under C.C.P. § 704.730(a)(2). The response is discussed below.

DISCUSSION

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

On Schedule C Debtor claims an exemption in the amount of $100,000 pursuant to California Code of Civil Procedure ("C.C.P.") § 704.730(a)(2).

The grounds stated in the Objection to Claim of Exemption by Creditor are that Debtor is not married and Debtor does not disclose having any dependents who reside in the residence. Dckt. 13. Thus, the maximum exemption is that of $75,000 for a single debtor.

Debtor's Opposition

Debtor alleges that he provides necessary and critical basic needs of living support care to his mother. Response, Dckt. 26. Thus, it is his position that even though he is not married, for purposes of C.C.P. § 704.730(a)(2), the "family unit" here is Debtor's mother, who he cares for, which is included within the definition and scope of C.C.P. § 704.710(b)(2)(C) for purposes of the C.C.P. § 704.730(a)(2) $100,000 exemption. *Id.*, at 2:1-3.

Debtor points the court to *In re Billings* for this proposition, which found that ""'Family unit" is defined in § 704.710(b)(2)(D) as the debtor and "[a]n unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself."'" *In re Billings*, 262 B.R. 88, 88 (Bankr. N.D. Cal. 2001). *Id.*, at 2:3-7.

Debtor further contends that regarding dependents, the language of California Code of Civil Procedure § 704.710(b)(2) itself includes the language "cares for," not "dependent." *Id.*, at 2:7-8. Again Debtor points to the analysis in *In re Billings*, arguing that the language in the statute refers to facts that demonstrate an actual dependency and does not require legal dependency status. *Id.*, at 2:8-10.

On February 9, 2021, Debtor filed an Opposition arguing that Debtor cares for his mother which depends on his care for food (among other things), and she does so on a regular, month-over-month basis, ongoing now since approximately 2005. Debtor points the court to *In re Billings*, 262 B.R. 88, 88 (Bankr. N.D. Cal. 2001), where the court stated that the "family unit" includes "[a]n unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself." Debtor also points to the language of CCP § 704.710(b)(2) itself includes the language "cares for," not "dependent," and concluding that under both the California

statute and the In re Billing decision, Debtor meets the standard and is thus entitled to the exemption.

In asserting that no claiming of dependents for tax purposes or residency is required for a Debtor to claim the $100,000 homestead exemption of CCP § 704.730(a)(2), Debtor points the court to *In re Pugh*, 522 B.R. 277 (Bankr. S.D. Cal. 2014), where the court's opinion includes an analysis of statutory interpretation, in which the decision notes the plain language of CCP § 704.710(b) requires only that the judgment debtor "cares for or maintains" (no legal dependent status required), and that the terms of the statute do not require the homestead be the cared for or maintained family unit member's primary place of residence. *Pugh* at 280.

Moreover, Debtor argues that according to *In re Pugh*, holding that tax code exemptions are not relevant to the analysis of exemption claims pursuant to CCP § 704.730(a) or in bankruptcy. *In re Pugh* at 280-281.

Debtor filed a Declaration testifying under penalty of perjury that he providing support to his mother since approximately 2005, including monetary assistance for her groceries, her cell phone, plus any necessary incidental expenses that may arise from time to time. Declaration, Dckt. 42, ¶¶ 3-4. Debtor also provides living assistance by taking her to medical appointments, to the grocery store, and other miscellaneous necessary errands and appointments. *Id.*, ¶ 6.

Debtor testifies that he does not claim dependents on his tax returns because he itemizes his deductions instead of claiming dependents and has been doing this for many years. *Id.*, ¶ 8.

Creditor's Reply

Creditor filed a Reply on February 16, 2021. Dckt. 44. Creditor argues that Debtor's assistance to his elderly mother does not qualify him for the exemption. Creditor further analyzes the cases presented by Debtor. Specifically, Creditor notes that in *In re Billings* the debtor lived with his unmarried 24-year-old-daughter who did not have employment of her own, and the debtor provided his daughter with room and board. *In re Billings*, 262 BR 88 (Bankr. N.D. Cal. 2001). Moreover, Creditor notes that in both of the cases used by Debtor, *In re Billings* and *In re Pugh*, the family member receiving support lives in the homestead.

Creditor asserts that Debtor has failed to present evidence showing that Debtor's mother lives with Debtor. Creditor further contends that Debtor's "necessary and critical basic needs of living support" is comprised of a $40.58 monthly expense for Debtor's mother's cell phone and $75 per month for groceries for Debtor's mother, which is a much different scenario than those present in *Billings* and *Howell* where the debtor was providing all of the dependent's living expenses including housing. Thus, Creditor argues, Debtor's level of support to his mother does not raise to the level of establishing that he is supporting his mother in the homestead and as such is not entitled to the exemption.

Review of California Statutory Exemption Provisions

Debtor claims the current exemption pursuant to California Code of Civil Procedure § 704.730(a)(2); Schedule C, Dckt. 1 at 16; which provided at the time this case was filed:

§ 704.730.

(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) **if the judgment debtor** or spouse of the judgment debtor who resides in the homestead **is** at the time of the attempted sale of the homestead **a member of a family unit**, and there is at least **one member of the family unit who owns no interest in the homestead** or whose only interest in the homestead is a community property interest with the judgment debtor.

Cal. C.C.P. § 704.730 in effect as of the November 3, 2020 filing of this case (emphasis added).

The term "family unit" is defined by the California Legislature in California Code of Civil Procedure § 704.710 as follows:

(b) **"Family unit" means** any of the following:

(1) The judgment debtor and the judgment debtor's spouse if the spouses reside together in the homestead.

(2) **The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead**:

(A) The minor child or minor grandchild of the judgment debtor or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.

(B) The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.

(C) **The** father, **mother**, grandfather, or grandmother **of the judgment debtor** or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.

(D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.

(3) The judgment debtor's spouse and at least one of the persons listed in paragraph (2) who the judgment debtor's spouse cares for or maintains in the homestead.

Cal Code Civ Proc § 704.710 (emphasis added).

On Schedule J, Debtor lists no dependents. Dckt. 1 at 28.

On Schedule A Debtor lists this property in which Creditor asserts a judgment lien as having a value of $340,000. Dckt. 1 at 11. On Schedule D Debtor lists the property being encumbered by the lien of NewRez, LLC to secure a claim of ($223,377.69). *Id*. at 18. This is consistent with Proof of Claim No. 2-1 filed by NewRez, LLC. Creditor asserts a claim of ($62,680.62) in Proof of Claim No. 1-1.

DECISION

Debtor has affirmatively sought to claim a homestead exemption based on having to care for and maintain his mother in the Property. Debtor provides the following evidence that his parent is dependent on him for her financial maintenance by his testimony in his Declaration:

A. "3. However, I have for many years now, since approximately 2005 without any period of interruption, provide and continue to provide necessary and critical basic needs of living support to my mother, Carol Beetler." Declaration, ¶ 3; Dckt. 42.

B. "4. My mother's only source of income is Social Security retirement, which is insufficient to provide for her basic needs of living. Because of this I provide, on a consistent monthly basis, monetary assistance for her groceries, her cell phone, plus any necessary incidental expenses that may arise from time to time." *Id*., ¶ 4.

C. "5. My mother is elderly, has a diagnosis of chronic emphysema, and has suffered loss of eyesight for which she recently underwent surgery. Because of all of this, my mother is not employed and cannot work." *Id*. ¶ 5.

D. "6. In addition to financial assistance for her basics of living, because of her debilitating medical issues, I also provide living assistance by taking her to medical appointments, to the grocery store, and other miscellaneous necessary errands and appointments." *Id*. ¶ 6.

E. "9. I own the real property commonly described as 10343 Lime Kiln Road, Grass Valley, CA 95949 in fee simple, with a 100% ownership interest, which is my primary residence. My mother Carol Beetler owns no interest of any kind in this real property." *Id*. ¶ 9.

No other evidence is provided by Debtor in support of the claim of exemption. No declaration from his mother. No copies of bills and expenses he has paid. No corroboration from his Mother's doctor, nurse, or other medical care provider.

Looking at the Declaration, Debtor provides the court with his conclusions for the court to adopt/repeat, but no evidence. The court is not presented with Debtor's Mother's Social Security income amount, her other assets, and other sources of support.

On Schedule J, Debtor identifies on Schedule J the financial care and maintenance of his Mother to be (identified by Schedule J paragraph numbers):

Debtor's Mother's Cell Phone.....($40.58)

Groceries For Mother.....($75.00)

Dckt. 1 at 28-30.

In looking at Schedule J, it is clear that there are no other "Mother Expenses" hidden in other expenses. It appears that the Expenses stated by Debtor are questionable as being sufficient. Some that appear questionable include:

Water, Sewer, Garbage Collection.....($6.00)

Food and Housekeeping Supplies.....($300.00)

Assuming ($50.00) a month for supplies for a household of two persons, that would leave ($250) in food expense for Debtor. In a thirty day month, that would allow Debtor ($2.77) per meal. Debtor surviving on ($2.77) per meal for sixty months does not appear reasonable, actual, or feasible.

Clothing, Laundry, Dry Cleaning.....($20.00)

This too appears questionable that Debtor can maintain/survive having only $240 a year to spend on his jeans, underwear, tee shirts, casual shirts, socks, nice clothing and the like.

Medical and Dental Expense.....($0.00)

It is not clear how Debtor, over a sixty month period, will never have any out of pocket medical expenses. There is not sufficient "cushion" in other expenses to provide medical and dental expense coverage. Additionally, Debtor testifies under penalty of perjury that his Mother for whom he provide care and maintenance has significant medical issues. Declaration, ¶ 5; Dckt. 42.

Transportation.....($90.00)

This is for gas, maintenance, repairs, registration, and the like (excluding insurance). On Schedule A/B Debtor lists owing two vehicles, a 1990 Toyota pickup with 190,000 miles and a 1974 Chevrolet Custom Deluxe with 250,000 miles. Dckt. 1 at 11, 11. Both of these vehicles have extremely high mileage are appear to be ones which will have substantial repair and maintenance expense, though low registration fees.

Even if all Debtor paid the ($90.00) a month was for gas, at $3.50 a gallon, he could purchase twenty-five gallons of gas a month. Assuming that these older, high mileage vehicles average twenty miles to the gallon, then he could drive sixteen miles a day in a thirty-day month. Such does not appear to be reasonable or feasible over the sixty months of the Plan.

Entertainment, Recreation.....($50.00)

It does not appear that Debtor's ($50.00) a month for sixty months of entertainment is reasonable.

It is unclear how Debtor is maintaining or caring for his Mother.

In *In re Howell*, 638 F.3d 81 (9th Cir. 1980), the Circuit affirmed the Bankruptcy Judge's specific findings that the adult son was unable to find employment and was completely dependant on the debtor in this case (the son's father) for support. In *Billings*, Bankruptcy Judge Jaroslovsky found that the debtor's daughter, who suffered from epilepsy, unable of maintaining steady employment, unable to have any income, who moved in which the debtor when she was pregnant, the higher care for and maintain homestead exemption was available. *In re Billings*, 262 B.R. 88 (Bankr. N.D. Cal. 2001).

Neither *Howell* or *Billings* address the evidence provided to the bankruptcy judge making the decision, just the conclusions drawn.

Debtor's Declaration does not provide any evidence that his Mother resides in the Debtor's real property. Dckt. 42. Rather, he testifies:

A. The conclusion that he provides "necessary and critical basic need of living support to my mother, Carol Beetler." Declaration, ¶ 3; Dckt. 42.

B. Debtor provides monthly assistance for her groceries, cell phone, and necessary incidental (unspecified) expenses. *Id*. ¶ 4.

C. Debtor provides assistance in the form of taking his Mother to the grocery store, medical appointments, and other miscellaneous errands and appointments. *Id*. ¶ 6.

In the Opposition, Debtor's counsel clearly states that the Mother does not reside in the Property in which the homestead exemption is being claimed, and affirmatively asserts that there is no requirement that Debtor's Mother lives in the homestead property. This assertion clearly misreads the plain language of California Code of Civil Procedure § 704.710 as it defines a "family unit" necessary to claim the $100,000 homestead exemption.

The term "family unit" is defined by the California Legislature in California Code of Civil Procedure § 704.710 (emphasis added) as follows:

> (b) **"Family unit" means** any of the following:
>
> (1) The judgment debtor and the judgment debtor's spouse if the spouses reside together **in the homestead**.
>
> (2) **The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead**:
>
> > (A) The minor child or minor grandchild of the judgment debtor or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.
> >
> > (B) The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.

> (C) **The** father, **mother**, grandfather, or grandmother **of the judgment debtor** or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.
>
> (D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.
>
> (3) The judgment debtor's spouse and at least one of the persons listed in paragraph (2) who the judgment debtor's spouse cares for or maintains in the homestead.

Cal Code Civ Proc § 704.710 (emphasis added). The judgment debtor must care for or maintain the person **in the homestead**. "In the homestead" modifies both "cares for" and "maintains."

To the extent that Debtor cites to the decision in *In re Pugh*, 522 B.R. 277 (Bankr. C.D. Cal. 2014) for the proposition that the care or maintenance need not take place in the homestead property, Debtor misreads that decision. As the bankruptcy judge in that case noted, in 1982 when family unit statutes were amended, the residing on the premises language was removed for children and other non-spouse persons. In *Pugh*, in finding that the debtor's daughter was a minor child that debtor cared for or maintained in the homestead, the evidence presented was that the minor child was cared for and maintained during the days and on weekends when the debtor had custody of his daughter. *In re Pugh*, 522 B.R. 277, 280 (Bankr. C.D. Cal. 2014). Judge Mann in *Pugh* clearly and expressly held:

> In other words, the legislature changed the plain language of the statute to now only **require that** the minor child **be cared for and maintained in the homestead**. Under this less restrictive standard, because it is undisputed that Debtor's second daughter is cared for in the Lake Ben Property at least on the days and weekends he has custody, Pugh and his daughter constitute a family unit qualifying him for the $100,000 exemption.

Id., 280 (emphasis added).

Here, Debtor's evidence is that the Mother is not cared for or is not maintained in the Property, but elsewhere. Debtor resides in the property and provides the financial and other care and maintenance at places other than the Property.

Additionally, other than Debtor's general conclusions that he provides care and maintenance for his Mother, the court is not presented with any evidence of such maintenance and support. From the financial information provided under penalty of perjury, Debtor is not able to provide any significant financial support.

The Creditor's Objection is sustained, and the claimed exemption in the amount of $100,000.00 is disallowed for all amount in excess of $75,000.00, the homestead exemption amount allowable under former California Code of Civil Procedure § 704.730(a)(1).

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

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

The Objection to Claimed Exemptions filed by Lauren C. Hayes ("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 Objection is sustained, and the claimed exemptions for the homestead under California Code of Civil Procedure § 704.730(a)(2) in the amount of $100,000 is disallowed for all amounts in excess of $75,000.00, the amount of the homestead exemption Debtor may claim under former California Code of Civil Procedure § 704.730(a)(1).

The court orders and allows the $75,000.00 homestead exemption in light of Creditor having asserted such in the Objection, and to allow Debtor to avoid the cost and expense of amending Schedule C.

30. **20-25072-E-13** **RICHARD MYRE** **CONTINUED OBJECTION TO**
RJM-2 **Judson Henry** **DEBTOR'S CLAIM OF EXEMPTIONS**
12-16-20 [13]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 17, 2020. By the court's calculation, 26 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.

Lauren C. Hayes ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor misclassified Creditor's claim as an unsecured claim.

B. The Plan improperly modifies a claim secured by Debtor's principal residence.

A. Debtor's plan is not feasible.

B. Debtor did not propose the plan in good faith.

Debtor filed an Opposition to the Objection on January 5, 2021. Dckt. 23. The opposition is discussed below.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor filed Proof of Claim 1-1 asserting a secured claim of $62,680.62 in this case, with the security having been obtained through a judgment lien. Debtor does not list Creditor in Schedule D and instead is listed in Schedule E/F as a nonpriority unsecured claim in the amount of $62,680.62; with the claim is listed in the plan as a Class 7 unsecured claim in the plan. Creditor alleges that the Plan treatment violates 11 U.S.C. § 1325(a)(5) because it misclassifies Creditor's secured claim as an unsecured claim in Class 7 with a proposed distribution of no less than 26%.

Through a separate claim objection, which the Debtor and Creditor consented to the court determining the extent, validity, and priority of Creditor's interest in the property created by the asserted abstract of judgment as part of the Objection to Claim Contested Matter (waving the adversary proceeding requirement of Fed. R. Bankr. P. 7001(2)), the court has determined that the abstract of judgment did not create a judgment lien and is of no force and effect due to Creditor's failure to comply with the requirement so California Code of Civil Procedure § 674.

Claim of Homestead Exemption

Creditor asserts that Debtor cannot claim a $100,000 homestead exemption pursuant to California Code of Civil Procedure § 704.730.730(a)(2). Objection, p. 3:28, 4:1; Dckt. 17. In his Opposition, Debtor argues that the exemption is proper because:

> [D]ebtor provides necessary and critical basic needs of living support care to his mother . . . [and Debtor] is not required to be married nor claim dependents on his tax returns to qualify for the $100,000 exemption pursuant to CCP § 704.730(a)(2) . . .

Opposition, p. 2:16-20.

The court has sustained the Objection to the $100,000 homestead exemption, and allowed Debtor a $75,000 homestead exemption. The property in which the homestead exemption is claimed, 10343 Lime Kiln Road, Grass Valley, California (the "Property") is stated on Schedule A/B to have a value of $340,000. Dckt. 1 at 11.

The Property is subject to the secured claim of NewRez, LLC with a claim of ($223,102.39). Proof of Claim 2-1, which is consistent with the amount stated by Debtor on Schedule D (Dckt. 1 at 18).

With a value of $340,000, and after subtracting the ($223,102.39) NewRez, LLC secured claim and the ($75,000) homestead exemption, there remains $41,898 of value in the Property for payment of creditor claims.

Modification of an Obligation Secured Only by Principal Residence

Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of $62,680.62, secured by an abstract of judgment

document # 20200024316 against the property commonly known as 10343 Lime Klin Road, Grass Valley, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

The court having determined that Creditor does not have a lien on the Property, this grounds of the Opposition is overruled.

Additionally, the provisions of 11 U.S.C. § 1322(b)(2) apply only to a "security interest." Congress defines that term as follows:

> (51) The term "security interest" means lien created by an agreement.
>
> (50) The term "security agreement" means agreement that creates or provides for a security interest.

11 U.S.C. § 101(51), (50).

Here, Creditor did not claim a security interest in the form of a lien created by agreement, but a judicial lien involuntarily, without the need of any agreement, asserted to be placed on the Property by Creditor. The term "judicial lien" is defined separate and apart from a "security interest:"

> (36) The term "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

11 U.S.C. § 101(36). Even if Creditor had the judicial lien on the Property, it would not be protected by 11 U.S.C. § 1322(b)(2). *See* 8 Collier on Bankruptcy ¶ 1322.06 [1][a][ii] (Sixteenth Edition), "Liens may be statutory liens or judicial liens rather than security interests. A claim secured by a lien other than a security interest on real estate that is the debtor's principal residence may also be modified by a chapter 13 plan."

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Here, Debtor's proposed plan payment of $350 per month is not sufficient to pay Creditor's secured Claim. The total plan payments to the secured creditor must equal the "allowed" amount of the secured creditor's claim. Creditor argues that Debtor would have to pay no less than $1,331.78 per month for 60 months just to satisfy Creditor's secured Claim at the statutory interest rate of 10% per annum, not to mention trustee fees and payments to Debtor's other unsecured creditors. Creditor further notes that Debtor's monthly net income, as specified on Schedules I and J, is just $351.16 per month. Thus, the plan is not feasible.

In considering this point, as well as Debtor's claim of exemption based on providing care or maintenance for his Mother, the court reviewed Debtor's Schedule J upon which he bases his ability to fund the proposed $350.00 a month plan payment.

In looking at Schedule J, it appears that the Expenses stated by Debtor are questionable as being sufficient. Some that appear questionable include:

Water, Sewer, Garbage Collection.....($6.00)

Food and Housekeeping Supplies.....($300.00)

Assuming ($50.00) a month for supplies for a household of two persons, that would leave ($250) in food expense for Debtor. In a thirty day month, that would allow Debtor ($2.77) per meal. Debtor surviving on ($2.77) per meal for sixty months does not appear reasonable, actual, or feasible.

Clothing, Laundry, Dry Cleaning.....($20.00)

This too appears questionable that Debtor can maintain/survive having only $240 a year to spend on his jeans, underwear, tee shirts, casual shirts, socks, nice clothing and the like.

Medical and Dental Expense.....($0.00)

It is not clear how Debtor, over a sixty month period, will never have any out of pocket medical expenses. There is not sufficient "cushion" in other expenses to provide medical and dental expense coverage.

Transportation.....($90.00)

This is for gas, maintenance, repairs, registration, and the like (excluding insurance). On Schedule A/B Debtor lists owing two vehicles, a 1990 Toyota pickup with 190,000 miles and a 1974 Chevrolet Custom Deluxe with 250,000 miles. Dckt. 1 at 11, 11. Both of these vehicles have extremely high mileage are appear to be ones which will have substantial repair and maintenance expense, though low registration fees.

Even if all Debtor paid the ($90.00) a month was for gas, at $3.50 a gallon, he could purchase twenty-five gallons of gas a month. Assuming that these older, high mileage vehicles average twenty miles to the gallon, then he could drive sixteen miles a day in a thirty-day month. Such does not appear to be reasonable or feasible over the sixty months of the Plan.

Entertainment, Recreation.....($50.00)

It does not appear that Debtor's ($50.00) a month for sixty months of entertainment is reasonable.

In reviewing Schedule J, it appears that this may well be creation of Debtor and Debtor's counsel to justify a pre-determined $350 a month plan payment.

Even before considering the increase for the $41,898 of non-exempt equity in the Property, Debtor has not provided the court with sufficient evidence that the plan with $350 a month payments is feasible.

The current plan with $350 a month payment for sixty month would have the Debtor fund the plan with $21,000.00.

With the reduction in the amount of the homestead exemption, the court must consider the Chapter 7 liquidation value requirement of 11 U.S.C. § 1325(a)(4). With a value of $340,000 as stated

by both Debtor and Creditor, if the property was sold by a Chapter 7 Trustee the net sales proceeds, after 8% for costs of sale, the liquidation value would be computed as follows:

Gross Sales Proceeds.....$340,000
8% costs of sale.....($ 27,200)
NewRez Secured Claim.....($223,102)
Homestead Exemption.....($ 75,000)

Net Chapter 7 Sales Proceeds.....$14,698

Chapter 7 Trustee Fees.....($ 2,219)
(11 U.S.C. §326(a))

Liquidation Value For Creditors.....$12,478.20

Thus, if Debtor can show that the $350.00 a month plan payment (for total plan payment of $21,000) is feasible, then the Plan would appear to be adequately funded for liquidation value in light of the 26% dividend provided in the Plan.

Good-Faith Filing

Creditor alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(7). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

1) The amount of the proposed payments and the amounts of the debtor's surplus;

2) The debtor's employment history, ability to earn, and likelihood of future increases in income;

3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy code;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

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

The court having determined that Creditor does not have a secured claim, then the asserted grounds that the Debtor has not filed the plan in good faith based on: (1) Creditor's claim is misclassified as an unsecured claim, (2) Debtor is attempting to inappropriately modify the value of Creditor's secured claim, and (3) Debtor's net monthly income is too low to meet the monthly payment required to pay Creditor's secured claim are overruled.

February 23, 2021 Hearing

The court's ruling on the Objection to Claim have resolved in Debtor's favor the Objections based on the Plan not providing for Creditor's secured claim. However, Creditor's Objection on feasibility and the Objection to Claim of Exemption have now brought to light the serious question of whether this Plan is feasible

At the hearing xxxxxxxx

FINAL RULINGS

31. 20-23200-E-13 BLG-3 — JOHN MONROE, Chad Johnson — MOTION FOR COMPENSATION FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S), 1-26-21 [55]

Final Ruling: No appearance at the February 23, 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 26, 2021. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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.

Chad M Johnson, the Attorney ("Applicant") for John Henry Monroe, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case. Debtor and Counsel have opted out the Chapter 13 Flat Fee compensation option. Dis. of Comp., Dckt. 1 at 66.

Fees are requested for the period November 21, 2019, through January 26, 2021. The order of the court approving employment of Applicant was entered on January 15, 2021, as part of the confirmation of the First Amended Plan. Dckt. 54. Applicant requests fees in the amount of $4,865.25 and costs in the amount of $457.00. Dckt. 55.

Debtor entered into an agreement with Applicant on November 13, 2019. Exhibit A, Dckt. 58.

Trustee does not oppose Applicant's request for fees but notes that Applicant misstates the task period for BLG-2 Motion to Confirm as July 29, 2020 to January 11, 2022, where the plan was confirmed January 28, 2021. Dckt. 64. [Fn. 1.] Trustee also informs the court that as of February 5, 2021, Debtor is delinquent one plan payment in the amount of $6,557.00. *Id.*

FN.1. The court, in turn, notes that Applicant's motion states **September 16, 2020** to January 11, 2022 (emphasis added). Dckt. 55 at 4:2.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include hearing representation and work performed to properly advise debtor and prepare and file a complete Petition, Schedules, and required documents. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant prepared and filed the petition; attended the meeting of creditors; assessed the claims filed, discovered several were beyond the statute of limitations, and communicated with creditors in order for these claims to be withdrawn; addressed issues regarding a second deed of trust on the residence; and filed a Motion to Confirm and the amended Plan which was confirmed.

Significant Motions and Other Contested Matters: Applicant drafted and filed a Motion to Extend Stay; and reviewed and responded to the Motion to Dismiss. Additionally, Applicant prepared

the instant application for fees.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Chad Johnson, Attorney	6.9	$400.00	$2,760.00
Tina Perez, Paralegal	11.15	$185.00	$2,062.75
Jennifer (Last Name Unknown), Staff	.50	$85.00	$42.50
	0	$0.00	$0.00
Total Fees for Period of Application			$4,865.25

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $457.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Filing Fees	$310.00	$310.00
Credit Report	$45.00	$45.00
Postage	$68.30	$68.30
Copies	674 at $0.05 per page	$33.70
Total Costs Requested in Application		$457.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $4,865.25 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan, after first applying credit for the monies paid by Debtor through

the retainer in the amount of $900.00.

Costs & Expenses

First Interim Costs in the amount of $457.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$4865.25
Costs and Expenses	$457.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Chad M Johnson ("Applicant"), Attorney for John Henry Monroe, the Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Chad M Johnson is allowed the following fees and expenses as a professional of the Estate:
>
> Chad M. Johnson, Professional employed by Chapter 13 Debtor.
>
> Fees in the amount of $457.00
> Expenses in the amount of $4865.25,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. The Chapter 13 Trustee is authorized to pay such interim fees, after crediting the $900.00 retainer paid to Applicant, which Applicant may disburse and apply to these authorized interim fees.

32. **20-24311-E-13** **JASON DIVEN** **CONTINUED MOTION TO CONFIRM PLAN**
Bonnie Baker **12-17-20 [47]**

Final Ruling: No appearance at the February 23, 2021 hearing is required.

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

Sufficient Notice Not 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 17, 2020. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

Moving party failed to serve several creditors with secured claims, namely SunTrust Bank (now Truist Bank Support Services), Portfolio Recovery Associates LLC, FreedomRoad Financial c/o Wayfinder BK, LLC, Jack Duran, and American Honda Finance.

At the hearing, counsel concurred with a continuance to allow for service to all of the parties in interest. The court shorten time for the additional notice, continuing the hearing to February 23, 2021.

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

The Motion to Confirm the Amended Plan is granted, and the Plan as amended as stated in this ruling and order on the Motion is confirmed.

The debtor, Jason Diven ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for 36 payments of $1,000.00 per month and $1,773.30 for 24 payments starting September 25, 2020, and a 21 percent to unsecured claims totaling $85,428.00. Amended 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 18, 2021. Dckt. 56. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor may be delinquent in plan payments.

B. Plan may not be feasible.

C. Debtor's plan fails the liquidation test.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,000.00 delinquent in plan payments. Trustee asserts receiving a $1,000 payment in November 2020 and $1,000 in December 2020 where $3,000 have come due. Additionally, according to Trustee, Trustee received $3,684.38 in funds from the Farm Service Agency that Debtor's Counsel has indicated is a "Cares Act for Farms grant." However, Trustee is uncertain what Debtor wants done with the $3,684.38 payment, and the funds may be subject to exemption. If not exempt, the Trustee argues, then the funds should be paid into the plan. Trustee has put th funds on hold until this matter is resolved.

Debtor filed a Response on January 18, 2020. Dckt. 63. Debtor requests that Trustee apply the CARES Act monies to Debtor's plan as an additional plan payment which Debtor contends should resolve the shortfall in the plan payment for the Trustee's fee in the first 36 months.

Feasibility

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 the plan will take approximately 74 months to complete because the federal tax refunds that should go into the plan will be intercepted by Creditor USDA Farm Service Agency until the debt is satisfied.

Additionally, Trustee asserts that the first 36 months of payments is insufficient to pay Class 3 creditors, administration fees, and Trustee's fees. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor asserts that Creditor USDA Farm Service Agency filed its proof of claim which states that the debt owed is $23,015, rather than the scheduled $30,896 and Debtor has amended the schedules to account for this lower balance. Debtor requests that the order confirming the plan incorporate this new amount and the 2.625% contractual interest rate.

Debtor Fails Liquidation Analysis

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Trustee has received what appears to be a CARES Act payment in the amount of $3,684.48 that were not identified on Schedule B as an asset of the estate. Debtor addresses this point, requesting that it be paid into the Plan.

Further, Trustee has filed an objection to Debtor's claim for exemption for a personal injury claim Trustee believes is a contract claim, and an exemption for building materials, which the Trustee

believes is for the Debtor's rental property and not residence.

In a single pleading filed as a joint response to the Trustee's Opposition to the Motion and the Objection Exemption (Dckt. 63) that Debtor has filed an Amended Schedule C which does not claim the exemptions that are the subject of the Trustee's Objection. See Amended Schedule C, Dckt. 61 at 10-11.

On Amended Schedule C Debtor no longer claims the exemption in the $95,000 payment due from the sale of his contracting business. That claim continues to be listed on Amended Scheduled A/B. Dckt. 61 at 6.

However, on Amended Schedule C Debtor continues to claim an exemption of $2,986 pursuant to California Code of Civil Procedure § 704.030 for the assets described as "Building Materials for remodeling of Eagleville house." *Id*. at 11. This assets is listed in ¶ 53 of Amended Schedule A/B. *Id*. at 8, 9. All of the materials are given a value of $2,986.00 on Amended Schedule A/B.

The Trustee's objection to the claim of exemption is that at the Meeting of Creditors Debtor testified that he is remodeling apartments in Cedarville and the Trustee is uncertain that these building materials are for Debtor's residence.

The court continues the hearing to allow Debtor to address these issues with the Trustee and serve the additional parties in interest for the February 23, 2021 hearing.

Trustee's Amended Response

On February 9, 2021, Trustee filed an Amended Response no longer opposing the confirmation of the Amended Plan on the following grounds:

1. Trustee confirms that Debtor served all the parties noted by the court as lacking service;

2. Debtor has agreed to apply the CARES Act funds currently held by Trustee as an additional Plan payment;

3. Trustee does not oppose Debtor increasing FSA's contractual interest rate to 2.625% in the Order Confirming Plan;

4. Trustee no longer opposes the current claims of exemptions; and

5. Debtor is current in plan payments.

Dckt. 76.

Debtor having addressed the service issues and filing the certificate of service (Dckt. 67), and Trustee no longer opposing confirmation, the Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on December 16, 2020 and as amended to increase FSA's contractual interest rate to 2.625%, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

33. **20-25524-E-13 DPC-1** **VICKIE KINEK** **Mary Anderson** **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **1-20-21 [14]**

Final Ruling: No appearance at the February 23, 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 and Debtor's Attorney on January 20, 2021. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Objection to Discharge is sustained.

Davis P. Cusick, the Chapter 13 Trustee ("Objector"), objects to Vickie Eileen Kinek's

("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on November 14, 2018. Case No. 18-90848. Debtor received a discharge on February 25, 2019. Case No. 18-90848, Dckt. 21.

The instant case was filed under Chapter 13 on December 13, 2020.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on February 25, 2019, which is less than four years preceding the date of the filing of the instant case. Case No. 18-90848, Dckt. 21. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 20-25524, the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant 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 Objection to Discharge filed by David P. Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 20-25524, the case shall be closed without the entry of a discharge.

34. **18-25925-E-13 KLE-2** | **DANIEL/KAREN FURLONG** **Seth Hanson** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF PENNEY & ASSOCIATES FOR KEVIN L. ELDER, PLAINTIFFS NON-BANKRUPTCY ATTORNEY(S)** **12-18-20 [34]**

Final Ruling: No appearance at the February 23, 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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2020. By the court's calculation, 69 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.

Kevin L. Elder of Penney & Associates, the Attorney ("Applicant") for Daniel Martin Furlong and Karen Marie Furlong, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 20, 2018, through December 16, 2020. The Motion states with particularity (Fed. R. Bankr. P. 9013) states that Debtor signed a contingency fee agreement on March 20 2018, with Applicant to represent Debtor is pursuing claims relating to injuries sustained in a motor vehicle accident on March 14, 2018. Motion, p. 1:19-22; Dckt. 34.

Debtor commenced this bankruptcy case on September 19, 2018, six months after the contingent fee agreement was entered into by Debtor. Debtor listed the claim arising out of the vehicle accident on Schedule A/B. Dckt. 1 at 16. On Schedule C Debtor claimed a $30,000 exemption in this

claim. *Id*. at 19.

Applicant requests fees in the amount of $5,000.00 and costs in the amount of $78.00.

On October 13, 2020, Debtor filed a Motion to Approve Compromise and Settlement. Dckt. 24. Through the settlement amount of $15,000.00, Applicant was to receive $78.00 in costs and $5,000.00 in fees. The Motion was granted November 12, 2020. Dckt. 32.

APPLICABLE LAW

Congress provides in 11 U.S.C. § 330(a)(4)(B) for fees to be allowed attorneys for Chapter 13 debtors, stating:

> (4)
> . . .
> (B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours

reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include representation of Debtor regarding her injuries sustained in a motor vehicle incident that occurred on March 14, 2018.. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

State Court Litigation: Applicant represented Debtor in a personal injury claim.

Contingency Fee: Litigation

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in litigation to regarding injuries Debtor sustained in a motor vehicle accident, for which Client agreed to a contingent fee of 33.33% of the gross. Applicant recovered $9922.00 of net monies (exclusive of these requested fees and costs) for Client.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $78.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Medical Records		$53.00
Description Not Provided		$25.00
		$0.00
Total Costs Requested in Application		$78.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Percentage Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $5,000.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 13 Trustee is authorized to pay from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First and Final Costs in the amount of $78.00 are approved pursuant to 11 U.S.C. § 330] and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. [Fn.1.]

FN. 1. While there is a $25.00 expense item not sufficiently described, it is of such a modest amount the court can infer that such would reasonably be authorized. The allowance of a professional's fees is not a

"gotcha game" to deprive the professional of reasonable compensation.

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

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

Fees	$5,000.00
Costs and Expenses	$ 78.00

pursuant to this Application as final fees and costs 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 Kevin L. Elder ("Applicant"), Attorney for Daniel Martin Furlong and Karen Marie Furlong, the Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Kevin L. Elder is allowed the following fees and expenses as a professional of the Estate:
>
> Kevin L. Elder, Professional employed by the Chapter 13 Debtor
>
> Fees in the amount of $5000.00
> Expenses in the amount of $ 78.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

35. **20-25327-E-13 DPC-2** **ROGER/BRANDY HAYES** **Mikalah Liviakis** **OBJECTION TO DISCHARGE BY DAVID P. CUSICK** **1-13-21 [24]**

Final Ruling: No appearance at the February 23, 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 and Debtor's Attorney on January 13, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Objection to Discharge is sustained.

David P. Cusick, the Chapter 13 Trustee, ("Objector") objects to Roger Ward Hayes and Brandy Trayshun Hayes's ("Debtors") discharge in this case. Objector argues that Debtors are not entitled to a discharge in the instant bankruptcy case because Debtors previously received a discharge in a Chapter 7 case.

Debtors filed a joint Chapter 13 bankruptcy case on April 26, 2018. Case No. 18-22532. The court issued an Order for Split Case and assigned Debtor Brandy Hayes Case. No. 19-25561. Order, Case No. 19-25561, Dckt 1. Debtor Brandy Hayes received a discharge on December 17, 2019. Case No. 19-25561, Dckt. 10. The original Chapter 13 Bankruptcy case, Case No. 18-22532, was converted to Chapter 7, on July 30, 2020. Case No. 18-22532, Dckt. 55. Debtor Roger Hayes received a discharge on November 18, 2020. Case No. 18-22532, Dckt. 70.

The instant case was filed under Chapter 13 on November 25, 2020.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtors Roger Ward Hayes and Brandy Trayshun Hayes's respectively, each received a discharge under 11 U.S.C. § 727 on November 18, 2020 and December 17, 2019, which are both less than four years preceding the date of the filing of the instant case. Case No. 18-22532, Dckt. 70 and Case No. 19-25561, Dckt 10. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtors are not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. Case. No. 20-25327), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant 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 Objection to Discharge filed by David P. Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 20-25327, the case shall be closed without the entry of a discharge.

36. **20-20430-E-13 BLG-12** **RAFAEL DE LA TORRE** **Chad Johnson** **MOTION TO CONFIRM PLAN** **1-12-21 [167]**

Final Ruling: No appearance at the February 23, 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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Rafael Palos De La Torre ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on February 4, 2021. Dckt.185. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Rafael Palos De La Torre ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended

Chapter 13 Plan filed on January 12, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

37. **20-23431-E-13 MJD-4** | **KAREN BLAKLEY** **Matthew DeCaminada** | **MOTION TO CONFIRM PLAN** **1-9-21 [51]**

Final Ruling: No appearance at the February 23, 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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2021. 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 Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Karen Patrice Blakley ("Debtor"), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on February 9, 2021. Dckt. 61. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on January 9, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. 18-25851-E-13 PGM-4 — ROBERT HUNTER, Peter Macaluso — MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S), 1-26-21 [116]

Final Ruling: No appearance at the February 23, 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 26, 2021. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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 Robert Paul Hunter, the Chapter 13 Debtor ("Client"), makes a Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 21, 2020, through November 2, 2020. Applicant requests fees in the amount of $1,477.50.

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

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

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

A review of the application shows that Applicant's services for the Estate include reviewing and opposing Motion to Dismiss, meeting with Client to discuss delinquency, preparing Motion to

Modify Plan, and appearing at the hearing on 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. 87. 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 1.35 hours in this category. Applicant reviewed the Motion to Dismiss, filed an opposition to the Motion to Dismiss, and appeared for the hearing on the Motion to Dismiss.

Delinquency Discussion: Applicant spent .5 hours in this category. Applicant met with the client to discussed client's delinquency.

Motion to Modify Plan: Applicant spent 3.45 hours in this category. Applicant reviewed the modified plan with Client, filed the Motion to Modify Plan, responded to Trustee's Objection to Motion to Modify Plan, and sent order confirming the plan to Trustee.

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	4.8	$300.00	$1,440.00
Legal Assistant	.5	$75.00	$37.50
Total Fees for Period of Application			$1,477.50

The court notes that the final entry, dated 11/2/20, charges $300.00 per hour for .5 hours worked but has a total charge of $37.50, instead of $150.00. Substituting the $300.00 per hour charge with the $75.00 per hour charge of the legal assistant that Applicant uses, shows the total to be $37.50 and brings the total fees in line with what Applicant has requested.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including reviewing and opposing Motion to Dismiss, meeting with Client to discuss delinquency, preparing Motion to Modify Plan, and appearing at the hearing on Motion to Modify Plan, 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 $1,477.50 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 $1,477.50

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 Robert Paul Hunter("Debtor")

Fees in the amount of $1,477.50,

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.