UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 21, 2017, at 3:00 p.m.

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1. 16-20005-E-13 BEVERLY BAUER
Mary Ellen Terranella

MOTION TO DISBURSE ATTORNEY'S FEES TO CLAIMANT
2-21-17 [101]

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. FN.1.

FN.1. Applicant filed the Notice of Motion and Motion for Allowance of Professional Fees in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

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

Applicant has not specified clearly whether the Motion is noticed according to Local Bankruptcy 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held to determine any amount of disbursible fees, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon the language that there may be submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2).

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney and the Chapter 13 Trustee on February 21, 2017. Debtor, creditors, parties requesting special notice, and the United States Trustee **were not served**. By the court's calculation, 28 days' notice was provided to only Debtor's attorney and the Chapter 13 Trustee. 14 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted in the amount of $1,450.00 and denied for all amounts in excess thereof.

IMPROPER NOTICE PROVIDED—Deficiency Waived

George Bye ("Applicant") filed a motion to disburse attorneys' fees incurred by him during the administration of this bankruptcy case. Dckt. 101. Applicant failed to serve Beverly Bauer ("Debtor"), any of the creditors, any parties requesting special notice, and the United States Trustee. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires that a movant provide notice to the debtor, the trustee, and all creditors of hearings to determine a compensation request that exceeds $1,000.00. Bankruptcy Code Section 342(g)(1) (further interpreted by Federal Rule of Bankruptcy Procedure 2002(g)(1) & (2)) requires notice and service to be provided to parties that have requested special notice in a bankruptcy case. Federal Rule of Bankruptcy Procedure 9034(e) requires that any request for compensation be served upon the United States Trustee.

While deficient, the court waives the deficient notice to address the substance of the Motion. The Chapter 13 Plan provides for the fees and such amount has been funded. The Chapter 13 Trustee was noticed and has addressed the Motion. Debtor has received a benefit of the services, a plan being confirmed in this case.

Applicant, the Attorney for Beverly Bauer, the Chapter 13 Debtor ("Client"), makes a request "to determine what amount of fees, if any, George H. Bye, former counsel for the debtor will be allowed for fees and costs incurred in the representation of the debtor." Dckt. 101. On May 11, 2016, the court issued

an order that required Applicant to pay $2,475.00 to the Chapter 13 Trustee representing monies paid but not authorized. Dckt. 79. The court ordered the Trustee to hold those funds for disbursement to Applicant. *Id.*

The Motion states the following grounds upon which the request for attorneys' fees is based:

A. Notice is given that a hearing will be conducted;

B. The hearing will be to determine what fees, if any, Applicant will be allowed;

C. The Motion is based on:

1. "The records of the court,"
2. Declaration of George Bye, and
3. Written and oral argument submitted at the hearing.

Motion, Dckt. 101.

The Motion does not appear to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity). Instead, the Motion does not provide any basis for requesting fees and does not state what amount is requested. Such insufficient pleading is not allowed in complaints that have a lesser pleading standard of "a short and plain statement of the claim showing that the pleader is entitled to relief; . . . ." Fed. R. Civ. P. 8(a)(2); Fed. R. Bankr. P. 7008; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

The Motion offers little, and in fact instructs the court to read whatever in the entire record of the case the court thinks supports whatever Applicant wants, assemble such documents and evidence, and then present such documents and evidence for Applicant.

In his declaration, while breaking out some expenses, Applicant does not provide any documentation of what was billed (task billing) for the legal services.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on March 7, 2017. Dckt. 104. The Trustee argues that Applicant has not complied with Federal Rule of Bankruptcy Procedure 9013 and Local Bankruptcy Rule 9014-1 regarding pleading with particularity, with Local Bankruptcy Rule 9014-1(b)–(d) regarding the calendar and procedure practice for motions, and Local Bankruptcy Rule 9014-1(d)(4) regarding the filing of pleadings as separate documents.

The Trustee also questions certain expenses claimed by Applicant. The Trustee states that he does not have the retainer agreement to review, and so, he questions whether Client agreed to pay the following:

A. $122: Travel to and from Sacramento

B. $75: Lodging in Sacramento

C. $129: Travel to Sacramento (airline)

D. $750: Attend 341(a) meeting (driving time @ $25 per hour, meeting at $50)

E. $150: Prepared and filed further documents

F. $150: Prepared and filed miscellaneous documents

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

RULING

This bankruptcy case, and the services of Applicant are part of a larger, unfortunate story for Debtor. This case is the second recent case filed by Debtor. In her first case, attorney James L. Conkey filed the case on November 19, 2015, and it was dismissed on December 7, 2015. 15-28988. The conduct of Mr. Conkey, and his filing of bankruptcy cases is addressed in this court's order to appear filed in this case on February 5, 2016. Dckt. 27. Though filing multiple bankruptcy cases in the Eastern District of California, it was determined that Mr. Conkey was not admitted to practice in the Eastern District of California. *Id.* After the court issued the order to appear, Applicant was substituted in as counsel for Debtor.

Though substituted in as counsel, the case did not proceed well for Debtor. Applicant's first effort was filing a Rule 60(b) motion to vacate the statutory termination of the automatic stay as to the Debtor under 11 U.S.C. § 362(c)(3)(A). That motion was denied. Dckt. 33.

Applicant then filed a motion to confirm a Chapter 13 Plan. That motion was denied. Order, Dckt. 48. The ruling on the motion indicates that Applicant delayed in providing representation to Debtor because he too had not been admitted to practice in the Eastern District of California. Civil Minutes, Dckt. 43 at 2.

Applicant filed a third amended plan and motion to confirm on May 6, 2016. Plan, Dckt. 74. That Motion was granted. Order, Dckt. 82, filed July 5, 2016. On July 7, 2016, a substitution of counsel was

filed, with Applicant withdrawing as counsel for Debtor. Dckt. 85. The substitution does not state the reason for the change.

The California State Bar records show that on May 23, 2016, Applicant was suspended from the practice of law, which suspension has continued to this day.
http://members.calbar.ca.gov/fal/Member/Detail/56666.

Though the suspension was after the May 3, 2017 filing of Third Amended Plan and Motion to Confirm, no action for substitution of counsel was taken until July 7, 2016—two months later. During that period Debtor had active litigation pending in this court, for which she had no licensed counsel to represent her.

Though the court could deny the Motion in its entirety, Debtor has received the benefit of a confirmed plan by Applicant's efforts. As demonstrated by this Motion itself, such legal services have not been of the nature and quality one expects from reasonable, experienced consumer counsel.

In reviewing the file, it appears that some of Applicant's work had to do with the short-comings of Mr. Conkey and Applicant. Some of the time and effort arises from Applicant, located in San Diego, electing to represent a consumer in Sacramento.

For confirming the Chapter 13 Plan and all of the legal services provided in this bankruptcy case, the court allows $1,450.00 in legal fees. At a $200-per-hour billing rate (which the court concludes is reasonable for the level of services provided) that allows for 7.25 hours. All of the travel and housing expense incurred by Applicant electing to represent a Sacramento consumer from Applicant's San Diego office is included in his $200-per-hour allowed hourly rate. Consumers in routine Chapter 13 cases are not burdened with travel and housing expenses by attorneys who elect to practice in remote geographic areas to their practice. Applicant's decision to leave Debtor unrepresented while active litigation was pending is reflected in his allowed effective hourly rate, and no further reduction is appropriate for that lack of action by Applicant.

All amounts of attorneys' fees and costs in excess of the total $1,450.00 above are disallowed.

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 George Bye ("Applicant"), Attorney for the Chapter 13 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 Applicant is allowed a total of $1,450.00 for all fees and expenses in this bankruptcy case, with all amounts requested in excess thereof denied.

2. **16-20005-E-13** **BEVERLY BAUER** **CONTINUED MOTION TO DISBURSE**
DPC-1 **Mary Ellen Terranella** **ATTORNEY FEES**
12-27-16 [92]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 27, 2016. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion to Disburse Attorney Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the 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 Disburse Attorney Fees is granted.

David Cusick, the Chapter 13 Trustee, seeks a court order authorizing the Trustee to disburse $2,475.00 to creditors under the confirmed plan, which funds had been withheld by order of the court. *See* Dckt. 79.

That order provided that the Trustee is to hold funds for disbursement to George H. Bye, successor attorney for Beverly Joe Bauer. The order provided that the Trustee shall hold the funds, and if fees are not approved, then pay the funds out according to the Plan, but the order does not state when the funds should be paid. Neither the Debtor's current counsel, Mary Ellen Terranella, nor any prior attorney, has filed any motion seeking to approve any attorney fees, and more than six months have elapsed.

The Trustee has served Mr. Bye at the address (Post Office Box) that Mr. Bye used on his pleadings. The court extensively discusses the facts and circumstances by which Debtor was represented by the former counsel and then purportedly by Mr. Bye when the former counsel's license to practice law was suspended.

The court has afforded Mr. Bye time to file a motion for allowance of attorneys' fees. No motion has been filed.

Debtor subsequently obtained the services of her current counsel, Mary Ellen Terranella, and with the assistance of Ms. Terranella Debtor has now confirmed a plan.

JANUARY 24, 2017 HEARING

At the hearing, the Trustee advised the court that Mr. Bye filed a Response on January 23, 2017 (Dckt. 96). Dckt. 97. The court continued the hearing on the matter to 3:00 p.m. on March 21, 2017, noting that Mr. Bye may request, in pro se, that the court determine and allow attorney's fees for services he previously provided in this case while serving as an attorney.

MR. BYE'S RESPONSE

Mr. Bye filed a Response on January 23, 2017. Dckt. 96. He states that:

A. He is not currently licensed to practice in the State of California, his license having been suspended on May 28, 2016.

B. Until January 11, 2017, Mr. Bye was residing in Florida for health reasons.

C. Mr. Bye makes it clear that he is not attempting to practice law in requesting fees.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on March 7, 2017. Dckt. 104. The Trustee argues that Applicant has not complied with Federal Rule of Bankruptcy Procedure 9013 and Local Bankruptcy Rule 9014-1 regarding pleading with particularity, with Local Bankruptcy Rule 9014-1(b)–(d) regarding the calendar and procedure practice for motions, and Local Bankruptcy Rule 9014-1(d)(4) regarding the filing of pleadings as separate documents.

The Trustee also questions certain expenses claimed by Applicant. The Trustee states that he does not have the retainer agreement to review, and so, he questions whether Client agreed to pay the following:

A. $122: Travel to and from Sacramento

B. $75: Lodging in Sacramento

C. $129: Travel to Sacramento (airline)

D. $750: Attend 341(a) meeting (driving time @ $25 per hour, meeting at $50)

E. $150: Prepared and filed further documents

F. $150: Prepared and filed miscellaneous documents

DISCUSSION

As discussed previously on this calendar at Item 1 regarding the Motion filed by George Bye on February 21, 2017, the court has allowed $1,450.00 in total attorneys' fees and costs fro Mr. Bye. Therefore, there remains $1,025.00 of monies to be disbursed to creditors pursuant to the Trustee's Motion.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Disburse Attorney Fees filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the court authorizes the Chapter 13 Trustee to disburse the $1,015.00 of monies held by the Trustee pursuant to the prior order of this court, Dckt. 79, to pay authorized administrative expenses and claims as provided in the confirmed Chapter 13 Plan in this case.

3. **15-28908-E-13 KWS-1** | **WILLIAM/SARAH MCGARVEY** **Matthew DeCaminada** | **MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY 2-1-17 [61]**

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 and some creditors on February 1, 2017. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion for Violation of the Automatic Stay is granted, with $3,050.00 in damages for violation of the automatic stay awarded to Debtors.

The present Motion for Damages for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by William McGarvey and Sarah McGarvey ("Movant"). The claims are asserted against Travis Credit Union and Grant & Weber, Inc. ("Respondent").

LEGAL STANDARD

A request for an order of contempt by the debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Steinberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

Attorneys' fees may be recovered for work involved in bringing about an end to the stay violation and for pursuing an award of damages. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151–52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191–92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

REVIEW OF MOTION

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. "On November 24, 2015 the Bankruptcy Noticing Center sent [Respondent's] notice of the bankruptcy case via electronic mail registered with the Bankruptcy Court [Docket # 13]."

B. "On November 25, 2015 the Bankruptcy Notice Center sent [Respondent Travis Credit Union] notice of the bankruptcy case filing via United States mail to their post office box which they indicate they receive mail. [Docket #13]."

C. "On November 24, 2015 the Bankruptcy Noticing Center sent GWI notice of the bankruptcy plan via electronic mail registered with the Bankruptcy Court [Docket #14]."

D. "On November 25, 2015 the Bankruptcy Noticing Center sent TCU notice of the bankruptcy plan via United States mail [Docket #14]."

E. "On or about August 2, 2016, GWI sent a letter to Debtors to collect on the pre-petition debt requesting payment of $1,071.97. The letter specifically states, 'This is an attempt to collect a debt by a debt collector.'"

F. "On or about September 8, 2016, Debtors' counsel sent letters to Creditors reminding them of the bankruptcy filing and providing the original notice of bankruptcy filing. The letters requested to receive a response from the parties within 28 days of receiving the letters."

G. "Debtors' counsel received a faxed latter on October 3, 2016, dated September 30, 2016, from TCU stating it 'apologizes for the error and has taken action to correct it. As you requested this letter will confirm that the credit union and its representatives will cease any further actions against your clients.'"

H. "Debtors' Counsel did not receive a response from GWI. On or about October 5, 2016, Debtors' counsel caused two more letters to be sent to GWI, once again reminding them of the bankruptcy filing, and requesting a response within 21 days of receiving the letters."

I. "On or about November 16, 2016, Debtors' counsel mailed a letter with a billing statement attached to TCU's counsel requesting it pay Debtors' damages and attorney fees for the violation it committed. The letter was also emailed to TCU's counsel via attachment."

J. "On or about December 1, 2016, Debtors' counsel received a response from counsel for GWI to resolve the matter for Creditors without any admission of liability. However, the amount that was offered was less than the attorney fees incurred by Debtors."

K. "On or about January 1, 2016, Mrs. McGarvey received a credit report from Experian. TCU was reporting a past due balance of $1,072, had reported as a 'failure to pay' since March 2015, and was reporting at various times late payments of 30, 60, 90 and 120 days late."

L. "On or about January 1, 2016, Mrs. McGarvey received a credit report from Equifax. TCU was also reporting there was a past due balance and various late payments."

M. "Mrs. McGarvey's doctor has prescribed her blood pressure medicine due to the stress induced from Creditors continuing to collect against her. This medicine costs Debtors $20 a month and Debtors had to purchase a machine, for $20, to read her blood pressure so she could provide her doctor with her weekly results."

N. "Debtors' Counsel spent 10.88 hours litigating this stay violation for our clients."

Movant has provided the Declarations of Sarah McGarvey and Kyle Schumacher in support of the Motion. Dckts. 63 & 64. The Declaration of Kyle Schumacher presents the actions taken by counsel in establishing this bankruptcy case, communicating with Respondent about violations, and incurring compensable fees. *See* Dckt. 64. The Declaration of Sarah McGarvey provides evidence of creditor reports and medical expenses in connection with this Motion. *See* Dckt. 63.

RESPONDENT'S LIMITED OPPOSITION

Respondent filed a Limited Opposition on March 7, 2017. Dckt. 72. Respondent presents the following grounds:

A. "[Respondent] readily admits the unintentional violation."

B. "[Respondent] admits that a single collection letter was sent, due to . . . [a] change in computer systems."

C. "Due to a change in its computer system . . . , communications with . . . [Debtor] were no longer being blocked although the account was properly 'flagged' in the system as bankrupt."

D. Debtor "received a single collection letter from [Respondent], although the parties obligated to pay the account had filed for Bankruptcy protection."

E. "Once informed of the error, [Respondent] took additional steps to block all communications with regard to the bankrupt accounts."

Dckt. 72.

Respondent argues that there is no debate that a violation of the automatic stay occurred. Respondent filed an Opposition, however, to the extent that Movant seeks an Order to Show Cause from the court because such an order "will simply serve to multiply the time spent by Counsel, the Court, and of course the attorneys fees incurred by all Parties." Dckt. 72.

Respondent also opposes Movant's calculation of damages for two reasons. First, Respondent argues that because Movant has not provided a task billing for its attorneys' fees, parties are not able to determine what fees were incurred against which responding party, and parties are not able to determine the reasonableness of the incurred fees. Dckt. 72, p. 4: 4–7, 18–19.

Second, Respondent argues that Movant's attorneys' fees incurred as to communications with Respondent are actually less than what Respondent offered in settlement ($1,000.00). Dckt. 72, p. 5: 2–6. Respondent asserts that Mr. Schumacher's Declaration establishes that most of the communications regarding this matter prior to December 2016 were with Respondent Travis Credit Union, for whom Respondent asserts it is not responsible for fees.

Respondent moves that the court find that there is no evidence that would allow the court to award attorneys' fees because Movant has not presented a task billing. Respondent asks that the court award nominal damages only. Alternatively, if the court awards attorneys' fees, then Respondent asks that the court award nominal damages and no more than $500.00 in attorneys' fees based upon the two letters that were sent to Respondent.

DISCUSSION

Respondent has admitted readily that a violation of the automatic stay occurred. Therefore, the only remaining question is: What sanctions should the court award?

Here, Movant's case is that one letter was sent on August 26, 2016, ten months after the bankruptcy case was filed. Respondent has demonstrated that the violation was caused by a computer software error. In fact, the error appears to be only a partial error because Debtor's account was flagged still as being in bankruptcy.

No other communications or attempts to collect a debt are alleged. In the Motion reference is made to the letter containing the language, "This is an attempt to collect a debt by a debt collector." Motion, ¶ 8; Dckt. 61. The Motion does not expressly tie this language to the contentions, but the court believes that the inference is that the August 2, 2016 correspondence was part of Respondent's attempt to obtain payment on this debt.

The full text of the letter is:

[Credit Card Payment Box]

SARAH M MCGARVEY
10895 OAKTON WAY
RANCHO CORDOVA CA 95670-2450

Remit To:
GRANT & WEBER, INC.
8880 WEST SUNSET ROAD SUITE 275
LAS VEGAS NV 89148

For: TRAVIS CREDIT UNION
Acct No.: 610
Call: O. SOTO
800-[xxx-xxx] Ext. [xxxx]

Amount:$1,071.97
Interest:$216.31
Total:$1288.28
Date: August 2,2016

We Understand Times Are Tough And We Want To Work With You

It is possible that we may be able to offer payment terms.

We Have Provided 4 Convenient Ways For You To Pay:

1. Pay on-line at Your password is:
2. Pay by Credit Card, use the form at the top of this letter.
3. Send check or money order in the enclosed envelope.
4. Call our office at 800-591-4311 Ext. 7751 to make an arrangement.

This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose. Grant & Weber, Inc. may record any or all phone calls.

As Movant's experienced consumer counsel is aware, federal law requires a third-party collection agency to include the "This is an attempt to collect a debt by a debt collector. Any information will be used for that purpose" in the initial written correspondence that the communication is from a debt collector in subsequent communications. Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692e(11). FN.2. If the August 2, 2016 communication did not have that disclosure, Movant likely would have been asserting such violation of the FDCPA.

FN.2. 15 U.S.C. § 1692e)(11):

§ 1692e. False or misleading representations

> "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
> . . .
>
> (11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action."

The "This is an attempt to collect a debt and any information will be used for that purpose" statement is commonly called the Mini-Miranda Warning" by debt collectors, with it automatically being given similar to the Miranda Warning given as part of a law enforcement officer's investigation. *Simon v. FIA Card Sevrs., N.A.*, 732 F.3d 259, 269 (3d Cir. 2013) (see additional cases cited therein).

Movant's counsel provided Respondent with a series of calm, rational, non-inflammatory letters requesting that Respondent (sent to two of its offices, with one addressed to the agent for service of process) confirm that it had ceased collection activity. Exhibit C, September 8, 2016 Letter; Exhibit E, October 4, 2016 Letter; Dckt. 66.

In its Limited Opposition, Respondent does not offer any communications in response to the letters, and Respondent did not provide confirmation that notwithstanding the one letter sent, it was not proceeding with any collection activities. Movant does candidly provide that TCU did confirm that "the credit union and its representatives will cease any further actions against [Movant]." Exhibit D, Travis Credit Union Counsel Letter; Dckt. 66.

Movant has presented evidence of medical expenses in connection with this matter as well. Movant testified that a doctor prescribed blood pressure medication at $20.00 per month; plus, Movant purchased a blood pressure monitor for $20.00 to allow Movant to report weekly readings to the doctor. No testimony is provided by the doctor or other professional. No testimony is provided by any doctor that it is the one collection letter, as opposed to the debtors' age, weight, physical condition, or other reasons for which there may be an elevated blood pressure. While the two debtors state that they are "worried" about further collection efforts, other than this conclusion they do not state a reason for such worry based on one collection letter and in light of Travis Credit Union expressly stating that the creditor union and its representative had ceased all collection efforts.

The Motion also makes reference to the Travis Credit Union obligation being listed on Movant's credit report, notwithstanding the bankruptcy case being filed and Movant having obtained a discharge. The grounds relating to the credit reported stated with particularity in the Motion are:

"14. On or about January 1, 2016, Mrs. McGarvey received a credit report from Experian. TCU was reporting a past due balance of $1,072, had reported as a 'failure to pay' since March 2015, and was reporting at various times late payments of 30, 60, 90 and 120 days late.

15. On or about January 1, 2016, Mrs. McGarvey received a credit report from Equifax. TCU was also reporting there was a past due balance and various late payments.

16. Debtors are concerned that neither creditor will stop harassing them until they pay this bill. Although TCU sent a letter stating it would cease any further collection, Debtors were shocked to see that they were still trying to collect on this debt through Mrs. McGarvey's credit report."

Motion, Dckt. 61.

Movant's Points and Authorities does not provide any legal guide for the court concerning credit reports and the reporting of debts for people who are in bankruptcy and for debtors who have received a discharge. Dckt. 65. Respondent's Opposition does not provide any legal authorities to the court relating to credit reporting of such debts. Dckt. 72.

One set of laws governing nationwide credit reports, consumer reporting agencies, and persons furnishing information to consumer reporting agencies is the Federal Fair Credit Reporting Act. 15 U.S.C. § 1681 et seq. With respect to obligations not reduced to judgment, Congress expressly addresses the reporting of information in 15 U.S.C. § 1681c(a), which states:

"§ 1681c. Requirements relating to information contained in consumer reports

(a) Information excluded from consumer reports. Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Cases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.

(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless–

(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance."

No provision is made for excluding an obligation, account placed for collection, or an account charged off because the obligation was discharged in bankruptcy. *See Lance v. PNC Bank, N.A.*, No. 15-10250-FDS, 2015 U.S. Dist. LEXIS 122676, at *8 (D. Mass. Sept. 15, 2015).

> [S]everal courts have concluded that, standing alone, the act of reporting a discharged debt is not a violation of § 524(a). See *In re Mahoney*, 368 B.R. 579, 589 (Bankr. W.D. Tex. 2007) ("[R]eporting of a debt to a credit reporting agency—without any evidence of harassment, coercion, or some other linkage to show that the act is one likely to be effective as a debt collection device—fails to qualify on its own as an 'act' that violates section 524."); *In re Irby*, 337 B.R. 293, 296 (Bankr. N.D. Ohio 2005) ("[T]he Court cannot conclude[] that [] the sole act of reporting a debt . . . violates the discharge injunction."); *In re Vogt*, 257 B.R. at 71 ("False reporting, if not done to extract payment of the debt, is simply not an act proscribed by the Code."). In *Irby*, the court explained that although a discharge eliminates a debtor's personal liability for the debt, it does not eliminate the debt itself. In re Irby, 337 B.R. at 295 (citing *Johnson v. Home State Bank*, 501 U.S. 78, 83, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991)). As a result, the court declined to find that reporting the debt was a violation of the bankruptcy code because "[a]ll that is being reported is the truth." *Id*.

Congress also requires that furnishers of information must provide accurate information. 15 U.S.C. § 1681s-2(a)(1). That section also imposes an affirmative duty on a furnisher to correct and update information. 15 U.S.C. § 1681s(a)(2). Movant does not allege that the information about the unpaid debts being reported on the consumer reports was inaccurate.

Violation of Automatic Stay and Obligation to Correct Violation

The Ninth Circuit Court of Appeals in *Sternberg v. Johnson*, 595 F.3d 937, 944–45 (9th Cir. 2009) addressed the duty of a creditor not to only comply with the automatic stay, but to affirmatively correct violations that may have inadvertently occurred, once the creditor become aware of the violations.

> To comply with his "affirmative duty" under the automatic stay, Sternberg needed to do what he could to relieve the violation. He could not simply rely on the normal adversarial process. See *Johnston Envtl. Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 615-16 (9th Cir. 1993) (holding that parties who attempted to exempt a debtor from their unlawful detainer action with a unilateral stipulation still violated the automatic stay because "the stipulation might not [have] accomplish[ed] its intended purpose" and thus the parties "could have, and should have, pursued the orthodox remedy: relief from the automatic stay"). At a minimum, he had an obligation to alert the state appellate court to the conflicts between the order and the automatic stay. As we have explained before, "[t]he automatic stay is intended to give the debtor a breathing spell from his creditors." *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 226 (9th Cir. 1989) (internal quotation marks omitted). The state court order intruded upon Johnston's "breathing spell." Sternberg did not act to try to fix that problem.

Sternberg v. Johnson, at 944–45.

Respondent failed to respond to Movant's counsel's letters confirming that there was no ongoing collection activity. The fact that Respondent may believe that such lack of collection activity should be obvious, the law requires affirmative action to be taken to correct even the inadvertent violation of the stay.

Damages For Violation of the Automatic Stay

In the Motion, Movant fails to clearly state the amount of damages requested for the asserted violations of the automatic stay. From reading the Motion itself, the court assembles the following damages:

A. $20.00 per month for blood pressure medicine;
B. $20.00 for a machine to read Movant's blood pressure;
C. $3,927.00 in legal fees for prosecuting the Motion; and
D. Award of a "mild deterrent sanction" as determined reasonable by the court.

With respect to the attorneys' fee award as damages pursuant to 11 U.S.C. § 362(k), no evidence of such fees, how they are computed, or the services provided is given, except for the Declaration of Kyle Schumacher, Esq., attorney for Movant, that such is the amount of attorneys' fees. Declaration, p. 3:14–15; Dckt. 64.

Additional Sanctions

A debtor entitled to actual damages does not automatically qualify under § 362(k)(1) to recover punitive damages. The court must decide whether the circumstances of each case warrant punitive damages. FN.3. When considering an award for damages, the court should consider the gravity of the offense and set the amount to assure that it will both punish and deter. FN.4. A creditor's good faith or lack thereof is relevant to sanctions under § 362(k)(1). FN.5. The rule in both the Ninth Circuit and California is that punitive damages must be proportional; they must be reasonably related to compensatory damages. FN.6. However, there is no fixed ratio or formula for determining the proper proportion between the two. FN.7. In determining the appropriate amount of punitive damages, the court usually considers the following factors: (1) the nature of the defendants' acts; (2) the amount of compensatory damages awarded; and (3) the wealth of the defendants. FN.8.

In determining that the award of punitive damages is proper, the court first considers the purpose of the automatic stay. This, as stated by Congress, is a fundamental protection given the debtor and creditors. Experienced counsel know that violating the stay is not something to be trifled with or taken lightly. Even when a violation occurs, the creditor can purge the violation and avoid serious damages by correcting the violation.

FN.3. *Henry v. Assocs. Home Equity Servs. (In re Henry)*, 266 B.R. 457, 481–83 (Bankr. C.D. Cal. 2001).

FN.4. *Id*.

FN.5. *See Walls v. Wells Fargo Bank (In re Wells)*, 262 B.R. 519, 529 (Bankr. E.D. Cal. 2001).

FN.6. *Hudson v. Moore Business Forms, Inc.*, 836 F.2d 1156, 1162–63 (9th Cir. 1987).

FN.7. *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1024–25 (9th Cir. 1985).

FN.8. *Bauer v. NE Neb. Fed. Credit Union (In re Bauer)* No. EC-09-1281, 2010 Bankr. LEXIS 5096 (B.A.P. 9th Cir. Apr. 8, 2010).

DECISION

Respondent argues that the violation was inadvertent, it ceased all collection activity when it received the letter from Movant's counsel, and in December 2016 attempted to make recompense for its violation by offering $800 and then $1,000 in damages to Movant. Based on that, Respondent contends that the reasonable attorneys' fees damages should be no more than $500.00 for the two letters.

Respondent provides no evidence of any written communication to Movant's counsel proposing such settlement. No professional, non-inflammatory letter addressing the violation and proposing the settlement is provided. Respondent's counsel provides his declaration testifying that in December 2016 he communicated an $800.00 settlement offer, which was then increased to $1,000.00 at some later date.

Declaration, p. 2:11–13; Dckt. 74. Movant acknowledges having the phone conversation about settlement, but that what was offered was less than the attorneys' fees charged Movant.

In the Opposition, Respondent argues that much of Movant's counsel's communications were with the credit union, and such efforts are not something for which Respondent should pay. However, this argument ignores the fact that is the Respondent collection letter that is the very reason that counsel for Movant had to communicate with the credit union.

Beginning with the compensatory damages sought by Movant, there is no credible evidence that the $20.00 per month expense for blood pressure medicine and a $20.00 blood pressure monitor were the result of the one collection letter. No simple testimony of Movant's doctor is provided.

Though Movant does not use the magic words, "emotional distress damages" in the Motion, the allegations include the allegation that Movant is concerned that "harassment" will continue until the bill is paid. Actual damages for violation of the automatic stay include emotional distress damages. FN.9. For a debtor to state a claim for emotional distress damages, the individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between the significant harm and the violation of the automatic stay. FN.10. Medical evidence of emotional distress is not required; the testimony of family members, friends, and co-workers is sufficient to establish an emotional distress claim. FN.11. In some cases no corroborating evidence is required. An example cited in *Dawson* is where the egregious conduct was the creditor pretending to hold a gun to the debtor's head. FN.12. Additionally, the court in *Dawson* stated that even when the conduct was not egregious, the court could award emotional distress damages where the circumstances make it obvious that a reasonable person would suffer emotional harm, such as the emotional distress of having to cancel a child's birthday party because the debtor's checking account was frozen. FN.13.

FN.9. *Dawson v. Wash. Mut. Bank (In re Dawson)*, 390 F.2d 1139, 1148 (9th Cir. 2004).

FN.10. *Id.* at 1149.

FN.11. *Id.* (citing *Varela v. Ocasio (In re Ocasio)*, 272 B.R. 815, 821–22 (B.A.P. 1st Cir. 2002) (holding that testimony of debtor's wife was sufficient to support an award of medical damages without medical testimony)).

FN.12. *Dawson*, 390 F.2d at 1149 (citing *Wagner v. Ivory* (*In re Wagner*), 74 B.R. 898, 905 (Bankr. E.D. Pa. 1987)).

FN.13. *Id.* (citing *United States v. Flynn (In re Flynn)*, 185 B.R. 89, 93 (S.D. Ga. 1995) ($5,000.00 award of emotional distress damages because 'it is clear that the appellee suffered emotional damages' when she was forced to cancel her son's birthday party because her checking account was frozen)); *see also Sternberg*, 595 F.3d at 943.

Movant has not shown there is a significant harm caused by the violation. To the contrary, the absence of such testimony indicates that the "anxiety" was all but non-existent.

With respect to the "threat" of the information remaining on Movant's credit report, Movant has offered no authority that the information was inaccurate or that it was improperly on Movant's credit report. It is "horn book" bankruptcy law that a discharge in bankruptcy is not an extinguishment of the debt. 11 U.S.C. § 524(a); *Dewsnup v. Timm*, 502 U.S. 410, 416 (1992); *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991). Movant offers no legal theory for the mere accurate reporting of the amount of an unpaid debt as being a violation of the automatic stay.

That leaves the last two elements of relief requested: (1) reasonable attorneys' fees and costs to Movant for the legal services required to rectify the violation and (2) such "mild sanctions" so as to ensure that Respondent, and similarly-situated persons will respond to a violation of the stay when they learn of it and not merely assume that since they do not intend to violate the stay, will take no action to violate the stay, and have pure thoughts about complying with the Bankruptcy Code, they can ignore having violated the stay.

Award of Attorneys' Fees

Respondent violated the automatic stay, necessitating Movant having its attorneys act (and Movant to incur an expense for such work) to address the violation. Respondent had an affirmative duty to correct the violation, which it has not presented the court with evidence that it had communicated such to Movant. Secretly, even if diligently and in good faith, remedying a violation but leaving the debtor, court, and world in limbo and creating the appearance that a creditor can violate the stay is not sufficient.

It appears that as of December 2016 a proposal of $1,000.00 for damages was proposed and rejected, Movant's counsel asserting that the reasonable attorneys' fees and costs as of December 2016 exceeded that amount. The court does not know what hourly rate for fees Movant's counsel is using in contending that $3,927.00 in fees and costs is reasonable. Movant has chosen not to provide a detailed billing record for the court to determine what constitutes reasonable fees, but instead have elected to have the court award some amount of attorneys' fees and costs as the court determines "necessary to prosecute the motion." FN.14.

FN.14. Though filing fee applications are an everyday occurrence in bankruptcy court, with detailed descriptions provided without disclosing any privileged information, Movant's counsel has filed a "billing statement" with all descriptions of the services blanked out. An attorney merely saying, "here's what I charge, the court does not need to know what I am billing for," does not carry the day.

Movant seeks that the court determine the attorneys' fees by a supplemental accounting and declaration, and presumably a further hearing. To a skeptical judge, one might think this is a calculated attempt to unnecessarily increase the attorneys' fees. The attorneys' fees are part of the actual damages, not "merely" prevailing party attorneys' fees to be awarded by post-judgment motion after trial. If further hearings were required by Movant's failure to provide the evidence for its actual damages at the hearing, most likely such attorneys' fees would be substantially unnecessary.

Though the court has issues with how Movant's counsel has failed to prosecute this part of the Contested Matter, the court can determine a reasonable amount of attorneys' fees arising from the failure to correct the violation, and communicate that correction to Movant.

First, while pointing the court to a $400+ hourly rate for experienced consumer counsel, the legal work as reflected in this motion is not $400+ per hour. Giving counsel the benefit of the doubt, the court will use an effective hourly rate of $300 and believes that is being very generous.

Counsel had to write several letters to Travis Credit Union and Respondent about the violation. Travis Credit Union Responded; Respondent did not. The correspondence began September 8, 2016, and continued through the early December 2016 telephone conversation between Movant's counsel and Respondent counsel. There are three letters by Movant's counsel documented and one received from Travis Credit Union's attorney. Exhibits C, D, E, and F; Dckt. 66.

Counsel does not provide testimony of doing anything other than the three letters and receiving the letter from Travis Credit Union. Presumably counsel met with Movant after receiving Respondent's letter and communicated with Movant concerning the letters sent and received. The court determines that the reasonable fees for these services up through the time of the telephone conversation with Respondent counsel was $1,050, when the $800 settlement offer was made by Respondent.

Though much of the present Motion does not represent payable, billable time as not asserting claims that the court can grant relief, it was necessary due to Respondent trying to cut too tight of a settlement. The court allows an additional $1,500.00 for the present motion. These attorneys' fees amounts are inclusive of costs. The court awards attorneys' fees as actual damages under 11 U.S.C. § 362(k) to Movant in the amount of $2,550.00.

Sanctions

The court also determines that the requested "mild sanctions" are appropriate. While not demonstrating any ill will, evil intent, or harassment of Movant, when learning of the violation of the automatic stay, Respondent failed to take any action to communicate cessation of collection activities. It required Movant to affirmatively reach out several times to confirm that Respondent was complying with the statutory injunction created by Congress in 11 U.S.C. § 362(a).

Even after discussion of settlement in December 2016, between counsel for Respondent and counsel for Movant, there is no written communication. While the appropriate level of sanctions for failing to correct a violation of the automatic stay, and communicate such correction, may be on a spectrum depending on the nature of the violation and failure to communicate, it must be done. There is not a class of violations that a creditor may ignore, leaving it to the natural order to sort out the "real" violations from those that everyone can just ignore.

The court concludes that $500.00 in "mild sanctions" is sufficient for Respondent, and similarly-situated persons, to remember to communicate that an inadvertent violation of the stay has been corrected. Such a communication is not an admission of "wrong doing," but to the contrary, the mark of a responsible person who takes the law seriously. It appears that in the present Contested Matter, it would merely have been the documentation of what Respondent had done—inadvertently sent a collection letter, learned of the error, and immediately corrected the inadvertent violation as any person making such error.

The Motion is granted, and the court shall enter an order requiring Respondent to pay $3,050.00 to Movant, jointly, pursuant to 11 U.S.C. § 362(k).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Sanctions for Violation of the Automatic Stay by William McGarvey and Sarah McGarvey ("Movant"), the 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 Grant & Weber, Inc. is ordered to pay William McGarvey and Sarah McGarvey, jointly, $3,050.00 in damages for violation of the automatic stay. The actual damages consist of $2,550.00 in legal fees, and the court awards $500.00 in additional sanctions. No other relief is granted.
>
> On March 16, 2017, Movant filed a notice of Dismissal of Travis Credit Union from this Contested Matter. The Credit Union having been dismissed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, 9014, no further matters remain to be determined in this Contested Matter.
>
> This Order constitutes a judgment (Federal Rule of Civil Procedure 54(a) and Federal Rules of Bankruptcy Procedure 7054 and 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure (including Federal Rule of Civil Procedure 69 and Federal Rules of Bankruptcy Procedure 7069 and 9014).

4. 13-24610-E-13 DAX/TINA CHAVEZ
PGM-5 Peter Macaluso

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
1-23-17 [138]

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, Creditor, and Office of the United States Trustee on January 23, 2017. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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 Notice of Mortgage Payment Change is sustained, and the increase of the escrow payment to $685.44 is disallowed. Debtor is awarded $1,575.00 in attorneys' fees for the prosecution of this Contested Matter.

Dax Chavez and Tina Chavez ("Debtor") object to the Notice of Mortgage Payment Change filed by U.S. Bank National Association, as Indenture Trustee on Behalf of and with Respect to Ajax Mortgage Loan Trust 2016-B Mortgage-Backed Notes, Series 2016-B AJX Mortgage Trust I ("Creditor"). The Notice of Mortgage Payment filed on January 5, 2017, increased the escrow payment on the property from $348.69 to $685.44 (a 97% increase). Debtor asserts that no basis exists to support the increase in escrow payments and the plan payments. Debtor asserts that Creditor force placing hazard insurance on Debtor's residence was "due to no fault of the debtor." Debtor additionally requests attorneys' fees in the amount of $1,575.00.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on March 2, 2017. Dckt. 161. Creditor asserts that Debtor is obligated under Covenant 5 of the Deed of Trust on Debtor's property to maintain property insurance against "loss by fire, hazards included within the term 'extended coverage,' and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance." Proof of Claim 7-1, Part 2, p. 6. According to that same covenant, "[i]f Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. . . . Any amounts

disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument." *Id.*

Creditor states that Gregory Funding LLC ("Servicer") serves as attorney in fact and loan servicer for the Note and Deed of Trust on Debtor's Property, and Ameriprise Auto and Home ("Ameriprise") provided an insurance policy for the property.

According to Creditor, Ameriprise sent a notification to Servicer on June 24, 2016, noting an upcoming policy expiration date. Dckt. 164, Exhibit A. Kim Barney, an Insurance Analyst for Servicer, declares that Servicer mailed a check to Ameriprise on July 29, 2016, for the purpose of renewing the policy on the property. Dckt. 162, ¶ 13.

Creditor argues that not until October 24, 2016, did Ms. Barney receive an e-mail from Servicer's Accounts Payable department stating that the check to Ameriprise had been outstanding for eighty-seven days and had not been cashed yet. Dckt. 164, Exhibit B. Ms. Barney testifies that she called Ameriprise on October 24, 2016, and learned that the insurance policy had been cancelled because of non-payment and learned that the policy "could possibly be reinstated" if two criteria were met: 1) payment of the policy premium and 2) a call to Ameriprise from Debtor to initiate reinstatement of the policy. Dckt. 162, ¶ 15.

On October 26, 2016, Ms. Barney states that she requested a stop payment on the outstanding check. Dckt. 162, ¶ 16. Then, Ms. Barney, on behalf of Servicer, reissued a check to Ameriprise in the amount of $916.27 (the renewal premium) on November 3, 2016. Dckt. 162, ¶ 17; *see also* Dckt. 164, Exhibit C. Creditor argues that Ameriprise cashed the reissued check on November 16, 2016. Dckt. 164, Exhibit D.

On November 16, 2016, Ameriprise also mailed to Debtor a letter about the recent payment, stating:

> We received your mortgage check in the amount of $916.27 on November 7, 2016 for the premium payment of the policy listed above; however, this policy has already lapsed for non-payment and cannot be reinstated. We mailed a policy lapse notice to you on July 20, 2016, which stated that your coverage under this policy would cease on August 8, 2016, if we did not receive payment on or before that date.
>
> Because there was an outstanding premium balance for coverage we provided prior to the policy's lapse date, we retained $0.00 of your recent payment and closed your account. The remaining $916.27 has been refunded, and a check for this amount is enclosed.
>
> We urge you to immediately purchase a policy with another insurance company to ensure you are adequately protected from losses.

Dckt. 164, Exhibit E. Then, on November 22, 2016, Ameriprise mailed another letter to Debtor seeming to contradict its prior letter by stating:

> Thank you for your recent payment; however, we are returning this payment because we have already received a premium payment from you and your account is paid in full.

Dckt. 164, Exhibit F. Both letters are signed by Carol Kammin, Vice President with Ameriprise, but the signatures are different: One is computer-typed in a cursive font, and the other appears to be a handwritten signature (although, whether digitally-pasted or physically-signed is indeterminable). *Compare* Dckt. 164, Exhibit E, *with* Dckt. 164, Exhibit F.

Ms. Barney declares that she called Ameriprise on November 17, 2016, and learned that Ameriprise had not been able to reach Debtor to discuss reinstating the policy, as would be required. Dckt. 162, ¶ 22; *see also* Dckt. 164, Exhibit J, p. 30 (subpoenaed documents from Ameriprise). Nevertheless, on November 23, 2016, Debtor deposited the refund check issued by Ameriprise in the full amount of $916.27, instead of returning those funds to Servicer. Dckt. 164, Exhibit J, pp. 48–49. On December 14, 2016, Ms. Barney called Ameriprise again and learned that Ameriprise had not reached Debtor and that Debtor had not contacted Ameriprise. Dckt. 162, ¶ 23.

On December 21, 2016, Servicer, sent written notice to Debtor that Servicer intended to purchase force placed hazard insurance on the property. Dckt. 164, Exhibit G. Servicer sent a second and final written notice to Debtor on January 25, 2017. Dckt. 164, Exhibit H.

Creditor argues that it was required to obtain force place hazard insurance on the property because Debtor cashed the Ameriprise refund check for the renewal premium that should have been issued to Servicer, because Debtor failed to return the deposited funds to Servicer, and because Debtor failed to communicate with the parties to allow them to reinstate the insurance policy. Dckt. 161. Creditor moves that the Objection be denied and that Creditor be awarded attorneys' fees according to Paragraph 9 of the Deed of Trust.

DEBTOR'S REPLY

Debtor filed a Reply on March 14, 2017. Dckt. 169. Debtor states that the claim is listed in Class 1, paid from disbursements from the Chapter 13 Trustee. Debtor also claims to have no control of whether a creditor fails to pay insurance timely. Debtor argues that Debtor's counsel was not contacted at any point prior to cancellation of the policy, and Creditor's contact with Debtor absent counsel's approval was inappropriate.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed an admittedly-untimely Response on March 15, 2017. Dckt. 173. The Trustee states that the sole reason for filing the untimely Response was to inform the court that BSI Financial Services Inc. and Gregory Funding LLC have received thirty disbursements since May 31, 2013, and a Motion to Dismiss for delinquent plan payments has been scheduled for hearing at 10:00 a.m. on March 29, 2017.

DISCUSSION

The Deed of Trust listed in Creditor's Proof of Claim 7-0 establishes that Debtor was obligated to maintain property insurance, and the various evidence of communications submitted by Creditor establish that the property insurance lapsed, attempts were made to correct the lapse, those attempts failed, and Creditor force placed insurance on the property.

However, Debtor did have in place insurance and funded the timely payment of insurance. Creditor admits that it had the money from Debtor and sent (July 29, 2016) in the insurance renewal checks. Unfortunately, Creditor (acting through its servicer) did not double check to see that the outstanding check had been cashed by the insurance company until eighty-seven days later (October 24, 2016).

Then on October 24, 2016, Creditor's representative stated that she contacted the insurance company, and then sent in a replacement check to pay for the insurance. On November 16, 2016, the insurance company cashed the check. But then on the same date, Creditor states that the insurance company immediately refunded the insurance payment directly to Debtor, even though it was paid by Creditor. The Opposition indicates this was "returned" to Debtor (who had not paid it) because the premium had already been paid in full.

When the refund was received by Debtor, Debtor cashed the check and deposited.

Though Creditor is an additional insured and is being represented by a loan servicer whose whole existence is to stay on top of the various loans and collateral, the insurance policy was "cancelled," purportedly because Debtor was not communicating with the insurance company, notwithstanding Creditor stating that it paid the premium twice.

Creditor, instead of enforcing the insurance policy that it had renewed using monies paid by Debtor, it instead elected to allow the insurance company to improperly assert that the insurance policy had lapsed, instead electing to buy expensive forced place insurance and then double Debtor's impound payment.

As Debtor points out, Creditor appears to have elected to unilaterally act, relying on what may well be a less-sophisticated consumer debtor rather than contacting the attorney of record in this case for the less-sophisticated consumer debtor.

Debtor paid the monies necessary for the insurance premium to be paid timely to Creditor. Creditor had the money and timely sent the insurance company the payment with Debtor's money. Then, for three months Creditor ignored the status of the insurance. When, three months later Creditor realized that the insurance premium check had not been cashed, it contacted the insurance company. It appears that the communication was minimal at best and does not indicate the communication by a sophisticated creditor and loan servicer that had paid the insurance premium timely and had the right to have the insurance continue in place.

While Creditor asserts that it exercised "due diligence," its own evidence is to the contrary. It let its insurance sit, growing stale, for three months, apparently unconcerned about the insurance on its

collateral. It did not assert rights and claims that the insurance had been paid for, and the insurance company could not cancel the policy for non-payment of a premium.

Further, Creditor states that the insurance company admitted in writing to Debtor that the premium had been paid twice and was refunding the overpayment. While Creditor may have a claim to recover the refund to Debtor, it is strangely silent how it merely acquiesces to the insurance company saying on the one hand that the premium was paid twice and then cancelling the policy saying that the premium has not been paid.

Additionally, while having paid the premium with Debtor's money, the sophisticated creditor and loan servicer contend that it is the Debtor's fault for not communicating with the insurance company about what Creditor says was its timely payment of the premium. Creditor appears to take the attitude that it can allow the insurance policy to be improperly cancelled on its watch, and then blame Debtor for not acting to correct Creditor's error.

Creditor, having an attorney on Debtor's payroll and ready to act, chose not to contact the attorney, but instead communicate with the less-sophisticated consumer about the payment–failure to cash check–second payment–Creditor not asserting its rights having made the timely premium payment–insurance company admitting that it received two payments–letting the insurance company improperly claim termination for non-payment when the premium was timely paid and paid twice situation that arose when Creditor timely paid the insurance premium with monies paid to it by Debtor.

Rather than enforcing its rights and properly fulfilling its obligations to use the monies paid to Creditor to timely pay and keep in place insurance, the easier path is just to increase Debtor's monthly escrow impound by 97%. While it may be easier for Creditor and its loan servicer to make Debtor pay more, that is not a basis for increasing the mortgage payment.

The Objection is sustained, and the increase in escrow payment is disallowed.

Unclean Hands

Creditor asserts that the Opposition should be denied and it be allowed to double the monthly escrow payment because of Debtor's "unclean hands." It is asserted that Debtor, in cashing the refund check from the insurance company—which told Debtor that the insurance premium had been paid twice, indicating that the insurance was in place—is such bad faith that it precludes the equitable relief sought.

First, the relief sought by Debtor is "legal" relief, what may properly demanded from Creditor as due under the note and deed of trust. The court is not being asked to do anything other than to determine the correct amount due under the contract. However, that does not preclude the court from considering the "unclean hands" defense.

Before going to more modern discussions of the "unclean hands" defense, the court notes the following from the 1933 case relied on by Creditor:

> But courts of equity do not make the quality of suitors the test. They apply the maxim requiring clean hands **only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation.** They do not close their doors because of plaintiff's misconduct, whatever its character, that has no relation to anything involved in the suit, but only for such violations of conscience as in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication. *Story, id.*, § 100. Pomeroy, id., § 399. They **apply the maxim, not by way of punishment for extraneous transgressions**, but upon considerations that make for the advancement of right and justice. They are not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion.

Keystone Driller Co., v. General Excavator Co., 290 U.S. 240, 245–46 (1933). Creditor seeks to have this court "punish" Debtor for having cashed a refund check that the insurance company expressly told Debtor was due to Debtor because the premium was paid twice. That the insurance company elected to pay a refund to the Debtor does not diminish Creditor's obligation to timely pay the premium, if it paid the premium twice to demand the refund from the insurance company, or enforce its rights if it did actually timely pay the insurance premium.

This court has recently reviewed the unclean hands defense in connection with another case. In *Kendall-Jackson Winery, Ltd. v. Superior Court*, 76 Cal. App. 4th 970 (1999), that court states:

> Not every wrongful act constitutes unclean hands. But the misconduct need not be a crime or actionable tort. Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient to invoke the doctrine.

One could also look to a 2015 U.S. Supreme Court decision (which cites back to *Keystone Driller*) for the statement that "[t]he unclean hands doctrine proscribes equitable relief when, but only when, an individual's misconduct has 'immediate and necessary relation to the equity he seeks.'" *Henderson v. United States*, ___ U.S. ___, 135 S. Ct. 1780, 1783 (2015). As noted by the Tenth Circuit Court of Appeals in *Houston Oilers v. Neely*, 362 F.2d 36, 42 (10th Cir. 1966):

> "But the [Unclean Hands] doctrine does not exclude all wrongdoers from a court of equity nor should it be applied in every case where the conduct of a party may be considered unconscionable or inequitable. *Office Employees Internat'l Union, etc. v. Houston Lighting & P. Co.*, Tex.Civ.App., 314 S.W.2d 315; *Kirkland v. Handrick, Tex.Civ.App.,* 173 S.W.2d 735. The maxim admits of the free exercise of judicial discretion in the furtherance of justice. See, *Johnson v. Yellow Cab Transit Co.*, 321 U.S. 383, 64 S. Ct. 622, 88 L. Ed. 814."

To the extent that Creditor asserts that the cashing of a refund check, which the insurance company expressly states is due to a double payment, mandates a prophylactic denial of relief in this Contested Matter, Creditor is in error. This doctrine is equitable in nature for which the court has the free exercise of judicial discretion.

Here, Debtor has not engaged in misconduct which has the "immediate and necessary" relation to the insurance company improperly cancelling the insurance. The responsibility for timely paying the insurance rested with Creditor. By Creditor's account, it paid the insurance premium timely. Having paid the insurance premium timely, Creditor than appears to just acquiesce to the insurance improperly asserting that no payment had been made—even when the insurance company admitted in writing to Debtor that it had received the premium, twice.

Could Debtor have done a better job of communicating? Yes. But Creditor could have done an even better job of communicating with the insurance company, Debtor, and more importantly Debtor's counsel. Instead, Creditor's conduct appears to be one in which it ignores its obligations and rights, but elects the easier path of just doubling Debtor's monthly escrow payment, instead of enforcing its rights having (by its account) the timely insurance premium payment. Creditor has all of the information and evidence of such payment (or of it having defaulted in the payment causing the insurance to be cancelled). If the court were weighing the "unclean hands" as between Creditor and Debtor, the scales would tip heavily against Creditor.

Award of Attorneys' Fees

In the Objection, Debtor asserts the right to statutory attorneys' fees pursuant to California Civil Code § 2941 and some unidentified contract with Creditor. While the court could guess what contract(s) that may be, Debtor neglects to provide that information to the court. In the Opposition, Creditor requests an award of contractual attorneys' fees, citing the court to paragraph 9 of the deed of trust. The contractual provision is identified for the court.

As to California Civil Code § 2941, Debtor does not identify what provision in that section provides for attorneys' fees in this Contested Matter. The one provision in § 2941 relating to attorneys' fees that the court identifies is:

> "(6) In addition to any other remedy provided by law, a title insurance company preparing or recording the release of the obligation shall be liable to any party for damages, including attorney's fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4)."

Cal. Civ. § 2941(b)(6). However, it has not been shown that there is a title insurance company that has failed to record a reconveyance of a deed of trust.

The court accepts Creditor's assertion that attorneys' fees are properly awardable under the deed of trust for the prevailing party in a dispute in this Contested Matter. As Debtor asserts, California Civil Code § 1717 makes that attorneys' fees provision reciprocal.

Though not included in the exhibits provided by Creditor, a copy of the deed of trust is attached to Creditor's proof of claim. Proof of Claim No. 7-1. Paragraph 9 of the deed of trust provides, in pertinent part:

> "9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, . . ., then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including . . . (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. . . ."

Proof of Claim No. 7-1, Part 2 at 7-1. At issue is Creditor's contention that it may properly pay and charge Debtor for the forced place insurance and recover its attorneys' fees in this Contested Matter, with Debtor contending that Creditor cannot properly do so and that Debtor is entitled to attorneys' fees.

Debtor has prevailed in this litigation and is entitled to recover Debtor's reasonable attorneys' fees. In this Contested Matter, Debtor has provided the Declaration of Debtor's counsel attesting to the reasonable attorneys' fees sought. Declaration, Dckt. 140; incorporating Exhibit C, Dckt. 141 at 17. The hourly billing statement (Exhibit C) lists $1,575.00 as reasonable fees for the Objection, including the projected hearing to address the anticipated opposition of Creditor. Those fees are reasonable.

Debtor is awarded $1,575.00 in attorneys' fees as the prevailing party in this Contested Matter.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Mortgage Payment 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 Notice of Mortgage Payment is sustained, and the increase of the escrow payment to $685.44 is disallowed in its entirety. The monthly escrow payment is and continues to be $348.69 (subject to future adjustments as allowed under the applicable documents relating to the obligation and non-bankruptcy law).
>
> **IT IS FURTHER ORDERED** that Dax Chavez and Tina Chavez, jointly, are awarded $1,575.00 in attorneys' fees against U.S. Bank, National Association.
>
> This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

5. 16-25321-E-13 JAY COHEN MOTION TO CONFIRM PLAN
SLE-1 Steele Lanphier 1-26-17 [67]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2017. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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.

Jay Cohen ("Debtor") seeks confirmation of the Amended Plan because the priority tax claim of the Internal Revenue Service and other claims were significantly underestimated. Dckt. 69. The Amended Plan proposes to decrease the budget category for electricity, from $170.00 to $155.00, and transportation, from $350.00 to $325.00. The Amended Plan proposes to increase the budget category for personal care from $25.00 to $47.00. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on March 7, 2017. Dckt. 77.

The Trustee asserts that Debtor is $2,653.00 delinquent in plan payments, which represents one month of the $2,653.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Amended Plan Section 6.01 provides proposed plan payments totaling $10,515.00

and $2,653.00 to be paid in month five. The case was filed on August 12, 2016, and five months have passed since filing. Debtor is current, and the Plan as proposed does not have sufficient proceeds to pay claims called for under the Plan. The Trustee requests that Debtor clarify plan terms and payments in the order confirming. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Trustee asserts that Debtor filed Rights and Responsibilities that lists conflicting attorney fees with other documents filed in the case. The Rights and Responsibilities lists attorney fees of $6,000.00, of which $2,000.00 was paid prior to filing. Dckt. 9. Debtor's petition lists attorney fees to be $6,000.00, of which $2,000.00 was paid prior to filing. Dckt. 1. Debtor's original plan, filed on August 12, 2016, listed attorney fees totaling $4,000.00, of which $500.00 was paid prior to filing. Dckt. 7. Debtor's First Amended Plan, filed on October 10, 2016, listed attorney fees as $4,000.00, of which $0.00 was paid prior to filing.

Debtor's Second Amended Plan, filed on January 26, 2017, listed attorney fees as $4,000.00, of which $2,000.00 was paid prior to filing. Debtor filed an amended petition on January 25, 2017, changing the total attorney fees to $4,000.00, of which $2,000.00 was paid prior to filing.

Thus far, Debtor has reported attorneys' fees as either a total of $6,000.00 or $4,000.00. Debtor lists that paying counsel prior to filing either $0.00, $500.00, or $2,000.00. The Trustee requests Debtor file a separate motion for approval of attorneys' fees or a declaration stating how much and when attorneys' fees were paid. The Trustee also requests a copy of the retainer agreement between Debtor and Counsel be filed.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by 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 Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

6. **09-31422-E-13 WW-10** | **FRANCISCO/LETICIA AGUTOS** **Mark Wolff** | **MOTION FOR ORDER TO SHOW CAUSE** **2-21-17 [160]**

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, Creditor, and Office of the United States Trustee on February 21, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Order to Show Cause is denied without prejudice.

Francisco Agutos and Leticia Agutos ("Debtor") seek an order to show cause why the court should not:

A. Vacate the Order Granting Motion for Payment of Unclaimed Funds (Dckt. 155);

B. Order PNC Bank, National Association, PNC Bancorp, Inc., a Delaware corporation, and/or PNC Financial Services Group, Inc. ("PNC") to disgorge all monies received as a result of PNC's Motion for Payment of Unclaimed Funds (Dckt. 154) and the court's subsequent order (Dckt. 155);

C. Order PNC to pay Debtor's damages, including attorneys' fees and costs, incurred as a result of PNC's:

1. Allegation that it is not the holder of Claim 6,

2. Refusal to provide Debtor with accurate information concerning the holder of Claim 6,

3. Refusal to provide Debtor with evidence that PNC transferred Claim 6,

4. Refusal to provide Debtor with reconveyance of the deed of trust securing Claim 6, and

5. Refusal to return the note that forms the basis of Claim 6; and

D. Enter an order finding PNC in contempt of court for filing false or misleading documents with the court asserting ownership of Claim 6, while simultaneously representing to Debtor that PNC held no interest in Claim 6 and alleging that it was therefore unable to:

1. Issue a reconveyance of the Deed of Trust securing Claim 6, and

2. Return the original note to Debtor as required by California law.

BACKGROUND

Debtor asserts that at the time of filing this bankruptcy case, Debtor owned two items of real property, one of which was a rental property. Dckt. 160. The rental property was subject to two in favor of National City Mortgage, and each was secured by a deed of trust. On June 15, 2009, National City Mortgage filed Proof of Claim 4 evidencing a first position secured claim against the rental property. One June 25, 2009, National City Bank filed Proof of Claim 6 evidencing a second position secured claim against the rental property.

Initially, Debtor filed a motion to value National City Bank's secured claim at $0.00, but Debtor and the bank stipulated that the bank's claim would be allowed as a non-priority general unsecured claim in the amount of $37,117.40; the bank would file an amended proof of claim, and avoidance of the bank's second deed of trust would be contingent upon Debtor completing the Plan and receiving a discharge. *See* Dckt. 50. The bank amended its claim. *See* Proof of Claim 20.

Debtor amended the confirmed plan multiples times, each time providing for the bank's secured claim (Claim 6) to be satisfied by completing the Plan. Additionally, each modified plan treated the bank's claim as fully unsecured, receiving distributions under Class 7. The Fourth Modified Plan (confirmed on April 29, 2012; Dckt. 128) contains the following language:

> Upon completion of payments under this Plan the secured claims of Wells Fargo and National City shall be deemed satisfied. Debtors may demand reconveyance of the trust deeds pursuant to the note, deed of trust, applicable non bankruptcy law, and other authority. Should the trust deeds not be reconveyed, Debtors may file an adversary proceeding to compel reconveyance as well as demanding costs and attorney fees and other relief.

Dckt. 119.

Debtor received a discharge in the Chapter 13 case on November 10, 2014. Dckt. 150.

RELIEF REQUESTED

Debtor argues that following the discharge in this case, PNC (as successor to National City Bank) refused to reconvey the second deed of trust related to Claim 6, as was required by the confirmed fourth modified plan's terms. Debtor asserts to have made multiple requests upon PNC by certified mail, first class mail, e-mail, telephone, and facsimile to at least six entities, including:

A. PNC Mortgage, a division of PNC Bank, National Association,

B. The Retail Division of PNC Bank (a separate division from PNC Mortgage),

C. PNC Bank, National Association,

D. US Mortgage Resolution,

E. Geoffrey Peters of Weltman, Weinberg & Reis CO., LPA, (attorney for PNC Bank N.A.), and

F. David L. Zive, esq. (attorney for PNC Bank as successor to National City Bank).

Debtor argues that the second deed of trust has not been reconveyed and that PNC has denied any ownership of the claim or the deed of trust, having instead transferred them. Debtor claims that PNC has refused to provide any evidence in support of such a transfer. Finally, Debtor insinuates that PNC must be the owner of the claim and the deed of trust still because it filed a Motion for Payment of Unclaimed Funds. *See* Dckt. 154.

Debtor states that PNC's actions have damaged Debtor by causing 1) delay to attempts to sell the rental property, 2) negative impacts upon Debtor's creditor reports, and 3) more than $12,000.00 of incurred attorneys' fees from attempting to obtain reconveyance of the second deed of trust on the rental property.

PNC'S OPPOSITION

PNC filed a Memorandum of Points and Authorities in Support of Creditor PNC Bank, National Association's Opposition to the Debtors' Application for an Order to Show Cause on March 7, 2017. Dckt. 168. FN.1.

FN.1. Movant filed the Opposition and Memorandum of Points and Authorities in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of

Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

First, PNC argues that its request for payment of the unclaimed funds was an inadvertent mistake that has been corrected already by the court's order vacating the Order for Payment of Unclaimed Funds. *See* Dckt. 167.

PNC argues that its mistaken request does not change the fact that PNC sold the underlying loan on the rental property to United States Mortgage Resolution, LLC ("USMR") before Debtor completed the Plan. Samuel Hughes, Director of the Structured Products Group at PNC, declares that the loan for the rental property was sold to USMR on November 25, 2013, as part of a purchase by USMR of a "pool of loans." Dckt. 169, ¶ 4. Mr. Hughes states that PNC served as interim servicing agent until December 13, 2013. *Id.* PNC argues that USMR, and not PNC, was the party bound to reconvey the second deed of trust. PNC claims that it notified Debtor on November 27, 2013, and that USMR would be the new servicer on December 13, 2013. *See* Exhibit 3, Dckt. 162.

PNC states that it, at USMR's direction, recorded a reconveyance of the second deed of trust on February 10, 2017. Exhibit B referenced in the Opposition for that claim details a three-e-mail chain between PNC and USMR in which:

A. USMR acknowledged that the deed needed to be reconveyed because of the Chapter 13 discharge;

B. USMR acknowledged that it needed an assignment of the claim from PNC to USMR;

C. USMR requested that PNC prepare a release of lien for the deed of trust, in lieu of waiting for PNC to assign its claim to USMR;

D. PNC requested USMR's approval to "execute[] and record the release of the Deed of Trust on [USMR's] behalf;" and

E. USMR approved PNC's request.

Dckt. 171, Exhibit B. The e-mails were exchanged on February 2 and 9, 2017. *Id.*

PNC requests that the court deny the Motion because it relies on two moot issues (vacating the order is unnecessary, as is returning unreceived funds) and because PNC properly sold its interest to USMR and worked with USMR to reconvey the second deed of trust on the rental property.

DEBTOR'S REPLY

Debtor filed a Reply on March 14, 2017. Dckt. 173. Debtor argues that PNC's Opposition raises more questions, and Debtor re-asserts that the only received communication from PNC was a letter dated November 27, 2013, indicating that PNC was "transferring the servicing of the loan or line of credit account referenced . . . to US Mortgage Resolutions LLC" on December 13, 2013. *See* Exhibit 3, Dckt. 162. Debtor asserts that such letter was insufficient to notify (or prove to) Debtor that the claim itself had been transferred to USMR such that Debtor would not have any evidence to show to a court of USMR's liability.

Debtor reasserts that PNC has made multiple assertions since 2009 that it is the holder of the loan. Additionally, Debtor raises an argument based upon PNC's Opposition that PNC does not appear to have been the holder of the loan, instead being Citigroup Heloc Trust 2006-NCB1 (nevertheless serviced by PNC). Finally, Debtor reargues that PNC's actions and inactions relating to Debtor's claims necessitated re-opening this bankruptcy case to seek an Order to Show Cause.

RULING

Some of the relief requested in this "motion" crosses the divide into proceedings that must be commenced by adversary proceeding—including quiet title and injunctive relief to compel reconveyance of a deed of trust. Fed. R. Bank. P. 7001(2), (7). If Debtor needs to clear title to property, Debtor may commence such adversary proceeding, conduct discovery therein, and recover attorneys's fees as permitted by statute or contract. Debtor offers no authority for the proposition that a real property title dispute is a proper basis for the court to bring down the hobnailed booth of the federal judiciary contempt power for this dispute.

Next, Debtor seeks to have this court sanction PNC for having filed a motion and obtained payment of unclaimed funds in this bankruptcy case. Motion for Payment of Unclaimed Funds, Dckt. 154 and Order thereon, Dckt. 155. The unclaimed funds sought are for payments due the creditor on Proof of Claim No. 4 filed by National City Bank. The court's order authorizing the disbursement of the unclaimed funds relating to the National City Bank claim was filed on January 26, 2017.

Debtor, on February 13, 2017, requested the bankruptcy case be reopened and filed the present Motion. The order authorizing the disbursement was vacated on February 23, 2017, by further order of the court. Dckt. 167.

Debtor's confirmed Fourth Modified Chapter 13 Plan provides for 0% dividend to creditors holding general unsecured claims. This is not a surplus Chapter 13 Plan, and Debtor has not shown a right to or any interest in any unclaimed funds for payments due to creditors. The secured claim of National City Bank was determined by the court to have a value of $0.00, with the entire claim being treated as a Class 7 general unsecured claim in this case. National City Bank Non-Opposition to Motion to Value, Dckt. 44; Confirmed First Modified Plan, Dckt. 58; Order Confirming; Dckt. 67.

As set forth in the Chapter 13 Trustee's Final Report, creditors holding general unsecured claims received a dividend of 1.87%. Dckt. 140 at 3.

While Debtor may want to fight with Creditor about whether it or another creditor has an interest in the 1.87% dividend, Debtor has no interest in, or standing to bring, the present motion.

A basic principal of American Jurisprudence is that the law does not condone the "officious intermeddler." One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of "standing."

> Article III of the Constitution confines federal courts to decisions of "Cases" or "Controversies." Standing to sue or defend is an aspect of the case-or-controversy requirement. (Citations omitted.) To qualify as a party with standing to litigate, a person must show, first and foremost, "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent.' (Citations omitted.) . . . Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess 'a direct state in the outcome.' (Citations omitted.)

Arizonans for Official English v. Arizona, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

Though neither party has identified the issue of standing, the court may raise it *sua sponte*. Rule 12(h)(3), Federal Rules of Civil Procedure. A person must have a legally protected interest, for which there is a direct stake in the outcome. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997). The Supreme Court provided a detailed explanation of the Constitutional case in controversy requirement in *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville*, 508 U.S. 656, 663, 113 S.Ct. 2297 (1993). The party seeking to invoke federal court jurisdiction must demonstrate (1) injury in fact, not merely conjectural or hypothetical injury, (2) a causal relationship between the injury and the challenged conduct, and (3) the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative. *Id*. In determining whether the plaintiff has the requisite standing and the court has jurisdiction, the court may consider extrinsic evidence. *Roverts v. Corrothers*, 812 F.2d, 1173, 1177 (9th Cir. 1987).

The Ninth Circuit Court of Appeals addressed the issue of Constitutional standing and the self-imposed judicial restrain of prudential standing (whether the person asserting standing was within the "zone of interests") in *Motor Vehicle Casualty Co. v. Thorpe Insulation Company* (*In re Thorpe Insulation Company*), 671 F.3d. 980, 2012 U.S. App. LEXIS 1272 (9th Cir. 2012). This followed the United States Supreme Court discussing the judicial restrain concept in *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 11–12 (2004), in which the Supreme Court explained:

> "[w]e have explained that prudential standing encompasses 'the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.' *Allen*, 468 U.S., at 751, 82 L. Ed. 2d 556, 104 S. Ct. 3315. See also *Secretary of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 955-956, 81 L. Ed. 2d 786, 104 S. Ct. 2839 (1984)."

"Prudential standing" is an additional judicial "self-restraint" by which a court, which otherwise has standing, chooses not to hear the matter because of the generalized interests that do not directly relate to the person seeking to utilize the federal courts to address his or her grievance. By its very nature, a request for the court to exercise "self restraint" and not hear a matter based on prudential standing admits that Article III case in controversy Constitutional standing and federal court jurisdiction exists.

Here, there is no showing that Debtor has any interest in the 1.87% dividend on this unsecured claim. Debtor has not shown that its adjudication of this issue has any effect on Debtor's ability to prosecute and complete the bankruptcy case. Debtor completed the case and obtained the bankruptcy discharge on November 10, 2014.

In this bankruptcy case, while Debtor may feel offended that Creditor might have sought to obtain the 1.87% dividend due another creditor, that is the other creditor's fight. To the extent that Debtor, though the action was improper, the U.S. Tax Payers fund the operation of the United States Trustee, to whom such a complaint could have been made, rather than Debtor seeking to have this court issue an order to show cause as to why this court does not hold Creditor in contempt.

The lack of standing for bringing the present motion is highlighted by the Motion and supporting declarations—Debtor wants to have the junior deed of trust reconveyed. The Motion has nothing substantive to do with the 1.87% divided and any dispute between two creditors.

Possibly, if Debtor had prepared a points and authorities to support the contention that Creditor should be held in contempt, the lack of foundation for the claims asserted in this Contested Matter would have been identified.

Debtor's Reply shows further the actual relief improperly sought by Contested Matter and contempt—payment of attorneys' fees and costs to obtain a reconveyance of the City National Bank deed of trust. The Declaration of counsel for Debtor shows that substantially all of the legal work relates to obtaining clear title to the Property. Dckt. 163.

Presuming that Debtor is relying on 11 U.S.C. § 105(a) for the court issuing the order to show cause why Creditor should not be sanctioned, Debtor has not shown why or how the quiet title dispute is one in which Creditor has failed to follow the Bankruptcy Code or prior order of this court.

The Motion is denied. Denial is without prejudice to any claims, rights, or interests that Debtor may seek to enforce by further Contested Matter, Adversary Proceeding, or complaint in Federal or State Court, including recovery of attorneys' fees and costs.

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

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

The Motion For Issuance of an Order to Show Cause filed by Francisco and Leticia Agutos 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. The denial is without prejudice to any claims, rights, or interests that Debtor may seek to enforce by further Contested Matter, Adversary Proceeding, or complaint in Federal or State Court, including recovery of attorneys' fees and costs.

7.	**17-21123-E-13 GTB-1**	**VICTOR NAVARRO JR AND KRISTINA ZAPATA** **George Burke**	**MOTION TO EXTEND AUTOMATIC STAY** **3-7-17 [9]**

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and one creditor on March 7, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the 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 court grants the Motion to Extend the Automatic Stay on an interim basis through and including April 24, 2017, and continues the hearing on this Motion to 3:00 p.m. on April 18, 2017.

Victor Navarro, Jr., and Kristina Zapata ("Debtor") served the Motion on only one of the creditors in this case: Nationstar Mortgage LLC ("Creditor"). *Compare* Proof of Service, Dckt. 12 (serving

one creditor), *with* Verification of Master Address List, Dckt. 4 (listing nine creditors), *and* Amended Creditor Matrix , Dckt. 16 (listing two additional creditors).

Additionally, that service was provided on a post office box, which is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92–93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case as to Creditor. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 16-20113) was dismissed on November 17, 2016, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 16-20113, Dckt. 66, November 17, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the 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 for failure to make a plan payment because Debtor's family traveled to Washington in a vehicle that broke down during the trip when the transmission failed. Debtor spent approximately $800.00 to rent a van to return to Sacramento. That rental expense caused Debtor to miss a plan payment, prompting the Chapter 13 Trustee to file a motion to dismiss. Debtor claims that a payment of $3,000.00 was made to the Trustee four days before the hearing on the dismissal, but the case was dismissed because the "trustee had not processed the check yet."

Debtor argues that circumstances have changed in this case because Debtor Navarro was unemployed when filing the prior case, but now, he is employed full-time. Debtor also asserts that there is approximately $3,200.00 being held in reserve cash at this time to deal with any unforeseen expenses.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on March 10, 2017. Dckt. 20. The Trustee states that he has no opposition to the Motion, but he notes that there are issues that need to be resolved before a plan can be confirmed in this case. The Trustee notes that Nationstar Mortgage, LLC ("Creditor") is provided for in Class 1 of the Plan with arrears of $24,000.00 and a monthly contract installment of $689.52. In Debtor's prior case, Creditor filed a proof of claim indicating that $14,273.25 were in arrears and a Notice of Mortgage Payment Change indicating a monthly payment of $1,492.78. Additionally, Schedule J lists no dependents claimed by Debtor but claims $150.00 for childcare and education costs. The Trustee believes that the Class 1 payment to Creditor should be $1,850.00.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C.

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

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

A. Why was the previous plan filed?

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

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

Debtor has provided a colorable basis for rebutting the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay as to Creditor. In the prior case, Debtor had immediate, unforeseen expenses that do not exist in the present case. Additionally, Debtor appears to have attempted to cure the delinquency that resulted in the prior case's dismissal, and the additional funds that Debtor raised in the prior case are now available as reserve funds for the present case.

Because of the defect in service, the court treats this as an *ex parte* motion for the relief and grants such relief on an interim basis. In substance, it may be that the extension of the stay as to Debtor is actually of little moment to Creditor, who would be wanting to foreclose on property of the bankruptcy estate.

The automatic stay is extended as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(B) through and including April 24, 2017.

Debtor shall properly serve the Motion and notice of continued hearing on all parties in interests against whom such relief is requested on or before March 27, 2017.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the 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) as to Nationstar Mortgage LLC for all purposes, through and including noon on April 24, 2017, unless terminated by operation of law or further order of this court, or further extended by order of this court.
>
> **IT IS FURTHER ORDERED** that Debtor shall properly serve the Motion and notice of continued hearing on all parties in interest against whom such relief is requested on or before March 27, 2017.

8. **16-22328-E-13** **MARIA COLEMAN** **MOTION TO MODIFY PLAN**
SS-3 **Scott Shumaker** **2-14-17 [64]**

Final Ruling: No appearance at the March 21, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 14, 2017. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a statement of non-opposition on March 7, 2017. Dckt. 82. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by 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, Debtor's Modified Chapter 13 Plan filed on February 14, 2017, is confirmed. Debtor's Counsel 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.

9.	**16-22328-E-13** **SS-4**	**MARIA COLEMAN** **Scott Shumaker**	**MOTION FOR COMPENSATION FOR SCOTT SHUMAKER, DEBTOR'S ATTORNEY** **2-14-17 [70]**

Final Ruling: No appearance at the March 21, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 14, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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.

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

Fees are requested for the period January 15, 2017, through February 11, 2017. Applicant requests fees in the amount of $1,415.00 and costs in the amount of $40.00.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on February 2, 2017. Dckt. 77.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including drafting a Motion to Dismiss, modifying Debtor's Plan a second time, and filing this Motion for Compensation. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

"No-Look" Fees

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

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

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

Lodestar Analysis

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Second Plan Modification: Applicant spent 4.8 hours in this category. Applicant assisted Client with responding to a Motion to Dismiss and drafting a Motion to Modify Plan.

Motion for Compensation: Applicant spent 3.7 hours in this category. Applicant assisted Client with drafting a Motion for Compensation for subsequent unanticipated motions and additional work.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Scott Shumaker, Attorney	0.7	$350.00	$245.00
Paralegal	7.8	$150.00	$1,170.00
Total Fees for Period of Application			$1,415.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $40.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage and Copying		$40.00
Total Costs Requested in Application		$40.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including responding to a Motion to Dismiss, modifying Debtor's Plan a second time, and filing this Motion for Compensation, 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 $1,415.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

Costs in the amount of $40.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees	$1,415.00
Costs and Expenses	$40.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Scott Shumaker ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Scott Shumaker is allowed the following fees and expenses as a professional of the Estate:
>
> Scott Shumaker, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $1,415.00
> Expenses in the amount of $40.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

10. 17-20130-E-13 ASW-1 | **BARBARA MYERS** **Chinonye Ugorji** | **OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB** **2-16-17 [17]**

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

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, and Chapter 13 Trustee on February 16, 2017. By the court's calculation, 33 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 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 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 Confirmation of Plan is sustained / overruled.

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2015-RPL1 Trust, Mortgage-Backed Notes, Series 2015-RPL1, Creditor with a secured claim, opposes confirmation of the Plan on the basis that:

A. Debtor failed to provide for the full arrearage of Creditor's claim, and

B. Debtor's Plan is not feasible because there is insufficient income to fund the Plan.

DEBTOR'S RESPONSE

Barbara Myers ("Debtor") filed a Response on March 6, 2017. Dckt. 21. Debtor asserts that Creditor's claim for arrearages of $23,393.23 is incorrect because Debtor and Creditor entered into an

agreement in September 2016, by which Debtor agreed to pay $3,142.00 for twelve months to cure arrears of $10,318.82. Debtor asserts that now, the arrears are "at best $10,360.00."

DISCUSSION

The objecting Creditor holds a deed of trust secured by Debtor's residence. Creditor has not filed a timely proof of claim, but in its Objection it asserts $23,293.23 in pre-petition arrearages. Debtor's plan proposes to cure arrearages in the amount of $9,200.00. A plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments if 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).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Schedule J indicates that Debtor has a disposable income of $2,547.77. Creditor notes that Debtor will need to pay a minimum of $388.22 per month to cure the Creditor's pre-petition arrears over the life of the Plan. Creditor asserts that according to Debtor's Schedules I & J and pre-petition arrearage payments, there is insufficient income to fund the Plan.

This Objection relies upon how much is owed in arrears by Debtor to Creditor. Unfortunately for both parties, neither side has filed admissible evidence as to what is owed to Creditor. Creditor filed the original note and deed of trust, establishing that it has a secured claim, but Creditor has not provided the court with any documentation regarding what payments have been made, what remains to be paid, what interest has accrued, or what payments are in arrears (the crucial matter).

Similarly, Debtor has not provided the court with any evidence to confirm that the arrears are as Debtor states. Debtor's Response is the equivalent of wagging Debtor's finger in Creditor's face and saying, "No, you're wrong." That is not admissible evidence. Debtor has not submitted a declaration or any other documentary evidence to prove that payments have been made against the arrears or that there is a payment arrangement with Creditor. Debtor wants the court to trust her without having to prove anything. The court is not inclined to disregard the Federal Rules of Evidence.

Both parties are at fault with this Objection for not providing admissible evidence of the arrears on Creditor's claim. At the hearing, the parties presented evidence that the arrears are xxxx.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a Creditor with a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained / overruled.

11. 17-20531-E-13 CYB-1 | **MICHELLE COAKLEY** **Candace Brooks** | **MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC 2-23-17 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 23, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Secured Claim of OneMain Financial Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $11,500.00.

The Motion filed by Michelle Coakley ("Debtor") to value the secured claim of OneMain Financial Group, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Toyota Rav4 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on March 7, 2017. Dckt. 22. The Trustee asserts that Debtor has listed Creditor in Class 2 with a claim for $15,413.00 and a vehicle value of $13,200.00. Debtor's motion seeks to value Creditor's secured claim at $11,500.00. The Trustee notes that Creditor has not filed a proof of claim.

The lien on the Vehicle's title secures a non purchase-money loan incurred on May 18, 2016, to secure a debt owed to Creditor, with a balance of approximately $12,187.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $11,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Michelle Coakley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of OneMain Financial Group, LLC ("Creditor") secured by an asset described as 2011 Toyota Rav4 ("Vehicle") is determined to be a secured claim in the amount of $11,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $11,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

12. 16-27334-E-13 ANNA RICE MOTION TO CONFIRM PLAN
MB-1 Michael Benavides 1-30-17 [29]

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

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 January 30, 2017. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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.

Anna Rice ("Debtor") seeks confirmation of the Amended Plan because Debtor can afford higher plan payments. Dckt. 32. The Amended Plan proposes to remit plan payments of $1,150.00 for sixty months to complete the Plan. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 21, 2017. Dckt. 36.

The Trustee asserts that Debtor's plan provides for the mortgage on Debtor's residence to be paid directly as a Class 4 claim. However, Debtor's First Amended Plan does not provide for Employment Development Department's ("EDD") secured claim in the amount of $4,609.77 filed on December 12, 2016.

Debtor intends to keep the property, and Trustee argues that Debtor has not shown she will be able to afford plan payments and comply with the Plan when EDD's secured claim exists.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future

income that is paid over to the Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

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

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

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

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

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

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by 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 Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

13. 16-26438-E-13 MWB-1 | **BILLY TENBERG** **Mark Briden** | **MOTION TO CONFIRM PLAN** **1-31-17 [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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 31, 2017. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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 3:00 p.m. on April 25, 2017.

Billy Tenberg ("Debtor") seeks confirmation of the Amended Plan that was filed to include previously unaccounted-for debts. Dckt. 43. The Amended Plan reduces monthly payments for attorneys' fees, adds creditors to their respective classes, and reduces the dividend to unsecured claims by six percent. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 22, 2017. Dckt. 49.

The Trustee asserts that Debtor has not disclosed the changes in the Amended Plan in the Motion. The Motion therefore does not state with particularity the grounds upon which relief is sought. The Trustee notes that the new plan differs for the following reasons:

A. Monthly payment for attorney fees has been reduced by $100.00;

B. Bank of America has been added to Class 1 for a Second Deed of Trust to be paid $135.00 per month, and arrears are to be paid forty-seven percent interest;

C. Wells Fargo has been added to Class 2(a) for $4,030.60 secured by jewelry to be paid $50.00 per month, at four percent interest;

D. Wells Fargo has been added to Class 4 for a First Deed of Trust to be paid $1,800.00 per month directly by Debtor; and

E. The dividend to unsecured claims has been reduced to no less than eight percent, down from no less than fourteen percent.

The Plan remains $600.00 per month for sixty months. No amended Schedule I or J or Statement of Financial Affairs has been filed. Schedule C was amended and now includes a $130.00 claim in Jewelry that had not been listed on Schedule B.

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

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

The Plan proposes to pay an eight-percent dividend to unsecured claims, which total $81,069.88. Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) is unclear with no documentary evidence to support his declaration statement that he averages $5,000.00 per month on an annual basis.

The Trustee asserts that Debtor has presented 1099-C forms, from 2014 and 2015, along with a document supposedly relating to an accounting of Debtor's income. Debtor does not explain in Debtor's Declaration the origins of the document representing an accounting of Debtor's gross income.

The Trustee notes that if this document is correct, however, then Debtor has income exceeding what was claimed on the Statement of Financial Affairs. Also, Schedule I lists a gross income of $5,000.00 from wages and $1,100.00 from Social Security, which does not add up to $5,000.00 per month of gross income.

REQUEST FOR CONTINUANCE

Debtor requested that this matter be continued on March 14, 2017. Dckt. 55. Debtor requests a continuance to provide time to compile the financial records requested by the Trustee. The court granted Debtor's request on March 14, 2017, and continued the hearing to 3:00 p.m. on April 25, 2017. Dckt. 57.

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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Confirm the Amended Plan is continued to 3:00 p.m. on April 25, 2017.

14. **17-20241-E-13 DPC-1** | **BONIFACIO/MARY ANN OCAMPO Steele Lanphier** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-22-17 [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 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 and Debtor's Attorney on February 22, 2017. By the court's calculation, 27 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 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 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 Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Debtor may not be able to make plan payments, and the Plan might not be Debtor's best efforts.

The Trustee's objection is well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor is under the median income of $83,012.00 for a family of four. The proposed plan payments are $2,330.00 for sixty months with a zero percent dividend to unsecured creditors. Debtor also has a second job that pays $14.90 per hour, but Debtor did not list that income on Schedule I. Debtor has four children, but the family's expenses appear too low. There are no expenses for the children's education, only $25.00 for recreation, and $55.00 for clothing. 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 a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee 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.

15. **16-26043-E-13 PPR-1** | **SUSAN GEDNEY** **Aubrey Jacobsen** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY** **1-17-17 [66]**

The Objection to Confirmation has been recast as Opposition to Debtor's Motion to Confirm the Chapter 13 Plan, DCN: TAG-3, with the ruling on the "Opposition" stated in the ruling on that Motion.

The Objection to Confirmation is removed from the Calendar.

16. **16-26043-E-13** **SUSAN GEDNEY** **CONTINUED MOTION TO CONFIRM PLAN**
TAG-3 **Aubrey Jacobsen** **12-13-16 [47]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2017. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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 xxxx.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

JANUARY 31, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on March 21, 2017, to allow counsel for Susan Gedney ("Debtor") to address the service issue and objections raised by the Trustee and a creditor. Dckt. 78.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on January 13, 2017. Dckt. 62. First, the Trustee objects that the Motion was not set on proper notice. Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1) require forty-two days' notice for a motion to confirm. The Trustee notes that three proofs of service were filed respectively on the following dates: December 13, 2016; December 16, 2016; and January 4, 2017.

The December 13, 2016 proof of service shows service on the Chapter 13 Trustee, U.S. Trustee, and most creditors. The December 16, 2016 proof of service indicates that service was provided to creditors added to Amended Schedules. *See* Dckt. 51. The January 4, 2017 proof of service adds counsel for the mortgage and a creditor with a different address.

Additionally, there are two master mailing lists in this case. One was filed on September 9, 2016, and lists three creditors (AT&T, Carrington, and FTB). Dckt. 4. The other list was filed on September 23, 2016, and lists six creditors (AT&T, Carrington, City of San Bernardino, Direct TV, FTB, and IRS).

When Debtor filed Amended Schedules on December 13, 2016, she added Gabriel Witkin and Sarah Wright, each of Keller Williams Realty, but those parties have not been added to the master list. Also, EDD filed a proof of claim (No. 2), but it is not listed on Debtor's Schedules or the master mailing list.

Procedurally, the Trustee also objects that not all creditors have been served with notice of this Motion. Even though listed on the master mailing list and Schedule G, neither Direct TV nor City of San Bernardino have been served. The Franchise Tax Board, Internal Revenue Service, and Employment Development Department have not been served as required by Federal Rule of Bankruptcy Procedure 2002(b) either.

The Trustee's second main ground for opposing confirmation is that the proposed plan does not indicate what month the Trustee is to begin making adequate protection payments to Class 1. The first three proposed payments of $460.00 are insufficient to pay even the monthly contract installment on the Class 1 claim. Thus, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Trustee's third ground is that the proposed plan is not Debtor's best efforts under 11 U.S.C. § 1325(b) because the plan does not appear to provide all of Debtor's projected disposable income. The Trustee notes that Debtor is above median income.

This case was filed on September 9, 2016, and by November 23, 2016, Debtor had made two payments of $460.00. If Debtor has fifty-eight months remaining (including January), then the plan term is sixty-one months. The proposed plan does not call for a payment in December 2016, and neither the plan nor the Motion indicate why Debtor is not required to make a December 2016 plan payment. Debtor's disposable income is reported to be $1,960.54. Schedule J, Dckt. 51. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

The Plan proposes to pay a zero percent dividend to unsecured claims, which total $4,419.00, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $1,960.54. Thus, the court may not approve the Plan.

The Trustee notes that on Schedule I, Debtor reports tax withholding of $2,973.25, but his review of her paystubs reveals that the withholding is approximately $1,905.00. Debtor's net disposable income could be up to $1,000.00 more than listed.

Debtor's paystubs include a deduction for "advance repay" of $285.20 per pay period, or $617.94 per month. That deduction is not listed on Schedule I, and the Trustee is uncertain about the details of the apparent loan, especially because Debtor fails to propose any increase in plan payments upon payoff of the loan.

The Trustee objects to Debtor's living expenses listed on Schedule J. Debtor, in a family of one, deducts $890.00 for food and housekeeping supplies, $100.00 for clothing and laundry, $100.00 for personal care products and services for a total of $1,090.00. The IRS National Standards for Allowable Living Expenses for one person for food, clothing, and other items totals $570.00. The Trustee notes that Debtor has not provided any explanation why she needs expense allowances in excess of the national standards.

Finally, the Trustee requests that future tax refunds be paid into the plan. On Schedule I, Debtor lists withholding 35% of her income for tax deductions, which the Trustee again notes is excessive when compared to current paystubs. Therefore, the Trustee requests that Debtor be required to pay in all future tax refunds as additional payments to the plan.

Trustee's Status Update - March 7, 2017

The Trustee filed a Status Update in Support of Opposition to the Motion to Confirm Amended Plan on March 7, 2017. Dckt. 86. The Trustee notes that his objection relating to how the Motion was noticed has been resolved, even though Gabriel Witkin and Sarah Wright, each from Keller Williams, were not listed on the Proof of Service for the Notice of Continued Hearing. The Trustee notes that they were served with notice of the original motion on December 16. *See* Dckt. 54.

The Trustee notes that the remaining grounds for objecting remain outstanding. Debtor has not indicated to the Trustee in which month adequate protection payments are to begin, and the plan payment for the first three months is insufficient to pay Carrington Mortgage.

The Plan does not indicate why Debtor is not able to make or should not be required to make a payment in December 2016. Debtor has not addressed the discrepancy about tax withholdings. Debtor has not addressed a deduction for advanced repayment on her paystubs. Debtor has not addressed an identified issue with Schedule J expenses. Finally, the Trustee requests, again, that Debtor be required to pay all future tax refunds into the Plan as additional payments.

Debtor's Reply

Debtor filed a Reply on March 14, 2017. Dckt. 90. Debtor states that the Trustee shall begin adequate protection payments to Carrington Mortgage with the February 2017 distribution or the distribution after receiving the increased plan payment in an amount sufficient to make such distribution.

Debtor explains that she was unable to save the entire amount of the December 2016 payment because "of the short notice and substantial increase in the proposed plan payment, as well as the consideration that the unplanned increase occurred during the holidays." Debtor states that calling for an increase in December 2016 would have caused her to be delinquent in plan payments. Debtor also argues that the Plan does not call for Debtor to miss the December 2016 payment, but to pay a sum certain by December 25, which Debtor alleges she did.

Debtor states that she had been under-withholding income taxes previously, which resulted in tax liabilities owed to the Internal Revenue Service and the Franchise Tax Board. Debtor states that her paystubs are misleading because she has been under-withholding taxes. Debtor states that the amount in tax withholdings listed on Schedule I is what she should be withholding to avoid future tax liability.

As to the advance repayments, Debtor states that what is listed on her paystubs is reimbursement for disability benefits overpayment that Debtor received while she was receiving disability payments. Repayment began when Debtor returned to work, approximately July 2016. Debtor claims that she was not aware that the reimbursement of a benefit overpayment was a dischargeable debt or that the deduction from her payroll was appropriate. Debtor intends to stop the advance repayment and add the overpayment to her list of creditors as general unsecured debt.

Regarding expenses, Debtor states that she is a registered nurse and part of her duties is to train other nurses and professional personnel. That training requires Debtor to maintain additional grooming expenses to appear professional at all times. Those expenses include regular haircuts and purchasing professional clothing. Additionally, Debtor travels frequently across the country by train to train other professionals, requiring her to purchase food restaurants during those trips.

Debtor does not oppose turning over any and all tax refunds received during this case to the Chapter 13 Trustee. Debtor notes, however, that because she has under-withheld historically, she does not anticipate receiving any tax refund.

OPPOSITION OF DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE

Deutsche Bank National Trust Company, as Trustee for Carrington Mortgage Loan Trust Series 2005-FRE1 Asset Backed Pass-Through Certificates, "DBNTC" with a secured claim, opposes confirmation of the Plan on the basis that:

A. The Plan is not feasible under 11 U.S.C. § 1325(a)(6) because it calls for curing DBNTC's claim with a speculative sale of property at an unidentified time in the future, and

B. The Plan does not provide ongoing post-petition payments to DBNTC.

Debtor's Response

Susan Gedney ("Debtor") filed a Response on March 14, 2017. Dckt. 93. Debtor argues that:

A. Cure-by-sale plans are permissible and feasible;

B. The Plan is sufficiently specific; and

C. The Plan provides for ongoing secured payments.

Debtor argues predominately that other courts have approved of proposals to cure by sale of property as long as the sale occurs within a reasonable time and the debtor makes ongoing monthly adequate protection payments. Dckt. 93, p. 2: 14–18 (citing *In re Newton*, 161 B.R. 207 (Bankr. D. Minn. 1993); *In re Erickson*, 176 B.R. 753 (Bankr. E.D. Pa. 1995); *In re Dunn*, 399 B.R. 909 (Bankr. W.D. Wash. 2009); *In re Bassett*, 413 B.R. 778 (Bankr. D. Mont.)). Debtor also argues that Creditor's reliance on *In re Gavia* is improper because that case is not factually similar to the present one.

Debtor argues that the Plan is specific enough because she is in the process of hiring a new realtor to list her property and because the Plan includes the default remedy of moving DBNTC's claim from Class 1 to Class 3 if the sale has not been completed within one year.

Finally, Debtor argues that DBNTC has mistakenly alleged that the proposed plan does not provide for ongoing monthly adequate protection payments, when in fact it does.

DISCUSSION

DBNTC's first objection is well-taken. 11 U.S.C. § 1325(a)(6) requires that a debtor be able to make all plan payments or comply with the plan. Creditor argues that such ability and compliance is not possible because the Plan calls for selling Debtor's residence that secures DBNTC's claim by means of a short sale. The court notes that the Plan actually lists the debt on Debtor's property as owing to Carrington Mortgage Services as a loan servicer.

DBNTC also opposes confirmation of the Plan because it does not provide ongoing post-petition payments to Creditor. Creditor filed Proof of Claim 3-1 on January 18, 2017, listing a debt secured in the amount of $496,546.69 with $121,553.52 owed in arrears. The Plan specifically says in Additional Provision 3(a), however, that the "debt owed to Carrington [DBNTC] has been listed in the Plan as a Class 1 debt . . . with ongoing monthly payments provided for until the sale of the house is completed as adequate protection of the lender's interest." Dckt. 52.

The Plan does provide for an "adequate protection" payment to be made to DBNTC pending the sale of the property. However, Debtor has not explained why she is pursuing a short-sale, rather than moving on and allowing DBNTC to have the privilege of conducting a foreclosure sale. Reviewing Proof

of Claim No. 3 filed by DBNTC, the last payment made by Debtor on the obligation securing the DBNTC claim was in February 2014 (for the January 2014 payment). The Proof of Claim shows Debtor making no payments during the thirty-one months preceding the September 2016 filing of the current bankruptcy case. Merely making a $1,500 monthly mortgage payment, after failing to pay the mortgage for the thirty-one pre-petition months and four post-petition months may not be adequate protection for Debtor's use of the collateral for another year.

If the sale of property does not occur within one year, then the Plan states that Creditor's claim shall be moved to Class 3. Creditor does not discuss any opposition to that plan term specifically, but Creditor does oppose there being nothing in the Plan to prevent Debtor from converting to Chapter 7 if the sale does not occur. 11 U.S.C. § 1307(a) states:

> The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

Any effort on Creditor's part to prevent a conversion to Chapter 7 would not be successful because the Code authorizes such a conversion at any time under Chapter 13.

While this court has allowed debtors to promptly, in good faith, market real property to recover the fair market value and pay claims, as well as preserving exempt equity, it must be done in a commercially reasonable manner. The court notes that while Debtor has a pre-petition dispute concerning the listing of the real property, it has been somewhat of an indirect path in addressing the issues of there being an executory contract to sell the property (signed merely ten hours before the bankruptcy case was filed). The court, finally recognizing the executory contract issue, has shortened time for Debtor to having a hearing on a motion to reject the executory contract. Dckt 88.

Though Debtor may now believe she is heading to the path to prosecute this bankruptcy case, the Plan now before the court does not comply with the Bankruptcy Code. Instead of providing for Creditor's secured claim, Debtor offers no adequate protection payments. Rather, Debtor appears to believe that she can ignore the secured claim, live in the house rent/adequate protection payment free, and then after 12 months of "free rent" just allow Creditor to foreclose. If Debtor were proposing the Plan in good faith and attempting to provide for Creditor's secured claim, there would be a reasonable adequate protection payment to creditor based on the value of its secured claim.

The court has previously addressed Debtor's apparent belief that filing bankruptcy should not cause her to reduce expenses and alter her pre-bankruptcy lifestyle in denying confirmation of the prior plan. Civil Minutes, Dckt. 39. In looking at the Amended Schedule J, the court notes the following:

	Original Schedule J Dckt. 18 at 20-21	**Amended Schedule J Dckt. 51 at 9-10**
Monthly Net Income	$230.54	$1,960.54
Total Expenses	($4,498.00)	($2,768.00)
Mortgage/Rent	($2,000.00)	$0.00
Home Maintenance	($100.00)	($130.00)
Electricity/Gas	($257.00)	($257.00)
Water/Sewer/Garbage	($110.00)	($110.00)
Phone/Cell/Internet	($236.00)	($236.00)
Food/Housekeeping Supplies	($800.00)	($890.00)
Clothing, Laundry	($100.00)	($100.00)
Personal Care Products	($100.00)	($100.00)
Medical, Dental	($50.00)	($100.00)
Transportation (Gas and Maintenance)	($370.00)	($470.00)
Entertainment	($180.00)	($180.00)
Charitable Contributions	($100.00)	($100.00)
Vehicle Insurance	($95.00)	($95.00)

The above expenses are just for Debtor, she stating that she has no dependents.

In reviewing the above expenses, it appears that Debtor may be creating some of the expenses out of desire to divert money from creditors, not to pay bona fide expenses. The court cannot identify why Debtor has increased her food and housekeeping expense $90.00 per month, her medical expense $50.00 per month, and her transportation expense $100.00 per month. Clearly, if these were actual expenses, they would have been provided for in the Original Schedule J as Debtor had enough money left over from her actual expenses to spend $180.00 per month on entertainment. If these higher expenses actually existed, Debtor would have provided for them instead of entertainment.

On Schedule I Debtor lists having gross monthly income of $8,500.01. After withholdings, it is reduced to $4,728.54—Debtor stating that her take-home income is only 55% of her gross income. To generate the take-home income, Debtor lists the following withholding:

A. Taxes, Medicare, Social Security.....($2,973.25) [35% of gross income]
B. Voluntary Retirement Contribution.....($ 472.94)

C. Insurance.....($ 325.28)

Schedule I, Dckt. 18 at 18–19.

On Schedule B Debtor lists having retirement accounts totaling $236,000. Schedule B, *Id.* at 6.

Review of Amended Plan and Original Plan

Debtor filed her original plan on September 23, 2016. Dckt. 17. Under that Plan, Debtor would fund it with $230.00 per month for thirty-six months, with Debtor attempting to short sell her residence to pay DBNTC's secured claim. The short sale was to occur within four months of confirmation. No payments would be made on that secured claim. The Plan provides to pay $3,000.00 to Debtor's counsel and to pay priority tax claims that total $4,419.00. The Plan states Debtor has no general unsecured claims or other claims to be paid or provided for in the Plan.

Though listed in Class 1 of the Plan, no payment is provided for the DBNTC claim in the Original Plan.

In the Amended Plan, Dckt. 52, Debtor extends the Plan term to sixty months. The Additional Provisions of the Amended Plan state that Debtor has funded the Plan with $460.00 through December 2016, and will commence making a $1,960 per month payment beginning in January 2017 and continuing thereafter for the remaining fifty-eight months of the Amended Plan.

Though not providing for payment of the DBNTC arrearage, the Additional Provisions say that it is included in Class 1 so as to maintain the automatic stay. However, the current monthly mortgage payment of $1,582 will be made through the Plan to DBNTC. (Payment is listed in Class 1, as well as stated in the Additional Provisions.) The Amended Plan provides for the same attorneys' fees and priority tax claims.

Debtor, during the first year of the Plan will market the property securing the DBNTC claim and propose a short sale to DBNTC.

DISCUSSION

At the hearing, the Trustee reported that he is / is not satisfied with Debtor's explanations to the Trustee's concerns.

In considering this Plan and Debtor's good faith, the court has several concerns. First, based on the Original Schedule, stating expenses under penalty of perjury, and Amended Schedule stating expenses under penalty of perjury, it appears that Debtor is misstating her expenses to improperly divert monies from the Plan. In explaining why Debtor has increased her monthly expenses, which has the effect of soaking up money that would otherwise be available for creditors now that she does not purport to have a $2,000 per month mortgage or rent expense, Debtor states:

> "10. As reflected on my Amended Schedule J, my total monthly expenses are $2,768. Schedule J has been amended, increasing the numbers for my monthly medical, transportation, and home repair expenses, to more accurately reflect my monthly budget. The monthly expense for mortgage/rent has been removed, since I will be making my contractual ongoing monthly mortgage payment through my Chapter 13 Plan until I am able to sell my house. Amended Schedule J is a true and correct reflection of my monthly expenses."

Declaration, p. 2:20–25; Dckt. 49. In providing this "explanation," Debtor gives the court no reason to believe that her current statement of expenses, under penalty of perjury, is more accurate than her prior statement of her expenses under penalty of perjury. As stated above, if such higher expenses actually existed, Debtor would have included them on the Original Schedule J, there being $180 in entertainment expenses that Debtor stated under penalty of perjury she had sufficient money to fund after paying all of her other expenses. It is not credible that Debtor "discovered" higher expenses only after there was "extra" money because she was not paying a $2,000 mortgage or rent expense.

As the court addressed in connection with the prior Plan, Debtor has stated under penalty of perjury that she had $2,000 for rent or mortgage payments in September, October, November, and December 2016. Debtor has not accounted for that $8,000.00 of monies not paid for any rent or mortgage payment in those months.

In looking at Debtor's Supplemental Declaration, Dckt. 91, the court has heightened concerns over the missing $8,000.00. Debtor states that in December, because of the holidays, Debtor's budget was "stretched." There should have been no "stretching" in the budget, as Debtor committed to it, stating that all of the numbers were accurate and necessary under penalty of perjury.

In the Supplemental Declaration Debtor states that pre-petition she was under-withholding on her taxes, leaving her owing taxes at the end of the year. Debtor has not provided the court with an analysis of her taxes and proper withholding, nor has she filed a Supplemental Schedule I stating what her accurate gross and net income is with the correct withholding.

The Supplemental Declaration raises another question. Debtor states that her job requires her to travel, but her employer does not reimburse her for her food expenses. Debtor asserts that because she must dine out when traveling, her food expenses are higher. Debtor does not provide the court with how much higher expenses are, and what reimbursements she does receive when traveling for her employer.

Though Debtor is getting closer, her financial information does not add up. Debtor's statement of higher expenses is not credible.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxx**.

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 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 Amended Plan is xxxx.

17. 17-20245-E-13 EAT-1 | **MARK BRADY** **Michael Benavides** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 2-10-17 [20]**

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

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 February 10, 2017. By the court's calculation, 39 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 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 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 Confirmation of Plan is sustained.

Wells Fargo Bank, N.A., Creditor with a secured claim, opposes confirmation of the Plan on the basis that Debtor's Plan understates the amount of pre-petition arrears and ongoing monthly mortgage payments.

The Creditor's objection is well-taken. 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 $13,122.58 in pre-petition

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

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

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

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

18. 16-26447-E-13 DOUGLAS TOOLEY MOTION TO CONFIRM PLAN
CK-3 Catherine King 2-9-17 [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.

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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2017. By the court's calculation, 40 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Amended Plan has not been properly 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.

Douglas Tooley ("Debtor") seeks confirmation of the Amended Plan because it was proposed to rectify the Trustee's objection to confirmation of plan when Debtor failed to correctly list the Class 1 claim of National Mortgage LLC. Dckt. 48. The Amended Plan proposes to increase income, and therefore plan payments, to support the Amended Plan. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

INSUFFICIENT NOTICE PROVIDED

Debtor filed this Motion to Confirm the Amended Plan according to Local Bankruptcy Rule 9014-1(f)(1). That Rule requires a total of forty-two days' notice to be provided for the Motion to Confirm the Amended Plan. Debtor provided forty days' notice, which is insufficient. Accordingly, the Motion to Confirm the Amended Plan is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied without prejudice.

THE COURT HAS PROVIDED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES SUFFICIENT NOTICE

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on February 21, 2017. Dckt. 57.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Amended Plan calls for plan payments of $2,178.00 per month for the first twelve months of the plan, then $2,379.00 per month for the next twelve months, then $2,932.00 per month for the next twelve months, and then $5,283.00 per month for the final twenty-four months. Section 6 calls for the plan payments to be increased in month thirteen by $201.00 per month, an additional $553.00 per month in month twenty-five, and an additional $2,351.00 per month in months forty-eight through sixty. Schedule I lists Debtor's total income as $3,518.00. Schedule J lists Debtor's net income as $2,178.00. Debtor's Statement of Financial Affairs lists Debtor's income from business as $17,700.00 for the current year, and also lists $32,475.00 and $14,000.00 from wages for 2015 and 2014, respectively.

The Trustee asserts that Debtor's Declaration states that Debtor is confident he will be able to increase income to support the Amended Plan, but he has not provided sufficient information proving otherwise. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

CREDITOR'S OPPOSITION

HSBC Bank USA, National Association as Trustee for The Holders of The Ellington Loan Acquisition Trust 2007-2, Mortgage Pass-Through Certificates, Series 2007-2, its assignees and/or successors in interest ("Creditor") filed an Opposition on February 23, 2017. Dckt. 60.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor asserts that Debtor's Schedules I and J evidence that all disposable income is already being committed to this Plan, and evidence of future additional income is speculative and contingent. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Creditor objects to how the Plan proposes to pay arrears through unequal plan payments over the life of the Plan, starting out low, and then gradually increasing over the life of the Plan. Creditor points out that it would be taking a substantial risk by accepting unequal lower payments first, without any assurance by Debtor, beyond speculation, that Debtor will be capable of paying the later substantial increases. Creditor states that Debtor has a history of being unable to make mortgage payments and that Debtor's income is committed to the Plan without any of the future increases proposed.

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

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

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

19. 17-20248-E-13 DPC-1

ALFREDO BOLANOS AND SOFIA MONTANO- GOMES
Thomas Gillis

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-22-17 [14]

Final Ruling: No appearance at the March 21, 2017 hearing is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled without prejudice as moot, Debtor having filed an amended plan to be prosecuted in this bankruptcy case.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. The Plan fails the liquidation analysis.

B. The Plan fails to list the name of a creditor in Class 2A.

DEBTOR'S NON-OPPOSITION

Alfred Bolanos and Sofia Gomes ("Debtor") filed a Non-Opposition on March 3, 2017. Dckt. 18. Debtor states that they will file an Amended Plan to address the issues the Trustee listed.

DISCUSSION

A review of the docket shows that Debtor has filed an Amended Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by the Debtor. Dckts. 20 & 23. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon the Debtor's personal knowledge. Fed. R. Evid. 601, 602.

Debtor appearing to be actively prosecuting this case, the Objection is overruled without prejudice as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is overruled without prejudice as moot, the Debtor having dismissed the plan and having filed an amended plan that is now being prosecuted in this bankruptcy case.

20. **16-28154-E-13** **KEVIN BRIDGES** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Mark Wolff** **1-25-17 [16]**

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 and Debtor's Attorney on January 25, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the 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 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 Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. Debtor did not provide any business documents.

B. Debtor cannot make the payments required under the Plan.

C. The Plan is not Debtor's best effort because Debtor did not provide disposable income.

D. Debtor's Plan did not provide any details of the lawsuit proceeds on the Statement of Financial Affairs.

E. The Plan exceeds sixty months.

FEBRUARY 28, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on March 21, 2017, to address the Trustee's concerns. Dckt. 27.

DISCUSSION

No further pleadings have been filed since the February 28, 2017 hearing.

The Trustee's objections are well-taken. Debtor has failed to timely provide the Trustee with business documents including:

A. Six months of profit and loss statements,

B. Six months of bank account statements, and

C. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor lists vehicle insurance on Schedule J in the amount of $100.0 and he admitted at the First Meeting of Creditors held on January 19, 2017 that the expense for vehicle insurance is $200.00 per month. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Therefore, the Objection is sustained.

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provision of the Bankruptcy Code provides:

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

The Plan proposes to pay a 100 percent dividend to unsecured claims, with the payments to be funded by $500.00 a month plan payment for sixty months and an additional lump-sum payment of $60,000.00 to be paid into the Plan from a class action lawsuit in month thirty-six, though the Debtor's projected disposable income under 11 U.S.C. § 1325(b)(2) totals $2,000 (not including the $1,000.00 that Debtor's mother provides, which amount is not listed on Schedule I).

The Trustee argues that Debtor's Plan proposes to pay $60,000.00 from proceeds of a class action lawsuit in month thirty-six, however, Debtor has failed to provide any details of the lawsuit on the Statement of Financial Affairs. Debtor lists the lawsuit on Schedule B and values it at $500,000.00, but there is no status of the proceeding or how the value was determined.

Debtor also lists three other lawsuits on Schedule B.

A. Debtor lists a claim against Robert Kitay, who filed a Chapter 7 bankruptcy case (Case No. 13-20645), that is valued at $0.00. Debtor does not provide any details of this claim or the reasons for that valuation.

B. Debtor lists Wyotec Class Action with an unknown recovery. Debtor obtained loans in excess of $40,000.00 and had $4,000.00 additional placed in collections. Debtor did not provide any details of this action or how the valuation was determined.

C. Debtor lists a wrongful termination from Scandia claim where Debtor was fired after refusing to sign fraudulent inspection reports. Debtor has not yet retained an attorney and values this asset at $0.00.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in ninety-seven months due to insufficient funds. The total debts to be paid through the Chapter 13 Plan, not considering Trustee Compensation at 6.2% is $98,483.84. Debtor's Plan proposes $500.00 for sixty months, with a $60,000.00 lump sum payment, which totals only $90,000.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). Therefore, the Objection is sustained.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee 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.	**16-27855-E-13** **DPC-1**	**FARENZO HANNON AND DIAMOND JOHNSON-HANNON** **Justin Kuney**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **1-19-17 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 19, 2017. 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). The Debtor, Creditors, the 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 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 Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

A. Debtor has failed to file a Motion to Value Secured Claim; and

B. Debtor cannot make payments or comply with the plan, or the plan may no longer be the Debtor's best effort.

FEBRUARY 14, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on March 21, 2017. Dckt. 25.

DISCUSSION

No further pleadings have been filed since the February 14, 2017 hearing.

The Trustee's objections are well-taken. A review of the Debtor's Plan shows that it relies on the court valuing the secured claim of Wells Fargo Dealer Services. Debtor has failed to file a Motion to Value the Secured Claim of Wells Fargo Dealer Services, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor testified at the First Meeting of Creditors held on January 12, 2017, that Co-Debtor Farenzo Hannon is now employed, and Debtor has additional expenses listed on Schedule J. The Plan calls for increasing payments: $500.00 for seventeen months, then $635.00 for three months, and then $815.00 for sixteen months. Without an accurate picture of the 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 a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee 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.

22. 16-26966-E-13 JENNIFER RIANDA MOTION TO CONFIRM PLAN
LBG-2 Lucas Garcia 1-17-17 [54]

Final Ruling: No appearance at the March 21, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 17, 2017. By the court's calculation, 63 days' notice was provided. 42 days' notice is required.

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. Debtor has provided evidence in support of confirmation. The Chapter 13 Trustee filed a statement of non-opposition on March 3, 2017. Dckt. 68. The Trustee notes that at the January 18, 2017 hearing, the court requested testimony of all the professionals who are working on the tax and corporate suspension issues as represented to the court by the Debtor, her non-filing spouse, and counsel. While the non-debtor spouse has filed a declaration, no other declarations from any professionals appear in the record as requested by the court. The Amended Plan otherwise complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Amended Chapter 13 Plan filed on January 17, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. 12-31671-E-13 PGM-8 | **CHRISTIAN NEWMAN** **Peter Macaluso** | **CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 1-26-17 [249]**

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 26, 2017. 28 days' notice is required. This requirement was met.

The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Notice of Mortgage Payment Change is sustained.

Christian Newman ("Debtor") objects to the Notice of Mortgage Payment Change filed by US Bank. The Notice of Mortgage Payment filed on December 13, 2016, increased the escrow payment on the property after an Escrow Analysis from $481.49 to $651.87. Debtor asserts that no basis exists to support this increase.

Debtor asserts that the projected disbursements from escrow total $5,894.02, at $491.17 per month, while the present escrow amount is $481.49 per month; thus a shortage of $9.68. Thus, Debtor asserts that the escrow amount should be $491.17. Debtor additionally requests attorneys' fees in the amount of $1,575.00 for having to prosecute this Objection.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, responds that the Notice may be in error based on the inclusion of $2,442.98 to be repaid through the bankruptcy in the escrow shortage amount. Dckt. 256. The creditor filed a notice on April 12, 2016, that is not consistent with the current Notice.

CREDITOR'S RESPONSE

Creditor, US Bank, N.A., filed a response requesting a continuance to allow the creditor to complete its research regarding the Notice of Mortgage Payment Change. Dckt. 259.

FEBRUARY 28, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on March 21, 2017. Dckt. 261.

MARCH 6, 2017 NOTICE OF MORTGAGE PAYMENT CHANGE

Creditor filed a Notice of Mortgage Payment Change on March 6, 2017, that lists the escrow payment as being $501.47, effective April 1, 2017. This Notice states that the escrow account has a "shortage" of $1,544.95.

DISCUSSION

No further pleadings have been filed since the February 28, 2017 hearing evidencing that the disagreement has been resolved.

The court notes that while the March 6, 2017 Notice of Mortgage Payment Change lowered the escrow amount to $501.47, it did not lower the amount to the amount of claimed by Debtor. However, the $501.47 amount is substantially closer to Debtor's $491.17 than the $651.87 Creditor had earlier demanded.

The Opposition filed by Creditor states that the "escrow shortage" of $2,223.38 to cover taxes and insurance. As pointed out by the Trustee, this appears to be the $2,442.98 arrearage that is being paid through the Chapter 13 Plan. On Original Proof of Claim No. 10 Creditor stated that the pre-petition arrearage was $16,393.91, of which $2,442.98 is listed as the pre-petition "escrow shortage." Proof of Claim 10 lists there being twelve pre-petition defaults.

On July 25, 2013 Creditor filed Amended Proof of Claim No. 10, in which the pre-petition arrearage is stated to be $15,979.54, slightly lower than stated in Original Proof of Claim No. 10. The pre-petition escrow shortage is still stated to be $2,442.98.

On June 9, 2014, Creditor filed a Second Amended Proof of Claim No. 10, with the pre-petition arrearage dropping again, that time to $14,424.54. The pre-petition escrow shortage was still stated to be $2,442.98.

For the Notice of Mortgage Payment Change filed on December 13, 2016, it appears that the only reason for an asserted "escrow shortage" is the pre-petition shortage that is included in Creditor's Claim being paid through the Plan.

The March 6, 2017 Notice of Mortgage Payment Change provides the escrow information in a more "user friendly form." For a one year period, April 2017–March 18, 2017, Creditor projects the following expenses to be funded through the escrow:

A. Property Taxes.....$3,521.68
B. Property Insurance.....$ 602.00
C. Flood Insurance.....$1,894.00

which totals.....$6,017.68.

Dividing the $6,017.68 over the twelve monthly payments results in Debtor needing to fund the escrow with $501.47 to pay those current, non-pre-petition arrearage, escrow amounts. This is exactly the amount stated by Creditor.

Even with the above finding, the March 6, 2016 Notice of Mortgage Payment Change appears to contain a fundamental flaw stating that to there to be the $501.47, Debtor must pay the $1,544.95 pre-petition arrearage immediately. That is not correct, as a matter of bankruptcy law.

This "defect" in what is stated in the bold font and brightly colored portion of the Notice is evidenced in the much smaller, non-bold, italic font on the Wells Fargo Bank, N.A. Escrow Review Statement attached to the Notice. This smaller, non-bolded, italic (hard to read) text states (with the court enlarging the font to make it easily readable):

> "PLEASE NOTE: If you are presently seeking relief (or have previously been granted relief) under the United States Bankruptcy Code, this statement is being sent to you for informational purposes only. The summaries below are based on the terms of the loan and are provided for informational purposes only."

March 6, 2017 filed Notice of Mortgage Payment Change.

Taken literally, Wells Fargo Bank, N.A. is telling the bankruptcy Debtor to ignore the Notice, it being only for "informational," not required payment, purposes only.

Though in bold, larger font the December 13, 2016 Notice of Mortgage Payment Change stated:

> **Date of payment change:**
> Must be at least 21 days after this notice 02/01/2017
>
> **New total payment:**
> Principal, interest, and escrow, if any $1,830.49.

But this bolded notice of Debtor's payment being increased to $1,830.49, is qualified by the additional, smaller font text., buried in an attachment on America's Service Company letterhead, stating:

> "Note : This notice is for informational purposes only and is being provided as a courtesy should you voluntarily decide to make any escrow shortage payment, if applicable. This notice should not be construed as an attempt to collect a debt or a demand for payment contrary to any protection you may have received pursuant to your bankruptcy case."

Id.

How is the information about how the amount is computed to be increased to $1,830.49 for informational purposes only if Creditor is demanding that the monthly payment be made in the amount of $1,830.49. Further, how is the least-sophisticated consumer who receives this Notice, which on the first page bolding states:

> **New total payment:**
> Principal, interest, and escrow, if any $1,830.49.

supposed to know that such amount is improper because of the "protection [least-sophisticated consumer debtor] may have received in your bankruptcy case." One could argue that this information has been intentionally drafted in a way to mislead consumer debtors to forego their rights under the Bankruptcy Code and confirmed Chapter 13 Plan and make double payments on the pre-petition arrearage to Creditor.

Though it appears that there may be a larger defect in Creditor's and the loan servicer's documentation in trying to use a non-bankruptcy form to ineffectively communicate with consumer debtors, the court will not act, at this time, to bring the creditor and loan servicer into court to address these issues, or refer this matter to the CFPB, U.S. Attorney, or U.S. Trustee. Debtor and Debtor's counsel can confer, meet with the U.S. Trustee, and those parties can communicate with creditor and the loan servicer to determine what, if any, referral or action is appropriate.

Debtor's Objection to the December 13, 2016 Notice of Mortgage Payment Change is sustained.

Allowance of Attorneys' Fees

Though it appears that Creditor has corrected whatever error occurred in including the pre-petition arrearage amount in the post-petition escrow amount (which would have Creditor being double paid for the pre-petition arrearage—first through the Plan and then through the demanded $651.87 payment amount), the December 13, 2016 Notice of Mortgage Payment necessitated the filing of the present Objection to get Creditor to state the accurate amount.

In the Objection, Debtor asserts the right to statutory attorneys' fees pursuant to California Civil Code § 2941 and some unidentified contract with Creditor. As to California Civil Code § 2941, Debtor does not identify what provision in that section provides for attorneys' fees in this Contested Matter. The one provision in § 2941 relating to attorneys' fees that the court identifies is:

> "(6) In addition to any other remedy provided by law, a title insurance company preparing or recording the release of the obligation shall be liable to any party for damages, including attorney's fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4)."

Cal. Civ. § 2941(b)(6). However, it has not been shown that there is a title insurance company that has failed to record a reconveyance of a deed of trust.

In the Opposition filed by Creditor, it does not contend that there is not a contractual attorneys' fees provision relating to the note and deed of trust upon which Creditor's claim and Notice of Mortgage Payment Change are based. Dckt. 259.

On Proof of Claim No. 10 Creditor includes "attorney costs." In the Deed of Trust, ¶ 9, attached to Proof of Claim No. 10 has a contractual attorneys' fees provision for the obligations and duties arising under the deed of trust. The Adjustable Rate Note, ¶ 7(E), attached to Proof of Claim No. 10 has a contractual attorneys' fees provision relating to enforcing the note (the basis of the obligation for Creditor's claim in this case and the obligation that is the subject of the Notice(s) of Mortgage Payment Change). As Debtor asserts, California Civil Code § 1717 makes that attorneys' fees provision reciprocal.

Debtor has prevailed in this litigation and is entitled to recover Debtor's reasonable attorneys' fees. In this Contested Matter, Debtor has provided the Declaration of Debtor's counsel attesting to the reasonable attorneys' fees sought. Declaration, Dckt. 251; incorporating Exhibit C, Dckt. 254 at 10. The hourly billing statement (Exhibit C) lists $1,575.00 as reasonable fees for the Objection, including the projected hearing to address the anticipated opposition of Creditor at the original hearing. These fees are reasonable.

Though the hearing was continued at the request of Creditor, and it could be argued that Debtor's counsel is "forced" to attend a second hearing, assuming that there is no opposition or reason to argue at the second hearing, the court does not add an additional amount. If there is a further contest by Creditor, and the court issues a ruling in favor of Debtor, the court will consider additional fees in connection with the further hearing.

The Objection is sustained, and the Notice of Mortgage Payment Change filed on December 13, 2016, is disallowed, with no change in the mortgage payment occurring relating thereto.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Mortgage Payment filed by Christian Newman 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 Notice of Mortgage Payment is sustained, and the Notice of Mortgage Payment Change filed on December 13, 2016, for U.S. Bank N.A., as Trustee, relating to the obligation for Proof of Claim 10 (as amended) is disallowed, of no force and effect, and there is no change in the mortgage payment occurring relating thereto.

IT IS FURTHER ORDERED that Christian Newman is awarded $1,575.00 in attorneys fees against U.S. Bank, National Association.

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

24. 13-31975-E-13 JACK/LINDA GANAS MOTION TO MODIFY PLAN
PLC-10 Peter Cianchetta 1-27-17 [203]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2017. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a statement of non-opposition on January 27, 2017. Dckt. 207. The Trustee notes that the Modified Plan does not authorize plan payments in the amount of $32,875.93 to creditor Wells Fargo, and the Trustee asks that the Debtor's attorney authorize the payments in the order confirming.

At the hearing, Debtor authorized plan payments to creditor Wells Fargo in the amount of $32,875.93. The Modified Plan, as modified, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by 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, Debtor's Modified Chapter 13 Plan filed on January 27, 2017, and as modified at the hearing to reflect payments of $32,875.93 to Wells Fargo, is confirmed. Debtor's Counsel 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.

25. 13-31975-E-13 JACK/LINDA GANAS
PLC-12 Peter Cianchetta

MOTION FOR COMPENSATION FOR PETER CIANCHETTA, DEBTORS' ATTORNEY
2-15-17 [218]

Final Ruling: No appearance at the March 21, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.

Peter Cianchetta, the Attorney ("Applicant") for Jack Ganas and Linda Ganas, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period September 12, 2016, through February 15, 2017. Applicant requests fees in the amount of $8,540.00 and costs in the amount of $307.20.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on February 22, 2017. Dckt. 224 (amended on February 22, 2017, at Dckt. 227 to include the DCN). The Trustee states that Applicant combined the Application and Declaration into one form rather than filing them separately as required. Dckt. 218.

The Trustee notes that the Motion states that Applicant seeks $8,847.20 in additional fees and costs, but no attorney fees paid yet in this case. The Trustee is not opposed to Counsel waiving fees from the date the petition was filed to September 12, 2016.

Section 2.06 in the plan filed January 27, 2017, lists a total of $6,000.00 to be paid through the Plan. The Motion does not state how the fee should be disbursed; the Plan says $200.00 per month, but only twenty months remain in the plan term.

The Trustee is uncertain if the court may consider excessive the 3.2 hours shown on the Time and Cost Logs for Applicant preparing a Motion to Employ Real Estate Broker and an Order Shortening Time.

APPLICANT'S DECLARATION

Applicant filed a Declaration in support of this Motion on February 28, 2017. Dckt. 230. Applicant states that this Motion is for additional fees and costs. Applicant waives all prior fees and costs prior to September 12, 2016. Applicant notes that the Plan does not fully fund Applicant's fees and costs, but the closing of Debtor's home and subsequent transfer of $30,000.00 will adequately fund a 100% plan and all requested attorneys' fees through the current application.

Applicant asserts that upon payment of 100% of the unsecured and secured debts, Debtor will file an amended plan to fully fund the attorneys' fees and shorten the length of the Plan, if necessary, to obtain a discharge.

Applicant also argues that the 3.2 hours shown preparing the Motion to Employ Real Estate Broker and an Order Shortening Time are accurate. Applicant also states that the time and cost logs submitted with the exhibits are true copies of Applicant's time and costs expended in this case.

TRUSTEE'S AMENDED RESPONSE

The Trustee filed an Amended Response on March 10, 2017. Dckt. 235. Based on the declaration from Applicant, including a waiver of filing fee, the Trustee no longer opposes the Motion.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including drafting Motion to Confirm, Motion to Sell Property, this Motion for Compensation, and subsequent related correspondence and meetings with the Client. The court finds the services were beneficial to the Client and bankruptcy 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 $0.00 in attorneys' fees in lieu of the no look fee for all work performed through a normal discharge. However, Attorney reserves the right to apply for additional fees if unexpected unanticipated additional work arises. Dckt. 51. 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.

Case Management: Applicant spent 3.40 hours in this category. Applicant conducted subsequent related correspondence with Client and the Trustee pertaining to the Motions.

Motion to Confirm: Applicant spent 8.3 hours in this category. Applicant assisted Client with drafting the Motions to Confirm Plan and associated pleadings, attending hearings, and replying to Trustee's Opposition to Motion to Modify Plan.

Motion to Sell Property: Applicant spent 14.7 hours in this category. Applicant assisted Client by preparing a Motion to Sell, a Motion to Employ Real Estate Broker, and an Order Shortening Time.

Motion for Compensation: Applicant spent 3.0 hours in this category. Applicant prepared this Motion for Compensation for additional work regarding to Client's case.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter Cianchetta	29.4	$350.00	$10,290.00
Total Fees for Period of Application			$10,290.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $8,540.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Printing		$156.00
Postage		$151.20
Total Costs Requested in Application		$307.20

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $8,540.00 for its fees incurred for the Client. The unique facts surrounding the case, including drafting Motion to Confirm, Motion to Sell Property, this Motion for Compensation, and subsequent related correspondence and meetings with the Client, 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 $8,540.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

Costs in the amount of $307.20 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees	$8,540.00
Costs and Expenses	$307.20

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 Cianchetta ("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 Cianchetta is allowed the following fees and expenses as a professional of the Estate:
>
> Peter Cianchetta, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $8,540.00
> Expenses in the amount of $307.20,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

26. 16-27277-E-13 KENNETH/SANDRA WILSON MOTION TO MODIFY PLAN
SDH-3 Scott Hughes 1-30-17 [35]

Final Ruling: No appearance at the March 31, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2017. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a statement of non-opposition on March 3, 2017. Dckt. 45. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by 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, Debtor's Modified Chapter 13 Plan filed on January 30, 2017, is confirmed. Debtor's Counsel 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.

27.	**17-20081-E-13 DPC-1**	**JOE PENA AND RAMONA RANDOLPH Seth Hanson**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-15-17 [17]**

Final Ruling: No appearance at the March 21, 2017 hearing is required.

The Debtor having voluntarily dismissed this case pursuant to 11 U.S.C. § 1307(b), the Objection is overruled as moot. *See* Dckt. 27.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation 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 Objection is overruled as moot, the case having been voluntarily dismissed by Debtor, pursuant to 11 U.S.C. § 1307(b).

28.	**17-20081-E-13 SLH-1**	**JOE PENA AND RAMONA RANDOLPH** **Seth Hanson**	**MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.** **2-10-17 [13]**

Final Ruling: No appearance at the March 21, 2017 hearing is required.

The Debtor having voluntarily dismissed this bankruptcy case pursuant to 11 U.S.C. § 1307(b), the Motion is dismissed as moot. *See* Dckt. 27.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Joe Pena and Ramona Randolph ("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 dismissed as moot, the case having been voluntarily dismissed by Debtor, pursuant to 11 U.S.C. § 1307(b).