

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 9, 2020 at 2:00 p.m.

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

1. [20-21500-C-13](#) FRANCISCO/DENISE SEGURA **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) Marc Carpenter **PLAN BY DAVID P. CUSICK**
5-13-20 [\[20\]](#)

Thru #2

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 13, 2020. 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

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The Objection to Confirmation of Plan is sustained.

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

- A. Debtor has secured debts, including the claims of Specialized Loan Servicing, LLC; Yolo Federal Credit Union; and Solar City Finance Company, which are not completely provided for in the plan.

Specialized Loan Service LLC claims the secured amount of \$168,757.39 and arrears of \$1,677.79. According to the claim the monthly mortgage payment is \$899.08 (Page 4). While Schedule J shows a mortgage expense of \$906.00, (DN 1, Page 44, Line 4), it shows no mortgage arrears expense.

Yolo Federal Credit Union’s total claim is \$31,594.15, (\$28,000.00 secured and \$3,594.15 unsecured), with an interest rate of 5.49% on the claim, the ongoing payment is not clear. Schedule J reflects a \$692 car payment which may or may not be for this vehicle, but would reflect a 52 month term remaining if it is for this vehicle, (which would be within the 60 month plan.)

Solar City Finance Company is listed on Schedule D for \$23,691.00 with a security interest in Debtor’s real property, (DN 1, Page 20). A claim has not been filed to date. A \$200.00 Solar City expense appears on Schedule J, (DN 1, Page 45, Line 6d), but the Trustee is not aware if this is the contract payment or if any arrears exist.

- B. Trustee argues that if any of the secured claims above are not going to be paid, debtor will have additionally disposable income that must be put into the plan.

DISCUSSION

The Chapter 13 Plan seems to want to provide for several secured claims directly as expenses on Schedule J, but without listing those claims in the plan as Class 4 claims. As to many of the claims, the debtors have not proposed a sufficient payment amount.

Specialized Loan Servicing, LLC filed its own Objection (Dckt. 16) opposing confirmation because the plan doesn’t provide for its prepetition arrearage, and does not appear feasible since debtors are already providing all their disposable income.

The Trustee and objection creditor’s grounds for opposition are well-taken. Without providing for the various secured claims in this case, the plan is not likely to be feasible, and the debtors have not presented evidence showing contrary. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on April 24, 2020. By the court’s calculation, 46 days’ notice was provided. 14 days’ notice is required.

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

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The Objection to Confirmation of Plan is sustained.

Specialized Loan Servicing, LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that the plan fails to provide for its prepetition arrearage of \$1,677.79. Creditor argues that failure means its claim is not fully provided for, and the plan is not feasible because the debtors are already providing all disposable income to the plan.

DISCUSSION

Creditor’s arguments are well taken. Creditor’s claim includes a prepetition arrearage of \$1,677.79 which the plan does not provide for.

In fact, none of the secured claims are listed in the proposed plan, and are instead included as expenses on Schedule J. The claims, if being provided for directly, should be listed as Class 4 claims (however, if there is a prepetition arrearage to be cured those claims must be Class 1).

Without providing for specific treatment of Creditor’s and other secured claims, and because

the amount proposed to be paid as an expense is insufficient, the plan is not feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by Specialized Loan Servicing, LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 13, 2020. 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

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The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the debtor, Kirkwindell Sablad Garlit (“Debtor”), is \$2,225.00 delinquent in plan payments.

DISCUSSION

Debtor is delinquent in plan payments, which represents one month of the plan payment. Dckt. 14. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 21, 2020. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Plan is granted.

The debtor, Laura Ann Salinas (“Debtor”) seeks confirmation of the Chapter 13 Plan. The Plan provides for 60 payments of \$3,414.47. Plan, Dckt. 22. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on May 26, 2020. Dckt. 35. Trustee opposes confirmation because the Debtor is \$6,243.41 delinquent in plan payments.

DISCUSSION

Debtor is \$6,243.41 delinquent in plan payments, which represents multiple months of the \$3,414.47 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Laura Ann Salinas (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2020. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Jennifer Dawn Ross (“Debtor”) seeks confirmation of the Modified Plan to reflect reduced income caused by the COVID-19 pandemic. Declaration, Dckt. 23. The Modified Plan provides payments of \$2,400 in months 1 through 4, \$2,000 in months 5 through 10, and \$2,400 in months 11 through 36. Modified Plan, Dckt. 24. The plan also proposes making extra \$3,000 payments in months 4, 7, 10, 13, 16, 19, 22, and 25. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on May 26, 2020. Dckt. 26. Trustee opposes confirmation on the following grounds:

1. The debtor is delinquent \$5,010.00 under the proposed plan.
2. The plan will take more than 36 months. To complete within 36 months the debtor needs to cure the delinquency of \$5,010.00 and increase the

proposed monthly plan payment effective June by \$180.00.

DEBTOR'S RESPONSE

Debtor filed a Response on June 3, 2020. Debtor represents that a \$3,000 payment has been made, and another \$2,000 will be paid June 5, 2020. Debtor also proposes using the order confirming plan to increase the monthly payment starting month 11 to \$2,601.00.

DISCUSSION

While the Debtor has proposed an increased payment schedule to make the plan work in 36 months, what is still on the fence is whether the plan is feasible.

Even with the lower payments, Debtor seems to be struggling. A \$3,000 payment was made, and Debtor reports that another \$2,000 payment will be made prior to the hearing date.

At the hearing, the parties reported ~~XXXXXXXXXXXXXXXXXX~~.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jennifer Dawn Ross ("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 is granted, and Debtor's Modified Chapter 13 Plan filed on May 1, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, with appropriate language addressing the increased plan payment, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.~~

Thru #7

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 Chapter13 Trustee, Creditor, and Office of the United States Trustee on May 18, 2020. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Value Collateral and Secured Claim of Schools
Financial Credit Union (“Creditor”) is granted, and Creditor’s secured claim is
determined to have a value of \$23,196.00.**

The Motion filed by Billy Burns and Linda Burns (“Debtor”) to value the secured claim of Schools Financial Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 30. Debtor is the owner of a 2017 Dodge Ram 1500 (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$23,196.00 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).

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on March 25, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$25,426.31. Declaration, Dckt. 30; Proof of Claim, No. 12. 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 \$23,196.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Billy Burns and Linda Burns ("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 Schools Financial Credit Union ("Creditor") secured by an asset described as 2017 Dodge Ram 1500 ("Vehicle") is determined to be a secured claim in the amount of \$23,196.00, 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 \$23,196.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 13, 2020. 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

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The Objection to Confirmation of Plan is overruled.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the plan relies on a motion to value secured claim (Dckt. 28) set for hearing the same day as this Objection.

A review of the docket shows that motion has been granted.

The Debtor having address, through supplemental filing, the Trustee's sole ground for objection, it appears the plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

IT IS ORDERED that the Objection is overruled, and Billy Burns and Linda Burns’ (“Debtor”) Chapter 13 Plan filed on March 27, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

8.

20-20250-C-13
DPC-1

RICHARD/JOHNNA HOWARD
Jeffrey Ogilvie

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK**
3-16-20 [18]

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)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on March 11, 2020. 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection to Confirmation of Plan is xxxxxxxx

Wells Fargo Bank, N.A., dba Wells Fargo Auto (“Creditor”) holding a secured claim opposes confirmation of the Plan based on a dispute over the valuation of Creditor’s secured claim.

The Debtor filed a Response noting that a Motion To Value has been set for hearing May 5, 2020. Dckt. 23.

PRIOR HEARINGS

At the April 7, 2020 hearing the court noted the plan’s feasibility hangs on the outcome of Debtor’s Motion to Value (Dckt. 23) and continued the hearing on the Objection to Confirmation. Civil Minutes, Dckt. 32. At the May 12, 2020, hearing the court continued the hearings on the Motion To Value and this Objection to allow the parties to discuss potential settlement. Dckt. 49.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx.

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 Wells Fargo Bank, N.A., dba Wells Fargo Auto (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is
XXXXXXX

FINAL RULINGS

9. [20-21558-C-13](#) DANIEL CRAIN **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) Mark Briden **PLAN BY DAVID P. CUSICK**
5-20-20 [31]

Final Ruling: No appearance at the June 9, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 20, 2020. By the court’s calculation, 20 days’ notice was provided. 42 days’ notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Objection To Confirmation 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 Objection is sustained, and the proposed Chapter 13 Plan is not confirmed..

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on May 26, 2020. Dckts. 37, 39. Filing a new plan is a de facto withdrawal of the pending plan. 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 Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the June 9, 2020, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 13, 2020. 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

However, 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.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan because the Statement of Financial Affairs indicates \$0 was paid to Debtor’s counsel prior to filing, but at the Meeting of Creditors Debtor admitted \$1,000.00 was paid.

DISCUSSION

On May 22, 2020, Debtor filed an Amended Statement of Financial Affairs to report the fee paid to Debtor’s counsel prior to filing. Dckt. 19.

The Debtor having address, through supplemental filing, the Trustee’s sole ground for objection, it appears the plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Janice Johnson Avery's ("Debtor") Chapter 13 Plan filed on March 25, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 9, 2020, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 28, 2020. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gerald L. White, the Attorney (“Applicant”) for Valoia John Laolagi and Pamela Denise Laolagi, the Chapter 13 debtors (“Client”), makes a Third Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 19, 2018, through March 27, 2020. Exhibit B, Dckt. 71. Applicant requests fees in the amount of \$2,895.00.^{FN.1.}

FN.1. In the motion and the Billing Statement there appears to be a math error. Applicant multiples \$300 x 8.10 to get \$2,430.00, and \$300 x 1.55 to get \$465.00. When adding those two sums together, Applicant concludes fees total \$3,895.00. The court’s math shows the sum is actually \$2,895.00 in fees. Based on the hours worked and billing rate, the court presumes this latter amount is the amount requested.

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign

to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include prosecution of three motions to sell property of the estate, and general case management. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 1.55 hours in this category.

Asset disposition: Applicant spent 8.10 hours in this category. Applicant prosecuted three motions to sell stock on behalf of debtor and the estate.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Gerald White	9.65	\$300.00	\$2,895.00
Total Fees for Period of Application			\$2,895.00

FEES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Third Interim Fees in the amount of \$2,895.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees	\$2,895.00
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pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Gerald L. White (“Applicant”), Attorney for Valoia John Laolagi and Pamela Denise Laolagi, the Chapter 13 debtors (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, Professional employed by Client,

Fees in the amount of \$2,895.00

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

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay 80% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

Final Ruling: No appearance at the June 9, 2020, 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 May 4, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Anthony David Morrison and Lisa-Anne Marshall Morrison ("Debtor") have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Amended Plan 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 the debtor, Anthony David Morrison and Lisa-Anne Marshall Morrison ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on May 4, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 9, 2020, hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 18, 2020. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

However, 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.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the plan relies on the court granting two motions to value secured claims.

A review of the docket shows that both of those motions were granted on June 2, 2020.

The Trustee not having asserted any other grounds for objection, it appears the plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Matthew David King and Michele Elizabeth Prather King’s (“Debtor”) Chapter 13 Plan filed on April 1, 2020, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter

13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 9, 2020, 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 April 30, 2020. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Piotr Gabriel Reysner and Celestial Olivia Reysner (“Debtor”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on May 26, 2020. Dckt. 92. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Piotr Gabriel Reysner and Celestial Olivia Reysner (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence,

arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on April 30, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, with the additional clarifying language proposed by The Chapter 13 Trustee, David Cusick ("Trustee"), transmit the proposed order to Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.