UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, until further order of the Chief Judge of the District Court. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

June 9, 2020 at 3:00 p.m.

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1. **20-21508-E-13** **LORI MICKENS** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **5-13-20 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) 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 ----------.

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 failed to provide pay advices and tax return.

B. Debtor will not be able to complete the Plan in sixty months.

C. Debtor failed to file a spousal waiver.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Pay Stubs & Tax Returns

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Plan Term is More Than 60 Months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 69 months due to claims being filed for higher amounts than the Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

No Spousal Waiver

Trustee objects on the basis of Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140. California Code of Civil Procedure § 703.140(a)(2), provides:

> If the petition is filed individually, and not jointly, for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if **both** of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this

> chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(emphasis added). The court's review of the docket reveals that the spousal wavier has not been filed.

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.

2. **20-21908-E-13 DPC-1** **MILTON PEREZ Mary Ellen Terranella** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-18-20 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor 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. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Debtor has failed to file tax return.

B. Debtor has failed to provide tax return.

C. Debtor will not be able to make monthly plan payments.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Tax Returns

According to the Internal Revenue Service Proof of Claim filed on May 13, 2020, Debtor failed to file the federal income tax return for the 2017 tax year. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Provide Tax Returns

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

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Debtor has a decrease in income and additional expenses due to the COVID-19 pandemic based on Debtor's admissions at the Meeting of Creditors on May 14, 2020:

A. Debtor's other monthly income from rent received from his two boarders has decreased from $450.00 to $225.00 as one of his boarders is now unemployed. *See* Schedule I, Dckt. 1.

B. Debtor's expenses now include expenses of his thirty-three year old cousin, who is listed as a dependent, lives with him, and is now unemployed. *See* Schedule J, Dckt. 1.

C. Debtor's transportation expense of $820.00 has increased as he is now driving into work instead of car pooling. *Id*.

Furthermore, Debtor's Plan and Schedule F fail to provide for the LVNV Funding, LLC claim. See Schedule F, Dckt. 1. Creditor filed a Proof of Claim on April 13, 2020 in the amount of $2,210.73 ($365.00 secured, $1,845.73 unsecured). Proof of Claim 7. 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, David Cusick ("Trustee"), having been presented to the court, and upon review of

the pleadings, evidence, arguments of counsel, and good cause appearing,

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

3. 16-22214-E-13 RAS-1 LYDIA RAMIREZ

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
4-6-20 [62]

REVERSE MORTGAGE FUNDING, LLC VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 6, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxx.

Reverse Mortgage Funding, LLC ("Movant") seeks relief from the automatic stay with respect to Lydia Alvarado Ramirez's ("Debtor") real property commonly known as 2 Dakota Court, Sacramento, California ("Property"). Movant has provided the Declaration of Rigoberto Corona to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has failed to maintain post-petition flood insurance on the subject property. Declaration, Dckt. 64. Creditor was forced to advance payment in the amount of $1,167.48 to cover flood insurance policy dated July 31, 2017 through September 29, 2017 and flood insurance policy dated September 29, 2019 through September 29, 2020. *Id*.

Movant also argues that Debtor lists the value of the Property on Schedule A to be $242,150.00, which the obligation owed to Movant is currently ($337,098.08). Further, that the Property is the Debtor's residence and not an income source to fund a plan.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 20, 2020. Dckt. 68. Trustee asserts that Debtor is current under the confirmed plan and has paid a total of $25,310.00 to date. *Id*. at p.1. Further, Trustee points out that creditor Champion Mortgage Company (Nationstar Mortgage LLC, DBA) filed a Proof of Claim, which has been provided for and paid. *Id*. at pp.1-2. No transfer of claim has been reported on PACER; however, Movant's exhibits include the assignment of the deed of trust from Champion Mortgage Company to Movant. *Id*. at p.1.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $337,098.08 (Declaration, Dckt. 64), while the value of the Property is determined to be $242,150.00, as stated in Schedules B and D filed by Debtor.

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

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

11 U.S.C. § 362(d)(2)

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

Ruling on Relief Requested

The cause grounds are that Movant has been forced to advance to protect its secured claim the modest, though required to be paid, amount for flood insurance in the sum of $1,167.48. It is asserted that Debtor has not cured this amount or that they will maintain the insurance going forward.

As the Trustee has noted, Debtor has made substantial payments under the Plan. Debtor is now starting year five of the plan, which may be blown-up over this modest amount. It appears that the only reason this case exists is to address Movant's claim defaults.

The Modified Plan in this case was confirmed in 2018 without a hearing due to no opposition having been filed. Civil Minutes, Dckt. 56. In looking back at the financial information filed in support of such motion, Debtor's expense information appears questionable. (Debtor was represented at the time by a difference counsel than is representing her now.)

On her statement of expenses, Exhibit B (Dckt. 49 at 4-5), Debtor lists having a family unit of two persons - the Debtor and a 54 year old child who is a dependent. There is no income contribution (whether from wages, Social Security, or other benefits) from the 54 year old child. The monthly expenses of ($1,433) appear to be significantly understated for a family unit of two persons.

This Motion may be bringing to light a bigger issue concerning this Debtor, who in light of having a now 57 year old child, would appear to be a "senior citizen."

For Movant, this modest arrearage is now forcing it to incur a substantial loss on reverse mortgage. Having a claim of $337,098.08, but with the property worth only $242,150.00, the downside appears to be:

FMV	$242,150.00
Foreclosure costs and expenses, property taxes, insurance and security for the period having to hold the property for marketing and sale	($20,000.00)
Costs of Sale (without taking into account repairs)	($19,372.00)
Projected Recovery from Collateral	$202,778.00

Thus, it appears that Movant will end up suffering a 40% loss if it proceeds against the collateral.

It appears that there are better alternatives for everyone concerning this property and the obligation.

At the May 5, 2020 hearing, the attorneys reported that an adequate protection stipulation was

being prepared, and a continuance is requested to finalize the stipulation and lodge a proposed order with the court.

June 9, 2020 Hearing

A review of the Docket (as of May 6, 2020) reveals that no stipulation has been filed and no other responses or status updates have been filed by either Party. As the continued hearing a month later on June 9, 2020, **xxxxxxxxxx**

4. **20-21932-E-13** **LERIDA/EDWIN DIAZ** **MOTION TO VALUE COLLATERAL OF**
PGM-1 **Peter Macaluso** **ALLY BANK**
4 thru 5 **5-11-20 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 11, 2020. By the court's calculation, 29 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 Ally Bank ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $16,000.00.

The Motion filed by Lerida Garcia Diaz and Edwin Obinque Diaz ("Debtor") to value the secured claim of Ally Bank ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 19. Debtor is the owner of a 2017 Subaru WRX ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $16,000.00 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 January 9, 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 $28,096.71. Proof of Claim, No. 7. 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 $16,000.00, 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 Ally Bank ("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 Ally Bank ("Creditor") secured by an asset described as a 2017 Subaru WRX ("Vehicle") is determined to be a secured claim in the amount of $16,000.00, 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 $16,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

5. 20-21932-E-13 DPC-1 LERIDA/EDWIN DIAZ

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-13-20 [22]

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

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

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

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

The Objection to Confirmation of Plan is overruled.

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

A. Debtor's Plan relies on a pending Motion to Value a Secured Claim.

DISCUSSION

Trustee's objections are well-taken.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Ally Bank. Debtor filed a Motion to Value the Secured Claim of Ally Bank on May 11, 2020, which is pending on the court with a hearing set for June 9,2020. Dckt. 17. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The Motion to Value the Secured Claim of Ally Bank having been granted and valued as stated in the Plan, Trustee's objection is resolved.

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 Lerida Garcia Diaz and Edwin Obinque Diaz ("Debtor") Chapter 13 Plan filed on April 2, 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.

6. 19-27460-E-13 SDH-1 ELYSHA LOPEZ

CONTINUED MOTION TO CONFIRM PLAN
3-25-20 [21]

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

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 March 25, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxx.

The debtor, Elysha Noelle Lopez ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $2,980.00 for months 1-2, then $3,302.00 through month 60 of the plan, and 0% dividend to unsecured claims totaling $96,000.00. Amended Plan, Dckt. 23. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

In support of the Plan, Debtor includes the Declaration of Casey Rogers, Debtor's fiancé, who declares that he will contribute at least $1,050.00 a month to help with the plan. Dckt. 25. Debtor also includes the Declaration of Glenda Rogers, the fiance's mother, who declares that she will contribute $500.00 to help with the plan. Dckt. 24.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on April 28, 2020. Dckt. 31. Trustee requests the court take into consideration that Debtor has not yet paid the $3,302.00 that was due on April 25, 2020. *Id*.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is $3,302.00 delinquent in plan payments, which represents one month of the $3,302.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

On May 5, 2020, Debtor filed a Response. Dckt. 34. Debtor informed counsel that she could only make a $1,200.00 payment. *Id*. at ¶2. Due to the Covid-19 crisis, Debtor has encountered financial problems: she was furloughed and out of work for two weeks and is waiting for the stimulus check and unemployment so that she can makeup the amount she is missing. *Id.* Debtor requests the court either confirm the plan so that Trustee can disburse what has already been paid into the plan or for the court to continue the hearing for 60 days to give Debtor time to catch up.

At the May 17, 2020 hearing, counsel for the Debtor reported that cashier's checks are ready to be delivered to the Trustee.

The Trustee agreed to a continuance.

Notice of Mortgage Forbearance

On May 27, 2020, M&T Bank ("Creditor"), Debtor's creditor holding the deed of trust secured by Debtor's residence, filed a notice that Creditor has granted a forbearance on Debtor's "monthly mortgage payment" for the period of May 1, 2020 to October 1, 2020. Forbearance Notice, p. 1:23-27; Filed May 27, 2020.

The Forbearance Notice that all of the monthly payments for the time period forbearance has been granted. The monthly mortgage payment for the period, as provided in the Chapter 11 Plan would be the post-petition monthly payment and the arrearage cure payment required in Class 1 of the Plan to be made monthly in this case. Plan, ¶ 3.07(c); Dckt. 23.

June 9, 2020 Hearing

A review of the docket on May 6, 2020, revealed that nothing further had been filed by the Parties. At the June 9, 2020 hearing, **xxxxxxxxxx**

7. 20-21910-E-13 GLF-1 7 thru 8 **TIMOTHY TROCKE** **OBJECTION TO CONFIRMATION OF PLAN BY ROGER ANDERSON 5-5-20 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 5, 2020. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection 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 20, 2020. Dckts. 28,30. The hearing on the Amended Plan is set for July 14, 2020.

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.

8. 20-21910-E-13 FF-1 TIMOTHY TROCKE

OBJECTION TO CLAIM OF SPEEDYRAPID CASH, CLAIM NUMBER 1
4-23-20 [18]

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on April 23, 2020. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 1 of SpeedyRapid Cash is overruled.

Timothy Trocke, the Debtor, ("Objector") requests that the court disallow the claim of SpeedyRapid Cash ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $309.12. Objector asserts that this particular debt was discharged in Debtor's previous bankruptcy case, Case No. 2019-27969.

In stating this Objection, while asserting that the claim was discharged in the prior case, Debtor fails to allege when the debt was incurred, that the obligation existed prior to the prior bankruptcy case, or that notice of the prior bankruptcy case was given to Creditor. Dckt. 18.

On its face, other than stating a legal conclusion, "the debt was previously discharged," Debtor offers the court little as grounds for sustaining the Objection.

As evidence in support of the Objection, Debtor provides his personal knowledge testimony (Fed. R. Evid. 601, 602) in a declaration under penalty of perjury. Dckt. 20. The Debtor's personal knowledge testimony under penalty of perjury consists of:

A. Debtor testifying that he has reviewed Creditor's Proof of Claim and he tells the court what the Proof of Claim says. Declaration ¶ 1, *Id.*

B. Debtor then makes a legal allegation, as would be done in an objection filed by counsel for Debtor, that he objects to the Proof of Claim. Declaration ¶ 2, *Id.*

C. Debtor then offers his legal conclusion that the "claim" (not the Proof of Claim) and unidentified attachments do not "sufficiently authenticate" (as part of Debtor's legal conclusion) and substantiate (as further part of Debtor's legal conclusion) the asserted balance and class of the claim. Declaration ¶ 3, *Id.*

D. Debtor concludes his personal knowledge of facts with a further prayer for relief, stating that he objects to "Debt" based on his legal conclusion that the Debt was discharged in his prior Chapter 7 case. *Id.*

Debtor offers no personal knowledge testimony, but offers several legal conclusions based on either his personal legal education or because they were written in the declaration provided to him by his counsel.

Debtor provides the court with one exhibit, that being the Proof of Claim filed by Creditor. No factual dispute is made to the Proof of Claim by the Debtor, no specific objection to any part thereof is asserted in the Objection, and no legal analysis is provided by Debtor's counsel as to why any part of the presumptively allowed claim should be disallowed.

DISCUSSION

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

Unfortunately, Debtor has not provided the court with any factual dispute or legal basis for disallowing this claim. Debtor offers no testimony that the claim pre-dated the prior bankruptcy case. Debtor offers the court list legally educated conclusions and prayer for relief, but no actual personal

knowledge testimony in his Declaration. The Objection offers the court no grounds for overruling, other than stating the conclusion that the debt was discharged in a prior case. Debtor offers no evidence for such general allegation.

The Objection is overruled.

It may be that given this is a $309.12 claim, it was not worth the time of Debtor and Debtor's counsel to properly prepare and support an objection to claim. Rather, merely filing a general set of legal conclusions and then having the Debtor repeat those under penalty of perjury was the assignment by Debtor to the Court to have the Court do the legal work in properly presenting an objection. The court declines the opportunity to do such work. [FN. 1]

FN. 1. This appears unlikely in that there is a long, detailed contract attached to Proof of Claim No. 1 as being documentation supporting the claim. It is the court's experience that such contracts routinely contain an attorney's fees provision, which provision is made applicable to both parties to the contract as provided in California Civil Code § 1717. Thus, whatever the reasonable attorney's fees and costs were that went with an objection to a claim filed by a creditor, Debtor and Debtor's counsel would have the fees paid by that creditor. So, the court will not presume under such reciprocal attorney's fees rights that the Debtor was assigning the legal work to the Court.

Though not presuming the above, it does concern the court that the Debtor has testified under penalty of perjury as to "his" legal conclusions and restating "his" prayer for relief from the Objection. It appears that Debtor's ability to provide personal knowledge testimony is questionable and the court may not be able to find it credible in connection with other proceedings in this case.

Based on the evidence filed in support of the Motion and the legal basis asserted, the Objection is 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 Claim of SpeedyRapid Cash ("Creditor"), filed in this case by Timothy Trocke, the Debtor ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 1 of Creditor is overruled.

9.	**20-21560-E-13 DPC-1**	**JAMES SPIVEY AND MARLAINA SCHROEDER-SPIVEY**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-13-20 [14]**

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

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

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

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

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. Debtors failed to provide certain business documents.

B. Debtors owe taxes that are not accounted for in the Plan.

C. Debtors have failed to attach to Schedule I their gross receipts, along with ordinary and necessary expenses.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Documents Related to Business

Debtors have failed to timely provide Trustee with business documents including:

A. Six (6) months of profit and loss statements, and
B. Six (6) months of bank account statements

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtors are required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtors submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Cannot Comply with the Plan

Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtors explained at the Meeting of Creditors that they owe approximately $3,000.00 in income taxes. Neither the Plan nor Debtor's Schedule J mentions this expense. Without an accurate picture of Debtors' financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File Business Documents Required by Schedule I

Debtors have failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtors to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Debtors have not provided the required attachment.

On March 15, 2020, Debtors filed as a separate document a Business and Income Statement disclosing that Debtor has $7,625.00 in monthly gross income, for which there are no expenses, so that the Debtors' monthly additional net monthly income from the business is $7,625.00. Dckt. 8.

On the Bankruptcy Petition, Debtors state under penalty of perjury that they are not a sole proprietor of any full or part-time business. Petition Question 12, Dckt 1 at 4.

On Schedule A/B Debtors state having a 95% ownership interest in Mirror Image Dance, LLC. Statement of Financial Affairs Question 19, *Id.* at 14.

Though having $91,500 in annual net (not gross) monthly income from a business (presumably the LLC), on Schedule J Debtor has no expense for any federal income taxes on the $91,500, no state income taxes on the $91,500, and no self-employment taxes on the $91,500. Dckt. 1 at 31-32. Debtors state under penalty of perjury that Debtors are entitled to $91,500 of tax-free income from the operation of a business.

At the hearing, counsel for the Debtors explained this almost $100,000 of tax free income, reporting **xxxxxxxxxx**

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.

10. 20-21666-E-13 DPC-1 — KHALED ALZIQ AND NIDA ALNAJJAR — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-13-20 [19]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtors' 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 ----------.

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. Debtors failed to list dependents on Schedule J.

B. Debtors failed to account for a secured debt for their vehicle in the Plan.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment

Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, at the Meeting of Creditors, Debtors admitted to having two dependents which are not shown on Schedule J. The court is unsure whether the expenses listed reflect expenses that include

these two dependents.

Additionally, Ford Motor Credit Company LLC filed a Proof of Claim for $11,249.96. Proof of Claim 4-1. While Debtors indicate a car payment on their Schedule J, and the vehicle is listed on Schedule D, the Plan fails to provide for this creditor. Trustee notes that the last payment on this loan is scheduled for April 4, 2022, which would make available $450 in additional funds for unsecured claims in the 26th month of the plan.

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, 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.

11. 20-22570-E-13 MOH-1 DONALD/KATHLEEN LENIHAN MOTION TO VALUE COLLATERAL OF BOSCO CREDIT, LLC AND/OR FRANKLIN CREDIT
5-26-20 [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, parties requesting special notice, and Office of the United States Trustee on May 26, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claims of Bosco Credit LLC and/or Franklin Credit Management Corp. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $172,000.00.

The Motion to Value filed by Donald Wayne Lenihan and Kathleen Yvonne Lenihan ("Debtors") to value the secured claim of Bosco Credit LLC and/or Franklin Credit Management Corp. ("Creditor") is accompanied by Debtors' declaration. Declaration, Dckt. 16. Debtor is the owner of the subject real property commonly known as 1018 4th Avenue, Corning, California ("Property"). Debtor seeks to value the Property at a fair market value of $172,000.00 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).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific

creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. A Proof of Claim has been filed by Specialized Loan Servicing, LLC on June 1, 2020 for Morgan Stanley Mortgage Loan Trust 2005-15XS, for the claim secured by the first deed of trust. Proof of Claim No. 2. However, no Proof of Claim has been filed by a creditor that appears to be for the claim secured by Creditor for the claim on the second deed of trust.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $173,596.66. Proof of Claim 2. Creditor's second deed of trust secures a claim with a balance of approximately $40,255.31. Schedule D, Dckt. 24. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's claim with a second in priority deed of trust is determined to be in the amount of $0.00, the senior liens exceeding the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). 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 Donald Wayne Lenihan and Kathleen Yvonne Lenihan ("Debtors") having been presented

to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Bosco Credit LLC and/or Franklin Credit Management Corp. ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 1018 4th Avenue, Corning, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $172,000.00 and is encumbered by a senior lien securing a claim in the amount of $173,596.66, which exceeds the value of the Property that is subject to Creditor's lien.

12. 18-22066-E-13 GW-1 — CHRISTOPHER/STEPHANIE BAFFONI — MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTORS ATTORNEY(S) 4-27-20 [22]

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

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

Sufficient Notice 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 27, 2020. By the court's calculation, 43 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.

Gerald L. White, the Attorney ("Applicant") for Christopher Baffoni and Stephanie Baffoni, the Chapter 13 Debtors ("Client"), makes a first Interim Request for the Allowance of Fees and Expenses in this case.

There is a retainer agreement between Client and Applicant dated February 5, 2018, which sets an hourly fee rate of $300.00. Exhibit A, Dckt. 26. The court approved the method of compensation pursuant to the order confirming the Plan on June 18, 2018. Dckt. 12.

Fees are requested for the period April 9, 2018, through March 27, 2020. Applicant requests fees in the amount of $6,255.00 and costs in the amount of $310.00.

TRUSTEE'S RESPONSE

On May 26, 2020, Trustee has no opposition, noting that Debtor is current in plan payments, and that the time spent appears reasonable and necessary, and the hourly rate is reasonable. Dckt. 28.

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 preparing the petition and required documents and other general case administration. 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 23.85 hours in this category. Applicant prepared the petition, Schedules, and Plan; reviewed claims filed; prepared order for confirmation of Plan; and conducted general case administration.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Gerald L. White	23.85	$300.00	$7,155.00
	0	$0.00	$0.00
Total Fees for Period of Application			$7,155.00

After a discount in the amount of $900.00, the total fees for application are $6,255.00

Costs & Expenses

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

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Filing Fee	$310.00	$310.00
		$0.00
Total Costs Requested in Application		$310.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of $6,255.00 for its fees incurred for Client. First Interim Fees in the amount of $6,255.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330; and are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First Interim Costs in the amount of $310.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Applicant is allowed, and the court approves payment of fees and costs in the amount of $5,627.70 from the funds paid by Debtor as a retainer prior to filing and the funds held in trust as distributed through the Plan, and the Chapter 13 Trustee is authorized to pay $937.30 to Applicant

through the Plan as an administrative expense.

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 Christopher Baffoni and Stephanie Baffoni, Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gerald L. White is allowed the following fees and expenses as a professional employed by the Chapter 13 Debtor:
>
> Gerald L. White, Professional employed by Chapter 13 Debtor
>
> Fees in the amount of $6,255.00
> Expenses in the amount of $310.00,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that Gerald L. White, Professional employed by Chapter 13 Debtor, is authorized to apply the funds held in trust for Debtor:
>
> Fees and expenses in the amount of $5,627.70.
>
> **IT IS FURTHER ORDERED** that David Cusick, the Chapter 13 Trustee, is authorized to pay Applicant through the Plan as an administrative expense:
>
> Fees in the amount of $937.30.

13. 19-25183-E-13 LON/REBECCA RENFRO MOTION TO MODIFY PLAN
TBG-1 4-28-20 [17]

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

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 27, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

The debtors, Lon Michael Renfro and Rebecca Lynn Renfro ("Debtors") seek confirmation of the Modified Plan on the following basis:

1. Lon Michael Renfro has had his work hours reduced and has thus far been unsuccessful in obtaining unemployment benefits due to the overburdening of the unemployment application system.

2. Rebecca Lynn Renfro has had her work bonuses suspended and her compensation reduced.

3. Both Debtors claim the income reduction is due to the effects of COVID-19.

Declaration, Dckt. 19.

The Modified Plan provides monthly payments of $2,450.00 for the first eight (8) months, monthly payments of $817.00 for three (3) months, monthly payments of $2,450.00 for 49 months, and a 100 percent dividend to unsecured claims totaling $94,260.00. Modified Plan, Dckt. 21. 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. 25. [FN.1.] Trustee opposes confirmation of the Plan on the basis that:

A. The plan is not feasible because it will be completed in 63 months unless the Debtors extend the commitment time through the CARES Act.

B. Debtors are delinquent on payments.

Additionally, Trustee notes that Debtors have not filed Supplemental Schedules I and J, but instead have paystubs for Lon Renfro and employer letters supporting the suspension of bonus and reduction in pay for Rebecca Renfro, as Exhibits A and B in support of the Plan.

FN.1. The court notes that Trustee filed two Oppositions, one dated May 26, 2020. A careful review of both documents shows that they are the same. Thus, the court takes the second filed Opposition, Dckt. 28, as a clerical error.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtors are in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 63 months due to there being an insufficient balance of $110,250.90 after Trustee's fees are assessed to pay creditors when the balance needs to be $116,710.21. Debtors would need to increase the monthly payment by $141.00 to complete the plan on time or extend the life of the plan to 63 months using the CARES Act. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtors filed a Reply on June 1, 2020, consenting to the order confirming the Plan changing the plan terms in section 2.03 to 63 months pursuant to 11 U.S.C. § 1329(d), which allows for debtors to exceed 60 months when experiencing hardship due to COVID-19 (as allowed through the CARES Act). Dckt. 31.

Under the Act, as it pertains to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic. The new language in this section enacted by Congress states:

> (d)
> (1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—
>
> > (A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019

(COVID-19) pandemic; and

(B) the modification is approved after notice and a hearing.

(2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

(3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).

Restating the above statutory provisions relied upon by the Debtor into a "punch-list" for application in a bankruptcy case:

- If for a pre-March 27, 2020 confirmed Chapter 13 plan a debtor is:
  - experiencing or has experienced a "material financial hardship"
  - that is directly or indirectly due to the COVID-19 pandemic
- then the Chapter 13 plan may be modified to provide for making payments over a seven year period (two years longer than the normal five year maximum imposed by Congress under 11 U.S.C. § 1322(d)).
- Such modification to a longer period than five years continues to be subject to the contents of a plan requirements of 11 U.S.C. § 1322(a)(b), and (c), as well as the plan confirmation requirements of 11 U.S.C. § 1325(a).

Here, Debtors argue that they are experiencing hardship due "directly or indirectly" to the COVID-9 health crisis. The Motion states with particularity the grounds required for modification of a Chapter 13 Plan, namely that Debtor Lon Renfro has lost his job due to COVID-19 and Debtor Rebecca Renfro is experiencing a reduction in compensation and the suspension of bonuses.

The Trustee noting that Debtors could extend the plan under the CARES Act, and the court finding that Debtors have shown direct impact related to the COVID-19 crisis, the court finds that the plan may exceed 60 months pursuant to the CARES Act.

Delinquency

The Chapter 13 Trustee asserts that Debtors are $2,450.00 delinquent in plan payments, which represents one month of the $2,450.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, **xxxxxxxx**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Lon Michael Renfro and Rebecca Lynn Renfro ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is **xxxxxx.**

14. 19-27487-E-13 MAC-2 — RICHARD/STEPHANIE ACOSTA — MOTION TO CONFIRM PLAN 4-27-20 [41]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 27, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtors, Richard A Acosta and Stephanie Marie Acosta ("Debtors"), seeks confirmation of the Amended Plan. The Amended Plan provides for:

1. A monthly payment of $1,502.58 for the first month,
2. Followed by a payment of $179.09,
3. Then a monthly payment of $872.00 for 1 month, and
4. Monthly payments of $392.00 for 57 months,
5. With a 0 percent dividend to unsecured claims totaling $58,020.00.

Amended Plan, Dckt. 44. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on May 26, 2020. Dckt. 47. Trustee opposes confirmation of the Plan on the basis that:

A. Debtors are delinquent on the payment due May 25, 2020.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtors are $394.51 delinquent in plan payments, which represents one month of the $394.51 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 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 the debtors, Richard A Acosta and Stephanie Marie Acosta ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

15. 20-20690-E-13 SS-2 JUSTIN/ANGELA ROBINSON

CONTINUED MOTION TO CONFIRM PLAN
4-2-20 [30]

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 April 2, 2020. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxx.

The debtors, Justin Lee Robinson and Angela Alyssa Robinson ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of $0.00 for months 1 and 2, followed by monthly plan payments of $4,514.00 for months 3 through 60, and a 0% dividend to unsecured claims totaling $169,400.00. Amended Plan, Dckt. 31. 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 April 28, 2020. Dckt. 43. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has requested a forbearance on the mortgage which was approved by the Creditor but Trustee is uncertain as to property taxes, insurance, and manner of curing default resulting from the forbearance.

DISCUSSION

Forbearance Issue

Trustee asserts that Debtor's current plan calls for Trustee to make mortgage payments in the amount of $2,984.24 to Creditor Nationwide/Mr. Cooper, subject to change by Creditor's proof of claim or a notice of mortgage payment change. Opposition, at ¶ 1. Creditor's Proof of Claim #6 shows an ongoing payment of $3,052.37, which includes escrow fees and insurance.

On April 21, Creditor filed a Notice of Debtor's Request for Forbearance due to the Covid-19 Pandemic. Dckt. 40.

Trustee seeks clarification as to what this Notice means. Trustee notes that the notice appears to indicate that Creditor is willing to forbear payment for six months, but it does not address whether Creditor is extending the repayment term or requiring a balloon payment at the end of the loan. Opposition, at ¶ 1. As it pertains to the Plan, Trustee is uncertain as to whether he is allowed to pay less than the Plan provides for. *Id*. at ¶ A. Further, the plan does not project curing for the forbearance payment period. *Id*. at ¶ B. But Trustee believes that the Plan will complete in 60 months provided that curing the forbearance payments occurs after the term of the Plan. *Id*. at ¶ C.

The Trustee is identifying cutting edge issues concerning a forbearance granted as required by the CARES Act or one voluntarily granted by a creditor. Congress provides for such forbearance as a "pause button," giving time for the creditor and borrower to figure out how to deal with the unpaid amounts on the obligation.

This will lead to confirmed plans, during which the payment otherwise provided for a creditor will be the subject of a forbearance, and during the forbearance period not paid by the trustee and the plan payment amount reduced.

Here, the forbearance has been granted for a claim with a post-petition contract installment payment of ($2,984.24) and a monthly payment of ($797.82) additional amount to cure the arrearage from pre-petition defaults. Plan, Class 1; Dckt. 31.

The Notice of Forbearance provided by Creditor identifies the forbearance being for the following payments due from Debtor:

> The Debtors recently contacted Creditor requesting a forbearance period of 6 months and have elected to not tender mortgage payments to Creditor that would come due on the mortgage starting 04/01/2020 through 09/01/2020.

Notice, p. 1:25-27; Dckt. 40. While not clearly stated, the above indicates that there is a forbearance for any payments, whether the currently monthly installment or the plan required arrearage payment (the plan modifying the contractual obligation that is binding on the parties [FN. 1] for the period of April 2020 through September 2020.

FN. 1. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1172 (9th Cir. 2004); *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995).

Thus, the question for the court is whether the forbearance is for the ($2,984.24) monthly payment installment only, or if it includes the ($797.82) additional arrearage cure under the agreement as modified by the Chapter 13 Plan (rather than Debtor continuing to whittle down the arrearage interest free).

At the hearing, the Parties requested continuance to allow them to clarify the forbearance granted Debtor.

June 9, 2020 Continued Hearing

A review of the Docket on June 6, 2020, reflected that no further documents were filed concerning this Plan.

At the hearing **xxxxxxxxxx**

16. 16-24697-E-13 SLH-1 ANDREA PATTON MOTION TO SELL 5-4-20 [43]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 4, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Andrea Jenifer Patton, Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 7243 Starflower Drive, Citrus Heights, California ("Property").

The proposed purchaser of the Property is Jessica Edwardson, and the terms of the sale are:

A. Sale Price is $370,000.

B. Escrow is to close within 21 days after the court approves the sale.

C. The Property is to be sold "as-is."

D. Buyer shall make an initial $5,000.00 deposit.

E. Seller to credit Buyer of $1,400.00 to cover non-recurring and recurring closing costs.

F. Seller to pay natural hazard disclosure report and County transfer fee. Buyer to pay the city transfer tax if applicable.

G. Buyer and Seller to pay 50/50 for the escrow fee and owner's title insurance.

H. Buyer to pay for the cots, not to exceed $450.00 of the standard one year home warranty plan.

I. The following items are included in the sale: A/C in garage, TV, and lawn equipment at no value with no warranties.

Trustee's Non-Opposition

On May 26, 2020, Trustee filed a non-opposition to Debtor's sale, but requests the court to allow the payments made under the plan to include the $70,500.00 called for by the Debtor in this motion so as to allow the Trustee to disburse the funds as payments under the plan so the Debtor can end this plan early. Dckt. 48.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor anticipates the proceeds of the sale will allow her to pay 100% of unsecured claims and to complete the plan early using the excess proceeds from the sale.

Movant has estimated that a 5 percent broker's commission from the sale of the Property will equal approximately $18,500. The commission will be divided equally between Chapter 13 Debtor's agent Cara A Richey receiving 2.5 percent and Buyer's agent Catherine Smith receiving 2.5 percent. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5 percent commission.

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

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

The Motion to Sell Property filed by Andrea Jenifer Patton, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Andrea Jenifer Patton, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jessica Edwardson or nominee ("Buyer"), the Property commonly known as 7243 Starflower Drive, Citrus Heights, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $370,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 46, and as further provided in this Order.

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

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

D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale. The 5 percent commission shall be divided equally and paid in the amount of 2.5 percent to Chapter 13 Debtor's agent, Cara A Richey and 2.5 percent to Buyer's agent, Catherine Smith.

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

17. **17-25309-E-13 MRL-3**
17 thru 18

ANTHONY/LAURA GONZALEZ

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, SUBSTITUTE PARTY, AS TO DEBTOR
5-5-20 [100]

JOINT DEBTOR DISMISSED:
5/8/20

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 5, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Waive Section 1328 Certificate Requirement and Substitute Party has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Waive Section 1328 Certificate Requirement and Substitute Party is granted to substitute in the successor to Debtor, and denied with respect to the requested waiver of the 1328 Certificate Requirement.

Laura Gonzalez ("Movant/Debtor's Spouse") has filed a Notice of Death of her husband, Anthony Gonzalez ("Debtor"). Dckt. 89. In this instant motion, Debtor's Spouse makes two requests: She requests to substitute herself as the Representative for the deceased debtor; and further that the court waive the certification requirements of debtor for entry of discharge in a chapter 13 case because debtor is unable to complete the certification requirements normally required in a chapter 13 case.

Debtor's Spouse has also filed a Motion to Dismiss Anthony Gonzalez's Chapter 13 Case set to be heard in concurrence with the instant motion. Dckt. 103.

On May 26, 2020, the Chapter 13 Trustee filed a Response and requests the court take into consideration the following (Dckt. 112):

1. Movant fails to discuss or disclose any conflicts she may have in representing Debtor's interests, where she, as joint debtor, has dismissed this case as to herself, Dckt. 109.

2. Movant seeks to dismiss the case, had a pending sale (Dckt. 95), and on the accompanying Motion to Dismiss (Dckt. 103) states that she "intends to resolve any remaining debts," but fails to disclose how.

3. Further, Movant does not reveal whether the total amount paid to creditors will remain the same if the bankruptcy is dismissed.

DISCUSSION

Debtor, as the surviving spouse of the deceased co-debtor is an appropriate person to serve as the personal representative for the deceased debtor in this case.

With respect to the requested waiver of the 11 U.S.C. § 1328 certifications required for the deceased debtor, Laura Gonzalez, as the personal representative of the deceased debtor shall provide such certification.

The Motion is granted in part, with the request for the waiver of the 11 U.S.C. § 1328 certifications for the co-debtor denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Waive Section 1328 Certificate Requirement and Substitute Party filed by Laura Gonzalez, the surviving co-debtor in this case, 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 Laura Gonzalez, the surviving co-debtor in this case, is appointed as the personal representative for the late Anthony Gonzalez, her deceased co-debtor in this case, pursuant to Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 7025 and 9014 for all purposes.
>
> **IT IS FURTHER ORDERED** that the request for the waiver of the 11 U.S.C. § 1328 certifications for deceased co-debtor Anthony Gonzalez is denied without prejudice, with such certifications to be provided by the personal representative appointed for him.

18. **17-25309-E-13 MRL-4** **ANTHONY/LAURA GONZALEZ** **MOTION TO DISMISS ANTHONY GONZALEZ**
5-5-20 [103]

JOINT DEBTOR DISMISSED:
5/8/20

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

Local Rule 9014-1(f)(1) Motion—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, parties requesting special notice, creditors, and Office of the United States Trustee on May 5, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss the Chapter 13 Case is xxxxx.

This Motion to Dismiss the Chapter 13 bankruptcy case of Anthony and Laura Gonzalez ("Debtor") has been filed by Laura Gonzalez ("Movant"). Mrs. Gonzalez, as the spouse of Debtor at the time of death, has a filed a Motion to Substitute as the Representative for Debtor's bankruptcy case. Dckt. 100. As to the administration of her deceased husband's bankruptcy case, Movant states the following:

1. Movant "intends to resolve any remains[sic] debts belonging to the Debtor after dismissal."

2. The following are unsecured creditors scheduled to receive no less than a 6% dividend throughout he remaining years of Debtor's chapter 13 case:

   a. Weinstein & Riley PS- approximately $18,000 claim

   b. First National Bank of Omaha- approximately $8,000 claim

   c. Schools Federal Credit Union- approximately $3,000 claim

   d. Quantum3 Group LLC- approximately $2,100 claim

e. Portfolio Recovery Associates LLC- approximately $700 claim

f. American Infosource LP- approximately $300 claim

g. Becket & Lee LLP- approximately $500 claim

The Motion provides no grounds for why the case should be dismissed.

Debtor's Spouse Declaration

Movant has provided the Declaration of Laura Gonzalez in support of the Motion. Dckt. 105. Mrs. Gonzalez testifies that:

1. She was Debtor's wife at time of death. Debtor died on March 24, 2020.

2. Mrs. Gonzalez is familiar with and knowledgeable about Debtor's financial affairs.

3. She would like to be substituted as the representative for Debtor's bankruptcy estate.

4. Mrs. Gonzalez is prepared to testify about Debtor's financial affairs.

5. She would like to dismiss Debtor's bankruptcy case.

Id.

TRUSTEE'S RESPONSE

Trustee filed a Response on May 26, 2020. Dckt. 115. Trustee first notes that unless Movant is substituted in for the Debtor who has the right to dismiss a case, Movant's motion fails to state grounds why the case should be dismissed. Movant also fails to state that Debtor is delinquent in plan payments for the amount of $7,365.73, with no means to continue the case absent the sale of property. Additionally, Movant fails to explain whether unsecured claims will receive the same or more than under the confirmed Plan, or if different unsecured claims will be paid than if the case continued.

Debtor has paid a total of $70,013.11 to date under the confirmed plan with the last payment having been received on February 24, 2020. Trustee has paid $41,507.39 in ongoing mortgage payments and $2,121.44 in mortgage arrears. Debtor valued the property at $280,000.00 with a loan in the amount of $183,135.96 according to Creditor Cenlar FSB (Proof of Claim 16). Debtor had non-exempt equity in the amount of $3,530.00 upon filing. Trustee further notes that it appears that there was a pending sale of the property for $330,000. Thus equity is higher than scheduled.

Lastly, Trustee argues that converting the case to a Chapter 7 may be in the best interest of the creditors due to non-exempt equity in the home. Noting that creditors with unsecured claims have not received any dividend to date and the confirmed plan proposes no less than 6% to be paid to the filed unsecured claims, at this time totaling $34,334.93.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

Laura Gonzalez, the representative of the deceased Debtor, has explained the significant events that have led her to request dismissal of the case. Trustee asserts that creditors would benefit by converting this chapter 13 into a Chapter 7 case. Debtor is represented by counsel.

When Debtor filed this bankruptcy case in August 2017, Debtor and his then co-debtor spouse elected to claim as exempt only $85,978 of their equity in their residence, notwithstanding that their homestead exemption was allowable up to $100,000. Schedule C, Dckt. 1 at 18. It appears that Debtor "did the math" and subtracted the amount of the claim secured by the residence from what Debtor thought the value was as of the commencement of this case, and then put in a lower number on Schedule C.

In the prior hearing on the Motion by Laura Gonzalez, the then co-debtor, to dismiss her from this case, the court concurred with the Chapter 13 Trustee that dismissal, based on the facts as represented by Debtor, did not appear to be in the Debtor's best financial interest.

> Serious issues exist as to whether and for what good faith reasons debtor Laura Gonzalez would be better off with dismissal from this case, rather than obtaining an order authorizing the sale of the property she desires to sell, claiming her exemptions, and modifying the plan to shorten the term in light of the tragic events and her now reduced ability to fund a plan. It was reported that Debtor has been marketing the property for sale since February 2020, with no order authorizing the employment of a real estate broker having been obtained by either of the two debtors.

Civil Minutes, Dckt. 108 at 3-4.

As the Trustee addresses in his Opposition (Dckt. 115), if the financial information being provided by Debtor's representative is accurate, then it is to her significant financial disadvantage to dismiss this case- if the dismissal is being requested in good faith.

On the other hand, the late Debtor and former co-debtor Laura Gonzalez did significantly perform the plan in this case, making significant plan payments. They appear to have conducted themselves consistent with a good faith prosecution of this case.

The main focus of the Trustee's Opposition is based on Laura Gonzalez appearing to have a sale of the residence property for $330,000, arguing that if converted to Chapter 7, a bankruptcy trustee could sell the property, pay the exemption, and make a distribution to creditors. A simple calculation of the same, projected proceeds, and possible distribution, would be:

Gross Sales Price	$330,000.00
Costs of Sale	($26,400.00)
CH 7 Administrative Expenses	($2,500.00)
CH 7 Trustee Fees	($4,150.00)
Homestead Exemption	($100,000.00)
Secured Claim 1st DOT	($180,000.00)
Secured Claim 2nd DOT	($10,000.00)
	==========
Possible Proceeds for Distribution to Creditors	$6,950.00

While projecting some distribution to creditors with unsecured claims, it appears that Debtor's Representative's desire to get both herself and her late husband out of this bankruptcy case may well work to the financial advantage of creditors. While having a married homestead exemption here in bankruptcy, such may not be the case when Debtor's and Ms. Gonzalez's creditors chase them outside of bankruptcy.

At the hearing, Counsel **xxxxxxx**

The Debtor, now acting through his successor representative, has the qualified right to dismiss this Chapter 13 case and is not forced to continue in this restructure, so long as the request to dismiss is in good faith. *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007) (conversion from Chapter 7), *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008) (dismissal of Chapter 13 case).

While it would appear unwise, the dismissal of the bankruptcy case and fleeing protection

hereunder does not appear to be in bad faith.

The Motion is granted and the case is dismissed.

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 Dismiss the Chapter 13 case filed by Laura Gonzalez ("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 Dismiss is granted and this bankruptcy case for the sole remaining debtor, Anthony Gonzalez, is dismissed.

19. 19-25536-E-13 PGM-3 — DEBORAH WATSON — Peter Macaluso — MOTION TO VALUE SECURED CLAIM OF TOWD POINT MORTGAGE TRUST 2018-6 — 1-14-20 [41]

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, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Towd Mortgage Trust ("Creditor") is xxxxx.

Continuance of June 2, 2020 Hearing

At the hearing, the parties agreed to continue the hearing to June 9, 2020 at 3:00 p.m. so as to set a date for an evidentiary hearing.

Continuance of April 28, 2020 Hearing

On April 20, 2020, Debtor filed a Supplemental Response requesting that the court further continue the hearing on the instant motion until after the Shelter in Place order has passed. Dckt. 79. Debtor states that the order has prevented Debtor from obtaining a formal appraisal as both the Debtor and appraiser wish to prevent the spread of the virus. *Id*.

In light of the ongoing restrictions, the court continues the hearing to a period sufficiently after May 1, 2020, to allow Debtor to have the appraisal scheduled and conducted. Additionally, was travel restrictions are partially lifted, Debtor and the appraiser should be able to take advantage of such.

REVIEW OF MOTION

The Motion to Value filed by Deborah Joyce Watson ("Debtor") to value the secured claim

of Towd Point Mortgage Trust ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 44. Debtor is the owner of the subject real property commonly known as 1800 59th Avenue, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $280,000.00 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).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 8-1 filed by Towd Point Mortgage Trust appears to be the claim subject of the present Motion.

OPPOSITION

Creditor has filed an Opposition on February 11, 2020. Dckt. 56. Creditor argues that Debtor cannot avoid Creditor's claim as it is not wholly unsecured. Creditor presents the Declaration of Peter Sousa, a licensed appraiser, who under penalty of perjury testified that the fair market value of the Property is $300,000.00 as of September 3, 2019. Declaration, 58. Thus, Creditor argues that its claim should be bifurcated between secured to the extend of the value ($15,164.81) and unsecured as to the rest.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $284,835.19. Proof of Claim 9-1. Creditor's second deed of trust secures a claim with a balance of

approximately $50,692.17. Proof of Claim 8-1.

Debtor's evidence of value is Debtor's opinion, stated to be $280,000. Declaration, Dckt. 44.

Creditor has provided the Declaration of Peter Sousa and his appraisal as to the value of the Property. Dckts. 58, 57. He testifies that the value is $300,000. The Appraisal Report (Dckt. 57) provides several comparable properties, makes adjustments for specific items, and states the basis for having an opinion of $300,000 for the value of the Property.

The court determines that the value of the Property is $300,000. When taking into account the ($284,835.19) obligation secured by the senior lien, there is approximately $15,000 in value for Creditor's claim secured by the junior lien.

While technically there being "value" to block the valuation for this obligation secured by the Debtor's residence, it is not the end of the story.

Here, even with a value of $300,000, there is no economically recoverable value for Creditor. If Debtor tells Creditor to "Stick It," as in stick a memo on this account file to proceed with foreclosure, here are the adverse consequences facing Creditor:

A. No payments will be made on the senior obligation causing interest to accrue, there being no escrow for taxes, and the insurance lapsing and the senior creditor putting in place expensive forced place insurance.

B. If Creditor goes to foreclose, it will have to pay all of the senior obligations, including property taxes and insurance, and then costs of sale, estimated to be ($24,000) for a $300,000 sale.

C. Thus, for its lien that has been protected against valuation, Creditor will lose likely around ($20,000). ($300,000 sales price - ($284,835) current debt - ($5,650) additional interest - ($750) insurance - ($3,000) property taxes - ($24,000) costs of sale = ($18,235).)

If Debtor does not want to lose the house and Creditor does not want to end up with, at best, a $0.00 recovery, it would appear likely that Debtor and Creditor could agree to a very modest agreed secured claim to be paid over the plan. As an example, $3,000 paid over 60 months would require a $50 a month payment.

June 9, 2020 Hearing

At the June 9, 2020 Hearing, the Parties identified the following factual issues for which an evidentiary hearing was necessary and the legal issues outstanding.

A. Factual Issues in Dispute:

1. **xxxxxxxxxx**

B. Outstanding Legal Issues:

1. xxxxxxxxxx

20. 19-25536-E-13 PGM-1 — DEBORAH WATSON — Peter Macaluso — CONTINUED MOTION TO CONFIRM PLAN — 1-14-20 [31]

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 14, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is xxxxx.

Continuance of June 2, 2020 Hearing

At the hearing, the parties agreed to continue the hearing to June 9, 2020 at 3:00 p.m. so as to set a date for an evidentiary hearing.

Continuance of April 28, 2020 Hearing

On April 20, 2020, Debtor filed a Supplemental Response requesting that the court further continue the hearing on the instant motion until after the Shelter in Place order has passed. Dckt. 79. Debtor states that the order has prevented Debtor from obtaining a formal appraisal as both the Debtor and appraiser wish to prevent the spread of the virus. *Id.*

In light of the ongoing restrictions, the court continues the hearing to a period sufficiently after May 1, 2020, to allow Debtor to have the appraisal scheduled and conducted. Additionally, was

travel restrictions are partially lifted, Debtor and the appraiser should be able to take advantage of such.

REVIEW OF MOTION

The debtor, Deborah Joyce Watson ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of $250.00 commencing January 25, 2020 for 33 months and a 0.0% percent dividend to unsecured claims totaling $101,646.96. Amended Plan, Dckt. 34. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 6, 2020. Dckt. 48. Trustee opposes on the basis that:

1. The Plan relies on two pending Motions to Value Secured Claims and the Plan will not have sufficient monies to pay the claims in full if these Motions are denied.

2. Debtor has failed to provide documents in support of son paying "half of all costs."

CREDITOR'S OPPOSITION

Deutsche Bank National Trust Company ("Creditor Deutsche") holding a secured claim filed an Opposition on February 11, 2020. Dckt. 51. Creditor Deutsche opposes on the basis that:

1. The Plan does not provide for the full value of Creditor Deutsche's claim.

2. The Plan Does not promptly cure Creditor Deutsche's pre-petition arrears.

3. The Plan makes no provision for the ongoing post-petition payments.

CREDITOR'S OPPOSITION

Towd Point Mortgage Trust ("Creditor Towd") holding a secured claim filed an Opposition on February 11, 2020. Dckt. 53. Creditor Towd opposes on the basis that:

1. The Plan cannot value Creditor Towd's lien at zero and treat it as unsecured because the lien is not wholly unsecured.

Request for Continuance - March 31, 2020 Hearing

Debtor filed a Supplemental Declaration on March 27, 2020, in connection with the related Motion to Value Secured Claim. Dckt. 72. She testifies that due to the travel restrictions and shelter in place orders, the appraiser she has engaged to value the property at issue cannot conduct the appraisal at this time. Debtor requests a continuance.

Though the Bankruptcy Court is able to conduct its law and motion calendars in a (relatively) normal manner, such is not for the "real world." It is reasonable to request such continuance.

Continuing the hearing on the Motion to value the Secured Claim necessitates continuance of this hearing.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has not provided the court with any extrinsic evidence of their son's payments of $950.00, $1,130.00, or $1,150.00, whichever amount is the correct amount. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In her Response, Debtor asserts that she will provide a declaration regarding her son's income contribution prior to the hearing on this motion. On February 19, 2020, Debtor filed Declaration of Michael Bradford in support of the Plan stating that he willing and able to make monthly contributions in the sum of $1,130.00 and said contribution is a gift and does not expect to be repaid. Dckt. 67.

Failure to Cure Arrearage of Creditor Deutsche

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 $1,991.44 in pre-petition arrearage. The Plan does not propose to cure those arrearage. 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 arrearage.

Debtor contends that she is current on her mortgage payments. Response, at 2. Debtor alleges that she is not past due in the amount of $1,991.44 as payments was processed shortly after September 1, 2019, and will provide such evidence prior to the hearing. *Id*. Finally, Debtor contends that she inadvertently failed to include Creditor Deutsche as a Class 4 which is proper on the basis that Debtor is current with pre-petition mortgage payments. Id. Debtor requests the court Creditor as a Class 4 to the order confirming the Plan. *Id*.

Valuation of Creditor Towd's Secured Claim

Creditor Towd argues that Debtor improperly seeks to value Creditor's total secured claim at $0.00 despite there being equity in the Property. Creditor filed Proof of Claim 8-1 on November 11, 2019. The Proof of Claims asserts a secured claim in the amount of $50,692.17. The claim is secured by a second deed of trust over Debtor's residence. Debtor filed a Motion to Value Creditor's Secured Claim to be heard on February 25, 2020.

21. **19-27175-E-13 PGM-1** **ADAM/SHERRI NEWLAND** **Peter Macaluso** **OBJECTION TO CLAIM OF DEUTSCHE BANK NATIONAL TRUST COMPANY, CLAIM NUMBER 4** **3-30-20 [27]**

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 30, 2020. By the court's calculation, 64 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 4 of Deutsche Bank National Trust Company is xxxxx.

Adam Scott Newland and Sherri Ann Newland, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Deutsche Bank National Trust Company ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $37,801.02.

Objector asserts that the claim defective on the basis that the proof of claim is in excess of the correct amount of arrears. Debtor seeks correction of the Proof of Claim to $20,594.58. Moreover, Objector argues that the attachment to the Proof of Claim lacks the necessary information required to support the secured claim in the amount demanded.

Final Cure and Prior Case

Objector states that in the prior Chapter 13 case, 13-31616, Objector completed the prior case and there was a final cure of Creditor's arrearage at that time as provided in Federal Rule of Bankruptcy Procedure 3002.1. Objection, p. 2, § I; Dckt. 27.

DISCUSSION

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

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

Debtor argues that Creditor lists the incorrect amount of $37,801.02 on the basis that on Debtor's previous case (Case No. #13-31616), Creditor determined that the account had a post-petition balance due of $10,440.66, through October 1, 2018. Debtors received a discharge on that case. Thus, by failing to account for that determination, Creditor fails to start the accounting on that date which increases the amount of arrears to $37,801.02.

Creditor Response

On May 19, 2020, Creditor filed a Response to Debtor's Objection. Dckt. 31. Creditor argues that after reviewing the claim objection, Creditor filed an Amended Proof of Claim which provides for a total claim amount of $694,139.98, including $23,940.56. Creditor's counsel has attempted to communicate with Debtor's Counsel but has been unable to reach him.

Debtor's Response

Debtor filed a Response and argues that the Amended Proof of Claim filed is also defective and invalid because the claim incorrectly increases the arrears to $23,940.56 without taking into account the previously payment made of $13,839.96, which increases the monthly escrow and total monthly payment from the original proof of claim. Thus, Creditor fails to decrease the arrears or delete the projected escrow shortage which is paid monthly in the increased escrow from $883.22 to $903.45 in the amended proof of claim.

Continuance of June 2, 2020 Hearing

At the hearing Counsel for Debtor suggested to the court that a method for resolving the $23,940.56 arrearage asserted by Creditor and the $20,594.58 asserted by Debtor would be by conducting an evidentiary hearing.

June 9, 2020 Hearing

At the June 9, 2020 Hearing, the Parties identified the following factual issues for which an evidentiary hearing was necessary and the legal issues outstanding.

A. Factual Issues in Dispute:

1. **XXXXXXXXXX**

B. Outstanding Legal Issues:

1. **xxxxxxxxxx**

22. **20-20978-E-13 DPC-1** **JEFFREY ANDERSEN** **Jeffery Meisner** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK** **5-6-20 [24]**

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 6, 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 ----------.

The Objection to Confirmation of Plan is xxxxx.

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

A. Debtor may not be able to make the plan payments.

B. Debtor failed to disclose possible inheritance on Schedules or Statement of Financial Affairs.

DISCUSSION

Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that at the Meeting of Creditors, Debtor admitted that his non-filing spouse has lost all business, thus based on this Debtor has a possible negative budget and the Plan may solely rely on Debtor's income. If this is the case, the expenses listed in Schedule J will exceed Debtor's income.

Moreover, Trustee asserts that Debtor admitted that he is the sole heir to his mother who has recently passed. Debtor failed to supplement his Schedules and Statement of Affairs to clarify or include shared bank accounts, mother's life insurance, or any property he might be holding or controlling for his mother. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

June 2, 2020 Hearing

At the hearing, Counsel for Debtor noted that the case may be converted to a Chapter 7 case. Parties agreed to continue the hearing.

23. 20-20978-E-13 JEFFREY ANDERSEN
Jeffery Meisner

OBJECTION TO CONFIRMATION OF PLAN BY GREGORY KELLY
5-7-20 [28]

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on May 6, 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 ----------.

The Objection to Confirmation of Plan is xxxxx.

Gregory Kelly ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor's filing of the case was not on good faith as it was done to avoid Creditor's post-judgment collection actions in state court.

B. Bad faith filing includes Debtor's failure to disclose in his petition of certain material changes in Debtor's state of affairs.

DISCUSSION

In considering Creditor's objection that this case was not filed in good faith because it was done to stymie Creditor's judgment collection, such is a "normal" reason for filing bankruptcy. Creditor's detailed Objection outlines the frustration in attempting to collect, the Debtor asserting exemptions, and the failure to pay back the $2,500 of the original $27,500 investment by Creditor in the "guaranteed returns and high interest rate" investment promised by Debtor. Objection ¶ 5. Creditor has

computed the interest due from Debtor on the "investment" is $6,500.

To the extent that Creditor believes that improper conduct may exist, a debtor "merely" filing bankruptcy to stop judgment collection is not bad faith.

Creditor references other conduct, some of which may go to whether Debtor may obtain a discharge, discovery in connection with a plan, or enforcement of a subpoena.

Some may go to whether the financial information provided is accurate, which primarily goes to feasibility, but it may go to the prosecution of this case in good faith. Given the court's decision to sustain this and the Trustee's separate objection, the court does not address these facts at this time.

Feasibility

Creditor points to several of the same assertions as those stated in Trustee's Objection (Dckt. 24). As explained in Trustee's objection, Trustee asserts that Debtor admitted that he is the sole heir to his mother who has recently passed. Debtor failed to supplement his Schedules and Statement of Affairs to clarify or include shared bank accounts, mother's life insurance, or any property he might holding or controlling for his mother.

Moreover, at the Meeting of Creditors, Debtor admitted that his non-filing spouse has lost all business, thus based on this Debtor has a possible negative budget and the Plan may solely rely on Debtor's income. If this is the case, the expenses listed in Schedule J will exceed Debtor's income. This lack of income would leave Debtor with a $1,500 monthly deficiency in the proposed plan. Creditor argues that this loss of income makes the plan unfeasible.

Creditor further argues that at the Meeting of Creditors Debtor admitted that while he has not filed 2019 State and Federal Tax Returns, he expects to owe money placing further strain on a plan that is already unfeasible due to non-filing spouse's loss of income.

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

June 2, 2020 Hearing

At the hearing, Counsel for Debtor noted that the case may be converted to a Chapter 7 case. Parties agreed to continue the hearing.

FINAL RULINGS

24. 20-20212-E-13 BMV-2 SHANNON BUTLER MOTION TO CONFIRM PLAN 4-28-20 [32]

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, 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)(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 denied as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, the debtor, Shannon Todd Butler ("Debtor"), filed a Second Amended Plan and corresponding Motion to Confirm on June 4, 2020. Dckt. 53, 57. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

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

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

appearing,

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

25.	**20-21836-E-13 DPC-1**	**EUGENE LISOWSKI AND ERIN KIRCHENBERG**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-20-20 [23]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtors' Attorney on May 20, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to 3:00 p.m. on July 14, 2020, to be heard in conjunction with the Debtor's Motion to Value Secured Claim.

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

A. Debtors have failed to file a Motion to Value Collateral.

DISCUSSION

Trustee's objections are well-taken.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtors' Plan shows that it relies on the court valuing the secured claim of San

Diego Credit Union. Debtors filed the Motion to Value the Secured Claim of San Diego Credit Union on May 28, 2020, with a hearing set for July 14, 2020. Dckt. 27.

Debtor having filed a Motion and setting it for hearing and that being the only grounds stated as the basis for objecting to confirmation, the court continues the hearing on the Trustee's Objection.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Objection to Confirmation of the Plan is continued to 3:00 p.m. on July 14, 2020, to be conducted in conjunction with the Debtor's Motion to Value the Secured Claim of San Diego Credit Union.

26. 19-25185-E-13 MMM-1 DAVID/WANDA BUSSELLE

MOTION TO APPROVE LOAN MODIFICATION
5-8-20 [17]

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

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 8, 2020. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification, the terms of which are stated in the Errata (titled "Motion") filed in May 27, 2020 (Dckt. 26), is granted.

A Motion to Approve Loan Modification was filed by David Busselle and Wanda Renee Busselle, the Chapter 13 debtors ("Debtor") seeking court approval for Debtor to incur post-petition credit was filed on May 8, 2020. Motion, Dckt 17. The Motion is supported by the declaration of Debtor (Dckt. 19) and a copy of the Loan Modification Agreement (non-designated Exhibit, Dckt. 20).

The Chapter 13 Trustee filed an Opposition stating that the terms stated in the Motion conflicted with the terms stated in the Declaration. Dckt. 24. The Trustee further noted that the terms stated in the Declaration appear to be consistent with the Loan Agreement filed as an exhibit.

Debtor's response was not to file and Errata [FN. 1] or Notice of Correction to the original motion filed, but to file on May 26, 2020, a pleading titled "Motion to Approve Loan Modification," which by its title would appear to be a separate motion seeking separate relief. Dckt. 26. However, it uses the same Docket Control Number as the Motion filed on May 8, 2020 (Dckt. 17). This appears to relate to the same claim, but stating terms consistent with those in Debtor's Declaration filed with the earlier Motion.

FN. 1. Errata is a "fancy" term for "a list of errors in a printed work discovered after printing and shown

with corrections, also : a page bearing such a list ." www.merriam-webster.com/dictionary/errata.

No exhibits are filed with the May 26, 2020 Motion. Debtor's counsel filed his declaration with the May 26, 2020 Motion. Dckt. 27. In his Declaration, Debtor's counsel testifies that "in the Motion" (which is not identified in this Declaration), there was an error in the statement of the details of the loan modification. Further, that the Debtor's Declaration states the correct terms.

Counsel's Declaration concludes with the statement that "This correction should resolve any inconsistency or confusion the error may have cause by the motion." Declaration ¶ 3, Dckt. 27.

The court accepts the pleading filed on May 26, 2020, as an Errata for the Motion filed on May 8, 2020, and to state the corrections of clerical errors in the Motion (Dckt. 17).

REVIEW OF MOTION AS CORRECTED

Debtor seeks by this Motion to Approve Loan Modification court approval for Debtor to incur post-petition credit. Wells Fargo Bank N.A. ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $1,392.00 per month to $1,064.59 per month. The modification will capitalize the pre-petition arrears and provide for an interest rate of 3.5% for the next 30 years.

The Motion is supported by the Declaration of David Busselle and Wanda Renee Busselle. Dckt. 19. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S FILINGS

The Chapter 13 Trustee filed an Opposition on May 26, 2020 on the basis that the terms of the Motion do not match the terms in Debtors' Declaration. Dckt. 24.

Debtors then filed a correction, Dckt. 26, correcting clerical errors in the Motion filed on May 8, 2020. On June 1st, 2020, Trustee filed an Amended Response indicating he no longer opposed the motion because Debtors have corrected their Motion. Dckt. 29.

DISCUSSION

As required by the U.S. Supreme Court in Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), a motion seeking authorization to obtain credit shall state the terms of the credit, including interest rate maturity, events of default, and the like.

For this Motion, it is the relatively simple issue of Debtor obtaining a modification of the existing loan secured by their residence. Through the pleading filed on May 27, 2020, which the court accepts as an Errata to the Motion filed on May 8, 2020, the basic terms of the modification are provided.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with

Debtor's ability to fund that Plan.

There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by David Busselle and Wanda Renee Busselle ("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 court authorizes David Busselle and Wanda Renee Busselle to amend the terms of the loan with Wells Fargo Bank N.A. ("Creditor"), which is secured by the real property commonly known as 6733 Heleen Bart Court, Browns Valley, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 20).

27. 18-27720-E-13 TLW-14 DAVID RYNDA

MOTION FOR COMPENSATION FOR TRACY L. WOOD, DEBTORS ATTORNEY(S)
4-29-20 [305]

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

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, and Office of the United States Trustee on April 29, 2020. By the court's calculation, 41 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). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Allowance of Professional Fees is continued to 10:00 a.m. on July 1, 2020, to be heard in conjunction with the Chapter 13 Trustee's Motion to Convert or Dismiss this case and several other motions. (Specially set date and time.)

Tracy L. Wood, the Attorney ("Applicant") for David Jerome Rynda, the Chapter 13 Debtor ("Client"), makes a Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 12, 2018 through April 29, 2020 Applicant requests fees and expenses in the total amount of $30,537.25, with fees in the amount of $25,916.00 plus $4,000 for the Chapter 13 base fee, and costs in the amount of $221.25.

APPLICABLE LAW

For Chapter 13 bankruptcy cases, Local Bankruptcy Rule 2016-1 provides, in pertinent part, the following for the allowance of reasonable attorney's fees for counsel representing a debtor. An attorney and client may elect for the attorney to be paid a flat ("no-look") fee of up to $4,000.00 in nonbusiness cases and $6,000.00 in cases in which the individual debtor has business obligations and

assets. L.B.R. 2016-1(c). The approval of the no-look fee is made in the order confirming the Chapter 13 plan. *Id.* The attorney and client can opt-out of the no-look fee and have the attorney's fees and costs allowed as otherwise permitted under 11 U.S.C. §§ 300, 331. L.B.R. 2016(a).

If the attorney and client elect the no-look fee for the services relating to the Chapter 13 case, the attorney is allowed additional compensation beyond the scope of the no-look fees. *See*, L.B.R. 2016-1(c)(3).

The fee election is stated in the Rights and Responsibilities signed by the attorney and debtor filed in the bankruptcy case. L.B.R. 2016-1(a).

The Rights and Responsibilities document filed by Debtor and Applicant in this case states with respect to fees:

> Initial fees charged in this case are $ 4,500.00 , and of this amount, $ 0.00 was paid by the Debtor before the filing of the petition. While this initial fee should be sufficient to fully and fairly compensate counsel for all pre-confirmation services and most post-confirmation services rendered in the case, where substantial and unanticipated post-confirmation work is necessary, the attorney may request that the court approve additional fees. If additional fees are approved, they shall be paid through the plan by the chapter 13 trustee unless otherwise ordered. The attorney may not receive fees directly from the Debtor.

Dckt. 14.

The scope of pre-petition, post-filing, confirmation, and post-confirmation services are the standard ones expected, and do not include adversary quite title litigation. However, they do include confirmation of a plan, entry of a discharge (if the debtor is eligible), and closing of the case. *Id.*

Statutory Basis For Allowance of Fees

Congress provides in 11 U.S.C. § 329 that the bankruptcy court shall determine whether fees charged by an attorney for a debtor are reasonable. For a Chapter 13 case, Local Bankruptcy Rule 2016-1 provides the vehicle for the court making that determination and sets some per se allowable amounts (which are always subject to a case by case review if appropriate).

Using the provisions of 11 U.S.C. § 330 in determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–

> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include defense of a motion for relief from the automatic stay, preparing and filing several plans and motions to confirm plans, prosecuting an adversary proceeding, and general case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

Lodestar Analysis

If Applicant has opted out of the no-look fee or there are substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*,

987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion for Relief From the Automatic Stay: Applicant drafted correspondence, communicated with Debtor, reviewed the file, and prepared and filed the substitution of attorney, and drafted the opposition and appeared at the hearing for the Motion for Relief from the Automatic Stay filed by Elina Machado.

Proposed Plans and Motions to Confirm: Applicant prepared, filed, and served nine proposed plans for Debtor along with Motions to Confirm said plans.

Adversary Proceeding: Applicant prepared, filed, and served Debtor's complaint for Quiet Title, and defended against Defendant Elina Machado's Counter Claims. Applicant further prepared, filed, and served discovery.

Case Administration: Applicant prepared, filed Debtor's petition and schedules; prepared filed, and served the instant application for attorney's fees and costs, drafted correspondence, and met with client for administration of the case.

Applicant spent 64.79 hours performing the work in the categories described above.

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**
Tracy L. Wood	64.79	$400.00	$25,916.00
Total Fees for Period of Application			$25,916.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $221.25 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Parking and Mileage		$221.25
		$0.00
Total Costs Requested in Application		$221.25

REVIEW OF TIME RECORDS AND SET FEES REQUESTED

In the Motion, Applicant requests $4,000.00 as the "Chapter 13 base fee" and $25,916.00 for post-petition litigation. Motion, p. 2:10.5-13; Dckt. 305. In saying $4,000.00 for a "base fee," the court interprets that language to mean "for all of the services required to qualify for a $4,000.00 no-look fee." As discussed above, those services include not only filing a case, but getting a plan confirmed, completed, and discharge entered. There is not a confirmed plan in the current case. It appears that the success of the post-petition litigation with Ms. Machado may obviate a need for a confirmed plan.

Based upon the scope of the actual and necessary work done, a fixed fee other than in the proportions provided in Local Bankruptcy Rule 2016-1(c)(4) may be appropriate. But that is based on the actual work required.

Exhibits B and C filed by Applicant are the billing records to support the $25,916.00 for post-petition litigation services. Exhibit B is for the State Court Litigation. Dckt. 309. The State Court fees total $2,757.00. $1,600 of the fees are for the review of the State Court judge's move out order and drafting the appeal brief.

Exhibit C is for the Adversary Proceeding litigation with Ms. Machado (Mr. Machado having defaulted by not responding). Dckt. 310. Both fees for legal services and expenses are mixed into one set of billings organized by date.

The hours billed and fees are not separately stated, the total hours billed not identified, and there is not a task billing analysis. The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

A review of the time records does not appear to indicate a large amount of time sunk into any one area. There are several motions for summary judgment, which the court notes were not granted.

Termination, Fee Dispute, and
Pending Motion to Convert or Dismiss

With a settlement having been reached with Ms. Machado and it appearing to have preserved substantial interests of the bankruptcy estate (Settlement Agreement, Dckt. 187), it appears that the legal services of Applicant have been very beneficial to the bankruptcy estate and the Debtor, having achieved establishing his ownership of the property in dispute.

Unfortunately, it appears that the Debtor (individually and serving as the fiduciary Chapter 13 debtor) and Applicant have come to a parting of the ways. On May 15, 2020, in the Adversary Proceeding Applicant filed a Motion to Withdraw as counsel for the Debtor. This is not to withdraw just as counsel for the Debtor in the Adversary Proceeding, but in the bankruptcy case as well. 19-2023; Motion to Withdraw, Dckt. 218.

In the Motion, Applicant asserts that Debtor informed Applicant in a phone call on May 15, 2020, that Applicant was "fired" and that Debtor has filed a complaint with the State Bar. In his Declaration, Applicant states that the disagreement relates to the terms of the fee agreement for services rendered in this bankruptcy case. Dckt. 220. It is asserted that Debtor thinks that a pre-bankruptcy fee agreement for the State Court litigation governs the fees Applicant is entitled to with respect to the bankruptcy case. Applicant states that Debtor signed a subsequent bankruptcy fee agreement prior to Applicant undertaking the bankruptcy representation, and the agreement provides for services such as the adversary proceeding to be billed on an hourly basis. A copy of the bankruptcy fee agreement is not filed with the Motion to Withdraw.

There is also the continued hearing on the Motion to Convert or Dismiss this Chapter 13 case. Motion, Dckt. 283. As discussed in the Civil Minutes from prior hearings on the Motion to Dismiss, the Debtor is in substantial monetary default under the Chapter 13 plan he has proposed and has been unable to make the necessary plan payments. Civil Minutes, Dckt. 283. Debtor also has lost control of the Property, with several boarders he took in refusing to pay rent and then allowing other persons to occupy the Property. *Id.* Debtor has stumbled through multiple unlawful detainer proceedings, with the State Court judges refusing to issue order evicting them because Debtor never recorded a deed (which Debtor now says is lost) giving him title to the Property. Debtor failed to understand, even when pointed out to him by this court, that the federal court has exclusive jurisdiction over property of the estate, or what is asserted to be property of the estate, and the Bankruptcy Code and Rules provide express authority for ordering the turning over of possession of such property to a trustee or other fiduciary (such as a Chapter 13 debtor) of the bankruptcy estate.

Debtor has faced other challenges in this case and leading up to this case. On the eve of bankruptcy he recorded two deeds of trust which appear to be either for antecedent debts or debts which cannot be legally enforced against him. These were to Debtor's brother for an obligation ten years earlier and a business associate. *Id.* Debtor has not acted on those potentially avoidable transfers. This may be based on a belief that if he performs the settlement with Ms. Machado and sells the Property, all creditors will be paid so as there not being a fraudulent conveyance or preference rights (and duties for the fiduciary of the bankruptcy estate) to be administered.

It appears that Debtor may not understand that Congress has made, as a matter of federal law, a determination of the fees that Applicant is entitled/allowed a federal law issue pursuant to 11 U.S.C. § 329. If Debtor has a dispute as to what are the terms of the agreement, that good faith dispute is to be promptly and efficiently litigated in this court. While Debtor may file other complaints, that does not override 11 U.S.C. § 329.

It may be that there appearing to be a settlement with Ms. Machado that documents the vesting of title in the Property in the bankruptcy estate for the Debtor may well obviate the need for a Chapter 13 plan. It may be that a Chapter 7 trustee can firmly and properly exercise the rights of the bankruptcy estate in performing the settlement, with the Debtor able to provide constructive input and assistance. It may be, in light of the events in this case, that Debtor will be unable to perform the settlement.

The court will address this Application for Fee at the same time as the hearing on the Motion to Withdraw and the Motion to Convert this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Attorney's Fees and Costs filed by Tracy Wood having been presented to the court, and upon review of the pleadings, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Application is continued to 10:00 a.m. on July 1, 2020, to be conducted in conjunction with a Motion by Applicant to withdraw as counsel for Debtor and a Motion to convert or dismiss this case.
>
> **IT IS FURTHER ORDERED** that Tracy Wood, Esq., and David Rynda, and each of them, shall appear in person at the 10:00 a.m. July 1, 2020 hearing – Telephonic Appearances are permitted (in the event that the Courthouse has reopened to the public).
>
> The Clerk of the Court shall serve on Tracy Wood, the Applicant, and David Rynda, the Debtor, this Order and a copy of the Civil Minutes for the June 9, 2020 hearing.