

Douglas Paul Jacobs and Kim Marie Jacobs (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case.

The motion represents a prior Chapter 13 case was filed on September 19, 2017, which case was converted to Chapter 7 on September 9, 2019. The motion further represents the Debtors received a discharge in that case on June 2, 2020.

The motion argues 11 U.S.C. § 362(c)(3) applies because of Debtors’ recent filing.

DISCUSSION

Congress provides in the Bankruptcy Code, 11 U.S.C. § 362(c)(3) for the termination of the automatic stay as to a debtor as follows::

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor **was pending within the preceding 1-year period but was dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to **any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;**

11 U.S.C. § 362(c)(3) (Emphasis added.). Congress then provides that the court may extend such stay so that it shall not terminate.

Debtor’s prior case was converted to Chapter 7 and the case was completed with the Debtors receiving a Chapter 7 discharge. Order, Bankr. E.D. Cal. No. 17-26211, Dckt. 103, June 2, 2020. The case was not dismissed, therefore section 362(c)(3) does not apply.

The prior case not being terminated, then the provisions of 11 U.S.C. § 362(c)(3)(A) do not apply.

The motion is denied.

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

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

The Motion to Extend the Automatic Stay filed by Douglas Paul Jacobs and Kim Marie Jacobs (“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, the court having determined that the provisions of 11 U.S.C. § 362(c)(3)(A) have not be satisfied.

2. [20-22154-E-13](#) **MANY/CHAYSAVANH** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **SUVANKHAM** **PLAN BY TRUSTEE DAVID P. CUSICK**
 Peter Macaluso **6-3-20 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on June 3, 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. At the hearing -----

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The Objection to Confirmation of Plan is sustained.

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

- A. Debtor is delinquent in plan payments.
- B. Debtor’s Plan fails the liquidation analysis.

C. Debtor's Plan may not be proposed in good faith.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$1,200.00 delinquent in plan payments, which represents one month of the \$1,200.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by 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).

Debtor Fails Liquidation Analysis

Debtor's Plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt equity totals \$65,418.67, which include the following assets:

- A. Debtor's rental property commonly known as 7855 Detroit Boulevard, Sacramento, California ("Rental Property") for \$56,775.67;
- B. 2011 Nissan Armada for \$6,218.00;
- C. Rental deposit of \$1,200.00;
- D. Tax refund of \$800.00; and
- E. Bank accounts for \$425.00.

Debtor proposes a 70% dividend to unsecured claims. Dckt 3. Although the Plan calculates the dividend to be approximately 72%, which results in approximately \$61,999.98 for unsecured claims, the Plan still fails the liquidation test.

Rental Income

Section 1325(a)(3) requires that a Debtor must propose a Plan in good faith. At the May 28th Meeting of Creditors, Debtor admitted that family members reside at Debtor's Rental Property. However, Debtor stated that no rental income is received from the family members. The Plan proposes to retain the Rental Property with a total monthly expense of \$1,707.87 (\$1,290.87 for mortgage, \$150.00 for maintenance, and \$267.00 for water, sewer, and garbage) without charging the residents any rent. Schedule J, Dckt. 1.

Furthermore, Debtor's Schedule J show two adult dependents, ages 37 and 55, who do not appear to be contributing any income.

The court is not certain that Debtor is proposing a plan in good faith when residents of the rental property are not being charged rent, and two adult dependents are not contributing any income

without an explanation from Debtor.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2020. By the court’s calculation, 20 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

In light of the Motion and facts relating to this Contested Matter, the court *sua sponte* shortens the notice period to the twenty-days given.

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

The Bankruptcy Code permits Travis Lee Brown, 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 134 South Palora Avenue Yuba City, California (“Property”).

The proposed purchaser of the Property is Santos Martinez, and the terms of the sale are:

- A. Sale Price is \$270,000.
- B. Escrow to close within 45 days of court’s approval.
- C. Property is sold “as-is.”

- D. Buyer shall make an initial \$2,500.00 deposit via cashier's check.
- E. Stove, refrigerator, and washer are included as part of the sale.
- F. Seller to pay natural hazard disclosure report.
- F. Buyer and Seller to pay 50/50 for the escrow fee, owner's title insurance, and County transfer tax.

Overbidding Procedures

Debtor proposes the following overbidding procedures:

1. Parties must appear at the scheduled hearing for this motion in order to submit bids.
2. Overbid must include a deposit of \$2,500.00 cashier's check to be presented at the hearing. It will be non-refundable if the party becomes the winning bidder.
3. Bids shall be submitted in increments of at least \$2,500.00 more than the previous bid, with the first overbid required amount of \$272,500 or higher.
4. Within 15 days, over-bidder/purchaser must provide Debtor with an approval letter or bank statement from a financing entity demonstrating that the over-bidder/purchaser has the full amount to complete the purchase.
5. Over-bidder/purchaser must provide Debtor with full payment of the purchase price within 45 days.
6. In the event that an over-bidder/purchaser fails to comply with any of these terms, their deposits paid shall be forfeited, and the next highest and previous bidder shall automatically become the winning bidder, and thus obligated to complete the terms of the sale; however, an over-bidder/purchaser that becomes the winning bidder under these circumstances shall have the same amount of time to execute the terms for this sale that have been set-forth in this motion and by the Court.

Trustee's Response

On June 9, 2020, Trustee filed a Response to Chapter 13 Debtor's Motion to Sell, where Trustee does not oppose the sale terms, but requests the court to consider holding the non-exempt proceeds paid to Trustee until further order as Movant may be seeking to pay in the non-exempt proceeds as a supplemental plan payment to end the plan early. Dckt. 28. Movant estimates proceeds of the sale to be \$60,197.80 (Dckt. 19), but has exempted only \$25,000.00 (Dckt. 1).

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: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Movant anticipates the proceeds of the sale will allow him to pay a substantial amount to creditors.

Movant has estimated that a five (5) percent broker's commission from the sale of the Property will equal approximately \$13,495.00. The commission will be divided equally between Chapter 13 Debtor's agent Alan Vega receiving 2.5 percent and Buyer's agent Jose L. Chavez 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 five (5) percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Buyer has presented the highest and best offer to purchase the Property, and waiving the stay will reduce the risk of loss to Debtor and the Estate.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief 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 Sell Property filed by Travis Lee Brown, 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 Travis Lee Brown, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Santos Martinez or nominee ("Buyer"), the Property commonly known as 134 South Palora Avenue, Yuba City, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$270,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 22, 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, Alan Vega and 2.5 percent to Buyer's agent, Jose L. Chavez.
- 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.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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 19, 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 -----

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The Objection to Confirmation of Plan is overruled.

Wells Fargo Bank, National Association as Trustee for Structured Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2006-AR2, Mortgage Pass-Through Certificates, Series 2006-AR2 (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Plan fails to provide for the curing of pre-petition arrearage on Secured Creditor’s claim; and
- B. Debtor may not be able to make plan payments.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$78,729.25 in pre-petition arrearage. The Plan computes the Plan payments based on an arrearage in the amount of \$71,000.

While the Creditor asserts this as the Plan failing to provide for the full amount of the arrearage, the Plan expressly states:

3.02. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

Plan, ¶ 3.02; Dckt. 3.

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 Debtor is to fund the Plan with monthly payments of \$5,225.00. Plan, Section 7 -Non-Standard Provisions; Dckt. 3 at 8. The monthly disbursements for Class 1 claims, including the under stated arrearage amount, total \$4,590.29. *Id.* at 3. The Debtor's counsel is to be paid \$2,000 through the plan, which equals \$34.00 a month. The projected Chapter 13 Trustee's fee (estimated at 8%) is \$418.00.

The total disbursements to creditors under the Plan, at the lower arrearage amount stated by Debtor in the Plan total \$5,042.29. That leaves an "extra" \$182 a month under the Plan.

The \$7,729.50 additional arrearage, when amortized over the 59 months of the Plan, requires an additional \$131.00 a month to Creditor. Thus, it appears that the Plan is adequately funded to provide for Creditor's claim as stated in the Proof of Claim.

This portion of the Objection is overruled.

Feasibility

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). For the first month, the Debtor will make a payment of \$0.00. For months 2-60, Debtor will make monthly payments of \$5,225.00. However, according to Debtor's Schedules, Debtor's monthly net income is \$5,225.00. The amount will be insufficient to fund a plan that accounts for the entire arrearage amount owed.

In the Opposition, Creditor does not provide a calculation of how the plan is not feasible. Creditor merely concludes that this is a "\$308,275 base plan," and that with monthly payments of only

\$5,225.00, the plan is not feasible. Creditor does not provide the court with an analysis or evidence for the court to so summarily conclude.

The objection is overruled.

However, the court has denied confirmation of this Plan pursuant to the Objection of the Trustee.

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

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

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, National Association as Trustee for Structured Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2006-AR2, Mortgage Pass-Through Certificates, Series 2006-AR2 (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled, however, the proposed Chapter 13 Plan is not confirmed, the court having denied confirmation based on the Objection of the Chapter 13 Trustee.

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 27, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

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The Objection to Confirmation of Plan is sustained.

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

- A. Debtor failed to appear at the May 21, 2020 Meeting of Creditors.
- B. Debtor may not be able to make plan payments.
- C. Debtor has failed to provide the Trustee with a tax transcript or a copy of her Federal Income Tax Return.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

On June 11, Trustee filed a Report stating that Debtor appeared at the June 11, 2020 continued Meeting of Creditors and that the meeting has been concluded as to Debtor. Trustee's June 11, 2020 Docket Entry Statement.

This basis for objecting to confirmation has been resolved in Debtor's favor.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). First, the Debtor cannot pay more than \$0.00 in the first month. Second, Debtor shows he is self-employed as a rental manager with rental income of \$5,900.00. However, Debtor failed to provide any detailed statement of income and expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

A debtor merely promising that payments can be made is not sufficient evidence for the court to so summarily conclude that a plan is feasible. Looking at the Schedules, Debtor states that Debtor has \$5,900 a month in net income from operating Debtor's rental business. Schedule I, Dckt. 1 at 32-33. Buried at page 56 of the documents filed on April 6, 2020, Dckt. 1, is a page titled Current Monthly Income Details for the Debtor. In this document under penalty of perjury, Debtor states that he has income of \$5,900 a month from rentals and has no expenses for such rentals.

On Schedule J, Debtor provides under penalty of perjury his expense information. Dckt. 1 at 34-35. For a family of three persons (Debtor and two minor children) Debtor's monthly expenses are stated to be only (\$675). These phenomenally low expenses are achieved because Debtor states under penalty of perjury that:

- A. He has no repair or maintenance expenses for his real property that produces his income.
- B. He and his two children have food and housekeeping supply expenses of only \$250 a month. For a family of three persons, and allowing \$75 a month for supplies, that leaves only \$175 a month for food. For a 30 day month that is only \$1.94 per meal for each family member.
- C. For clothing, for 60 months the Debtor and his two children will spend only \$60 a year each for clothing.
- D. For the three persons, their transportation expenses are only \$80 a month - which is only \$0.89 per person per day.
- E. Absent from Schedule J are any state or federal income or self employment taxes

for the \$70,800 in annual net income for Debtor.

- F. Also absent are any expenses for liability insurance for Debtor operating multiple rental properties.

This information provided by Debtor under penalty of perjury is not credible and does not support confirmation.

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).

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.

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 April 24, 2020. By the court’s calculation, 39 days’ notice was provided. 14 days’ notice is required.

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

NewRez LLC d/b/a Shellpoint Mortgage Servicing (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor’s Plan fails to provides for Creditor’s pre-petition arrearage.
- B. Debtor may not be able to make monthly plan payments.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor’s residence. Creditor has filed a timely proof of claim in which it asserts \$1,886.66 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.

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). The Plan proposes monthly payments of \$300.00 for the first four months, monthly payments of \$500.00 for months five through sixteen, and monthly payments of \$1000.00 for months seventeen through twenty-eight. However, Debtor's monthly net income is only \$303.49. Schedule J, Dckt 1. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the June 2, 2020 hearing, the parties agreed to continue the hearing.

June 23, 2020 Hearing

No further pleadings have been filed by the Parties.

At the continued hearing, **XXXXXXXXXX**

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 filed by NewRez LLC, dba Shellpoint Mortgage Servicing 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 is **XXXXXXXXXX**.

**REVERSE MORTGAGE FUNDING,
LLC. VS.**

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 a 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.

At the continued hearing a month later on June 9, 2020, counsel for Movant stated an adequate protection stipulation has been signed and the proposed order will be forwarded to the Chapter 13 Trustee for lodging with the court. The parties requested a continuance so that the matter may be

concluded and the proposed order lodged with the court.

June 23, 2020 Hearing

No further pleadings have been filed.

At the continued hearing, **XXXXXXXXXX**

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 Relief From the Automatic Stay filed by Reverse Mortgage, LLC 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 **XXXXXXXXXX**.

FINAL RULINGS

8. [20-21003-E-13](#) **MICHAEL/MYRA SPELLER** **MOTION TO CONFIRM PLAN**
[MJD-1](#) **Matthew DeCaminada** **4-30-20 [30]**

Final Ruling: No appearance at the June 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2020. By the court’s calculation, 53 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Michael Speller and Myra Speller (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on June 2, 2020. Dckt. 42. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the

the court disallow the claim of SFM-6, LLC on behalf of CashCall, Inc. (“Creditor”), Proof of Claim No. 5-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$14,778.58. Objector asserts that Creditor’s proof of claim fails to account for the amount of \$4,434.63 already paid through the Sacramento County Sheriff’s pursuant to an earnings withholding order.

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.

Creditor filed a proof of claim in the amount of \$14,778.58 on June 24, 2019. Claim No. 5. On February 6, 2019, the Sacramento County Sheriff served an earnings withholding order on Debtor’s employer. Exhibit A, Dckt. 49. Debtor’s employer withheld a total of \$5,398.15 and paid a total of \$4,434.63 to Creditor as of May 22, 2019. Exhibit D, Dckt. 49.

Here, Debtor asserts that the proof of claim should be amended or disallowed because the claim in the amount of \$14,778.58 filed on June 24, 2019 does not reflect the amount Creditor has already been paid. Claim No. 5-1; Exhibit D, Dckt. 49. The evidence presented shows that Creditor has failed to account for payments already made in the amount of \$4,434.63.

Based on the evidence before the court, Creditor’s claim is disallowed in the amount of \$4,434.63, the claim being determined in the amount of \$10,343.95. The Objection to the Proof of Claim is sustained.

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 SFM-6, LLC (“Creditor”), filed in this case by Paul Wayne Roberts and Pamela Lee Roberts, Chapter 13 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 5-1 of Creditor is sustained, and the claim is disallowed in the amount of \$4,434.63, the claim being determined to be in the amount of \$10,343.95 as a general unsecured

The Chapter 13 Trustee does not oppose the motion. Dckt. 104.

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 general case administration consisting of communications with the Debtor, Creditors, and Trustee and reviewing files and reports. 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 4.2 hours in this category. Applicant communicated with the Debtor, Creditors, and Trustee throughout the case, corrected a declaration, prepared and filed a notice of changed address, and reviewed client’s file and Trustee’s Debtor Summary report.

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	4.2	\$300.00	\$1,260.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$1,260.00

Costs & Expenses

Applicant does not seek costs through this Application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Fourth and Final Fees in the amount of \$1,260.00 are approved pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$1,260.00
Costs and Expenses	\$0.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Gerald L. White (“Applicant”), Attorney for Matthew Albert Corsaut, 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 of the Estate:

Gerald L. White, Professional employed by Chapter 13 Debtor

Fees in the amount of \$1260.00
Expenses in the amount of \$0.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.

IT IS FURTHER ORDERED that David Cusick, the Chapter 13 Trustee, is authorized to pay Applicant through the Plan as an administrative expense:

Fees in the amount of \$1,260.00.

Final Ruling: No appearance at the June 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 12, 2020. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Nina Yvette Drake (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on June 9, 2020. Dckt. 47. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 12, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

12. [20-22036-E-13](#) **RUDY/APRIL RAYA**
[DPC-1](#) **Scott Hughes**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
5-27-20 [19]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 23, 2020 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the June 23, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not 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 15, 2020. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtor, Tina Louise Andrade (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$425.00 through April 25, 2020, followed by monthly plan payments of \$435.00 for the remainder of the Plan, and a 0% dividend to unsecured claims totaling \$389,019.14. Amended Plan, Dckt. 78. 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 June 9, 2020. Dckt. 85. Trustee opposes confirmation of the Plan on the basis that:

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

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the

permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 74 months on the basis that the monthly dividend of \$29.28 required to pay the secured claim on Becket & Lee LLP for household goods is insufficient. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Trustee notes that the Plan could be completed in 60 months if Debtor were to increase the monthly dividend to \$51.75 (which means increasing the Plan payment to \$456.00). Opposition, p.2, 3-5.

On June 16, 2020, Debtor filed a Reply adopting the Plan payment suggested by Trustee and proposing the order confirming the plan include such amendment. Dckt. 88.

The Amended Plan, adopting the Plan payment increase to \$456.00, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on May 17, 2020, as amended to increase the Plan payment to \$456.00 is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, including the above amendment, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the June 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on May 15, 2020. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates, LLC (“Creditor”) against property of the debtor, Mario J. Riley (“Debtor”) commonly known as 458 Americano Way, Fairfield, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$26,753.35. Exhibit A, Dckt. 128. An abstract of judgment was recorded with Solano County on December 30, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$395,503.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$375,968.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$19,535.00 on Schedule C. Dckt. 1. ^{FN.1.}

FN.1. The Motion states that the homestead exemption amount claimed is \$29,275.00. However, the amount claimed in Debtor's Schedule C is \$19,535.00. Dckt. 1. This is a clerical error that, based on a review of the record, does not affect the outcome of the Motion.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Mario J. Riley ("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 judgment lien of Portfolio Recovery Associates, LLC, California Superior Court for Solano County Case No. FCM114004, recorded on December 30, 2011, with the Solano County Recorder, against the real property commonly known as 458 Americano Way, Fairfield, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

15.	20-21508-E-13 DPC-2	LORI MICKENS Pro Se	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 5-13-20 [22]
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Final Ruling: No appearance at the June 23, 2020 hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Debtor's Claim of Exemptions was dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the June 23, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 14, 2020. By the court's calculation, 40 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 William Rudolph Battilana, II, Chapter 13 Debtor ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

This case was originally filed under Chapter 7 on May 30, 2018, and was subsequently converted to a Chapter 13 on August 3, 2018. After conversion, a Chapter 13 retainer agreement was entered into which set an hourly fee rate of \$300.00. Exhibit A, Dckt. 193.

Fees are requested for the period April 1, 2019, through May 12, 2020. Applicant requests fees in the amount of \$6,030.00 and costs in the amount of \$82.40.

Trustee's Response

Trustee does not oppose the Motion. Dckt. 195.

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 legal services for the reinvestment of homestead funds, an objection to a creditor’s claim, settlement regarding the claim of Debtor’s former spouse, actions for a pending family case, and case management. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 1.9 hours in this category. Applicant reviewed and responded to normal communications with Debtor, trustee, and creditors.

Objection to Claim No. 11 of PHH Mortgage: Applicant spent 3.15 hours in this category. Applicant filed an objection to a creditor’s claim that was paid in full through the sale of Debtor’s residence.

Settlement of Claim No. 12: Applicant spent 8.85 hours in this category. Applicant worked with the attorney of the Debtor’s former spouse to reach a settlement for the divorce claim ordered by the family law court.

Reinvestment of Homestead Funds: Applicant spent 3.4 hours in this category. Applicant prepared and filed a motion to approve the release of funds held in Applicant’s trust account to purchase a new residence for Debtor live in as Debtor had to sell his former residence.

Pending Family Law Case: Applicant spent 2.8 hours in this category. Applicant prepared a declaration for the Debtor’s family law attorney regarding the status of the bankruptcy case.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Gerald L. White	20.10	\$300.00	\$6,030.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$6,030.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$82.40 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Telephonic Appearance Fee on 4/30/19		\$41.20
Telephonic Appearance Fee on 2/11/20		\$41.20
		\$0.00
Total Costs Requested in Application		\$82.40

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of \$6,030.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Final Costs in the amount of \$82.40 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$6,030.00
Costs and Expenses	\$82.40

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

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

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

The Motion for Allowance of Fees and Expenses filed by Gerald L. White (“Applicant”), Attorney for William Rudolph Battilana, II, Chapter 13, (“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 of the Estate:

Gerald L. White, Professional employed by Chapter 13 Debtor

Fees in the amount of \$6,030.00
Expenses in the amount of \$82.40,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan; limiting the fees and costs to those funds available through the final payment due on August 25, 2021.

Final Ruling: No appearance at the June 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 7, 2020. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Louis Javar (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on June 9, 2020. Dckt. 61. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on May 7, 2020 is confirmed. Debtor’s Counsel shall

and that any amount in excess is to be treated as a general unsecured claim pursuant to 11 U.S.C. § 506(a).

As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee's Response

Chapter 13 Trustee, David Cusick, ("Trustee") notes in his response that the IRS has not provided a proof of claim to date, and that Debtor provides for the IRS on Schedule D and in Class 2B of the proposed plan. Dckt. 20.

Upon review of the evidence, the court determines the value of the secured claim of the IRS in this case for property of the bankruptcy estate is \$1,800.00, with the balance to be treated as unsecured claims (whether priority or general unsecured claims) in this case. This determination does not include the value of the IRS claim as it may be secured by the Debtor's 401(k) plan.

The Motion 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 Andrea Jane Dean ("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 the Internal Revenue Service ("IRS" or "Creditor") secured by the Debtor's assets, other than her interest in her 401k plan (11 U.S.C. § 541(c)(1)(A), ("Property"), is determined to be a secured claim in the amount of \$1,800.00, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan. The court makes no determination with respect to any lien of the IRS on Debtor's 401(k) plan.

Final Ruling: No appearance at the June 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 8, 2020. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Michael Oosterman and Kimberly Leona Oosterman, (“Debtors”) have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on June 9, 2020. Dckt. 36. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Michael Oosterman and Kimberly Leona Oosterman, (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence,

Lyn Brennan, the Debtors, (“Clients”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Debtor paid Applicant \$4,665.00 prior to the filing of the case. According to the plan, Applicant opted out of the “no look fees” and chose to file and serve a motion for fees in accordance with 11 U.S.C. §§ 329 and 330. Dckt. 156.

Fees are requested for the period March 14, 2018, through May 14, 2020. Applicant requests fees in the amount of \$12,156.66 and costs in the amount of \$160.40.

Trustee does not oppose the fees and costs requested. Dckt. 199.

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 general case administration, drafting and filing motions, preparing for hearings, and communicating with Trustee and creditors. 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 32.46 hours in this category. Applicant drafted and prepared Modified Plans and Motions to Confirm Plans, reviewed Objections, defended two motions for relief from the automatic stay, attended hearings, drafted Motions to Employ and Motions to Sell, and communicated with Debtor, Trustee, and creditors.

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
Charles Hastings	28.88	\$375.00 \$400.00	\$11,210.83
Natali Ron	3.58	\$250.00 \$300.00	\$945.83
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$12,156.66

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$160.40 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Call charges		\$160.40
Total Costs Requested in Application		\$160.40

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$12,156.66 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First Interim Costs in the amount of \$160.40 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts

as compensation to this professional in this case:

Fees	\$12,156.66
Costs and Expenses	\$160.40

pursuant to this Application as interim fees in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Charles L. Hastings (“Applicant”), Attorney for Daniel Lawrence Brennan and Allison Lyn Brennan, the Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Charles L. Hastings is allowed the following fees and expenses as a professional of the Estate:

Charles L. Hastings, Professional employed by Chapter 13 Debtors

Fees in the amount of \$12,156.66
Expenses in the amount of \$160.40,

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

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

21. [20-00202-E-0](#)
[UST-1](#) **IN THE MATTER OF THOMAS
OSCAR GILLIS,** **MOTION UNDER 11 U.S.C. 329 AND
FEE RUBRIC105 AND FEDERAL RULE
OF BANKRUPTCY PROCEDURE 2017
(THOMAS O. GILLIS)
5-26-20 [4]**

**The hearing on the Motion has been continued to 3:00 p.m. on July 14, 2020,
pursuant to a prior order of the court.**

22. [20-00202-E-0](#)
[UST-2](#) **IN THE MATTER OF THOMAS
OSCAR GILLIS,** **MOTION UNDER 11 U.S.C. 329 AND
FEE RUBRIC105 AND FEDERAL RULE
OF BANKRUPTCY PROCEDURE 2017
(THOMAS O. GILLIS)
5-26-20 [13]**

**The hearing on the Motion has been continued to 3:00 p.m. on July 14, 2020,
pursuant to a prior order of the court.**