

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 29, 2021 at 2:00 p.m.

1.	<u>20-21910-E-13</u> <u>FF-6</u>	TIMOTHY TROCKE Gary Fraley	CONTINUED MOTION TO CONFIRM PLAN 12-17-20 [149]
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 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 Plan is XXXXX.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Timothy Tobias Trocke ("Debtor") has provided evidence in support of confirmation. The Amended Plan provides for payments of \$100.00 commencing December 25, 2020 and all net proceeds from the sale of the real property commonly known as 1671 Rosalind Street, Sacramento, California to be turned over directly to the Chapter 13 Trustee after fees and costs, sufficient to pay all creditors proposed to be paid through the plan and will complete the plan. Amended Plan, Dckt. 151. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

On January 19, 2021, the Chapter 13 Trustee, David p. Cusick (“Trustee”) filed a Non-opposition noting that the court granted Debtor’s Motion to Seel Free and Clear of Liens on December 22, 2020 and that the Escrow Closing Statement submitted by the title company showed the Trustee was to receive his demand of all net proceeds, approximately \$72,000. Dckt. 199.

HISTORY OF THE MOTION

The hearing on this Motion has been continued several times since the original hearing on February 2, 2021 in order to address Debtor’s Objections to the Claim of Roger Anderson, Trustee of the RWA Trust dated March 14, 2014 (“Creditor”).

On April 6, 2021 Trustee filed an Amended Response requesting the court take into consideration that Debtor has paid \$80,512.03, which \$72,297.03 was paid from Chicago Title Company from proceeds of sale of real property, into the Plan and the Debtor is now current in plan payments. Dckt. 239.

The Objection was decided in two phases. In Phase 1, the court sustained Debtor’s Objection to Creditor’s original Proof of Claim finding that Proof of Claim 2-1 was deficient in many ways, including: (1) failing to provide itemizations, and (2) failing to provide the loan payment history, failing to state the cure amount (and instead stating that the full obligation that was not yet due was the cure amount). Creditor filed a First Amended Proof of Claim while the Objection to the original POC was still a contested matter in front of the court. In Phase 2, Debtor filed a claim objection to Creditor RWA’s Amended Claim 2 filed on January 26, 2021 where Creditor increased the claim from \$126,635.02 to \$180,264.76.

Then, on April 19, 2021, the day before the scheduled April 20, 2021 hearing on Phase 2 of the Objection, Creditor filed a Second Amended Proof of Claim 2-3, continuing in the rolling filing notwithstanding there being the pending Contested Matter in which the Parties were providing their evidence and legal arguments concerning Creditor’s claim. The amended Proof of Claim 2-3 states a secured claim in the amount of \$183,094.13.

The court further continued the April 27, 2021 to 2:00 p.m. on May 25, 2021 having taken under submission the Objection to the Claim of Roger Anderson and allowing a reasonable time for the parties to engage in constructive settlement talks in light of what was addressed at that hearing.

Additionally, the Debtor and Chapter 13 Trustee had identified several “tweaks” that Debtor may be making to the Plan.

The objection to the Second Amended Claim 2-3 was further continued to June 29, 2021, to allow for the court to finalize its ruling on the Objection.

June 29, 2021 Hearing

At the hearing, the court will review the decision being issued on the claim objection and address how the parties want to proceed.

**IF COUNSEL FOR DEBTOR CONCURS WITH THE CLARIFICATION
AS TO THE AMOUNT OF THE DIVIDEND FOR UNSECURED CLAIMS
NO APPEARANCE BY DEBTOR’S COUNSEL REQUIRED**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 25, 2021. By the court’s calculation, 35 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.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, David Nieto Hernandez (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on June 14, 2021. Dckt. 36. In the Non-Opposition, the Chapter 13 Trustee requests that the order confirming the modified plan state that no less than a 70% dividend shall be paid to Class 7 creditors. *Id.* The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on May 25, 2021, as amended to provide the following:

no less than a 70% dividend shall be paid Class 7 creditors

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.

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 Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 13, 2021. By the court's calculation, 47 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Objection to Confirmation 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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<p>The Objection to Confirmation of Plan is overruled.</p>

Nissan Motor Acceptance Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor has failed to provide for Secured Creditor's claim in the full amount.
- B. Debtor has proposed an unreasonably low interest rate.
- C. The plan is not feasible.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$28,221.01 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as \$28,049.88 and indicates that it is secured by a Nissan Rogue 2WD, VIN # 8513 ("Vehicle"). The Plan provides for treatment of this as a Class 2(B) claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a \$302.82 monthly dividend on account of the claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1325(a)(5)(B) because the value of the Property to be distributed to the Creditor is less than the allowed amount of the Creditor's claim. Creditor asserts that the Debtor must therefore provide for the Creditor's claim in full in the amount of \$28,221.01.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for an interest rate of 4.50%. Creditor's claim is secured by the Vehicle. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.25% risk adjustment, for a 4.5% interest rate.

Thus, the objection to confirmation of the Plan on this basis may be sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Infeasible Plan

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). According to the Creditor, the Plan calls for monthly payments by the Debtor of \$396.00 to the Trustee for 60 months for a base plan amount of \$23,7600. However, the \$396.00 monthly payments are insufficient to fund the Plan once the creditor's claim, \$28,221 with an interest of 6.25%, is fully provided for.

Taking into account that the court would adopt the interest rate at the rate that Debtor proposes, the Plan would be feasible.

Court's Order Requiring Appearance RE Stipulation

On May 18, 2021, Creditor and Debtor filed a Stipulation addressing the instant objection. Dckt. 33. The Stipulation calls for the Debtor to amend her Chapter 13 Plan to provide for a 5.5% interest rate on the Secured Creditor's claim. *Id.*

Upon uploading the order approving the Stipulation, the court issued an order requiring the appearance of counsel at the hearing on the Objection to the Confirmation at 2:00 p.m. on June 29, 2021. Dckt. 37. In the order, the court notes that the Stipulation does not address how Debtor will fund the plan and what monthly plan payment Debtor will propose as part of the some future date amendment. *Id.* Furthermore, the court ordered that Debtor shall file a supplemental pleading stating all of the proposed plan amendments and serve such on the Chapter 13 Trustee, U.S. Trustee, and any creditors whose treatment under the proposed Plan will be altered by such amendments on or before June 15, 2021. *Id.*

Additionally, as drafted, the "IT IS ORDERED that the terms and conditions set forth in the Stipulation are hereby approved and made order of the court," Order, p. 2:9-12, Dckt. 37, could be read to state that this court could issue corrective sanctions (monetary and incarceration) and a District Court judge could issue punitive monetary and incarceration sanctions if the Debtor fails to amend the Plan as stated in the stipulation that would be made the "Stipu-Order" of the court.

Debtor filed a Motion to Value Creditor's collateral on April 30, 2021. Dckt. The motion was set for hearing on June 8, 2021 at 2:00 p.m. The same Stipulation filed with this Objection was filed for the Motion to Value. Dckt. 35. The court approved the Stipulation on May 21, 2021. Dckt. 37. The court granted Debtor's Motion to Value Collateral pursuant to the terms stated in the Stipulation on May 25, 2021. Dckt. 38.

Debtor's Supplemental Pleadings

Debtor filed a Status Report and a proposed Order Confirming Plan on June 3, 2021. Dckts. 43, 44. Debtor proposes the following amendments:

IT IS FURTHER ORDERED that the Class 2 Secured Claim of Nissan Motors Acceptance Corporation for a 2018 Nissan Rogue 2 WD, vehicle identification number KNMAT2MT4JP608513 shall be allowed a secured valuation of \$17,471.50 at a 5.5% interest rate with the remaining balance as an unsecured claim in Class 7.

IT IS FURTHER ORDERED that administrative fee in §3.06 shall be reduced from \$70.33 to \$56.00 per month.

IT IS FURTHER ORDERED that the Chapter 13 plan shall be \$396.00 for month 1, then \$425.00 per month for months 2 through 60.

Id. Debtor argues that an amended plan is not necessary as the Stipulation only affects the dividend of one creditor and that she will be able to bear the *de minimis* \$29.000 increase into her budget.

Trustee's Response

Trustee filed a Response on June 9, 2021. Dckt. 47. The Trustee states that after a review of the proposed Order Confirming Plan, Trustee believes the stipulated terms are a reasonable compromise. *Id.*

At the hearing, **xxxxx**

The Plan as amended complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled.

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

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

The Objection to the Chapter 13 Plan filed by Nissan Motor Acceptance Corporation ("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, and the Plan filed on April 30, 2021 as amended providing for the following:~~

~~Class 2 Secured Claim of Nissan Motors Acceptance Corporation for a 2018 Nissan Rogue 2 WD, vehicle identification number KNMAT2MT4JP608513 shall be allowed a secured valuation of \$17,471.50 at a 5.5% interest rate with the remaining balance as an unsecured claim in Class 7.~~

~~The administrative fee in §3.06 shall be reduced from \$70.33 to \$56.00 per month.~~

~~The Chapter 13 plan payments shall be \$396.00 for month 1, then \$425.00 per month for months 2 through 60.~~

~~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.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 10, 2021. By the court's calculation, 50 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).

<p>The Motion to Confirm the Modified Plan is XXXXX.</p>
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The debtor, Ronald Lee Gregory ("Debtor") seeks confirmation of the Modified Plan to cure a default in payments due to underestimated vehicle repair expenses and an increase in cost of living. Declaration, Dckt. 66. The Modified Plan provides for payments of \$200.00 per month for months 34 through 57, and a zero (0) percent dividend to unsecured claims totaling \$36,040.14. Modified Plan, Dckt. 65. 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 June 14, 2021. Dckt. 73. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor fails to indicate that nonstandard provisions were attached.
- B. Trustee is uncertain if change in interest rate was made in error.

DISCUSSION

Error in Plan Form

The Chapter 13 Trustee reports that the Debtor failed to indicate in § 1.02 of the plan form that nonstandard provisions were attached. Dckt. 65. The Debtor has attached nonstandard provisions in § 7.01 and § 7.02, where these modify Section 2.01 and Section 5.02 respectively.

The Plan form includes specific language which provides that “A nonstandard provision will be given no effect unless this section indicates one is included in section 7 and it appears in section 7.” Thus, Debtor’s Section 7 provision has no effect.

Class 2 Interest Rate

The Chapter 13 Trustee contends that it is uncertain if the Debtor intends the changes made to the interest rate to be retroactive or if the change was made in error. The Debtor is proposing to change the interest rate to Class 2 (A) creditor, Wheels Financial Group, from 6.0% per the confirmed plan to 4.50%. The Trustee has disbursed \$549.32 in interest to the creditor with an additional \$146.18 accrued at the 6.0% rate. Without certainty regarding this rate, a plan may not be confirmed.

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

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

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

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

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

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 creditors and Office of the United States Trustee on May 13, 2021. By the court's calculation, 47 days' notice was provided. An amended Proof of Service states that the motion and supporting pleadings were served on Chapter 13 Trustee on May 26, 2021. By the court's calculation, 34 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).

Notice was not sufficient for the Chapter 13 Trustee. At the hearing **xxxxxxx**

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 debtor, Laura Ann Salinas ("Debtor") seeks confirmation of the Modified Plan to account for projected increases in gross monthly income within the remainder of her plan where Debtor expects a raise at certain points through the years of the plan and her children living at home have obtained part-time work and will be contributing to house expenses.. Declaration, Dckt. 53. The Modified Plan provides:

1. \$2,950.00 to be paid per month through November 2021;
2. \$3,060.00 beginning in December 2021 through May 2022;
3. \$3,111.00 from June 2022 through September 2022;

4. \$3,210.00 from October 2022 through March 2023;
5. \$3,660.00 from April 2023 through March 2024; and
6. \$3,800.00 beginning in April 2024 through March 2025
7. and a 0% dividend to unsecured claims totaling \$7,083.57.

Modified Plan, Dckt. 52. 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 June 14, 2021. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent under the proposed Plan.
- B. Debtor is delinquent under last confirmed Plan.

DISCUSSION

Delinquency Under the Proposed Plan

The Chapter 13 Trustee asserts that Debtor is \$2,300.00 delinquent under the proposed plan. The Plan states that Debtor has paid a total of \$38,365.49 per Section 7, where Trustee actually received \$33,865.49 for this period. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed a Reply on June 24, 2021. Dckt. 69. Debtor notes that Trustee is incorrect and that according to the NDC the Trustee has actually received \$41,665.49 through May 25, 2021. Exhibit B, Dc kt. 70. Debtor however notes that Trustee was correct in his assertion that Debtor was behind on her payments and proposes the following:

Beginning month 17, payments into the plan shall be as follows:

\$2,877.00 for 1 month
\$3,077.00 for 4 months
\$3,168.00 for 6 months
\$3,223.00 for 4 months
\$3,279.00 for 6 months
\$3,729.00 for 12 months
\$3,831.00 for 11 months

Failure to Explain Delinquency Under Last Confirmed Plan

The Debtor has failed to explain why she became delinquent \$9,839.74 under the terms of the confirmed plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing xxxxxxxx

~~The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

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

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

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

IT IS ORDERED that Motion to Confirm the Modified Plan is xxxxx.

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 9, 2021. 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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<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the proposed Plan is not Debtor’s best effort.

DISCUSSION

Trustee’s objections are well-taken.

Not Best Effort

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

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan

on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

According to Trustee, Debtor admitted at the Meeting of Creditors that she has and will continue to receive unemployment income of \$1,800.00 until September 2021 but projects no future income for her. Moreover, Trustee asserts that although Debtor can fund the plan based on her spouse's income, Debtor states "Debtor's income is mainly government aid connected to COVID stimulus payments." Trustee also points the court that Debtor lists a \$1,800 expense for "Termination of unemployment benefits in September 2021." Trustee requested Schedule J be amended to remove this expense.

Trustee also suggested that Debtor can make plan payments of \$2,666.00 for the next 4 months until unemployment income expires and thereafter make plan payments of \$266.00 for 56 months. It would require that the plan length be extended from 36 months to 60 months.

Debtor filed a Reply on June 20, 2021. Dckt. 20. Debtor proposes paying the \$7,200 the Trustee cited over a period of a 4-year term where she would pay \$378/month for 48 months. This would pay the unsecured creditors the same dividend as the Trustee claimed.

Debtor also filed a Declaration explaining that since filing Debtor has been able to use the unemployment money to catch up with utilities; and the money she has been receiving has not been "stashed away" but to become current on her bills and get back on her feet. She has also learned how to budget for a family of four.

No explanation is provided by Debtor regarding her spouse's income. Moreover, Debtor has failed to file amended Schedule J as requested by Trustee.

At the hearing **xxxxxxx**

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

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

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

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

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

Final Ruling: No appearance at the June 29, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 27, 2021. By the court's calculation, 33 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). 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 Value Collateral and Secured Claim of Jefferson Capital Systems LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$4,500.00.

The Motion filed by Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("Debtor") to value the secured claim of Jefferson Capital Systems LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 38. Debtor is the owner of a 2011 Volkswagen Jetta ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$4,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee has no opposition to the valuation but notes for the court that Debtor is delinquent \$27.34 in plan payment under the proposed plan. Dckt. 47.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on June 8, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a

balance of approximately \$10,026.99. Proof of Claim, No. 2-1. 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 \$4,500.00, 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 Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("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 Jefferson Capital Systems LLC ("Creditor") secured by an asset described as 2011 Volkswagen Jetta ("Vehicle") is determined to be a secured claim in the amount of \$4,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$4,500.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

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 12, 2021. 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.

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 has failed to file a motion to value a secured claim.
- B. Debtor’s mortgage payment is slightly delinquent.

DISCUSSION

Feasability

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor is delinquent in plan payments because Debtor’s mortgage payment is greater than what is provided for under the plan resulting in a delinquency that will persist through the term of the plan. Debtor’s plan provides for mortgage payments of \$2,787.74 where \$2,813.62 are needed according to the proof of claim.

Addressing this concern, Debtor requests that the order confirming the plan state the following language: “Chapter 13 Plan payments shall be \$4,478.00 for 60 months.” Dckt. 41.

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 Jefferson Capital Systems. Debtor has failed to file a Motion to Value the Secured Claim of Jefferson Capital Systems, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor filed a Reply on May 31, 2021 requesting that the court continue the hearing on this motion to June 29, 2021 the same day that Debtor has set for the hearing on the Motion to Value the Secured Claim of Jefferson Capital Systems, LLC. Dckt. 41. A review of the docket for this case shows that the Debtor filed the motion on May 27, 2021 and has been set for hearing on June 29, 2021 at 2:00 p.m.

In light of Debtor prosecuting this case to address the Trustee's objection, the hearing is continued.

June 29, 2021 Hearing

Debtor's Motion to Value the Secured Claim has been valued at the amount requested.

Debtor's motion to value having been granted at the amount sought, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). 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 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 Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew's ("Debtor") Chapter 13 Plan filed on March 24, 2021, as amended,

Chapter 13 Plan payments shall be \$4,478.00 for 60 months.

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.

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 May 29, 2021. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Substitute 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 Substitute is granted, the bankruptcy case shall continue to be administered, the requirement for Debtor Heather Oliver to complete a personal financial management course as provided in 11 U.S.C. § 1328(g)(1), and denied as to the request to waive other requirements of 11 U.S.C. § 1328.

Joint Debtor, James D. Oliver, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Heather L. Oliver. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 7025.

The two debtors filed for relief under Chapter 13 on July 23, 2019. On February 7, 2020, Debtors' Chapter 13 Plan was confirmed. Dckt. 56. On April 1, 2021, Debtor Heather Oliver passed away. Joint Debtor asserts that he is the lawful successor and representative of Debtor Heather Oliver.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Suggestion of Death was filed on May 28, 2021. Dckt. 64. Joint Debtor is the spouse of the deceased party and is the successor's

heir and lawful representative. Joint Debtor states that he will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case “pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the

90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004

(emphasis added); *see also Hawkins v. Eads, supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor’s 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, James D. Oliver has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 64. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, James D. Oliver, as the spouse of the deceased party and as the successor’s heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Heather Oliver. The court grants the Motion to Substitute Party.

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 Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and James D. Oliver is substituted as the successor-in-interest to Heather L. Oliver and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the personal financial management

course requirement of 11 U.S.C. § 1328(g)(1) is waived for deceased Debtor Heather L. Oliver.

IT IS FURTHER ORDERED that the requested waiver of other requirements of 11 U.S.C. § 1328 for certifications to be provided for the deceased Debtor Heather L. Oliver is denied, with such certifications to be made by her successor representative.

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 9, 2021. 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 -----
-----.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor failed to provide copies of payment advices.
- B. The Plan is overextended.
- C. Debtor failed to disclose an auto loan at the Meeting of Creditors.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Pay Advices

Debtor have not provided Trustee with employer payment advices for Corey Garcia 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). While Debtor has provided some pay stubs, Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Infeasible Plan

Trustee alleges that the Plan is overextended due to claims being improperly classified. 11 U.S.C. § 1325(a)(6).

- First, the proposed monthly plan payments of \$950.00 are insufficient to pay the \$4,951.43 monthly contract installment on the Class 1 claims.
- Second, the proposed \$950.00 monthly payments for the balance of the plan term are insufficient to pay the Chapter 13 Trustee's fee, administrative fees, the Class 1 monthly contract installment, the Class 1 dividend, and the Class 2 dividends.

Two of the Class 1 claims, Toyota Financial Services and AmeriCredit/GM Financial, appear to be leases and are properly provided for in the plan elsewhere under Section 4 for Executory Contracts and leases. Plan, ¶¶ 4.01, 3.10; Dckt. 3.

Additionally, the Class 1 claim for Flagstar Bank appears to be for a current mortgage and should belong in Class 4 if Debtor intends to pay it directly if there are no defaults on that claim and it extends beyond the length of the plan. Trustee suggests that the final claim by Yamaha Financial Services for a dirt bike, will be paid off during the plan and would normally belong in Class 2. Thus, the Plan may not be confirmed.

Failure to Disclose

Trustee alleges that at the Meeting of Creditors, it was discovered that the Debtor have a 2013 Chevrolet Volt that has an outstanding loan with Capital One Auto Finance that will mature in less than 5 years. Debtor failed to list the loan on Schedule D and failed to list the vehicle in the Plan in Class 2. Dckt. 3. Debtor have failed to fully and accurately provide all information required by the petition, schedules and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. Section 1325(a)(3) and the Debtor have failed to fully comply with the duty imposed by 11 U.S.C. Section 521(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 an order substantially in the following form holding that:

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee,

David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 May 17, 2021. 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).

<p>The Motion to Confirm the Amended Plan is XXXXX.</p>

The debtors, Robin Arlene Harland and Thomas Scott Harland ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for payments for the remaining 53 months of the Plan for \$3,582, plus a one-time payment of \$80,000 within 24 months of June 2021, and a 100 percent dividend to unsecured claims totaling \$36,369.58. Amended Plan, Dckt. 62. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 14, 2021. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

- A. The Debtor is delinquent in Plan payments.
- B. The Plan does not work mathematically.
- C. The Motion fails to state with particularity the grounds for the Motion.
- D. The Trustee cannot determine the method of attorney compensation.

DISCUSSION

Review of Minimum Pleading Requirements for a Motion

Trustee contends that the Motion does not provide the necessary useful information, such as a brief description of the Plan, an explanation as to what has changed, and a summary of prior events that have brought Debtor to a second amended Plan. Instead, Trustee alleges that Debtors have obligated all parties, including the Court, to read and review all 59 documents filed previously and draw their own conclusions.

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise,

debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

- A. Stephen M. Reynolds, on behalf of Robin Harland and Thomas Harland, hereby requests that the Court enter an order confirming their Second Amended Chapter 13 Plan dated April 20, 2021, and for such other and further relief as the Court deems proper.

This “ground” is merely a request by Movant. Presumably, Movant believed that the court would make those conclusions, but the “grounds” cannot merely state the anticipated conclusions.

Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry

of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion then states that the motion is based on (presumably where the Debtor believe the grounds that must be stated with particularity can be found) the following:

- A. The Notice of Motion;
- B. The Offer of Proof and Memorandum in Support of Plan Confirmation;
- C. Declaration; and
- D. As well as the papers on file in the bankruptcy case and on such argument or evidence as may be presented at the hearing on this Motion.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. Moreover, no such "Offer of Proof and Memorandum in Support of Plan Confirmation" has been filed.

On June 22, 2021, Debtor filed a Reply in which they addressed the Trustee's concerns. Dckt. 70. Debtor's attorney refers the court to the Declaration of Debtor Thomas Scott Harland as the source to satisfy the particularity required by the Supreme Court for a motion. As explained above, a declaration is not the place for such particularity, and neither is a reply. The motion is to state the grounds for confirmation.

The court notes that the Reply actually appears to be in the nature of a "Supplement" or Errata to the Motion and includes the stating of grounds with particularity upon which Debtor asserts that confirmation is proper. Reply, p. 3:6.5-27; Dckt. 70.

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$3,584.00 delinquent in plan payments, which represents one month of the \$3,582.00 plan payment. 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).

Debtor testify in their declaration that they paid \$3,582.00 on May 26, 2021, and have submitted via TFS the June 2021 payment of \$3,582.00. Dckt. 71, ¶ 3. The declaration is not accompanied by any exhibits.

Infeasibility

The Plan proposes payments in §7.01 as follows: "Payments through May 19, 2021, in the amount of \$20,814.00 are hereby ratified," with the remaining payments, over the next 53 months, to be \$3,582.00. Dckt. 62. According the Trustee's records, Debtor had paid \$17,230.00 into the Plan, as of May 19, 2021. Dckt. 67.

Debtor assert that the plan does work mathematically when factoring in the May 26, 2021, payment pending. Dckt. 70. They suggest that this amount can be recited in the Order Confirming Plan. *Id.* However, the purported payments are not supported by properly authenticated evidence.

At the hearing xxxxxxxx

Attorney Compensation

Under Local Bankruptcy Rule 2016(a), compensation paid to attorneys for the representation of chapter 13 debtors is determined according to 2016-1(c), which provides for fixed fees approved in connection with plan confirmation. However, if a party in interest objects, such as the trustee, compensation is determined in accordance with 11 U.S.C. §§ 329 and 330.

Trustee contends that Debtor have failed to file an amended F.R.B.P. 2016(b) statement and the Trustee cannot determine the Attorney's means of compensation. Thus, counsel's fees will be reviewed under the standard loadstar analysis.

In their Reply, Debtor points the court to Counsel having filed a 2016(b) Statement at Docket No. 8 which states that Counsel did not receive a prepetition retainer, that he was charging a flat fee and was owed \$4,000. Debtor states that a supplemental 2016(b) Statement will be filed.

~~The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

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

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

~~The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Robin Arlene Harland and Thomas Scott Harland ("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 14, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

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 12, 2021. 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.

The Objection to Confirmation of Plan XXXXX.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor is delinquent.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,610.00 delinquent in plan payments, which represents one month of the \$1,610.00 plan payment. 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).

June 29, 2021

Debtor filed a Reply on June 21, 2021 informing the court that a review of the Trustee's system shows that Debtor is current in plan payment with the April and May payments and that she will remain current by remitting the June 2021 payment timely. Dckt. 29.

No declaration and/or exhibits were filed in support of the Reply.

At the hearing xxxxxxxx

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 9, 2021. 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.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that the Plan does not represent best efforts of the debtors, Ginger Rose Wright and Valitino Navaille Wright ("Debtor").

DISCUSSION

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

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the

applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay \$225.00 per month for 60 months with 10% to unsecured creditors. However, Trustee says that according to an e-filing confirmation it received of Debtor's Amended Schedule J, Question #23 indicates that Debtor's monthly income surplus is \$839.00. Dckt. 18. Therefore, Trustee believes that Debtor should be able to increase their plan payment to \$838 a month, which would provide a higher dividend than the 10% to the general unsecured creditors. *Id.* Thus, the court may not approve the Plan.

Amended Schedule I, of which Trustee has received an e-filing confirmation, indicates that both debtors are contributing to voluntary retirement plans for a total amount of \$273.62 per month. Trustee argues that if the retirement contributions are not allowed, then some amount of those diverted funds might be available to pay unsecured creditors a higher dividend than 10%. Dckt. 18.

Debtor's Response

Debtors argue that Trustee's objection is based on a miscommunication. Debtor Valitino Wright testified that Debtor filed the Amended Schedules to reflect a temporary increase in his monthly income due to additional overtime hours. Dckt. 23, Declaration, ¶ 3. As of June 2021, Debtor asserts that he is no longer able to work overtime because of availability. *Id.* Debtor claim that their monthly income surplus equals the amount proposed in the Plan, \$225.00. Dckt. 22. Debtor Valitino Wright also testifies that he has not made any changes to his voluntary retirement contribution of 5% since filing for Chapter 13 bankruptcy on April 21, 2021. Dckt. 23, Declaration, ¶ 6.

The dollar amounts of the voluntary retirement contributions are \$75 and \$198.26 by the two Debtors.

At the hearing **xxxxxxx**

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

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

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

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

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

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 8, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.
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The Bankruptcy Code permits Jack Allen Elder and Rebecca Rene Elder, Chapter 13 Debtor, ("Movant") to sell property under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 300 E L Street, Benicia, California ("Property").

The proposed purchasers of the Property are Ronnie and Maria Ancheta, and the terms of the sale are:

- A. Purchase price of \$1,100,000.00, with an initial deposit of \$31,500.
- B. Close of escrow to take place 30 days after acceptance.
- C. Buyer to pay escrow fee, title insurance. Seller to pay county transfer tax, city transfer tax, and a one-year home warranty plan.
- D. The sale includes the stove, refrigerator, and washer.

Trustee does not oppose the sale so long as the order approving the sale states that the proceeds are to be disbursed directly to the Trustee in an amount to pay all creditors in full pursuant to the Trustee's demand and any excess funds over and above that amount can be disbursed directly to the debtor. Dckt. 108.

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 it will allow Debtor to pay off the plan by covering the remaining five months of plan payments (July 2021 through November 2021).

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately \$55,000, with Buyer's broker receiving 2.5% and Seller's broker receiving 2.5%. 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.

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

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

The Motion to Sell Property filed by Jack Allen Elder and Rebecca Rene Elder, the 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 Jack Allen Elder and Rebecca Rene Elder, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Ronnie & Maria Ancheta or nominee ("Buyer"), the Property commonly known as 300 East L Street, Benicia, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$1,100,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 105, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to pay a real estate

broker's commission in an amount not more than five (5) percent, with 2.5 percent commission to Chapter 13 Debtor's broker, Compass, and 2.5 percent commission to Buyer's broker, Prime Meridian Realty & Mtg.

- E. Next from the proceeds, there shall be disbursed to the Chapter 13 Trustee directly from escrow the amount necessary to complete the payments under the confirmed Chapter 13 Plan in this case. The Trustee shall make written demand on the escrow, with that amount disbursed to the Trustee. In the event of a dispute as the amount necessary, that shall be addressed in a further proceeding in this court.
- F. After disbursement of the amounts authorized above, including the amount demanded by the Chapter 13 Trustee, all remaining net proceeds from the sale may be disbursed directly to Debtor from escrow.

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

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

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

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

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is XXXXX.

This Motion requests an order avoiding the judicial lien of First Northern Bank of Dixon ("Creditor") against property of the debtor, William James Vannucci ("Debtor") commonly known as 26251 Madison Street, Esparto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$332,066.52. Exhibit A, Dckt. 26. An abstract of judgment was recorded with Yolo County on December 5, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$480,000.00 as of the petition date. Dckt. 14. The unavoidable consensual liens that total \$296,255.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 14. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$300,000.00 on Schedule C. Dckt. 14.

DISCUSSION

Debtor's motion seeks to avoid the lien in excess of \$25,000.00. In determining the \$25,000.00 figure, Debtor relies on a homestead exemption of only \$158,745.00 to reach the \$25,000.00 figure. A review of the docket shows that Debtor has claimed a \$300,000.00 exemption in their Schedule C. Dckt. 14. Contrary to what is stated in the Motion, no amended schedules changing such exemption to the \$158,745.00 have been filed with the court.

Creditor filed an Opposition on June 25, 2021. Creditor states the following grounds in opposing the avoidance:

1. The Notice of the Motion did not indicate that the avoidance seeks a reduction of the lien to \$25,000.
2. Debtor is not entitled to a \$300,000 exemption where the abstract was recorded prior to the increase of the homeowner's exemption at the beginning of the year, citing to C.C.P. § 703.050(a) and *In re Morgan*, 157 B.R. 467 (1993).
3. Debtor does not present evidence establishing the amounts due to Chase Mortgage as the purported lienholder.
4. The avoidance may result in prejudice to Creditor where the Meeting of Creditors has not yet occurred (scheduled for July 8, 2021) and Debtor does not provide basic information for the value of the Property or the amount of liens senior to Creditor.

California Exemption Law

As discussed in *In re Morgan*, 157 B.R. 467 (Bankr. C.D. Cal 1993), determination of the exemption amount is made pursuant to applicable California law. Here, Debtor commenced his bankruptcy case on May 21, 2021. Creditor asserts that its judgment lien was recorded on December 5, 2019.

On January 1, 2021, California substantially revised the homestead exemption law, "simplifying" it in some respect and creating significant challenges in other respects. As of the May 21, 2021 filing of this case, the applicable California homestead law provides:

§ 704.730. Amount of homestead exemption

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

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

Cal Code Civ Proc § 704.730. On Schedule C Debtor claims the \$300,000 exemption. But, Creditor asserts that its judgment lien, which was recorded on December 5, 2019, predates the change in the homestead exemption on January 1, 2021, and that the homestead exemption in effect on December 5, 2019 controls.

Creditor directs the court to California Code of Civil Procedure § 703.050 in support of its assertion that its judgment lien is subject to “only” the homestead exemption that existed in December 2019.

§ 703.050. Statutes governing exemptions

(a) The **determination** whether property is exempt or the **amount of an exemption shall be made** by application of the exemption **statutes in effect (1) at the time the judgment creditor’s lien on the property was created** or (2) if the judgment creditor’s lien on the property is the latest in a series of overlapping liens created when an earlier lien on the property in favor of the judgment creditor was in effect, at the time the earliest lien in the series of overlapping liens was created.

(b) **This section applies to all judgments**, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of this section, and whether the judgment was entered before or after the operative date of this section.

(c) Notwithstanding subdivision (a), in the case of a levy of execution, the procedures to be followed in levying upon, selling, or releasing property, claiming, processing, opposing, and determining exemptions, and paying exemption proceeds, shall be governed by the law in effect at the time the levy of execution is made on the property.

Cal Code Civ Proc § 703.050 (emphasis added).

In December 2019, the California homestead exemption provided for in former California Code of Civil Procedure § 704.730 provided:

§ 704.730.

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

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

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

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than fifteen thousand dollars (\$15,000) TWENTY-FIVE THOUSAND DOLLARS (\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than twenty thousand dollars (\$20,000) THIRTY-FIVE THOUSAND DOLLARS (\$35,000) and the sale is an involuntary sale.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is applicable, of subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

2012 Cal ALS 678, 2012 Cal AB 929, 2012 Cal Stats. ch. 678, 2012 Cal ALS 678, 2012 Cal AB 929, 2012 Cal Stats. ch. 678.

As one can see, the 2020 amendments not only made changes, but leaves hanging several points, including whether if there are spouses claiming the homestead exemption, whether each of them have up to \$600,000 that can be claimed, for a \$1,200,000 homestead exemption.

On Schedule D Debtor lists there being two other claims secured by the Property that are identified as purchase money security - Chase Mortgage #1 for (\$239,970) and Chase Mortgage #2 for (\$55,285). Dckt. 14 at 12-13.

JPMorgan Chase Bank has filed two proofs of claim in this case, Proof of Claims 2-1 and 5-1, each for unsecured credit card debt. No secured claims have been filed for the “Chase Mortgage” secured claims.

If there is (\$295,000) in senior secured debt and Debtor having a \$100,000 homestead exemption, at Debtor’s \$480,000 value there would appear to be a significant value in the property for the judgment lien of Creditor.

At the hearing ~~XXXXXXXX~~

~~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 in its entirety / for all amounts in excess of \$25,000 subject to 11 U.S.C. § 349(b)(1)(B).~~

ISSUANCE OF A COURT-DRAFTED ORDER

An 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 William James Vannucci (“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 First Northern Bank of Dixon, California Superior Court for Yolo County Case No. CV19-1286, recorded on December 5, 2019, Document No. DOC-2019-0030721-00, with the Yolo County Recorder, against the real property commonly known as 26251 Madison Street Esparto, California, is ~~avoided in its entirety / for all amounts in excess of \$25,000.00~~ 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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2021. By the court's calculation, 6 days' notice was provided. The court set the hearing for June 29, 2021. Dckt. 111.

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

The Motion to Sell Property is granted.
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The Bankruptcy Code permits William Matthew Freeman and Carla Elise Tavormina, the Chapter 13 Debtor, ("Movant") to sell property under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 303 West J. Street, Benicia, California ("Property").

The proposed purchaser of the Property is Chris Kenney, and the summarized terms of the sale are:

- A. Purchase price of \$1,150,000.00, with an initial deposit of \$34,500.00.
- B. Close of escrow to take place 75 days after acceptance.
- C. Seller to pay for the natural hazard zone disclosure report and the smoke alarm and carbon monoxide device installation.
- D. Buyer to pay escrow fee, title insurance. Seller to pay county transfer tax

and a one-year home warranty plan.

E. The sale includes the stove, refrigerator, and washer.

Trustee's Response

Trustee filed a Response on June 23, 2021. Dckt. 117. Trustee does not oppose the sale but notes first that it appears Debtor will receive approximately \$583,733.37 (\$1,150,000.00 (offer) - \$566,266.63 (total liens)) in proceeds from the sale of the property but has only claimed an exemption of \$100,00.00 using C.C.P. § 704.730. Thus, Trustee asks the court order that any proceeds in excess of what has been claimed exempt be held until further order of the court. Trustee also notes that Debtor have failed to file an Estimated Settlement Statement.

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 the proceeds will be used to pay off all allowed liens of record.

Real Estate Commission

The Chapter 13 Debtor, exercising the powers of a bankruptcy trustee to sell property in this case, has not obtained authorization from the court to employ a broker to assist the Debtor in exercising a trustee's power to sell property. Such authorization, 11 U.S.C. § 327, is required for a professional, such as a real estate broker, to be paid compensation pursuant to 11 U.S.C. § 330.

While not disclosed in either the Motion or Debtor's Declaration, in paragraph 17, on page 7 of 10, of the Purchase Agreement, reference is made to seller or buyer having a separate agreement to pay compensation to their brokers. The court "pawed" through the Purchase Agreement several times, but could not identify a standard broker's commission provision providing for a 6% commission, which was to be divided 50/50 between the seller's broker and the buyer's broker.

No authorization to employ and no request to have the professional compensation allowed has been filed. However all is not lost for the Realtors as the law exists so that such professionals are properly paid for their services and not as a device to deprive them of compensation.

First, Debtor must file a motion to authorize employment of Debtor's Realtor. Under the facts and circumstances of this Sale, the court makes Federal Rule of Civil Procedure 18 effective for the motion to employ and Debtor may join with the requested relief to employ the Realtor a request to have allowed and pay the Realtor's commission, including authorizing it to be divided between Debtor Seller's Realtor and the Buyer's Realtor. The Motion shall request "Retroactive" authorization to employ, and not "*nunc pro tunc*" relief which the court cannot grant under these circumstances of the relief not previously having been requested and granted, but the order having been "lost."

Debtor may seek this relief by *ex parte* motion, and it may well be if Debtor's counsel jumps

right on it, the order can be issued and compensation allowed before escrow closes. If not, the Chapter 13 Trustee can hold the proceeds relating to the to be requested commissions and subsequently disburse the monies.

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 William Matthew Freeman and Carla Elise Tavormina, the 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 William Matthew Freeman and Carla Elise Tavormina, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Chris Kenney or nominee (“Buyer”), the Property commonly known as 303 West J. Street, Benicia, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$1,150,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 115, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. From the sales proceeds, after payment of the above authorized costs, property taxes, liens and other non-real estate commission amounts, the sum of \$100,000 shall be disbursed directly from escrow to Debtor, which is the \$100,000 homestead exemption claimed in the Property, and proceed thereof.

All net sales proceeds after payment of the above amounts and homestead exemption shall be disbursed directly to the Chapter 13 Trustee to be held subject to further order of the court. Any rights and interests of the Seller’s Realtor and the Buyer’s Realtor in the sales proceeds continues in full force and effect in the net sales proceeds held by the Chapter 13 Trustee, including their right to payment of an administrative expense.

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 no commissions or compensation to be paid out of the sale proceeds is authorized, Debtor not having yet obtained an order authorizing employment of Seller's Realtor nor allowance of a commission for such professional as required by 11 U.S.C. § 330.

IT IS FURTHER ORDERED that Debtor may by *ex parte* motion seek both the authorization to employ and the allowance of fees, the real estate commission, for Seller's Realtor and Buyer's Realtor. The court makes Federal Rule of Civil Procedure 18, incorporated through Federal Rule of Bankruptcy Procedure 7018 and 9014(c), effective to allow the joining in one for the motion the two different types of relief sought. The Motion shall request "Retroactive" authorization to employ, and not "*nunc pro tunc*" relief which the court cannot grant under these circumstances of the relief not previously having been requested and granted, but the order having been "lost."

Debtor may seek this relief by *ex parte* motion, and it may well be if Debtor's counsel jumps right on it, the order can be issued and compensation allowed before escrow closes. If not, the Chapter 13 Trustee can hold the proceeds relating to the to be requested commissions and subsequently disburse the monies.

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

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

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

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

<p>The Motion to Dismiss is XXXXX.</p>
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1 Oak Ventures Step Fund LLC ("Creditor"), seeks dismissal of the case on the basis that the debtor, Milton Raul Perez ("Debtor"), does not provide for full payment of Creditor's pre-petition arrearage.

DEBTOR'S OPPOSITION

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

DISCUSSION

Failure to Cure Arrearage of Creditor

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

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

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

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

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

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

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

February 23, 2021 Hearing

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

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

June 22, 2021 Hearing

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

At the hearing counsel for the Debtor reported that Debtor has not been able to refinance because the lenders require refinancing the first as well. The first has a 2% interest rate, but Debtor can only obtain new financing at 10%.

As the court addressed on the Record for the June 22, 2021 hearing, which is incorporated herein by this reference, Debtor has now (in this and his prior case) been in bankruptcy more than a year with no confirmed plan. Though this bankruptcy case filed on August 11, 2020, has been premised on Debtor refinancing the debt, no refinance has occurred during the last nine months.

Debtor's counsel advises the court that the interest rate on a refinance is too high 10%, and must include the obligation secured by the senior deed of trust, which obligation has only a 2% interest. Debtor new "plan" for a "plan" is to have unidentified family members (Debtor's counsel not having been told who these family members are) who will help fund the Plan to repay the arrearage over the

term of the Plan.

While the Debtor has every economic incentive to save this Property and the substantial equity in it, he is not demonstrating that he can prosecute this case.

The court continues the hearing to allow Debtor to get the new plan on file, the motion to confirm, and the declarations showing how it will be funded.

June 29, 2021 Hearing

At the hearing xxxxxxxx

FINAL RULINGS

18. [20-20212](#)-E-13 SHANNON BUTLER MOTION TO CONFIRM PLAN
[BMV-5](#) Bert Vega 5-18-21 [[91](#)]

DEBTOR DISMISSED: 5/20/2021

Final Ruling: No appearance at the June 29, 2021 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Confirm the Fourth Amended Chapter 13 Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

Final Ruling: No appearance at the June 29, 2021 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, creditors, parties requesting special notice, and Office of the United States Trustee on May 13, 2021. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Confirm the Modified Plan is continued to 2:00 p.m. on July 27, 2021.

The debtor, Eduardo Alfredo Monterrosa ("Debtor") seeks confirmation of the Modified Plan under the CARES Act. Debtor states he fell behind in plan payments due to his month long quarantine from work, his wife's job loss, and increased utilities resulting from his children shifting to at-home schooling due to COVID-19. Declaration, Dckt. 92. The Modified Plan provides:

1. payments of \$3,550.00 commencing June 25, 2021 payment for 12 months,
2. followed by \$4,810.00 per month for 51 months for a plan term of 84 months, and
3. a zero (0) percent dividend to unsecured claims totaling \$221,723.00.

Modified Plan, Dckt. 89. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Debtor filed a Supplemental Document further modifying the proposed Plan. Dckt. 102. Debtor seeks to modify the secured claim of Ally Bank as follows: reclassify the claim from a Class 4

claim to Class 2A in order to account for post-petition arrearage in the amount of \$5,559.09. Thus, the monthly plan payment will be \$2,020.00 for 21 months and \$4,865.00 for 63 months.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 14, 2021. Dckt. 105. Trustee opposes confirmation of the Plan on the basis that:

- A. Insufficient service of Plan..
- B. Debtor fails to explain why the interest rate is the contract rate.
- C. Debtor will not be able to perform the plan as required.
- D. The caption in the Motion states incorrect hearing information.

DISCUSSION

Insufficient Service

The Chapter 13 Trustee opposes Debtor’s motion on the basis that the plan with the proposed changes listed on Debtor’s Supplemental Pleading was not served on other creditors. Dckt. 105. The Chapter 13 Trustee asserts that the First Modified plan included Creditor, Ally Financial in Class 4. Dckt. 89. The Debtor now proposes changes but service of the Supplemental Pleading was given to only the attorney for Ally Financial, the Debtor, the Chapter 13 Trustee, and the United States Trustee. Dckt. 104. Therefore, Debtor has not advised other creditors of the proposed changes in payments to Ally Financial.

Interest Rate

The Chapter 13 Trustee asserts that the Debtor fails to explain why Creditor Ally Financial is to be paid contract interest rate of 10.7%. The vehicle securing this claim is a 2017 Toyota Highlander, purchased used by Debtor in November 2018. Proof of Claim 4, Attachment 2, Purchase Contract.

The Chapter 13 Trustee argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, secured creditors interest rates are not required to be contract rate. Moreover, in *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.25% risk adjustment, for a 4.5% interest rate. The Plan cannot be confirmed. See 11 U.S.C. § 1325(a)(5)(B)(ii).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Trustee's calculations, the Plan will run 92 months, and the monthly dividend to the secured claim of the Franchise Tax Board is now showing as \$0.00. The set monthly dividends total \$5,244.68 before Trustee fees, although this amount will be reduced by \$540.00 in three months after accounting for attorney fees and \$463.26 in 21 months after the post-petition arrears to Ally Financial are paid. The proposed plan payment of \$4,865.00 is \$4,670.40 after Trustee fees of 4%. Thus, the Plan is not feasible.

Incorrect Hearing Information

Chapter 13 Trustee asserts that the caption in the instant Motion to Modify Plan states an incorrect time, courtroom, and judge for the hearing but the information on the Notice of Hearing appears to be correct.

DEBTOR'S REPLY TO CHAPTER 13 TRUSTEE'S OPPOSITION

Debtor filed a Reply on June 22, 2021. Dckt. 108. Debtor addresses Trustee's concerns as follows:

Insufficient Service

Debtor concedes that the Supplemental Pleading in Support of the Motion to Modify Plan After Confirmation was served only on the United States Trustee, the Chapter 13 Trustee, counsel for Creditor Ally Financial, and the Debtor. The Debtor agrees with the Chapter 13 Trustee that all other creditors should be advised of the changed treatment of Creditor Ally Financial as a Class 2 creditor. The Debtor suggests the court continue the hearing on the Motion to Modify for 30 days to allow for proper service of the Supplemental Pleading, and any additional Supplemental Pleadings, on all creditors.

Interest Rate

Debtor's Attorney has contacted Ally Financial regarding the contract interest rate of 10.7%. Debtor anticipates filing a Supplemental Pleading to address the interest rate, and to further modify the plan to provide for an interest rate in line with the guidelines set forth in Supreme Court case, *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

Cannot Comply with Plan

Debtor states that the monthly dividend to the secured claim of the Franchise Tax Board showing as \$0.00 was an inadvertent error. Debtor asserts the monthly dividend should be \$77.00. Debtor concedes that the plan is overextended and attached a proposed Order Modifying Plan. Exhibit, Dckt. 109.

Errors in Motion's Caption

Lastly, Debtor notes the errors and "regrets the scrivener's error."

In the response filed by Debtor on June 22, 2021, specific endeavors to address the Trustee's concerns and to "tweak" the Plan are discussed, and Debtor requests a continuance to accomplish such. The court continues the hearing to allow Debtor and Debtor's counsel to continue in their diligent prosecution of 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 to Confirm the Modified Chapter 13 Plan filed by the debtor, Eduardo Alfredo Monterrosa ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm the Modified Plan is continued to 2:00 p.m. on July 27, 2021.

**CONVERTED TO CHAPTER 7 ON
5/21/2021**

Final Ruling: No appearance at the June 29, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Chapter 13 Trustee and Office of the United States Trustee on April 21, 2021. By the court's calculation, 69 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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 Amended Plan is denied without prejudice as moot.

The debtor, David S. Fletcher ("Debtor") seeks to amend the proposed plan. Debtor filed a Notice of Conversion on May 24, 2021, however, converting the case to a proceeding under Chapter 7. Dckt. 205. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on May 24, 2021. *McFadden*, 37 B.R. at 521.

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

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

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

appearing,

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

21.	<u>21-21572-E-13</u> <u>DPC-1</u>	CINDY FORGRAVE Peter Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 6-9-21 [27]
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Final Ruling: No appearance at the June 29, 2021 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 Debtor and Debtor’s Attorney on June 9, 2021. 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 Objection to Confirmation of Plan is continued to 2:00 p.m. on July 20, 2021.
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that Plan relies on Motions to Avoid Liens.

DISCUSSION

Trustee objects that the Debtor’s Plan relies on Motions to Avoid Liens. *See* Dckt. 15 and 21. The Trustee is not certain that Debtor can afford the plan payments unless these motions are successful. These motions have been set for hearing at 2:00 p.m. on July 20, 2021.

Objection filed by Creditor Cadles of West Virginia

The deadline for filing an Objection was set for June 11, 2021. Creditor filed their Objection on June 24, 2021. Dckt. 31. Notwithstanding this untimeliness, the court will treat this objection as a pleading in support of Trustee’s Objection providing supplemental information which identifies a specific claim that is the subject of Trustee’s Objection.

Creditor objects on the basis that the proposed Plan does not provide for Creditor's secured claim. Creditor asserts that a money judgment was entered in favor of Creditor against Debtor in the Nevada County Superior Court in the principal amount of \$282,628.05, with the abstract of judgment having been recorded on December 15, 2020 in the Official Records of Nevada County. The money judgment entered against the Debtor and a copy of the Abstract of Judgment are attached to Creditor's Proof of Claim 2-1. Debtor has misclassified Creditor as an unsecured debt in an attempt to modify Creditor's claim and seeks to avoid the judgment lien.

Creditor argues that this case was filed in bad faith and alleges that Debtor's sole purpose in filing for Chapter 13 bankruptcy is to avoid the sale of her residence under Creditor's judgment lien. Creditor explains that after summary judgment was granted in its favor in the underlying state court action, the Debtor quit-claimed her interest in the subject property to third parties, forcing Creditor to bring a fraudulent transfer lawsuit in Nevada County Superior Court. In response to that lawsuit, the third parties quit-claimed their interests back to Debtor and the bankruptcy filing followed. ^{Fn. 1}.

FN. 1. That a judgment debtor would file bankruptcy to avoid the sale of a residence by a judgment creditor is not surprising or improper. However, when the judgement debtor begins transferring away assets and fraudulent transfer litigation ensues, that may be a different story.

Creditor further asserts that Debtor has substantially undervalued her residence which sits on 49 acres.

Decision

Debtor's two Motions to Avoid the Liens are currently pending and with respect to any discovery valuation issues, these will be addressed through those motions and as such Creditor can prosecute its part of the contested matter as appropriate.

The court continues this Objection for to be heard on the same date and time as the individual Motions to Avoid Lien set for hearing at 2:00 p.m. on July 20, 2021.

Creditor's information relating to the Trustee's Objection piqued the court's curiosity about what is being alleged concerning this real property. On Schedule A/B Debtor lists the residence in Penn Value of \$598,000 on Schedule A/B. Dckt. 1 at 13. However, in the notes going with this, Debtor states that property has a Fair Market Value of \$625,000, which the Debtor discounts down to \$598,000 after deducting 8% for the cost of sale. Debtor stating the current value of the Property on Schedule A/B under penalty of perjury is to state the value of the property, not the net sales proceeds. Thus, we begin with a value of \$625,000.

On Schedule C Debtor claims an exemption of \$557,000 in the Property, citing to California Code of Civil Procedure § 704.730. California Code of Civil Procedure § 704.730 provides, as of January 1, 2021, that the homestead exemption amount is the greater of the median sale price for a singly family home in the county in which it is located or \$300,000. Debtor asserts that the median sales price for homes countywide in Nevada County for 2020 was \$557,000.

On Schedule D, Debtor lists a secured claim in the amount of (\$102,000) which encumbers

the Property with a deed of trust or mortgage. Presumably this predates Creditor's judgment lien.

Debtor filed the Motion to Avoid the judgment lien on June 4, 2021. In addition to the deed of trust, Debtor identifies another senior judgment lien in the amount of (\$132,955), which Debtor is also seeking to avoid in another Contested Matter. In the Objection, Creditor asserts that the value of the property is much greater than the \$598,000 asserted by Debtor, noting that in addition to a home, it includes forty-two (42) acres.

This appears to be a situation that may lead to an interesting battle of experts, or with the experts' information in hand, the parties coming up with a resolution consistent with California and Federal law.

A look at Schedule I provides some interesting information. Debtor is unemployed and states having monthly income of \$600 from rental property or business and \$1,800 in unemployment compensation. Dckt. 1 at 30-31. No profit and loss statement, as required in ¶ 8a of Schedule I is provided for the \$600 in monthly income.

Looking at Schedule J, Debtor lives a very tight, almost destitute lifestyle. She has gas, repair and maintenance expenses of only (\$130) a month, which having a vehicle insurance expense of (\$230) a month. *Id.* at 33. On Schedule A/B, Debtor states under penalty of perjury that she has no vehicle, but drives a 2008 Land Rover for which "title" is in Peter Baga, as is the loan on the vehicle. Further, that this vehicle "Does not belong to Debtor." *Id.* at 14.

On the Statement of Financial Affairs Debtor states under penalty of perjury that she was unemployed in 2019, 2020, and now 2021. *Id.* at 35-37.

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

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

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

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to 2:00 p.m. on July 20, 2021.

Final Ruling: No appearance at the June 29, 2021 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 Debtor and Debtor’s Attorney on June 9, 2021. 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, as a supplement to the Chapter 13 Trustee’s Objection, is continued to 2:00 p.m. on July 20, 2021.

Creditor Cadles of West Virginia (“Creditor”), opposes confirmation of the Plan on the basis that Plan seeks to avoid its lien over Debtor’s property. The Objection was untimely filed and the court has taken it as a pleading in support of Trustee’s timely filed Objection to Debtor’s Plan. The court discusses Creditor’s argument as part of the Trustee’s Objection set for hearing on June 29, 2021 at 2:00 p.m.

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

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

The Objection to the Chapter 13 Plan filed by Cadles of West Virginia, having been presented to the court, the Objection not having been timely filed, the Objection asserting the same grounds as the Objection filed by the Chapter 13 Trustee, 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 2:00 p.m. on July 20, 2021, to be conducted as

supplemental information relating to the Trustee's Objection.

23. [17-23287](#)-E-13 **ROBERT AMADOR** **MOTION FOR COMPENSATION FOR**
[MRL-4](#) **Mikalah Liviakis** **MIKALAH RAYMOND LIVIAKIS,**
 DEBTORS ATTORNEY(S)
 5-27-21 [181]

Final Ruling: No appearance at the June 29, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2021. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.
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Mikalah R. Liviakis, the Attorney ("Applicant") for Robert Marciano Amador, the Chapter 13 Debtor ("Client"), makes a First Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 17, 2018, through May 27, 2021. Applicant requests substantial and unanticipated fees in the amount of \$5,621.00 and costs in the amount of \$0.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the

estate at the time they were rendered?

- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must 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 for the Estate include resolving the Trustee’s Motions to Dismiss, the filing of the Motions for Relief, and preparing the Debtor’s Modified Plan and Motion to Confirm. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 180. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v.*

Fitzsimmons (In re Yermakov), 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Administration: Applicant spent 3.7 hours in this category. Applicant responded to motions for relief from automatic stay in Debtor’s case from two separate mortgage creditors related to Debtor’s home.

Chapter 13 Plan: Applicant spent 9.5 hours in this category. Applicant drafted a new plan, a motion to confirm, updated schedules I and J, and responded to several motions to dismiss from the Chapter 13 Trustee.

Fee Applications: Applicant spent 1.4 hours in this category. Applicant preparing and filing one application for compensation.

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
Mikalah Raymond Liviakis	14.6	\$385.00	\$5,621.00

Total Fees for Period of Application	\$5,621.00
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Costs and Expenses

Applicant does not seek allowance and recovery of costs and expenses through this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including resolving the Trustee's Motions to Dismiss, the filing of the Motions for Relief, and preparing the Debtor's Modified Plan and Motion to Confirm, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$5,621.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$5,621.00
Costs and Expenses	\$0.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Mikalah R. Liviakis ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Mikalah R. Liviakis is allowed the following fees and expenses as a professional of the Estate:

Mikalah R. Liviakis, Professional Employed by Robert Marciano Amador
("Debtor")

Fees in the amount of \$5,621.00
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 Debtor.

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