UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 11, 2017, at 3:00 p.m.

1.	**11-29166-E-13** **WW-6**	**MICHAEL/JENNIFER PETERS** **Mark Wolff**	**CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 4-25-17 [152]**

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

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

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

FN.1. Movant did not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held on an Objection to Notice of Mortgage Payment Change. Based upon language that any opposing party must appear at the hearing to be heard, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on April 25, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Objection to Notice of Mortgage Payment Change was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court set a briefing schedule and final hearing.

The Objection to Notice of Mortgage Payment Change is xxxxxxxxxxx.

Michael Peters and Jennifer Peters ("Debtor") object to a Notice of Mortgage Payment Change filed by MTGLQ Investors LP ("Creditor") on March 1, 2017. Debtor alleges that creditor violated Federal Rule of Bankruptcy Procedure 3002.1(c) by failing to file and serve Debtor, Debtor's attorney, and David Cusick (the Chapter 13 Trustee), with a notice itemizing all fees, expenses, and charges.

Debtor requests that the court, pursuant to Federal Rule of Bankruptcy Procedure 3002.1(i):

A. Preclude Creditor from presenting omitted information as evidence;

B. Determine that payment of the fees, costs, and expenses allegedly incurred in the past 180 days are not required by the underlying agreement and applicable bankruptcy law to cure a default or to maintain payments in accordance with 11 U.S.C. § 1322(b)(5);

C. Require Creditor to pay Debtor's incurred attorney's fees; and

D. Award sanctions to Debtor and against Creditor and Rushmore Loan Management Services.

Summary of Debtor's Objection

Debtor argues that Creditor has collected, or charged Debtor for, fees, costs, or expenses after December 1, 2011, without giving notice. A review of the docket shows that Creditor has not filed any Notice of Fees, Expenses, and Charges since December 1, 2011. Nevertheless, Debtor has asserted—and attached as Exhibit A—that Creditor has charged for various fees, including:

1/20/16	Property Preservation DI	$96.00
1/22/16	Property Preservation DI	$55.00
1/22/16	Property Preservation DI	$15.00
1/22/16	Property Preservation DI	$1.50
2/9/16	Property Preservation DI	$10.50
2/24/16	Property Preservation DI	$15.00
2/24/[16]	Property Preservation DI	$1.50
3/8/16	Misc Corporate Disbursem	$1.18
3/16/16	Misc Corporate Disbursem	$1.18
3/25/16	Property Preservation DI	$1.50
3/25/16	Property Preservation DI	$15.00
4/28/16	Property Preservation DI	$15.00

4/28/16	Property Preservation DI	$1.50
5/5/16	Misc Corporate Disbursem	$1.18
5/20/16	Property Preservation DI	$15.00
5/20/16	Property Preservation DI	$1.50
5/24/16	Misc Corporate Disbursem	$1.18
5/31/16	Misc Repayment	$109.00
6/2/16	Misc Corporate Disbursem	$1.18
6/23/16	Property Preservation DI	$1.50
6/23/16	Property Preservation DI	$15.00
6/27/16	Misc Corporate Disbursem	$1.18
7/7/16	Misc Corporate Disbursem	$1.18
7/8/16	Misc Repayment	$1.18
7/15/16	Attorney Advance Disburs	$215.00
7/25/16	Misc Corporate Disbursem	$1.18
7/25/16	Property Preservation DI	$55.00
7/27/16	Property Preservation DI	$96.00
7/27/16	Property Preservation DI	$15.00
7/27/16	Property Preservation DI	$1.50
8/1/16	Property Preservation DI	$10.50
8/2/16	Escrow Advance	$10,859.60
8/10/16	Misc Corporate Disbursem	$1.18
8/10/16	Misc Corporate Disbursem	$0.29
8/29/16	Property Preservation DI	$15.00
8/29/16	Property Preservation DI	$1.50
9/6/16	Misc Corporate Disbursem	$1.18
9/26/16	Property Preservation DI	$15.00
9/26/16	Property Preservation DI	$1.50
9/29/16	Corporate Advance Disbursem	$1.18

10/26/16	Corporate Advance Disbursem	$1.18
10/26/16	Property Preservation DI	$15.00
10/26/16	Property Preservation DI	$1.50
10/31/16	Misc Corporate Disbursem	$1.18
11/1/16	Misc Corporate Disbursem	$0.79
11/23/16	Property Preservation DI	$15.00
11/23/16	Property Preservation DI	$1.50
11/29/16	Misc Corporate Disbursem	$1.18
12/1/16	Escrow Advance	$2,443.05
12/7/16	Misc Corporate Disbursem	$0.63
12/30/16	Property Preservation DI	$1.50
12/30/16	Property Preservation DI	$15.00
5/6/15	Corp. Advance Adjustment	$5,327.95
5/27/15	Property Preservation	$1.50
5/27/15	Property Preservation	$15.00
6/26/15	Property Preservation	$15.00
6/26/15	Property Preservation	$1.50
7/16/15	Property Preservation	$96.00
7/28/15	Attorney Advances	$25.00
7/28/15	Property Preservation	$55.00
7/28/15	Misc. F/C and B/R expenses	$1.44
7/28/15	Misc. F/C and B/R expenses	$1.44
7/30/15	Property Preservation	$15.00
7/30/15	Property Preservation	$1.50
7/30/15	Property Preservation	$9.50
8/3/15	Property Preservation	$9.50
8/27/15	Property Preservation	$15.00
8/27/15	Property Preservation	$1.50

9/11/15	Attorney Advances	$150.00
9/25/15	Property Preservation	$15.00
9/25/15	Property Preservation	$1.50
10/27/15	Property Preservation	$1.50
10/27/15	Property Preservation	$15.00
11/30/15	Property Preservation	$15.00
11/30/15	Property Preservation	$1.50
12/10/15	Misc Corporate Disbursement	$1.18
12/10/15	Misc Corporate Disbursement	$1.18
12/23/15	Property Preservation	$15.00
12/23/15	Property Preservation	$1.50
	Total	**$19,977.25**

Debtor argues that Creditor's charges were discovered only recently. Debtor believed that an escrow account had been established to pay Creditor and that Creditor was collecting its necessary amount through the Chapter 13 Plan.

Debtor provides a task billing for the attorney fees incurred with this Objection and asserts that the total amount of fees is $8,695.00.

MAY 9, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on July 11, 2017. Dckt. 160. The court instructed Creditor to file supplemental pleadings on or before June 2, 2017, and Debtor to reply, if at all, on or before June 19, 2017.

CREDITOR'S RESPONSE

Creditor filed a Response on June 2, 2017. Dckt. 167. Creditor argues that Debtor has failed to pay property taxes during the bankruptcy case. Creditor explains that when Rushmore Loan Management Services, LLP ("Rushmore") acquired the loan in May 2015, it learned from the records that Debtor had not been paying property taxes and were deficient by $12,000.00. Additionally, Rushmore allegedly payed the following tax advances on Debtor's behalf:

A. $8,948.04 on August 1, 2016;

B. $1,911.56 on August 2, 2016;

C. $2,443.05 on December 1, 2016; and

D. $2,433.05 on March 20, 2016.

Creditor argues that it was not required to file a Notice of Postpetition Fees, Charges, and Expenses pursuant to Federal Rule of Bankruptcy Procedure 3002.1 because tax payments were made on Debtor's behalf by Rushmore as escrow account disbursements, charged toward Debtor's escrow account.

Creditor notes that Debtor has routinely been paying $2,366.00, which—while being $128.78 in excess of the required monthly payment of $2,237.22—is not sufficient to support a $407.18 monthly escrow payment.

Creditor states that Rushmore filed a Response to the Notice of Final Cure Payment, indicating that Debtor was current with post-petition payments. Rushmore, allegedly intended to reflect only that post-petition payments were current, not that the escrow deficiency had been cured. Creditor states that Rushmore will be amending its Response.

Finally, Creditor states that it will be waiving all other fees, charges, and expenses because they were not noticed property according to Federal Rule of Bankruptcy Procedure 3002.1.

DEBTOR'S REPLY

Debtor filed a Reply on June 19, 2017. Dckt. 173. Debtor argues that Creditor's Response fails to:

A. Address the May 22, 2017 escrow account disclosure statement sent to Debtor;

B. Acknowledge or show how Creditor applied $8,901.00 paid for escrow by the Trustee;

C. Show how Creditor applied the post-bankruptcy escrow payments;

D. Detail the fees, expenses, or charges that make up the asserted $27,457.90 escrow shortage;

E. Address or explain why Creditor should be excused from its failure to file or provide Debtor with:

1. Payment change notices pursuant to Federal Rule of Bankruptcy Procedure 3002.1(b) during this case,

2. Notice of fees, expense, and charges pursuant to Federal Rule of Bankruptcy Procedure 3002(c) during this case,

3. Annual Escrow Account and disclosure statements required by RESPA during this case, and

4. Annual accountings of the escrow account as required by the Deed of Trust; and

F. Explain how Creditor should be exempt from Federal Rule of Bankruptcy Procedure 3002.1(c) based upon an "escrow account disbursement" exception when Creditor took no action consistent with maintaining an escrow account and did not "analyze and impound the escrow account until March 2017."

Dckt. 173 at 2.

Debtor does not oppose setting a monthly payment of $2,664.40, but Debtor opposes a shortage of thousands of dollars as unexplained. Debtor notes that the excess funds that were being paid monthly were put into an account that Creditor labeled "other" without any explanation of how those funds were applied to escrow or to Debtor's loan.

Debtor argues that Creditor does not account for $3,407.12 that Debtor paid in each of March, April, and May 2017. Additionally, Debtor contains to maintain that Creditor has not accounted for and itemized a $27,457.90 escrow shortage. Debtor argues that Creditor has owned the loan since 2011 but has only provided documentation for escrow advances since August 1, 2016, and has not provided evidence of charges approximating $12,000.00 prior to May 2015.

In response to Creditor stating that Rushmore analyzed and impounded the escrow account in March 2017, Debtor argues that no accountings were provided to Debtor as required by RESPA and the Deed of Trust.

Regarding Creditor's argument that it was not required to file a Notice of Postpetition Fees, Charges, and Expenses, Debtor makes three arguments. First, Debtor argues that no escrow account was created until March 2017, well after Creditor allegedly advanced funds for expense payments. Second, Debtor argues that property preservation fees and other expenses can be run through the escrow account to bypass reporting requirements. Third, Debtor argues that an implied exception to Federal Rule of Bankruptcy Procedure 3002.1(c) for escrow account disbursements comes with an implied requirement that Creditor will comply with RESPA and Federal Rule of Bankruptcy Procedure 3002.1(b) and will disclose all escrow charges in an annual escrow account and disclosure statement.

DISCUSSION

Federal Rule of Bankruptcy Procedure 3002.1(c) states that a claimholder must file and serve a notice of fees, expenses, and charges "within 180 days after the date on which the fees, expenses, or charges are incurred."

On April 24, 2017, Creditor filed its Response to Notice of Final Cure Payment, expressly affirming under penalty of perjury, that:

"Creditor agrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim."

and

"Creditor states that the debtor(s) are current with all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.

The next postpetition payment from the debtor(s) is due on: 04/24/2017"

Creditor Response to Notice of Final Cure Payment (Form 4100R), April 24, 2017 Docket Entry, Filed as part of Proof of Claim No. 5-1.

This Response confirms that Creditor admits that the Chapter 13 Trustee's Notice of Final Cure Payment (Dckt. 145) is correct and that there is no outstanding pre-petition or post-petition arrearage as of the February 2017 completion of Plan payments. Despite Creditor's assertion that Rushmore understood it to refer to post-petition fees only, Rushmore has not amended the Response.

It is worth restating, verbatim, exactly what Creditor confirmed under penalty of perjury in responding to the Notice of Final Cure Payment:

"Part 2: Prepetition Default Payments

Check one:

☒ Creditor agrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim

☐ Creditor disagrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim. Creditor asserts that the total prepetition amount remaining unpaid as of the date of this response is: $_____

Part 3: Prepetition Default Payments

Check one:

☒ Creditor states that the debtor(s) are current with all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.

The next postpetition payment from the debtor(s) is due on: 04/24/2017

☐ Creditor states that the debtor(s) are not current on all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.

Creditor asserts that the total amount remaining unpaid as of the date of this response is:

a. Total postpetition ongoing payments due: (a) $ _____

b. Total fees, charges, expenses, escrow, and costs outstanding: + (b) $ _____

c. Total. Add lines a and b. (c) $ _____

Creditor asserts that the debtor(s) are contractually obligated for the postpetition payment(s) that first became due on: _ __/___/___"

Response to Notice of Final Cure Payment, Filed April 24, 2017, p. 1. It appears that this Response crossed in the mail with the Objection to Notice of Mortgage Payment Change.

Creditor provides the declaration of Barkley Sutton in response to the Motion. Declaration, Dckt. 168. Mr. Sutton testifies under penalty of perjury that he is an Assistant Vice President for Rushmore Loan Management Services, LLC, the servicer and attorney in fact for Creditor. He then goes further to testify that he, or possibly Rushmore, is not a party to this "action." Declaration, p. 2:2–4; Dckt. 168.

Mr. Sutton testifies that Rushmore, and not the Creditor, has made advances for property taxes on the Property that secures Creditor's claim. As stated above, Rushmore is not a party to this "action" and does not purport to be the creditor having a claim in this case, but is merely the loan servicer for Creditor.

Mr. Sutton offers no testimony as to why Debtor has an obligation to pay Rushmore any amounts.

Mr. Sutton provides the further testimony under penalty of perjury that "10. Rushmore did not analyze the Loan to recover the above tax payments until th Notice of Mortgage Payment Change was filed on 03/01/2017." Declaration, p. 4:1–2; Dckt. 168. He provides no testimony about why, if Rushmore had a belief that it had a right to be repaid for more than $12,000 in property taxes paid during the period March 2015 through December 2016 (Declaration, p. 3:16–21; *Id.*), it would have known of such prior to waiting until March 2017 to "analyze the Loan."

The March 1, 2017 Notice of Mortgage Payment Change (filed as part of Proof of Claim No. 5) filed by Creditor states that the current monthly principal and interest payment is $2,237.22. On top of this, Creditor states that the escrow payment is an additional $1,169.90. The attachment states that there is a ($27,457.90) escrow shortage, almost double the $15,735.70 in alleged property tax payments by Rushmore (not asserted to be advances by Creditor).

Attached to the Notice of Mortgage Payment Change is an Escrow Analysis Disclosure Statement dated February 23, 2017. That Statement identifies the Principal and Interest Payment to be $2,237.22. In addition, the "required escrow payment" is stated to be $407.18. In "double addition," the Statement says that there is an additional $762.72 that must be paid for "shortage/Surplus Spread."

On Proof of Claim No. 5, Creditor states under penalty of perjury that there was a $31,475.58 pre-petition arrearage. Exhibit A to Proof of Claim No. 5 states that the total monthly payment is $2,237.22, with that amount subject to either a change in the escrow requirement or interest rate. The arrearage is stated to consist of $31,321.08 for fourteen missed monthly payments and $134.50 for appraisal and inspection fees.

The confirmed Modified Plan provided for curing this arrearage in full through the Plan. Plan, ¶ 2.08(c); Dckt. 89. In his final report, the Chapter 13 Trustee confirms that the pre-petition arrearage on Creditor's secured claim was paid in the amount of $31,475.58. Dckt. 163 at 3.

As provided in the testimony of Debtor (Declaration, Dckt. 154), the 2016 Mortgage Interest 1098 Statement issued by Creditor (that was received in 2017) shows that Creditor and Rushmore were assessing various "Property Preservation DI" charges, with multiple charges in each month. No such "fees" and "charges" were disclosed in this bankruptcy case. The 1098 Statement also states that there was an escrow advance of $2,443.05 in December 1, 2016 for "county tax." Exhibit A, Dckt. 156.

Exhibit B is the Annual Escrow Account Disclosure Statement dated December 27, 2016, advising Debtor that the monthly mortgage payment was going to increase to $4,032.56. *Id.* Further, Creditor and Rushmore asserted that there was a $25,422.03 escrow shortage (taking the "starting balance" shown on the statement).

The Statement continues, indicating that prior to 2016 there was a negative escrow balance of $12,119.38, and in 2015, Creditor and Rushmore made payments of $11,392.09 for "County/Paris" and $1,911.56 for "County Tax." This ballooned the stated shortfall to $25,422.03. *Id.* The Statement does not indicate what a "County/Paris" disbursement is for with respect to Debtor's loan.

As addressed above, Creditor has confirmed/admitted under penalty of perjury that there are no pre- or post-petition arrearages to be addressed, with Debtor starting with the loan as current as of February 28, 2017. Response under penalty of perjury, filed with Proof of Claim No. 5, April 24, 2017 Docket Entry.

Creditor's admission is bolstered by there having been no notice of any fees, expenses, or charges as required by Federal Rule of Bankruptcy Procedure 3002.1(c). If any had actually existed, they would have been raised timely, and Debtor would then have had the opportunity to address them during the five years of the bankruptcy plan. If such actually existed and Creditor failed to provide the notice (and waited until the case was completed to spring them on the consumer debtor), then such non-compliance clearly works a prejudice on Debtor caused by Creditor's non-compliance.

As provided in Federal Rule of Bankruptcy Procedure 3002.1(e) and (h), the final notice of cure having been given, the confirmation that all pre- and post-petition obligations of Debtor under the loan are current through February 2017, the proof of claim specifying the pre-petition arrearage, and there being no notice during the bankruptcy case of any such post-petition, the court confirms that there are no pre-petition or post-petition (through February 2017) fees, expenses, charges, or arrearages due on the loan upon which Proof of Claim No. 5 is based.

Possible Tax Obligation

Rushmore, who admits it is not a party to this "action" appears to have sprung on these least-sophisticated debtors that there has been a "gift" of property tax payments made by Rushmore in 2016, paying property taxes for some unstated period of time. A skeptical person could well believe that Rushmore made such a gift in an attempt to try to create a trap for Debtor and take the Property by asserting a default for takes intentionally allowed by Rushmore to fester.

Conversely ever for the most least sophisticated creditor, Debtor has not addressed how Debtor could have some good faith belief that it could continue to live in the Property and not pay property taxes. On the Statement of Expenses filed in support of the Motion to Confirm the Modified Plan, Debtor confirmed that the property tax payment was not included in the monthly mortgage payment. Dckt. 87 at 3. Debtor further stated that each month Debtor was spending (saving to timely pay) $283 for the current real estate taxes and $75.00 for "back taxes." The $283.00 per month amount equates to $3,396.00 annually for taxes. Over five years, that totals $16,980.00, an amount suspiciously close to the $15,735.70 property tax payment gift made by Rushmore.

Even if given such a gift, then Debtor has not account for $16,980.00 in additional projected disposable income for this phantom expense not paid by Debtor.

DETERMINATION OF TAX OBLIGATION, IF ANY

Creditor and Rushmore have squarely presented the court with the issue of whether, now, as of the conclusion of this case there is any obligation of Debtor to pay a post-petition property tax arrearage. Creditor will have to show first that there is an obligation to pay Creditor under the Note and Deed of Trust for what appears to have been a "reorganization gift" made by Rushmore.

Debtor also needs to address for the court, the Trustee, and creditors, where the $16,980.00 of post-petition property taxes are if not paid by Debtor.

Therefore, the court sets a further briefing schedule for the parties to address these issues:

A.

B.

C.

D.

Award of Attorneys' Fees

Federal Rule of Bankruptcy Procedure 3002.1(f)(2) further authorizes the award of attorney's fees and costs related to the failure to provide the required notice of fees, expenses, and charges. In this case, Creditor having filed a Notice of Mortgage Payment Change and sent a Statement purporting to state Debtor owed payment for charges, fees, expenses, advances for which no Notice had been given, Debtor was forced to both investigate this contention and then file the Objection to Notice of Mortgage Payment Change.

Creditor has ameliorated the problem a bit with its admission in the Reply that there are no pre- or post-petition (through February 2017) arrearages owed by Debtor. However, Creditor did not rescind its Notice of Mortgage Payment Change and file a new one accurately stating the payment amount and that there were no pre- or post-petition (through February 2017) arrearages owed under the loan. This inaction

required Debtor and Debtor's counsel to continue in having to prosecute the Objection. Then, Creditor's Response after the May 9, 2017 hearing necessitated more work for Debtor's counsel.

Debtor's counsel has provided copies of time records for work asserted to have been done in connection with the December 27, 2016 Annual Escrow Account Disclosure Statement and the more than doubling the amount of the asserted regular mortgage payment to $4,932.56. No declaration of counsel is provided authenticating the records.

The billing records state a total of $8,345.00 in fees requested. That is 21 hours of time at $350.00 per hour and 3 hours at $250.00 per hour by Mark Wolff, counsel for Debtor. No task billing analysis is provided. The court organizes the legal work into several task areas:

A. Communications with Client and Initial Review of Statement Doubling Payment and Stating Arrearage..... 3.7 hours

B. Communications with Counsel for Creditor..... 1.4 hours

C. Research in Preparation of Objection..... 5.5 hours

D. Drafting Objection Pleadings.....10.5 hours

E. Meeting with Client Re Objection, Declaration..... 3.6 hours

For the above 24.7 hours, the total fees average $337.85 per hour, not an unreasonable hourly rate.

The need for Debtor to have counsel address the Notice of Mortgage Payment Change that doubled Debtor's mortgage payment was driven by the Notice itself and Creditor asserting theretofore undisclosed charges, fees, advances, and costs purported to have been piled up by Creditor and its loan servicer.

After the May 9, 2017 hearing, Debtor's counsel filed a Declaration listing additional hours (with an invoice) of work done in this matter. Dckt. 174. Debtor's counsel states that he spent an additional 6.6 hours on this matter: 5.0 hours reviewing Creditor's Response and drafting the Reply, 1.2 hours communicating with Debtor and preparing a declaration, and 0.4 hours compiling billing and drafting Debtor's counsel's Declaration regarding time spent. *Id.* Debtor's counsel states that his hourly rate is $350.00. The total additional incurred fees are $2,310.00.

From a review of the pleadings, the potential attorneys' fees award has grown to$9,380.00. That could be viewed as allowing for 26.8 hours of the 31.3 hours of work at $350.00 per hour, or it could be viewed as lowering the hourly rate to $300.00 for 31.27 hours for the above work. Either way, the court is convinced that $9,380.00 in attorneys' fees were reasonably incurred in having to address the Notice of Mortgage Payment Change purporting to double the Debtor's monthly mortgage payment. The court notes that counsel for Debtor did attempt to communicate with counsel for Creditor for two weeks before beginning to work on the Objection.

Presumably, as these proceedings continue and Creditor belatedly shows a basis for asserting that there is an obligation to pay it for the property tax payment gift that Rushmore states it made for Debtor, the attorneys' fees cost demanded by Debtor will rise.

Requested Award of Sanctions

The Objection also requests the additional award of Sanctions, citing the court to Federal Rule of Bankruptcy Procedure 3002.1(i)(2) "other appropriate relief" language as the legal basis. Debtor also directs the court to *In re Gravel* for the contention that Rule 3002.1 provides that the court can issue an order for sanctions pursuant thereto. 556 Br. 561 (Bankr. D. Vt. 2016).

First, the court is not as convinced as Debtor that Rule 3002.1 "explicitly" empowers the court to issue corrective sanctions. While there may be other grounds for doing so, they are not now before this court. Second, the court is ordering the payment of $9,380.00 in compensatory attorneys' fees as damages. That is not an insignificant amount.

The court denies, without prejudice, any request for sanctions.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Mortgage Payment Change filed by Michael and Jennifer Peters, 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 Objection is continued to 3:00 p.m. on **xxxxxxxxxx**, 2017.
>
> **IT IS FURTHER ORDERED** that:
>
> A.
>
> B.
>
> C.

2. **10-33701-E-13** **VICTOR/GWENDOLYN LOPEZ** **MOTION TO AVOID LIEN OF CITIMORTGAGE**
RK-1 **Richard Kwun** **6-12-17 [54]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 12, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of "Citimortgage" ("Creditor") against property of Victor Lopez and Gwendolyn Lopez ("Debtor") commonly known as 3397 Bridgeway Lakes Drive, West Sacramento, California ("Property").

Although the Motion states that an exemption has been claimed pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C, no such Amended Schedule C has been filed with the court. Dckt. 56. Thus, there is no exemption that has been impaired so that the court could avoid a judicial lien. The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) 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 denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR FILES AN AMENDED SCHEDULE C LIKE STATED IN THE MOTION

A judgment was entered against Debtor in favor of Citimortgage Inc. in the amount of $53,504.02. An abstract of judgment was recorded with Yolo County on May 11, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $370,000.00 as of the date of the petition. The unavoidable consensual liens that total $708,550.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Amended Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by 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 Citimortgage Inc., California Superior Court for Yolo County Case No. CV09-3379, recorded on May 11, 2010, with the Yolo County Recorder, against the real property commonly known 3397 Bridgeway Lakes Drive, West Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. 15-25102-E-13 LARRY/ROSEMARY CALKINS MOTION TO MODIFY PLAN
PGM-1 Peter Macaluso 5-26-17 [83]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 26, 2017. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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 denied, and the case is converted to one under Chapter 7 at the election of Debtor as stated in the Response to the Motion and on the record at the hearing.

Larry Calkins and Rosemary Calkins ("Debtor") seek confirmation of a Modified Plan because Debtor received a permanent loan modification from Wachovia Mortgage/Wells Fargo Home Mortgage, which has partly caused Debtor to miss several plan payments. Dckt. 83. The Modified Plan proposes that Debtor's missed plan payments be forgiven and that plan payments for the remaining thirty-seven months of the sixty-month Plan be reduced from $2,275.00 per month to $150.00 per month. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 27, 2017. Dckt. 104.

The Trustee argues that the Modified Plan has not been proposed in good faith, pursuant to 11 U.S.C. § 1325(a)(3). Debtor's Amended Schedule I reflects an increase in average monthly income of $745.93. Dckt. 92. Debtor's Amended Schedule J reflects an increase in monthly expenses totaling $1,690.62. Dckt. 92. The Amended Schedule J reflects a new monthly expense of $100.00 for home

maintenance for siding replacement and painting; a new monthly expense of $100.00 for recreation expense; and an increase of $250.00 per month for food expense even though Debtor's son has since moved out of Debtor's residence. Absent explanation from Debtor as to how the proposed increase in income will be achieved and why the proposed increases in expenses are necessary, the Trustee does not believe that Debtor's projection is in good faith.

The Trustee argues that Debtor's reason for seeking a modified plan is inconsistent with the loan modification Debtor actually received. Debtor seeks a modified plan by claiming Debtor has been unable to make plan payments since January 19, 2017, partly due to an increased mortgage payment as a result of a loan modification from Wachovia Mortgage/Wells Fargo Home Mortgage; however, Debtor's loan modification appears to be an increase from $1,099.98 per month to $1,180.29 per month starting June 1, 2017. The Trustee asserts that Debtor has not proven to have made any payment to the creditor in February, March, April, or May 2017.

The Trustee argues that Debtor has not shown the court an ability to comply with the Modified Plan, pursuant to 11 U.S.C. § 1325(a)(6), due to Debtor's history of ignoring the confirmed Plan. The Trustee asserts that Debtor applied for and received a retirement loan after filing for bankruptcy, without the court's approval for post-petition debt; Debtor applied for and received a mortgage loan modification on April 26, 2017, without obtaining the court's approval to incur additional debt; Debtor has failed to submit the net amount of payroll bonuses called for by the confirmed Plan; Debtor has failed to immediately notify the Trustee of any changes in employment, when Debtor's Amended Schedule I reflects that Larry Caulkins is now unemployed; and Debtor has failed to make plan payments for the months of October 2016, February 2017, March 2017, April 2017, and May 2017. Debtor's history of non-compliance indicates that Debtor is incapable of complying with the Modified Plan.

DEBTOR'S REPLY

Debtor filed a Reply on July 3, 2017. Dckt. 109. Debtor seeks to convert the case to Chapter 7 because Debtor is unemployed.

APPLICABLE LAW

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

The Bankruptcy Code Provides:

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

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

RULING

While the court has been presented with sufficient argument and evidence from the Trustee to support a finding of bad faith such that conversion or dismissal would be warranted, Debtor has intervened and requested conversion to Chapter 7. Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion to Confirm the Modified Plan is denied, and the case is converted to a case under Chapter 7.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied. The court shall issue a separate order converting this case to one under Chapter 7 of Title 11, United States Code at the election of Debtor.

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

> DCN: Oral Motion
>
> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> Larry and Rosemary Calkins, the "Debtors," having stated their election to convert this case to one under Chapter 7 in the Response (Dckt. 109) to the Trustee's Opposition to Motion to Confirm the Chapter 13 Plan, Debtors' counsel having stated such election orally on the record at the July 11, 2017 hearing on the Motion to Confirm, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the case is converted to one under Chapter 7 of the Bankruptcy Code.

4. **15-29404-E-13 PGM-2** | **TAEVONA MONTGOMERY** **Peter Macaluso** | **MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY** **5-31-17 [211]**

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 31, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney ("Applicant") for Taevona Montgomery, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period February 8, 2017, through May 20, 2017. Applicant requests fees in the amount of $2,020.00.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on June 14, 2017. Dckt. 222.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration and preparation and filing of a Motion to Sell Real Property, an opposition to a Motion to Dismiss, and an ex parte Motion to Sell Real Property. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

"No-Look" Fees

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

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

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

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 REQUESTED

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

General Case Administration: Applicant spent 3.15 hours in this category (0.5 hours of which was not billed). Applicant prepared and filed a Substitution of Attorney; reviewed client's case in preparation for client meetings; prepared a mortgage authorization; and met with client to discuss a request to purchase a vehicle and to cure the delinquency.

Motion to Sell Real Property: Applicant spent 2.25 hours in this category. Applicant prepared and filed the Motion; appeared for the hearing on the Motion; corresponded with the realtor for Debtor; and corresponded with the Trustee regarding the sale falling through.

Motion to Dismiss: Applicant spent 1.05 hours in this category. Applicant received and reviewed the Motion; prepared and sent a letter to client regarding the delinquency; and prepared and filed an opposition to the Motion.

Ex Parte Motion to Sell Real Property: Applicant spent 2.45 hours in this category. Applicant received and reviewed the purchase agreement, the approval for mortgage holders for first and second deeds of trust, and an email from the Trustee requesting changes to order for Motion to Sell; made requested changes to order for Motion to Sell; and prepared and sent a declaration to Debtor for review and signature.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter Macaluso	8.4	$300.00	$2,520.00
(Amount paid by Debtor in advance)			($500.00)
Total Fees for Period of Application			$2,020.00

FEES ALLOWED

The unique facts surrounding the case, including the substitution of Peter Macaluso for prior counsel in this case, 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 $2,020.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $2,020.00

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 Peter Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Peter Macaluso, Professional Employed by Chapter 13 Debtor

Fees in the amount of $2,020.00,

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

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

5. **17-24205-E-13** **MARK BRADY** **MOTION TO EXTEND AUTOMATIC STAY**
DAO-1 **Dale Orthner**
6-27-17 [10]

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, creditors, and Office of the United States Trustee on June 27, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Mark Brady ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-20245) was dismissed on June 5, 2017, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 17-20245, Dckt. 45, June 5, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor's prior attorney did not explain the deadlines well to him, which caused him to be behind one month in payments.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on June 29, 2017. Dckt. 14.

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor alleges that there was miscommunication with his prior attorney that caused him to miss payments, but now, Debtor is represented by another attorney.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

6.	**13-29907-E-13**	**SYAMPHAI LIEMTHONGSAMOUT**	**MOTION MODIFY PLAN**
	SS-5	**Scott Shumaker**	**5-30-17 [130]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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 denied.

Syamphai Liemthongsamout ("Debtor") seeks confirmation of the Modified Plan because Debtor has been offered a permanent home loan modification on her residence from Nationstar Mortgage LLC. Dckt. 130. The Modified Plan proposes changing the plan payment from $1,235.00 per month to $1,801.00 for the month of June 2017 followed by $478.00 per month for months forty-eight through sixty; Debtor proposes paying no less than seven percent of approved unsecured claims; and Debtor proposes reclassifying Nationstar Mortgage LLC from a Class One secured claim to a Class Four claim to be paid outside of the Plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Objection (which the court interprets as an Opposition) on June 26, 2017. Dckt. 151.

The Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Trustee states that while Debtor has reported non-exempt equity in the amount of $13,245.00, and Debtor is proposing a seven percent dividend to unsecured claims, additional equity exists. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claims are entitled to a seven percent dividend when there may be upward of $5,000.00 in non-exempt equity/assets.

The Trustee opposes confirmation on the basis that the Modified Plan proposes to reclassify Nationstar Mortgage LLC from a Class One secured claim to a Class Four claim to be paid outside the plan, yet Debtor has not authorized payments disbursed to date for the ongoing mortgage payments, pre-petition arrears and a supplemental chain. To date, the Trustee has disbursed $47,749.11 in ongoing mortgage payments, $3,791.45 in pre-petition arrears, and $240.00 on a supplemental chain.

The Trustee also opposes confirmation on the basis that Debtor fails to provide evidence through a declaration or pay-stubs in support of third-party income contribution of $3,400.00 from Debtor's boyfriend, depicted on Schedule I. Dckt. 133. Because Debtor's Schedule J now includes a $480.00 monthly expense for this third party's car loan, it is unclear whether the income contribution amount is all or a portion of this third party's net income.

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

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

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

7. **13-29907-E-13 SS-6** | **SYAMPHAI LIEMTHONGSAMOUT** **Scott Shumaker** | **MOTION TO APPROVE LOAN MODIFICATION** **5-30-17 [136]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Syamphai Liemthongsamout ("Debtor") seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage, LLC ("Creditor"), whose claim the Confirmed Plan provides for in Class 1 (and a proposed Modified Plan provides for it in Class 4), has agreed to a loan modification that will increase Debtor's mortgage payment from the current $1,293.57 per month to $1,323.03 per month. The modification will capitalize the pre-petition arrears and provide for an interest rate of 3.00% through a maturity date of February 1, 2017.

The Motion is supported by the Declaration of Syamphai Liemthongsamout. Dckt. 138. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms. The Declaration also reveals that Debtor already began making the new payments in February 2017. The court did not authorize Debtor to make payments different than called for by her confirmed plan.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 26, 2017. Dckt. 154. The Trustee notes that mortgage payments due under the loan modification from February through April 2017 were $3,969.09. The Trustee paid $5,422.56 during that time, which is a difference of $1,453.47.

The Trustee does not oppose the Motion, but he states that if a surplus of funds exists under the confirmed plan based upon the payments made by the Trustee and agreed to by Creditor, then Creditor can return the funds to the Trustee for redistribution to other creditors.

RULING

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Syamphai Liemthongsamout having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Syamphai Liemthongsamout ("Debtor") to amend the terms of the loan with Nationstar Mortgage, LLC ("Creditor"), which is secured by the real property commonly known as 7724 Laramore Way, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion (Dckt. 139).

8. **13-29907-E-13 SS-7** | **SYAMPHAI LIEMTHONGSAMOUT** **Scott Shumaker** | **MOTION FOR COMPENSATION FOR SCOTT SHUMAKER, DEBTOR'S ATTORNEY** **5-30-17 [141]**

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 13Trustee,creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period February 12, 2014, through July 11, 2017. Applicant requests fees in the amount of $6,037.50 and costs in the amount of $85.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing and filing two Motions to Modify Debtor's plan and objecting to a Motion to Dismiss due to Debtor's temporary delinquency. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and

the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 5. 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.

General Case Management: Applicant spent 6.5 attorney hours and 7.4 paralegal hours in this category. Applicant researched establishing a locked bank account; received and reviewed a Motion for Relief from Stay; drafted and filed a Withdrawal of Motion for Fees; and received and reviewed Notices of Mortgage Payment Change.

First Post-Confirmation Plan Modification: Applicant spent 2.3 attorney hours and 1.7 paralegal hours in this category. Applicant drafted the Motion to Confirm Modified Plan; received and reviewed Trustee's Objection to the Motion; drafted and filed a Reply to Trustee's Objection; and received and reviewed the Trustee's Notice of Withdrawal of Objection.

Second Post-Confirmation Plan Modification: Applicant spent 5.9 attorney hours and 3.5 paralegal hours in this category. Applicant received and reviewed Trustee's Motion to Dismiss and corresponded with Client regarding the motion; drafted Motion to Modify; and anticipated time to prepare for and appear at hearings on three motions.

Loan Modification: Applicant spent 2.1 attorney hours and 2.3 paralegal hours in this category. Applicant sent Modification Packet to Nationstar; corresponded with Client regarding the loan modification; received and reviewed a letter from Nationstar; drafted, reviewed, and edited the Motion to Approve Loan Modification; and reviewed Notice of Mortgage Payment Change.

Motion for Fees: Applicant spent 0.5 attorney hours and 2.5 paralegal hours in this category. Applicant drafted, reviewed, and edited the Motion for Fees.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Scott Shumaker, Attorney			
	15.9	$250.00	$3,975.00
	1.4	$0.00	$0.00
Paralegal			
	14.1	$125.00	$1,762.50
	3.3	$0.00	$0.00
Total Fees for Period of Application			$5,737.50

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $85.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage and Copying		$85.00
Total Costs Requested in Application		$85.00

REVIEW OF THE REQUESTED FEES AND COSTS & EXPENSES

Upon reviewing Applicant's Motion, the court has found several errors and deficiencies in Applicant's Motion for Compensation. Applicant has failed to identify all of the parties seeking

compensation, including the paralegal(s) mentioned in both the Motion and in the Billing Analysis filed under Exhibit 2. Dckt. 144. Applicant has failed to present the court with the CV's of all of the parties seeking compensation. Additionally, Applicant's billing analysis filed under Exhibit 2 contains several mathematical errors, for instance: under General Case Management, an entry dated 5/4/2017 is shown as 0.5 paralegal hours that should equal $62.50, but the total is listed as $150.00; and under Second Post-Confirmation Plan Modification, an entry dated 5/4/2017 is shown as 0.4 attorney hours that should equal $100.00, but the total is listed as $150.00.

Though the court could deny the Application and have counsel and his staff go back, revise all of the pleadings, and file a new Application (for which a second set of application fees would not be allowed), in light of the total fees requested and work done, the court grants the Application and allows Scott Shumaker, the Attorney for Syamphai Liemthongsamout, additional compensation of:

A. Attorneys' Fees.....$5,737.50, and
B. Costs.....$ 85.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Scott Shumaker ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that this Motion is granted. Scott Shumaker, the Attorney for Syamphai Liemthongsamout, Debtor, is allowed additional compensation of:
>
> A. Attorneys' Fees.....$5,737.50, and
> B. Costs.....$ 85.00
>
> in this Bankruptcy Case. The Chapter 13 Trustee is authorized to pay the additional fees through the Chapter 13 Plan in this case.

9. **14-30007-E-13** **MITCHELL WHITE** **MOTION TO MODIFY PLAN**
MOH-1 **Michael Hays** **5-30-17 [50]**

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a Response indicating non-opposition on June 20, 2017. Dckt. 63. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 30, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

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

10. 17-23911-E-13 LBG-2 | **CRAIG MASON** / **Lucas Garcia** | **MOTION TO EXTEND AUTOMATIC STAY** / **6-26-17 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 26, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is denied.

Craig Mason ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 17-22299) was dismissed on April 24, 2017, after Debtor failed to file documents. *See* Order, Bankr. E.D. Cal. No. 17-22299, Dckt. 12, April 24, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he filed the case based upon the suggestion of a non-legal professional and "was [not] properly advised as to [his] rights and responsibilities to the Court and the Trustee in the prosecution of the prior case." Dckt. 17 at 2:9–14.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 28, 2017. Dckt. 19. The Trustee argues that Debtor has failed to show a change in circumstances since the last case. The Trustee notes that the current case filed without all of the necessary documents, though Debtor has had more than two months since filing the previous case to obtain all of the necessary information to complete his schedules.

Additionally, the Trustee notes that Debtor's declaration for a motion to extend time to file documents states that he is struggling "to learn good accounting practices and create the months of profit and losses needed for the bankruptcy filing." *See* Dckt. 12. The Trustee interprets that to mean that Debtor is engaged in a business, but no business is listed on the petition.

Finally, the Trustee notes that there are only three parties in interest on the Mailing Matrix: [1] "Wells Fargo Hm Mortga" (which the court notes does not appear to be the name of any recognizable legal entity) and [2] "RCA" (again, which is not a recognizable legal entity), and "States Recovery System" (for which the California Secretary of State does not list any legal entity with that name, but there is a "States Recovery Systems").

DISCUSSION

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

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

A. Why was the previous plan filed?

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

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

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The court issued an order extending Debtor's deadline to file documents until July 10, 2017. Dckt. 23. As part of that order, the court ordered that the clerk of the court shall dismiss this case if the documents are not filed timely. As of the court's review of the docket on July 6, 2017, no schedules had been filed, and Debtor had not submitted a plan with a corresponding motion to confirm. Debtor has not demonstrated to the court that he is in any more of a position now to prosecute this case than he was in with the prior case.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied. The denial of the Motion relates only to the requested extension of the automatic stay as it applies to the Debtor under 11 U.S.C. § 362(c)(3)(a) and not the automatic stay as it applies to the bankruptcy estate or other persons.

11. 15-26512-E-13 GW-4 | **MATTHEW CORSAUT**
Gerald White | **MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTOR'S ATTORNEY**
6-9-17 [84]

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2017. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Gerald White, the Attorney ("Applicant") for Matthew Corsaut, the Chapter 13 Debtor ("Client"), makes a Third Interim Request for the Allowance of Fees in this case.

Fees are requested for the period October 6, 2016, through June 2, 2017. The order of the court approving employment of Applicant was entered on August 28, 2015. Dckt. 10. Applicant requests fees in the amount of $1,050.00.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on June 16, 2017. Dckt. 90.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reviewing and communicating with Client regarding an amended claim filed by the Internal Revenue Service; reviewing correspondence from Client's mortgage servicer Fay Servicing who refuses to communicate with Client directly; and forwarding correspondence from Fay Servicing to Client. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

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

Case Management: Applicant spent 3.1 hours in this category. Applicant reviewed correspondence from Fay Servicing and forwarded to Client; spoke on the phone with Fay Servicing on several occasions; and reviewed mortgage statements from Fay Servicing.

Review of Claims: Applicant spent 0.4 hours in this category. Applicant reviewed the amended claim from the Internal Revenue Service and forwarded to Client.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Gerald White, Attorney	3.5	$300.00	$1,050.00
Total Fees for Period of Application			$1,050.00

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Interim Fees in the amount of $1,050.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and Plan Administrator under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $1,050.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gerald White ("Applicant"), Attorney for Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gerald White is allowed the following fees and expenses as a professional of the Estate:
>
> Gerald White, Professional employed by Chapter 13 Debtor
>
> Fees in the amount of $1,050.00
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the 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.

12. 17-22614-E-13 DPC-1 | **MICHAEL/POLLY LANHAM** **Mark Wolff** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-6-17 [40]**

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 6, 2017. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Plan fails the Chapter 7 Liquidation Analysis.

The Trustee's objection is well-taken. The Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Trustee states that Debtor claims $31,504.00 in non-exempt equity and proposes a 0% dividend to unsecured claims, with Class 5 of Debtor's Plan proposing to pay $32,500.00 in priority claims (listing $12,500.00 and $12,000.00 to be paid to Internal Revenue Service, and $8,000.00 to be paid to Franchise Tax Board). Those agencies have filed their claims for lower amounts, however: Internal Revenue Service has claimed $12,546.41 in priority, and Franchise Tax Board has filed $2,096.74 in priority, for a total of $14,643.15.

There appears to be $16,860.85 in non-exempt equity to be distributed under a plan in this case, but Debtor has not included that in the Plan that proposes a 0.00% dividend to unsecured claims. That fails the liquidation analysis.

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

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

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

13. 16-25419-E-13 ANTHONY/AMALIA AITKEN MOTION TO MODIFY PLAN
DBL-2 Bruce Dwiggins 5-26-17 [57]

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 26, 2017. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a non-opposition on June 27, 2017. Dckt. 65. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 26, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

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

14. 13-22820-E-13 EJS-7 | **KATHLEEN SINDELAR** | **Eric Schwab** | **MOTION TO MODIFY PLAN** | **5-30-17 [114]**

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed a Response indicating non-opposition on June 20, 2017. Dckt. 122. The Trustee's Response states that the Trustee has already received the $18,000.00 in payments provided for by the Modified Plan. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 30, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. 13-31622-E-13 SJD-4 — TIMOTHY/VIKI HERNANDEZ — Susan Dodds — MOTION TO MODIFY PLAN — 6-1-17 [58]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 1, 2017. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

Timothy Hernandez and Viki Hernandez ("Debtor") seeks confirmation of the Modified Plan because Timothy Hernandez is now retired, and Viki Hernandez is now working. Dckt. 58. The Modified Plan increases the monthly plan payment from $611.00 to $1,336.00 and increases the dividend to creditors with unsecured claims from 0.00% to 17.00%. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 26, 2017. Dckt. 64. The Trustee argues the proposed plan payment is unclear because of conflicting language between Debtor's filings with the court. The Trustee asserts that Debtor's Declaration, filed under Dckt. 61, states the new plan payment of $1,336.00 applies "for the remainder of the plan," whereas Debtor's Motion to Confirm the Modified Plan, filed under Dckt. 58, and Debtor's First Modified Plan, filed under Dckt. 60, may indicate that the new plan payment of $1,336.00 applies to all sixty months of the plan. The Trustee states that he would have no objection if this were corrected in the order confirming.

DEBTOR'S REPLY

Debtor filed a Reply on June 27, 2017. Dckt. 67. Debtor states that Debtor will include the following language in the order confirming the plan: "As of June 25, 2017 the Debtors shall have paid in to the plan $27,495.00. Beginning July 25, 2017 the Debtor's plan payment shall be $1,336.00 for the remainder of the plan."

JULY 11, 2017 HEARING

At the hearing, the Trustee reported that the proposed amendment satisfies his opposition.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on June 1, 2017, is confirmed as amended to state "As of June 25, 2017 the Debtors shall have paid in to the plan $27,495.00. Beginning July 25, 2017 the Debtor's plan payment shall be $1,336.00 for the remainder of the plan." Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. **17-21624-E-13** **ELIEZER/EVANGELINE DELMENDO** **MOTION TO CONFIRM PLAN**
JMC-4 **Joseph Canning** **5-30-17 [105]**

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation. The Chapter 13 Trustee filed a statement of non-opposition on June 9, 2017. Dckt. 116. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

17. 11-45130-E-13 MJD-3 | **SHARON ALDRED** **Matthew DeCaminada** | **MOTION TO VALUE SECURED CLAIM OF INSURANCE GROUP FEDERAL CREDIT UNION** **6-19-17 [100]**

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 19, 2017. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Secured Claim of Farmers Insurance Group Federal Credit Union ("Creditor") is granted.

The Motion to Value filed by Sharon Aldred ("Debtor") to value the secured claim of Farmers Insurance Group Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6557 Donegal Drive, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $71,280.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $99,282.43. Proof of Claim 10. Creditor filed Proof of Claim 3, as alleged in the Motion, for the amount of $42,160.30. Proof of Claim 3 states explicitly that the entire amount is unsecured, indicating that Creditor concurs with Debtor's $71,280.00 valuation of the Property.

This bankruptcy case was filed on October 22, 2011. The Chapter 13 Plan was confirmed and completed in 2015. Notice of Plan Completion, Dckt. 75. Debtor's discharge was entered on November 8, 2015. Dckt. 87. The confirmed First Modified Chapter 13 Plan for the payment of Creditor's secured claim is in the amount of $0.00. Dckt. 51 at 3. This Plan was fully performed.

The first deed of trust secures a loan with a balance of approximately $99,282.43. Creditor's second deed of trust secures a loan with a balance of approximately $42,160.30. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) 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 Farmers Insurance Group Federal Credit Union secured by a second deed of trust recorded against the real property commonly known as 6557 Donegal Drive, Citrus Heights, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $71,280.00 (determined as of the commencement of this case and confirmation of the Chapter 13 Plan) and is encumbered by senior liens securing claims that exceed the value of the Property.

18. 14-27630-E-13 ROSIE GOMEZ — MOTION TO MODIFY PLAN
FF-1 Gary Fraley — 5-31-17 [34]

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 31, 2017. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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 denied.

Rosie Gomez ("Debtor") seeks confirmation of the Modified Plan because Debtor became delinquent in plan payments after January 2017, when Debtor believed she had completed the plan because Debtor ran out of payment labels for her cashier's checks. Dckt. 34. The Modified Plan proposes an increase in monthly plan payments from $1,005.37 to $1,222.00 for the remainder of the plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 27, 2017. Dckt. 45. The Trustee asserts that Debtor is $2,444.00 delinquent in plan payments, which represents multiple months of the $1,005.37 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in sixty-three months because the Trustee calculates it will take an additional twenty-eight months to pay off the $31,845.54 in principal and

interest to be paid to secured creditors, and because Debtor has completed thirty-five months of the plan, the total term would be sixty-three months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes increasing the monthly plan payment, yet there is no current statement of Debtor's income and expenses on file. The last statement of Debtor's income and expenses was filed on September 9, 2014, under Dckt. 1, which reflected that Debtor was on a fixed income. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

19. 15-26944-E-13 SHAWN SANFORD MOTION TO MODIFY PLAN
PLG-1 Steven Alpert 5-24-17 [27]

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, and Office of the United States Trustee on May 24, 2017. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

Shawn Sanford ("Debtor") seeks confirmation of the Modified Plan to provide for the claims of the Employment Development Department, the Franchise Tax Board, the Internal Revenue Service, and the Employment Development Department-State of California. Dckt. 27. The Modified Plan proposes an increase in the monthly plan payment from $1,123.03 to $1,371.61, to commence on May 25, 2017, and be paid through September 25, 2020. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 20, 2017. Dckt. 38. The Trustee asserts that Debtor is $1,371.61 delinquent in plan payments, which represents one month of the $1,371.61 proposed plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Although Debtor recently filed a current Schedule I, under Dckt. 33, showing a $500.00 increase in business revenue, Debtor has not filed a current Schedule J to show current expenses. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

DEBTOR'S RESPONSE

Debtor filed a Response on July 3, 2017. Dckt. 45. Debtor asserts that he filed a Supplemental Schedule J on June 28, 2017, which only showed an expense increase for health insurance from $620.00 to $740.00.

RULING

Debtor has filed a Supplemental Schedule J indicating increased expenses of $120.00. Offset against the Supplemental Schedule I, there is $380.00 in excess funds to be contributed to the Plan. The proposed plan contains payments that are $248.58 more than the confirmed plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is granted, and Debtor's Modified Chapter 13 Plan filed on May 24, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. 16-24246-E-13 RICHARD CRUZ — MOTION TO CONFIRM PLAN
EWV-121 Eric Vandermey — 5-17-17 [127]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 17, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is denied.

Richard Cruz ("Debtor") seeks confirmation of the Amended Plan because Debtor mistakenly accounted for the income and expenses of his separated, non-filing spouse when Debtor submitted his original plan; Debtor has now provided the Chapter 13 Trustee with his 2015 and 2016 federal tax returns, and Debtor's Amended Plan seeks to adjust the priority debt claimed by creditors Department of Treasury, Internal Revenue Service, and California Franchise Tax Board; Debtor filed his original plan overlooking how to provide for certain secured debt held by creditors, including Green Tree Servicing LLC and Hilton Grand Vacations. Dckt. 127. The Amended Plan increases the monthly plan payment from $775.00 to $1,260.00. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 23, 2017. Dckt. 133. The Trustee asserts that Debtor is $5,335.00 delinquent in plan payments, which represents multiple months of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Trustee asserts that the Amended Plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b) and that the Amended Plan may not be filed in good faith under 11 U.S.C. § 1325(a)(3). The Trustee raises the concern that the claims listed in Class 4 for Bank of the West (2004 Mastercraft Boat) and Bank of America (Camping Trailer) may not be debts of Debtor's business Master Tech Automotive and that Debtor may have more income than he is reporting. In addition, the Trustee asserts that it appears the claim for Bank of the West (2004 Mastercraft Boat) will be paid off in forty-nine months such that it may mature before the Plan will complete its term.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

21. **15-22747-E-13 PLC-7** **GARY/VICTORIA TEDFORD** **Peter Cianchetta** **MOTION FOR COMPENSATION FOR PETER CIANCHETTA, DEBTOR'S ATTORNEY**
6-7-17 [104]

Final Ruling: No appearance at the July 11, 2017 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, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 7, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees, as amended in Applicant's Reply, is granted.

Peter Cianchetta, the Attorney ("Applicant") for Gary Tedford and Victoria Tedford, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 18, 2015, through June 7, 2017. Applicant requests fees in the amount of $6,192.50 and costs in the amount of $472.01.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 27, 2017. Dckt. 113. The Trustee asserts that Applicant's Motion contains two entries that appear to be improper: one entry dated 7/10/14 described as "Attend continued 341 Meeting" purportedly occurred on a date before the filing of this case on April 3, 2015; a second entry dated 6/11/15 described as "Motion to Value PLC-1" appeared to refer to a motion that was never filed with the court. Each item was listed as costing $350.00.

APPLICANT'S DECLARATION

Applicant filed a Declaration on June 27, 2017. Dckt. 116. Applicant asserts that the entry dated 7/10/14 described as "Attend continued 341 Meeting" was a copy-and-paste error and should be removed

from the billing, and the entry dated 6/11/15 described as "Motion to Value PLC-1" was prepared and served but not filed and should also be removed from Applicant's fee request.

Applicant states that his fee request should be $5,492.50, and his expense request should be $463.36, a reduction of $7.29 for postage and printing.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th

Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney

must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparation of emergency bankruptcy petition, Motion to Value Automobile, response to Objection to Confirmation, Motion to Confirm Plan, Amended Chapter 13 plan and Motion to Confirm Plan, Motion to Vacate Dismissal, Motion for Compensation, response to Motion to Dismiss, and client communications. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Pre-Chapter 13 Confirmation: Applicant spent 13.5 hours in this category. Applicant met with Client to begin bankruptcy, prepared the emergency bankruptcy petition, Motion to Value Automobile, a response to Objection to Confirmation, Motion to Confirm Plan, Amended Chapter 13 plan and Motion to Confirm Plan.

Post-Chapter 13 Confirmation: Applicant spent 4.5 hours in this category. Applicant prepared a Motion to Vacate Dismissal, Motion for Compensation, response to Motion to Dismiss, and client communications regarding the plan and notices of mortgage payment changes.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Peter Cianchetta	18.0	$350.00	$6,300.00
Total Fees for Period of Application			$6,300.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $472.01 pursuant to this application. FN.1.

FN.1. The court notes that the Application states $472.01, but Applicant's time sheets reflect $470.65 in costs.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Printing and postage		$70.65
Filing Fee		$335.00
Credit Reports		$65.00
Total Costs Requested in Application		$470.65

FEES AND COSTS & EXPENSES ALLOWED

Applicant seeks to be paid a single sum of $5,492.50 for his fees and $463.36 for costs and expenses incurred for Client. First and Final Fees and Costs in the amount of $5,955.86 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees $5,492.50
Costs and Expenses $463.36

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Cianchetta ("Applicant"), Attorney for Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter Cianchetta is allowed the following fees and expenses as a professional of the Estate:
>
> Peter Cianchetta , Professional employed by Chapter 13 Debtor
>
> Fees in the amount of $5,492.50
> Expenses in the amount of $463.36,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Chapter 13 Debtor.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution under the confirmed Plan.

22. **15-27951-E-13 WW-2** | **NICOLE KIMBROUGH** **Mark Wolff** | **OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 5-25-17 [40]**

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2017. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 hearing on the Objection to Notice of Mortgage Payment Change is continued to 3:00 p.m. on August 29, 2017.

ORDER CONTINUING HEARING

On June 28, 2017, the court entered an order continuing the hearing on the Objection 3:00 p.m. on August 29, 2017, pursuant to parties' stipulated request for a continuance. Dckt. 57. The court also ordered that the deadline to object is August 22, 2017.

The hearing having been continued to 3:00 p.m. on August 29, 2017, this matter is removed from the calendar.

23. **17-20054-E-13 TLA-1** | **TREVOR HARPER AND MYA MOORE-HARPER** **Thomas Amberg** | **OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES** **5-25-17 [24]**

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, Creditor, parties requesting special notice, and Office of the United States Trustee on May 25, 2017. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Objection to Notice of Mortgage Payment Change is sustained in part and overruled in part.

Trevor Harper and Mya Harper-Moore ("Debtor") object to a Notice of Mortgage Payment Change filed by Banc of California, National Association ("Creditor") on April 28, 2017. Debtor alleges that Creditor has charged $900.00 for post-petition mortgage fees and expenses without providing any description other than "Proof of Claim, Plan Review and 410A Attachment." Debtor moves for Creditor to provide a more-detailed breakdown of the fees, and if unsatisfactory, then to have them disallowed in their entirety.

CREDITOR'S RESPONSE

Creditor filed a Response on June 27, 2017. Dckt. 28. Creditor states that specifics were provided for each expense. Creditor notes that on January 17, 2017, attorney fees were incurred in the amount of $350.00 for a detailed review of Debtor's proposed Plan and Schedules. Then, Creditor states that a report was prepared to provide Creditor with appropriate action to take in the bankruptcy proceeding.

On March 24, 2017, Creditor states that additional fees were incurred to prepare and to file a proof of claim with a 410A attachment, which information was reviewed and verified with Creditor's supporting documentation.

Creditor asserts that the above expenses were disclosed with details of each fee.

DISCUSSION

The court's review of the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed on April 28, 2017, shows that Line Item 5 for "Bankruptcy/Proof of claim fees" states "Proof of Claim; 3/24/17: $300.00, Plan Review: $350.00:01/17/17." Line Item 11 for "Other" states "410A attachment 03/24/17" for $250.00.

Historically, Creditors have served notices "without the assistance of an attorney." *In re Baines*, No. 12-80168, 2012 Bankr. LEXIS 2980, at *2 (Bankr. M.D.N.C. June 29, 2012) (citation omitted). Federal Rule of Bankruptcy Procedure 3002.1 does not place any additional legal burden on creditors; it clarifies what parties must receive notice. *Id.* at *3. Preparing a notice is "a business function that can be done by a claims administrator in the creditor's own office. . . . It is not the practice of law." *In re Carr*, 468 B.R. 806, 808 (Bankr. E.D. Va. 2012). When creditors have not met the burden of proof to support a notice for attorney fees, courts have disallowed the claims. *See, e.g.*, *In re Ortega*, No. 10-40698-H3-13, 2013 Bankr. LEXIS 1967, at *3–4 (Bankr. S.D. Tex. May 14, 2013); *In re Boyd*, No. 12-80400-H3-13, 2013 Bankr. LEXIS 1770 (Bankr. S.D. Tex. May 1, 2013) (citing *In re Valdez*, 324 B.R. 296 (Bankr. S.D. Tex. 2005)).

However, it is commonly observed that when a creditor has counsel provide a reasonable review to ensure that information is properly disclosed under the Bankruptcy Rules and required forms, both the creditor and debtor are well-served.

The Objection states that "post-petition mortgage, fees and expenses totals $900 with no description other than 'Proof of Claim, Plan Review and 410A Attachment.'" Objection, p. 1:25–27. The Notice breaks down the $900 amount into the following categories:

A. Proof of Claim.....$300.00
B. Plan Review.....$350.00
C. 410A Attachment.....$250.00

Exhibit A, Notice of Post-Petition Mortgage Fees, Expenses and Charges; Dckt. 26.

On the one hand, it appears that Debtor argues that there should be a more-detailed billing statement for the $300.00 in fees relating to the Proof of Claim, the $350.00 for Review of Plan, and $250.00 for the 410A Attachment. It appears likely that each may well be a one line entry, such as "Review draft proof of claim, confirm information with client.....$300.00."

On the other hand, counsel seeks to charge $550.00 in connection with the Proof of Claim filed for Creditor in this case. While counsel may reasonably review what the sophisticated financial institution

client has prepared, it is for the client's financial people to prepare—not outsource—the internal record keeping and clerical work to be billing by lawyers and paralegals.

In responding to the Objection, Creditor does not provide any testimony in opposition. No one from Creditor has stepped forward to testify as to the legal services provided for which the legal fees are added to the debt. Rather, Creditor only has its attorney make arguments in the Response based on the information included in the Notice and Proof of Claim. Response, Dckt. 28.

When dealing with such modest attorneys' fees numbers, the court can fairly consider the services and what may reasonably be allowed or awarded Creditor.

A review of Proof of Claim No. 5 filed by Creditor indicates that it does not contain sophisticated "legal" discussion or additions. Most of the documents, including the Form 410A attachment, appear to be documents generated by Creditor. It appears that there is some clerical work in filling in some of the fields, such as: [1] name of debtor, [2] name of creditor, [3] principal balance, [4] interest due, [5] fees and costs, [6] total debt, [7] arrearage information, and [8] monthly payment information. All of this is information that necessarily has to be prepared by Creditor and is not "legal services" provided by counsel. Once the clerical work is completed, however, it is not unreasonable for Creditor to have its counsel give the 410A Form a review to make sure that the financial information makes "legal sense."

From reviewing the Proof of Claim and 410A attachment, the court concludes that $300.00 is a reasonable legal fee. The court sustains the Objection as to the additional $250.00 sought by Creditor.

While Debtor may object to Creditor having counsel review the proposed plan and make sure nothing adverse to Creditor's interests be confirmed, merely because Debtor says that Debtor was not trying to do Creditor wrong (in this case), it is unreasonable to have counsel review and monitor the confirmation process. Debtor, for all of their good faith and having a plan to deal fairly with Creditor's claim, cannot preclude Creditor from seeking the reasonable assistance of counsel to confirm that Debtor is a "good guy." Debtor chose to file the bankruptcy case, necessitating some reasonable review and monitoring by Creditor's attorney.

The $350.00 in legal services is not unreasonable for "Plan Review." The court interprets this "review" to include monitoring the court's file to make sure that the Plan, as proposed, is the Plan that was confirmed. If the $350.00 was merely for reading the proposed plan on January 17, 2017, and sending a confirming email to Creditor saying, "this all looks OK by me, your attorney," such $350.00 fee would appear to be excessive. But the court is confident that the $350.00 fee would not be merely for a once-over of the Plan but includes confirming that the Plan was confirmed.

This discussion reminds the court of the California Supreme Court decision in *Bondanza v. Peninsula Hospital and Medical Center et al.*, 23 Cal. 3d 260 (1979). That case addressed the legal point that a person is obligated to pay only the reasonable legal fees for the actual legal services provided, not an average set fee or contingent fee as agreed in good faith between the creditor and its collection agency (or attorney). While the set or contingent fee may be fair in the aggregate given that some debtors pay nothing, some pay something, and some pay all (with that averaging out), the debtor who pays all cannot be called on to subsidize those who pay less than all.

The $350.00 amount is reasonable for legal services provided in reviewing the proposed plan and monitoring the file through confirmation to ensure that the proposed plan is what was confirmed. If the $350.00 was a fee merely for a "once-over review" of the proposed plan, such would be unreasonable for Debtor in this case, though such an average may be fair as between counsel and Creditor in the aggregate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Mortgage Payment Change filed by Trevor Harper and Mya Harper-Moore, 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 Objection is sustained, and Post-Petition Expenses in the amount of $250.00 are disallowed. The balance of the Objection is overruled as to the remaining $650.00 ($300.00 relating to the proof of claim, including Form 410A, and review of Chapter 13 Plan and monitoring for confirmation) in post-petition attorney's fees and expenses claimed by Banc of California, National Association in the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed on April 28, 2017.
>
> This Order constitutes a judgment (FED. R. CIV. P. 54(a) and FED. R. BANKR. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure (including FED. R. CIV. P. 69 and FED. R. BANKR. P. 7069, 9014).

24. 12-24857-E-13 EGS-1 | **DONALD/JULIANA EMUKPOERUO** Mark Shmorgon | **MOTION TO APPROVE LOAN MODIFICATION** 6-27-17 [134]

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by Bayview Loan Servicing, LLC ("Movant-Creditor") seeks court approval for Debtor to incur post-petition credit. Movant-Creditor, whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $3,144.96 per month to $2,249.97 per month. The modification will capitalize arrears and provides for stepped increases in interest from 5.326% to 7.350% through the maturity date of December 1, 2045.

The Motion is supported by the Declaration of Daine Barron, an employee (Bankruptcy Coordinator) of Movant-Creditor. Dckt. 136. The Declaration states that Movant-Creditor is the owner of the current Note secured by a First Deed of Trust. Further, the Declaration states that on or about January 1, 2017, Debtor entered into a post-petition Loan Modification Agreement with Movant-Creditor, which was signed by Debtor on May 15, 2017.

DISCUSSION

Based on the court's review of the pleadings, it appears that this loan modification was entered into on or about January 1, 2017. Dckt 134. It is unclear, though, whether or not Debtor has been making payments outside of the current Plan in compliance with this modification, and in violation of the Plan. It is also unclear whether the Trustee has been overpaying Movant-Creditor under the current plan.

This loan modification was allegedly signed, with no approval by the court, on May 15, 2017, by Debtor and on May 18, 2017, by Movant. Additionally, Movant-Creditor asserts to have attached a copy of the proposed loan modification as Exhibit E, but instead, Exhibit E is a copy of Debtor's Schedule D. Without being able to review the terms of the proposed modification, the court cannot grant the Motion.

This post-petition financing is not consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Bayview Loan Servicing, LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

25. 17-20460-E-13 STACY JOHNSON
Richard Jare

CONTINUED ORDER TO SHOW CAUSE —FAILURE TO PAY FEES
5-30-17 [43]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 1, 2017. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $77.00 due on May 25, 2017.

The Order to Show Cause is sustained, and the case is dismissed.

JULY 11, 2017 HEARING

xxxxxxxxxxxxxxxxxxxx.

JUNE 21, 2017 HEARING

At the hearing, counsel for Debtor requested that the court continue the hearing to allow Debtor one last opportunity to pay the installment fee—the last of the required installments for the filing fee.

The court continued the hearing to 3:00 p.m. on July 11, 2017, with the only issue for consideration being whether the final installment fee has been paid. Dckt. 57.

JULY 11, 2017 HEARING

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $77.00.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

26.	**17-22862-E-13 DPC-1**	**TESSA SMITH AND VALERIE SPECHT Mikalah Liviakis**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-6-17 [20]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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 6, 2017. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Debtor's Plan may fail the liquidation analysis.

The Trustee's Objection is well-taken. The Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Trustee states that Debtor has supplied insufficient information relating to real property of the estate of Debtor's mother that is intended to be sold and divided between three beneficiaries. Debtor fails to report information leading to an accurate valuation of the property.

Additionally, Debtor has scheduled a potential inheritance of an unknown value and has exempted $27,903.00 for it under California Code of Civil Procedure § 703.140(b)(5).

There may be extra equity to fund Debtor's Plan, but there has not been enough information provided to determine how much.

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

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

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

27.	**17-22862-E-13 DPC-1**	**TESSA SMITH AND VALERIE SPECHT Mikalah Liviakis**	**MOTION FOR DENIAL OF DISCHARGE OF JOINT DEBTOR UNDER 11 U.S.C. SECTION 727(A) 6-6-17 [16]**

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and the Office of the United States Trustee on June 6, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee("Objector"), filed the instant Objection to Debtor's Discharge on June 6, 2017. Dckt. 16.

Objector argues that Valerie Specht ("Debtor") is not entitled to a discharge in the instant bankruptcy case because she received a discharge in a prior Chapter 7 case.

Debtor Valerie Specht filed a Chapter 7 bankruptcy case on November 27, 2013. Case No. 13-35143. Debtor received a discharge on March 10, 2014. Case No. 13-35143, Dckt. 17.

The instant case was filed under Chapter 13 on April 27, 2017.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on March 10, 2014, which is less than four years preceding the date of the filing of the instant case. Case No. 13-35143, Dckt. 17. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 17-22862), the case shall be closed without the entry of a discharge, and Debtor Valerie Specht shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter13 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 Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 17-22862, the case shall be closed without the entry of a discharge for Valerie Specht.

28. **17-23464-E-13 MET-1** | **JOSEPHINE MELONE** **Mary Ellen Terranella** | **CONTINUED MOTION TO EXTEND AUTOMATIC STAY** **5-27-17 [8]**

Final Ruling: No appearance at the July 11, 2017 hearing is required.

Local Rule 9014-1(f)(2) Motion.

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 27, 2017. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Josephine Melone ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 14-29966) was dismissed on April 12, 2017, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 14-29966, Dckt. 37, April 12, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor fell behind in plan payments after having to make unexpected repairs to rental property when one set of renters moved out and before new renters moved in. While the property was vacant, Debtor lost rental income as well. Now, the repairs have been made, and new tenants are in the property.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 1, 2017. Dckt. 15. The Trustee states that he has no basis to oppose the Motion.

JUNE 13, 2017 HEARING

At the hearing, the court extended the automatic stay on an interim basis through and including noon on July 15, 2017, for all purposes and parties, unless terminated by operation of law or further order of this court. The court announced that a final hearing on the Motion would be held at 3:00 p.m. on July 11, 2017. Opposition, if any, was to be filed and served on or before June 24, 2017, and Replies were to be filed and served on or before July 1, 2017. Dckt. 34.

DISCUSSION

Nothing further has been filed since the June 13, 2017 hearing, indicating that no party opposes extending the automatic stay in this case.

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

After the filing of this Motion, several creditors have required requests for special notice. They were not included on the service list for the present motion.

In reviewing the pleadings, Debtor states that she has $3,200.00 in rental income. It may be that this rental income, if from the real property Debtor owns, may be cash collateral of some creditor.

The Motion is granted, and the automatic stay is extended on an interim basis through and including noon on July 15, 2017, for all purposes and parties, unless terminated by operation of law or further order of this court. The final hearing on this Motion will be conducted at 3:00 p.m. on July 11, 2017. Opposition, if any, shall be filed and served on or before June 24, 2017, and Replies filed and served on or before July 1, 2017.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

29. 16-28365-E-13 BARBARA GIAMMARCO MOTION TO CONFIRM PLAN
LBG-1 Lucas Garcia 5-17-17 [39]

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, 2017 By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is denied.

Barbara Giammarco ("Debtor") seeks confirmation of the Amended Plan to clarify income versus contribution from Debtor's son, who lives with her and reflects the potential necessity to reopen a prior Chapter 13 case to finalize discharge. Dckt. 39. The Amended Plan proposes monthly plan payments of $2,100.00. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on May 30, 2017. Dckt. 50. The Trustee asserts that Debtor is $2,878.23 delinquent in plan payments, which represents multiple months of the $2,100.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

30. 17-22866-E-13 ABEL RUSFELDT
Dale Orthner

OBJECTION TO CONFIRMATION OF PLAN BY HOME ALLY FINANCIAL, LLC
6-9-17 [30]

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

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. FN.1.

FN.1. Movant has not specified clearly whether the Objection is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Hearing states that "Respondents must appear personally or by counsel" at the hearing, but it also states that they "may file responsive pleadings, points and authorities and declarations." Dckt. 31. Based upon language that the parties must appear at the hearing, the court treats the Objection as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to overrule the Objection. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

The court also notes that the Objecting Creditor has not provided a Docket Control Number for this Objection. LOCAL BANKR. R. 3015(c)(4).

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 9, 2017. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

Home Ally Financial, alleged Creditor with a secured claim, opposes confirmation of the Plan on the basis that:

A. The Plan modifies the rights of a creditor whose claim is secured only a security interest in real property that is Debtor's principal residence, and

B. Debtor cannot reorganize the debt owed to Creditor because it is owed solely by Debtor's non-filing spouse.

Creditor argues that Maria De Los Angeles Torres Lopez executed a note secured by a first deed of trust on June 1, 2005, in the amount of $64,000.00. The original holder of the note (allegedly) was First Franklin, a Division of Nat. City Bank of IN. Creditor alleges the following:

A. That National City Bank was acquired by PNC Bank, National Association on November 7, 2009;

B. That PNC Bank National Association, Successor by Merger to National City Bank assigned all beneficial interests to Dreambuilders Investments, LLC on February 10, 2015;

C. That Dreambuilder Investments, LLC assigned all beneficial interests to Home Ally Financial II, LLC on February 10, 2015; and

D. That Home Ally Financial II, LLC assigned all beneficial interests to Certis PN 1, LLC on March 13, 2015.

REVIEW OF OBJECTION

Creditor argues that Debtor has violated 11 U.S.C. § 1322(b)(2) by reducing the interest rate on Creditor's debt from 10.375% to 0.00% on real property that is Debtor's principal residence. Creditor also alleges that the debt is not Debtor's to reorganize.

Creditor's sole legal basis for the argument is stated to be 11 U.S.C. § 133(b)(2), stating that the claim secured only by a lien against Debtor's residence cannot be modified. The asserted modification is that the $50,000.00 arrearage in principal and interest payments is being repaid at 0.00% interest and that such cure of the arrearage at 0% interest is impermissible.

Creditor does not cite to 11 U.S.C. § 1322(c), which provides [emphasis added]:

"(c) **Notwithstanding subsection (b)(2) and applicable nonbankruptcy law**--

(1) **a default** with respect to, or that gave rise to, a lien on the debtor's principal residence **may be cured under paragraph (3) or (5) of subsection (b)** until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal

> residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title."

"The Bankruptcy Code provides in 11 U.S.C. § 1332(b)(3) and (5) as follows:

> (b) Subject to subsections (a) and (c) of this section, the plan may–
> . . .
> (3) provide for the curing or waiving of any default;
> . . .
> (5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due; . . . ."

Several courts have addressed the issue of whether the arrearage cure payments require the payment of additional interest (a portion of the arrearage already being interest), including *Rake v. Wade*, 508 U.S. 464 (1993). This prompted Congress to address the issue in 1994 amendments to the Bankruptcy Code, adding paragraph (e) to 11 U.S.C. § 1322, which provides:

> (e) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

The enactment of this provision and what is actually required as part of the cure payment is discussed in Collier on Bankruptcy, Sixteenth Edition, ¶ 1322.19

> Section 1322(e) was enacted to overrule the Supreme Court decision in *Rake v. Wade*. In that case, the Court had required debtors curing home mortgage defaults to pay not only the interest on the principal of their loans, but also interest on that interest, as well as interest on other elements of the arrearage, such as interest, late fees, escrow payments and attorney's fees. Section 1322(e) provides that the amount necessary to cure a default is to be determined in accordance with the underlying agreement and applicable nonbankruptcy law.
> . . .
>
> Under section 1322(e), the amount necessary to cure a default is the same amount as would be required to cure if the debtor were not in bankruptcy. Two conditions must be met before interest or other charges can be required as part of a bankruptcy cure. First, the interest or charges must be required under the original agreement, and second, they cannot be prohibited by state law. In other words, the bankruptcy court will never require interest in excess of that permitted by state law, and will require none unless the agreement provides for interest.

In the Objection to Confirmation, Creditor state its objection to be based on the following application of the law:

> "**A. IMPERMISSIBLY MODIFIES CREDITOR'S RIGHTS**
>
> 11 U.S.C. §1322(b)(2)
>
> The Plan modifies the rights of a creditor whose claim is secured only by a security interest in real property that is Debtor's principal residence in violation of 11 U.S.C. Section 1322(b)(2). Pursuant to Debtor's proposed Plan, Creditor's arrears will be paid at 0% interest. Rather than an interest rate of at least 10.375% as designated in Creditor's Note.
>
> The ability of a Debtor to modify secured claims in Chapter 13 is statutorily limited. A debtor's Chapter 13 plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. Section 1322(b)(2). Here, Creditor's Claim is secured only by an interest in real property that is Debtor's principal residence, therefore the Claim cannot be modified. The interest rate of 10.375% is provided for in Creditor's Note. Thus, it is not permissible pursuant to 11 U.S.C. Section 1322(b)(2) for Debtor to modify Creditor's contractual interest rate and provide for an interest rate of 0% to cure Creditor's arrears. The reduction of interest is a substantial modification of Creditor's Claim. Therefore, this Plan cannot be confirmed."

It appears that this Objection is not based on the applicable federal law, but merely an incomplete presentation of federal law by Creditor. No basis under California law or the contract has been presented for the contention that whatever arrearage may exist must be compounded by Debtor, piling interest on interest, interest on fees, interest on charges, and whatever else may be included in the asserted arrearage.

Creditor does raise a substantial issue in questioning what and how this Property is appearing in this bankruptcy case. Debtor cannot state what interest he actually has, providing only a cryptic description of the interest as being an "equitable interest," apparently admitting that he has no "legal interest" in the Property. Then Debtor states that nobody else has any interest in the Property on Schedule A.

Creditor has provided the court with a copy of the note and deed of trust at issue with Creditor's Motion for Relief from the Stay. Exhibits 1, Note, and 2, Deed of Trust, Dckt. 39; authenticated by Declaration, Dckt. 37. The borrower on the note is "Maria Lopez" and is dated June 1, 2005. The Deed of Trust is identified as a "Secondary Lien," with Ms. Lopez identified as "a married woman as her sole and separate property."

In the Motion for Relief from the Stay, Creditor states that Maria Lopez has filed her own prior bankruptcy case, No. 16-27069 ("Maria Bankruptcy Case"). That case was filed on October 24, 2016, and dismissed on April 12, 2017. Ms. Lopez's attorney in the Maria Bankruptcy Case is the same attorney as for Debtor in this case. In the Maria Bankruptcy Case, a Chapter 13 Plan was confirmed. 16-27069; Order,

Dckt. 71. That confirmed Chapter 13 Plan required monthly plan payments of $3,248.00 for sixty months. *Id.*; Plan, Dckt. 7. Under that Chapter 13 Plan, there were no Class 1 claims paid, Class 2 provided for paying several car loans and paying Creditor's $111,000.00 claim with 3% interest at the rate of $1,994.52 (providing for fully amortizing the loan over the sixty months of the Chapter 13 Plan).

The Maria Bankruptcy Case was dismissed in April 2017 because of $9,744 in defaults. *Id.*; Civil Minutes, Dckt. 79. The Trustee's Final Report discusses that only $3,248.00 was paid into the Chapter 13 Plan for the five months of the Plan (with monthly payments of $3,248.00 each). *Id.*, Final Report, Dckt. 85.

On Schedule A in the Maria Bankruptcy Case, Maria Lopez states under penalty of perjury that she owns the Property that secures Creditor's claim and that she is the only person who has an interest in the Property. *Id.*; Dckt. 1 at 11. That appears to be in conflict with Debtor in the current case stating that he is the only person having an interest in the Property. On her Schedule I, Debtor states that she has no income but that her spouse has gross income of $9,300 per month. *Id.* at 29–30. On Schedule J, Ms. Lopez states that her household consists of two persons, Maria Lopez and her husband. *Id.* at 31. On Schedule J in the current case, Debtor states under penalty of perjury that the household consists of four persons—Debtor, Maria Lopez, a nine-year-old daughter, and a twelve-year-old son. Dckt. 1 at 35. Debtor's statement of penalty of perjury in this case is in conflict with Maria Lopez's statement under penalty of perjury in 2016.

Debtor and Maria Lopez have a third bankruptcy case that they filed jointly in 2013, No. 13-28581. In that Chapter 7 case, they were represented by an attorney who is not the same one who represents them in their individual Chapter 13 cases. Debtor and Maria Lopez obtained their Chapter 7 discharges on October 15, 2013. 13-28581; Discharge Order, Dckt. 15. On Schedule I filed in the Chapter 7 case, Debtor and Maria Lopez state under penalty of perjury that their family unit is four persons, the two adult debtors and two children (ages six and nine). *Id.*; Dckt. 1 at 39. On Schedule A in the Chapter 7 case, Debtor and Maria Lopez state under penalty of perjury that they both own the Property securing Creditor's claim with their interests being those of joint tenants. *Id.* at 12.

It is unclear whether Debtor has any interest in the Property that secures Creditor's claim, Debtor and Maria Lopez providing conflicting statements under penalty of perjury. At this juncture, it is not clear that Debtor owns property that secures Creditor's obligation and that Creditor has a secured claim in this bankruptcy case. Debtor has not addressed the effect of having only Debtor (assuming he has an interest in the Property) as a non-recourse, no personal liability debtor, providing for the secured claim in a bankruptcy plan. Though Debtor may provide for the claim, the question arises as to Maria Lopez's obligation on the Note and the encumbrance of her interest in the Property.

Proof of Claim No. 6

Creditor has not filed a proof of claim in this bankruptcy case, which is consistent with its contention that Debtor does not have an interest in the Property. However, Proof of Claim 6 filed in this case by Deutsche Bank National Trust Company, as Trustee for HSI Asset Securitization Corporation Trust 2005 I1 Mortgage Pass Through Certificates, Series 2005 I1 ("Deutsche") provides some additional information. That proof of claim includes an Adjustable Rate Note dated June 1, 2005, in which Maria Lopez agreed to pay $512,000.00 to First Franklin A Division of Nat. City Bank of IN. The deed of trust

lists the borrower as "MARIA LOPEZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY." The claim also includes a Modification of Deed of Trust and an Agreement to Maintain Escrow Account, each dated December 28, 2016, that are signed by Maria Lopez and "Abel Rusfelrt" as borrowers.

Additionally, Proof of Claim 6 contains two assignments. One assignment on June 9, 2005, is from First Franklin, A Division of National City Bank of Indiana to First Franklin Financial Corporation. The second assignment is from First Franklin Financial Corporation to Deutsche on March 18, 2008.

The court sustains the Objection and denies confirmation of the Chapter 13 Plan without prejudice. The court cannot determine whether the Plan complies with 11 U.S.C. §§ 1325 and 1322.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by a creditor with an alleged 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 is sustained, and the proposed Chapter 13 Plan is not confirmed, without prejudice.

31. **17-22866-E-13 AP-1** **ABEL RUSFELDT**
Dale Orthner

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
6-2-17 [23]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 2, 2017. By the court's calculation, 39 days' notice was provided. 14 days' notice is required.

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

Deutsche Bank National Trustee Company, as Trustee for HSI Asset Securitization Corporation Trust 2005-I1 Mortgage Pass-Through Certificates, Series 2005-I1, Creditor with a secured claim, opposes confirmation of the Plan on the basis that the Plan does not account for and cure Creditor's pre-petition arrears.

Creditor's objection is well-taken. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim (Proof of Claim No. 6(in which it asserts $4,677.60 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

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

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

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

32. **17-22866-E-13** **ABEL RUSFELDT** **MOTION TO VALUE COLLATERAL OF FIRST INVESTORS SERVICING CORPORATION**
DAO-1 **Dale Orthner** **6-16-17 [43]**

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

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 16, 2017. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Secured Claim of First Investors Servicing Corporation ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $12,000.00.

The Motion filed by Abel Rusfeldt ("Debtor") to value the secured claim of First Investors Servicing Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Nissan Altima ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $12,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 20, 2017. Dckt. 48. The Trustee highlights the discrepancy between Debtor's assertion of the secured claim amount and the Vehicle's value ($16,869.77 and $12,000.00, respectively) with Creditor's Proof of Claim amount of the secured claim and the Vehicle's value ($16,528.42 and $8,500.00, respectively). The Trustee further points out that Debtor

failed to disclose the style of the vehicle (*i.e.* 4 cylinder or 6, Coupe or Sedan, hybrid or Altima S or Altima L).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on June 12, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,528.42. 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 $12,000.00, Debtor's valuation 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 Secured Claim filed by Abel Rusfeldt ("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 First Investors Servicing Corporation ("Creditor") secured by an asset described as 2011 Nissan Altima ("Vehicle") is determined to be a secured claim in the amount of $12,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $12,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

33. 17-22866-E-13 DPC-2 | **ABEL RUSFELDT**
Dale Orthner | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
6-6-17 [26]

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 6, 2017. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Plan relies on a Motion to Value Collateral that has not been filed.

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of First Investors Servicing Corporation. Subsequent to Trustee's Objection, Debtor filed that Motion to Value. Dckt. 43. The court heard that Motion and granted it. Therefore, Debtor has cured the Trustee's sole objection to the Plan.

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

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

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

IT IS ORDERED that the Objection is overruled.

The court has sustained Objections to Confirmation filed by creditors in this bankruptcy case.

34. 14-28968-E-13 EJS-2 | **KATHERINE PONGRATZ** Eric Schwab | **MOTION TO MODIFY PLAN** 5-30-17 [53]

NO APPEARANCE AT THE HEARING IS REQUIRED UNLESS A PARTY BELIEVES THE COURT HAS INCORRECTLY ARTICULATED DEBTOR'S AMENDMENT TO BE STATED IN THE ORDER CONFIRMING THE PLAN

Final Ruling: No appearance at the July 11, 2017 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, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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, as amended (Dckt. 68) is granted.

Katherine Pongratz ("Debtor") seeks confirmation of the Modified Plan to bring the Plan current based on claims recently filed by creditors and to reflect changes in Debtor's budget. Dckt. 53. The Modified Plan seeks to increase the amount of monthly payments to $2,195.00 from $1,479.00. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 20, 2017. Dckt. 65. The Trustee highlights that Additional Provision 6.01 incorrectly states the total payments from Month 1 through Month 33 as $48,653.00, when the correct amount paid for this period is $50,487.00. The Trustee requests the Motion be denied unless the total paid is corrected in the order confirming.

DEBTOR'S RESPONSE

Debtor filed a Response on June 29, 2017. Dckt. 68. Debtor asserts that she will correct the incorrectly stated amount paid in the Order Confirming the Plan.

JULY 11, 2017 HEARING

Debtor having stated in writing an amendment to the proposed Chapter 13 Plan to state that the payments for months 1 through 33 of the Plan total $50,487.00, with said amendment stated in the order confirming the Plan, the court grants the Motion and confirms the Plan as amended.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 30, 2017, as amended to state that the Plan payments for months 1 through 33 total $50,487.00, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the above amendment, 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.

35. **17-22472-E-13** **BRANDON LIVINGSTON** **OBJECTION TO CONFIRMATION OF**
DPC-1 **August Bullock** **PLAN BY DAVID P. CUSICK**
6-14-17 [15]

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 14, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

A. The Plan misclassified a debt in Class 4 that should be in Class 2.

B. The Plan discriminates unfairly against unsecured claims.

C. Brandon Livingston ("Debtor") cannot afford plan payments, or Debtor's proposal may not be his best effort.

DEBTOR'S RESPONSE

Debtor filed a Response on June 22, 2017. Dckt. 20. Debtor states that he and his wife purchased a 2014 Chevrolet Cruze, with her name on the title and the loan. Debtor would like to make payments directly on the car loan. Debtor agrees with the Trustee that the loan matures in March 2021.

Debtor agrees that unsecured claims are discriminated against, but Debtor stresses that the discrimination is not unfair. Debtor argues that 39% to medical bills and 25% to student loans is a modest differential. Debtor cites the court to *In re Sperna*, in which the discrimination was 100% to student loans and 1.25% to other claims. 173 B.R. 654 (B.A.P. 9th Cir. 1994). Debtor believes that the discrimination is fair and reasonable.

Finally, Debtor states that he has filed a Supplemental Schedule J to fix a clerical error that was in the initial filing.

DISCUSSION

The Trustee's objections are well-taken. The car loan proposed to be paid in Class 4 will mature during the life of the Plan, meaning that it should be paid in Class 2. The court declines Debtor's request to allow the claim to be paid in Class 4.

Also, Debtor's Plan discriminates against unsecured claims, but Debtor has not presented the court with a reason why the discrimination should be allowed. Debtor argues that the discrimination is reasonable and fair, but with so few unsecured claims, Debtor has not given the court a reason why the different treatment should be allowed (other than to argue that other courts have allowed broader treatment).

Debtor directs the court to the Bankruptcy Appellate Panel decision in *McDonald v. Sperna (In re Sperna)*, 173 B.R. 654 (1994) as a basis for the court concluding that paying 39% to one creditor for its unsecured claim (purported nondischargeable student loans) and then only 25% to the disfavored creditor is ok. In concluding that the proposed discrimination in *Sperna* was unfair, the Appellate Panel concludes, stating:

> "We hold that the nature of student loans as nondischargeable is not, by itself, a reasonable basis for giving them preferential treatment. Instead, the Debtor must show some other factors which demonstrate that discrimination is necessary. The record below does not provided a sufficient basis for making such a determination. Furthermore, the record is inadequate for analysis of the remaining factors of the four-part test."

Id., 660–61.

Debtor does not provide any explanation why the discrimination is not unfair—other than that Debtor wants to pay 39% on his (purportedly) nondischargeable student loans. It may be that an economic analysis can be provided showing that if the student loans were included they would swamp the unsecured class, the effect of which would be to reduce the actual distribution made to other creditors. It may be shown that Debtor is making the student loan payments pursuant to a plan that, if "breached" by including it in the Plan, would be of serious financial detriment to Debtor.

Without Debtor providing such a basis for showing that the discrimination is not "unfair," the court will not confirm the plan merely because Debtor provides only his argument that it is ok.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed, without prejudice.

36. **17-22980-E-13** **COBURN WALKER** **OBJECTION TO CONFIRMATION OF**
DPC-1 **James Keenan** **PLAN BY DAVID P. CUSICK**
6-6-17 [12]

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 6, 2017. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

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

A. The Trustee is unable to properly assess the feasibility of the plan, as Debtor's net income on his pay stubs differs from the amount reported on Schedule I, likely due to a difference in the accounting of certain deductions.

B. It appears based on the additional deductions, that Debtor has insufficient disposable income to make the plan payments.

The Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The discrepancy between Debtor's pay stubs and Debtor's Schedule I, showing $800.00 less of monthly income for expenses and funding a plan, leave both the Trustee and the court unable to determine

that the proposed plan is feasible. Based on these stated (on the payroll stubs) potential additional deductions, it appears Debtor has insufficient disposable income to make plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

37. 13-22083-E-13 CYNTHIA BAKER — MOTION TO MODIFY PLAN
PGM-4 Peter Macaluso — 5-24-17 [67]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 24, 2017. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy 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 denied.

Cynthia Baker ("Debtor") seeks confirmation of the Modified Plan because Debtor had to start paying back $1,641.75 to the City of Sacramento and had to pay an additional "couple lump sums" that "messed [her] up." Dckt. 69. The Modified Plan proposes that the total amounts of missed payments equaling $1,834.05 be forgiven and plan payments of $1,425.00 begin in June 2017 for nine months until completion of the Plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 27, 2017. Dckt. 78. The Trustee opposes modification based upon the following grounds:

A. The proposed amount of post-petition arrears differs from the Trustee's records. Debtor's Plan proposes post-petition arrears in the amount of $4,343.16, while Trustee's records indicate the total amount due for post-petition arrears in the amount of $4,406.68.

B. Debtor is delinquent $1,425.00 under the proposed plan.

DEBTOR'S REPLY

Debtor filed a Reply on July 3, 2017. Dckt. 81. Debtor responds:

A. The amount of post-petition arrears were incorrectly stated in Debtor's proposed plan, and the $4,406.68 indicated in Trustee's records is the correct amount. Debtor requests that the correct amount, $4,406.68, be adjusted in the Order, so that distribution to creditors is not delayed further.

B. The delinquency will be cured on or before the date of the hearing on this matter.

DISCUSSION

The Trustee asserts that Debtor is $1,425.00 delinquent in plan payments, which represents one month of the $1,425.00 plan payment. Debtor responds that this delinquency will be cured "on or before the hearing on this matter." Dckt. 81. Unfortunately for Debtor, the mere assertion that the delinquency will be cured at some unspecified time in advance or during the hearing does not, in actuality, cure the delinquency. As the record stands, Debtor remains delinquent. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's explanation stated under penalty of perjury is cryptic. Somehow, a payment to the City of Sacramento had arisen in the amount of $1,641.75 that had to be "paid back." In her declaration Debtor offers no explanation as to why this "payback" is required or permissible under applicable law. Declaration ¶ 2, Dckt. 69. The "grounds" stated in the Motion merely quote this cryptic language from the Declaration. Motion ¶ 3, Dckt. 67.

Debtor also states that she had to pay somebody some "lump sums" in unstated amounts, which added to her being "messed up." Declaration ¶ 2, Dckt. 69. Who got lump sums, and how much, and why appears to be information that Debtor and her counsel have determined is of no interest to parties in this case or the court.

Debtor has filed a new Schedule I and new Schedule J. Dckt. 72. On it, Debtor states that it is both an "amended filing," which dates all the way back to the filing of this case on 2013 and that it actually is only a supplemental filing dating from May 15, 2017. (Debtor and counsel having checked both the "amended filing" and "supplemental showing postpetition changes.") The court is unsure which statement under penalty of perjury is accurate—an amended filing or a supplemental filing.

On Amended Schedule I filed April 4, 2013, Debtor's gross income was stated to be $2,176.00. Dckt. 19 at 5. Debtor's average monthly take-home income was $1,999.13. *Id.* On Schedule J, Debtor stated under penalty of perjury that her monthly expenses were only $1,126.00. Dckt. 1 at 31. On April 4, 2013, Debtor filed an Amended Schedule J stating that her expenses were only $949.00 (excluding her mortgage to be paid through the Plan). Dckt. 19 at 4. Based on this amended filing, the Chapter 13 Trustee withdrew his objection to confirmation and the Plan was confirmed without a hearing.

To get her expenses down to $949.00 per month, Debtor stated under penalty of perjury that her expenses included only:

A.	Home Maintenance and Repair	$ 5.00
B.	Food and Housekeeping Supplies	$150.00
C.	Clothing	$ 5.00
D.	Laundry and Dry Cleaning	$ 5.00
E.	Medical and Dental	$ 70.00
F.	Transportation	$150.00
G.	Vehicle License and Registration	$ 37.00
H.	Auto Insurance	$ 70.19

Dckt. 19 at 4.

However, on the "Amended/Supplemental" Schedule I, Debtor now states under penalty of perjury that her monthly take-home income is and has been $2,995.00. This is 37.6% higher than previously stated under penalty of perjury.

Debtor now states on the "Amended/Supplemental Schedule J" that her food expense is/has increased 100%, her clothing and laundry expense is/has increased 400%, and her transportation expense has increased 83.3%. On the "Amended/Supplemental Schedule J" Debtor states under penalty of perjury that she now has a $165.00 per month tax payment for "City Sac Utilities."

Debtor offers no explanation as to reconcile these grossly different statements under penalty of perjury.

In reviewing the file, the court notes that Debtor has stumbled in this case financially, faced dismissal for her defaults, and already has had to modify her plan previously. Debtor's counsel then sought, and was allowed, additional attorney's fees for having to do "substantial and *unanticipated*" legal work arising from the defaults. That work included a loan modification.

However, in looking back at Debtor's expenses stated under penalty of perjury, it may well have been, and may be now, that financial defaults are not unanticipated, but the product of a fanciful, inaccurate, and made-up list of expenses on Schedules J, intentionally done to mislead the court.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by 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.

38.	**17-21385-E-13**	**JOANN NORRIS**	**MOTION TO CONFIRM PLAN**
	NBC-2	**Eamonn Foster**	**5-23-17 [42]**

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 23, 2017. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation. The Chapter 13 Trustee withdrew his Opposition on July 3, 2017. Dckt. 57. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by 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 24, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

39. 17-21490-E-13 MRL-2 | **TOU VANG AND KA MOUA** **Mikalah Liviakis** | **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH ETHAN CONRAD** **6-9-17 [37]**

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 June 10, 2017. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion for Approval of Compromise is granted.

Tou Vang and Ka Moua, Chapter 13 Debtor ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Ethan Conrad ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to fifty washing machines that Debtor left on Creditor's property after moving out of the premises.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 39):

A. Movant will transfer title of the fifty washers to Settlor.

B. Settlor's secured claim in this bankruptcy case is reduced to and fixed at $15,000.00, plus interest at the federal judgment rate of interest.

C. Upon payment of the $15,000.00, plus interest, Settlor will remove its judgment lien from Debtor's real and personal property.

D. Settlor shall pay $4,000.00 for Debtor's special counsel (David Sternberg & Associates) fees in connection with this dispute.

E. As of the effective date, Settlor agrees to accept the payments in full satisfaction of any claims he has against Movant and against the Chapter 13 Estate, including the claim arising from and evidenced by the judgment.

F. Within two business days of the effective date, Settlor shall deliver a satisfaction of judgment relating to the judgment issued by the Superior Court to Mikalah Liviakis, Movant's counsel.

G. Movant shall file the satisfaction of judgment with the Superior Court within five business days of the effective date and shall provide proof to Settlor and his counsel that the satisfaction of judgment has been filed within the Superior Court within five business days of the date the satisfaction of judgment is filed.

H. Movant shall be responsible for recording the satisfaction of judgment, as appropriate, and shall bear all costs associated with filing and/or recording the satisfaction.

I. Settlor shall not be responsible for filing and/or recording the satisfaction but shall be provided proof thereof.

J. The Agreement contains full and complete mutual releases exchanged between Movant and Settlor.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 27, 2017. Dckt. 50. The Trustee does not oppose the Motion.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant has alleged that Settlor violated the automatic stay, and given the circumstances, Movant believes that an adversary proceeding would be successful. Nevertheless, there is uncertainty whether any monetary damages would match or exceed the judgment held already by Settlor, even in the amount he has agreed to as a reduction.

Difficulties in Collection

The difficulty in collecting money damages lies in Settlor's ability to offset Movant's potential claim against his claim against Movant.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that Settlor's staff would need to be deposed fully, and the parties would have to product documents evidencing their contractual relationship. Both parties would incur large attorney's fees from litigation.

Paramount Interest of Creditors

Movant argues that the settlement will not harm creditors and they will receive an amount now, instead of any reduced amount from litigation. Plus, the settlement reduces the size of unsecured claims, which increases their take from the Plan.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it avoids litigation, satisfies Settlor's claim, and provides for a larger class for the remaining unsecured claims. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Tou Vang and Ka Moua, 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 the Motion for Approval of Compromise between Movant and Ethan Conrad ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 39).
>
> **IT IS FURTHER ORDERED** that the $4,000.00 to be paid by Settlor for Movant's legal fees related to this dispute and the resolution thereof shall be paid by Settlor directly to the Chapter 13 Trustee in this case. The Chapter 13 Trustee shall then disburse those monies to Movant's special counsel for this matter to the extent such fees are approved by this court.

40. **17-21490-E-13** **TOU VANG AND KA MOUA** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DAVID M. STERNBERG & ASSOCIATES SPECIAL COUNSEL(S) 6-21-17 [45]**
DMS-1 **Mikalah Liviakis**

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

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

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

Sufficient Notice Not Provided. While the Docket reflects a filing of a "Certificate of Service" on June 21, 2017, that certificate guides the court to view an "Attached Matrix" that has, in actuality, not been attached. Dckt. 49. The court cannot tell what parties were given notice.

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

The Motion for Allowance of Professional Fees is denied without prejudice.

David Sternberg, the Attorney ("Applicant") for Tou Vang and Ka Moua, Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Applicant was Debtor's special counsel, retained at the advice of Debtor's attorney, to litigate and obtain possession of sixty washers and dryers from Ethan Conrad ("Creditor").

Fees are requested for the period April 28, 2017, through June 20, 2017. While there was no order of the court approving employment of Applicant, Applicant was retained by Debtor to litigate a special matter, wherein Applicant negotiated a pending settlement agreement. A Motion to Approve the Settlement Agreement has been scheduled for hearing on July 11, 2017. Dckt. 37. Applicant requests fees in the amount of $4,000.00.

NO PROOF OF SERVICE

Applicant has not provided proof that the necessary parties have been served with notice. Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Professional Fees filed by Applicant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES PROOF OF SUFFICIENT NOTICE

STATUTORY BASIS FOR PROFESSIONAL FEES

Local Bankruptcy Rule 2016-1 provides that attorney's fees for debtor's counsel in Chapter 13 cases will be determined in the same manner as approving fees under 11 U.S.C. § 330. Pursuant to 11 U.S.C. § 330(a)(3),

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*,

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including litigation services manifesting in a Settlement Agreement in which Debtor and Creditor agreed to a resolution where there would be a $15,000.00 credit on the $26,000.00 secured claim of Creditor as well as $4,000.00 to be paid for Applicant's attorney's fees and the removal of an unsecured claim by Creditor. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

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

Litigation: Applicant spent 7.2 hours total in this category. Applicant elicited a settlement agreement between Debtors and Creditor, concerning forty washers and dryers that Creditor seized upon Debtor's eviction.

Motion for Allowance of Professional Fees: Applicant spent 1.6 hours in this category. Applicant drafted the Notice of Hearing on Final Application of Special Counsel David Sternberg for Compensation for Fees and Reimbursement of Expenses and the subsequent Final Motion on this same matter.

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**
David Sternberg	8.8	$495.00	$4,356.00
Total Fees for Period of Application			$4,356.00

FEES AND COSTS & EXPENSES ALLOWED

Applicant seeks to be paid a single sum of $4,000.00 for its fees incurred for Client. First and Final Fees and Costs in the amount of $4,000.00 are approved pursuant to 11 U.S.C. § 330, and authorized to be paid by the Trustee from the available funds from the Settlement Agreement.

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

Fees $4,000.00

pursuant to this Application 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 David Sternberg ("Applicant"), Attorney for Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

David Sternberg, Professional employed by Chapter 13 Debtor

Fees in the amount of $4,000.00,

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

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Settlement Agreement in a manner consistent with the terms of the Settlement Agreement.

41.	**17-21493-E-13 PGM-1**	**TEARA MENDEZ-OTLANG AND NEAL OTLANG Peter Macaluso**	**CONTINUED MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION 4-12-17 [13]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 12, 2017. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Secured Claim of Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $9,495.00.

The Motion filed by Teara Mendez-Otlang and Neil Otlang ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Toyota Prius ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on May 16, 2017. Dckt. 27. Creditor asserts that the replacement value for the Vehicle is $9,495.00 as of the petition date. Creditor has provided a copy of the Kelley Blue Book report for the Vehicle indicating a retail value of $9,495.00. Exhibit A, Dckt. 28.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 23, 2017. Dckt. 31. The Trustee notes that Creditor has filed a claim for $15,464.00, with $9,495.00 listed as secured and $5,969.00 listed as unsecured. *See* Claim No. 2.

PARTIES' STIPULATION TO CONTINUE HEARING

Debtor and Creditor submitted a jointly-signed stipulation on May 25, 2017, requesting that the hearing on this Motion be continued to 3:00 p.m. on July 11, 2017. Dckt. 34.

On May 27, 2017, the court entered an order granting the parties stipulation to continue the hearing to 3:00 p.m. on July 11, 2017. Dckt. 36.

DISCUSSION

No further pleadings have been filed since the June 6, 2017 hearing. The parties do not appear to have agreed to a valuation for the Vehicle.

The lien on the Vehicle's title secures a purchase-money loan incurred on July 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 $15,464.00. Whether the court accepts Debtor's or Creditor's assertion of the Vehicle's value ($5,000.00 and $9,495.00, respectively), 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 $9,495.00, the value of the collateral as reported by Kelley Blue Book. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Teara Mendez-Otlang and Neil Otlang ("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 Travis Credit Union ("Creditor") secured by an asset described as 2008 Toyota Prius ("Vehicle") is determined to be a secured claim in the amount of $9,495.00, 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 $9,495.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

42.	**17-21493-E-13 DPC-1**	**TEARA MENDEZ-OTLANG AND NEAL OTLANG Peter Macaluso**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-14-17 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 14, 2017. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that it relies upon a Motion to Value Secured Claim set for hearing on June 6, 2017.

DEBTOR'S REPLY

Teara Mendez-Otlang and Neal Otlang ("Debtor") filed a Reply on April 24, 2017. Dckt. 22. Debtor requests that the hearing be continued to June 6, 2017, to coincide with the Motion to Value Secured Claim.

At the hearing, the court continued this matter to 3:00 p.m. on June 6, 2017. Dckt. 24.

At the hearing, the court continued the matter to 3:00 p.m. on July 11, 2017. Dckt. 41.

RULING

At the July 11, 2017, the court conducted a hearing on the related Motion to Value Secured Claim of Travis Credit Union. That Motion was granted, but in a higher amount that Debtor moved for, which means that Debtor is not able to afford plan payments as they had been proposed. 11 U.S.C. § 1325(a)(6).

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

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

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

43. **17-22593-E-13** **HOWARD THOMAS** **MOTION TO SELL**
WSS-6 **Steven Shumway** **6-27-17 [65]**

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 27, 2017. By the court's calculation, 14 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 not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits Howard Thomas, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1913 Ambridge Drive, California ("Property").

INSUFFICIENT NOTICE PROVIDED

Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a minimum of twenty-one days' notice for a motion to sell. Movant provided only fourteen days. Therefore, the minimum requirement for this Motion has not been satisfied, and the Motion is denied without prejudice.

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

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

The Motion to Sell Property filed by Howard Thomas, Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice, insufficient notice having been provided.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES SUFFICIENT NOTICE

Movant discloses that the sale has occurred already. The proposed purchaser of the Property is Mark Henderson, and the terms of the sale are:

A. Purchase price of $390,000.00;

B. All cash offer;

C. Initial deposit of $5,000.00;

D. Escrow to close ten days after acceptance of offer;

E. Offer accepted on May 17, 2017;

F. Movant to pay for a natural hazard zone disclosure report and owner's title insurance policy;

G. Buyer to pay for an escrow fee, county transfer tax or fee, city transfer tax or fee, and any private transfer fee;

H. Escrow held by Fidelity National Title El Dorado Hills; and

I. Broker's commissions of $11,700.00 to each of Movant's and Buyer's brokers, totaling $23,400.00 (six percent of sale).

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: xxxxxxxxxxxxxx.

On its face, the Motion requests that the court "ratify" a prior sale that was conducted by the woman who holds a power of attorney for Debtor (and who has been seeking to receive a portion of the sales proceeds). The Motion does not request that the court issue an order for retroactive relief.

The Motion does not state with particularity (or even generally) grounds for which retroactive relief is proper. Rather, the Motion merely states: the Property was sold; no order was obtained; ratify the sale.

While the court is authorized to grant retroactive relief, it is more than merely that a party requests such relief. As discussed in the context to employing professionals:

> "The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services. See *Halperin v. Occidental Fin. Group, Inc. (In re Occidental Fin. Group, Inc.)*, 40 F.3d 1059, 1062 (9th Cir.1994); ?In re THC Fin. Corp., 837 F.2d at 392. We have held that such retroactive approval should be limited to situations in which "exceptional circumstances" exist. *In re Occidental Fin. Group, Inc.*, 40 F.3d at 1062; *In re THC Fin. Corp.*, 837 F.2d at 392.
>
> To establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner. *In re Occidental Fin. Group, Inc.*, 40 F.3d at 1062 (finding retroactive approval inappropriate where these two conditions were not met); *In re THC Fin. Corp.*, 837 F.2d at 392 (affirming denial of retroactive approval where these two conditions were not satisfied) (citations omitted). Whether additional factors should or must be considered is contested in this appeal."

Atkins v. Wain Samuel & Co. (In re Atkins), 69 F.3d 970 (1995).

Generally applying these principles, extrapolating from prior hearings and testimony, the failure to obtain prior approval arose due to error. While unclear how a title company could have closed escrow *if told by Debtor's counsel of the pending bankruptcy case*, Debtor and his counsel (and his fiduciary exercising the power of attorney) have come to the court. It appears that Debtor's counsel believed that he could just get this case dismissed days before the escrow closed, not appreciating the court's concerns with how the purported power of attorney was being exercised.

On the second point, approving the sale is in the best interests of Debtor (who has a significant exemption) and the buyer. Not approving the sale could create a series of costly, expensive lawsuits in which the title company, lenders, real estate agents, the buyer, counsel for Debtor, the fiduciary exercising the power of attorney, and insurance companies for all point the finger in the other direction. The costs of such litigation could well exceed the sales price. The sales price is consistent with Debtor's stated value of the Property.

This case has a somewhat short, but tortured history in which Debtor, who is incarcerated, has had his financial life handled by a woman who holds his power of attorney (who while stated to be his "wife," it has been presented to the court that no marriage license has been filed with the County Recorder) and his attorney.

Debtor has appeared telephonically at a prior status conference, and the court is confident that Debtor's counsel is actually communicating with his client and not merely doing the fiduciary person's bidding.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it pays Movant's creditors and provides $81,427.09 in net proceeds for Movant.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $23,400.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Howard Thomas, Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Howard Thomas, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Mark Henderson or nominee ("Buyer"), the Property commonly known as 1913 Ambridge Drive, Roseville, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $390,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 68, 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 in order to effectuate the sale.
>
> C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to Chapter 13 Debtor's broker, Ryan Watts, and to the buyer's broker, Lori Holloway—$11,700.00 to each agent.

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

44. 17-22593-E-13 WSS-7 | **HOWARD THOMAS** / **Steven Shumway** | **MOTION TO EMPLOY MALOOF PROPERTIES AS BROKER(S) AND/OR MOTION FOR COMPENSATION FOR MALOOF PROPERTIES, BROKER(S)** **6-27-17 [70]**

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, creditors, and Office of the United States Trustee on June 27, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Employ is granted.

Howard Thomas, Debtor, seeks to employ Ryan Watts, Broker, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to list and sell real property commonly known as 1913 Ambridge Drive, Roseville, California.

Debtor argues that Broker's appointment and retention is necessary to sell the property. Debtor seeks to employ Broker at a six percent commission. Debtor discloses that Broker has been hired already and that escrow closed on a proposed sale on June 7, 2017, for a total purchase price of $390,000.00. Broker's commission will be $11,700.00—half for being the listing agent, with the other half proposed to go to the buyer's agent.

Ryan Watts, a real estate agent of Maloof Properties, states that he has been selling properties since 2010 and that he has agreed to split the six percent commission with the buyer's agent. Mr. Watts states he does not represent or hold any interest adverse to Debtor or to the Estate and that he has no connection with Debtor.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Ryan Watts as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Motion (and reflected in the Residential Listing Agreement filed as Exhibit B, Dckt. 75). Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

IT IS ORDERED that the Motion to Employ is granted, and Debtor is authorized to employ Ryan Watts as Broker for Debtor on the terms and conditions as set forth in the Motion (and reflected in the Residential Listing Agreement filed as Exhibit B, Dckt. 75).

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

45. 17-22593-E-13 WSS-5 | **HOWARD THOMAS** **Steven Shumway** | **MOTION TO AVOID LIEN OF AMERICAN GENERAL FINANCIAL SERVICES, INC.** **6-27-17 [60]**

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 27, 2017. By the court's calculation, 14 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 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 denied without prejudice.

This Motion requests an order avoiding the judicial lien of American General Financial Services, Inc. ("Creditor") against property of Howard Thomas ("Debtor") commonly known as 1913 Ambridge Drive, Roseville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,293.35. An abstract of judgment was recorded with Placer County on April 6, 2009, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $400,000.00 as of the date of the petition. The unavoidable consensual liens that total $259,068.47 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 29, 2017. Dckt. 77. The Trustee states that he is uncertain whether Debtor can claim the exemption in the Property as reported. The Trustee states that the first Meeting of Creditors has not been conducted.

REVIEW OF MOTION

Debtor's Motion argues that the Property is worth $390,000.00, that the unavoidable consensual liens (just the First Deed of Trust) total $279,081.60, and that Debtor has exempted $100,000.00. That would leave $10,918.40 in equity to support the judicial lien. The Motion does not state explicitly the amount of the lien, but it seems to imply that the lien is for $12,632.37. According to Debtor's calculations, $1,713.97 of the lien should be avoid because it impairs Debtor's exemption.

The pleadings in Debtor's Motion are flawed in several ways. First, no evidence has been provided to support a value of $390,000.00 for the Property. The most recent Schedule A—filed on April 28, 2017—indicates that the Property is worth $400,000.00. Dckt. 14.

Second, the most recent Schedule D—also filed on April 28, 2017—indicates that there is only one lien against the Property for a first deed of trust in the amount of $259,068.47, not the $279,081.60 alleged in the Motion. *Id.* No Proof of Claim has been filed to contradict Schedule D.

Third, the lien that was provided as an exhibit by Debtor and that matches the Document Number stated in the Motion is for $7,293.35, not the implied amount of $12,632.37. *Compare* Dckt. 63, *with* Dckt. 60.

RULING

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A) (and assuming Debtor could claim a $100,000.00 exemption), there is $40,931.53 in equity to support the judicial lien. Therefore, the judicial lien does not impair Debtor's exemption of the real property, and it is not avoided.

With an actual sales price of $390,000.00 and subtracting the senior liens and homestead exemption, computation of the avoidance issue is as follows:

Sales Price	$390,000.00
Deed of Trust	($279,081.60)
Homestead Exemption	($100,000.00)
Computation of Value in Excess of Senior Liens and Exemption	$10,918.40

Thus, it appears that $1,713.97 ($12,632.37 paid from escrow —$10,918.40 value above liens and exemption) in what could be part of the avoidable lien may have been paid, one could question whether the Property is actually being sold for the full value, or just a close enough value because anything else

would go to creditors. Second, Debtor's fiduciary authorized this payment to be made, in her headlong rush to sell without regard to the Bankruptcy Code. Third, the cost of pursuing such litigation could well be in excess of the $1,713.97, even if uncontested. The fiduciary who proceeded with the sale without obtaining the required authorization may find it less expensive to "square this with the Debtor," rather forcing Debtor to incur more in legal fees and then recovering that amount later from the fiduciary. Fourth, Debtor has not addressed how the court can "disgorge" the payment from the escrow that was authorized and sale now retroactively approved.

Additional Questionable Relief Sought by Debtor

This bankruptcy case was filed on April 19, 2017. At some (unstated time) when Debtor was selling the Property against which the judgment lien was recorded, Creditor put a demand for $12,632.37 into escrow and was paid. Debtor asserts that this is $1,713.87 more than the equity above the senior liens and homestead exemption (Debtor computing it based on a value of $5,000.00 less than stated on Schedule A) and such amount should be "disgorged." Motion, Dckt. 60. No points and authorities is filed in support of the Motion. The Motion makes no reference to any legal basis for this court to issue an injunction ordering Creditor to "disgorge" the $1,713.87 or issue a monetary judgment for $1,713.87 based on a motion. *See* FED. R. BANKR. P. 7001.

On June 9, 2017, Debtor filed a Motion to Sell real property commonly known as 1913 Ambridge Drive, Roseville, California. The court denied that Motion without prejudice. Order, Dckt. 56. As addressed by the court in the Civil Minutes from the Motion, serious legal and ethical issues arise from the sale—which was conducted without court approval and the woman who holds Debtor's power of attorney, authorized payment to be made to Creditor.

On June 27, 2017, Debtor filed a new Motion to Approve the above sale, which is set for hearing on July 11, 2017.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) 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 denied without prejudice.

46. **17-23093-E-13** **ROBERT CLIFF, JR.** **CONTINUED MOTION TO EXTEND**
SDH-2 **Scott Hughes** **AUTOMATIC STAY**
5-11-17 [13]

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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, creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Robert Cliff, Jr. ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 15-29002) was dismissed on March 30, 2017, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 15-29002, Dckt. 60, March 30, 2017. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he fell behind on payments after his spouse had medical issues. Now, Debtor intends to sell his home to pay the mortgage fully.

APPLICABLE LAW

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect

property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

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

A. Why was the previous plan filed?

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

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

INTERIM ORDER

On May 12, 2017, the court issued an interim order granting an *ex parte* request to extend the stay and continued the stay through June 13, 2017. Dckt. 19.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 23, 2017, indicating that he does not oppose the Motion. Dckt. 25.

JUNE 6, 2017 HEARING

At the hearing, the court extended the automatic stay on an interlocutory basis through July 31, 2017, with a final hearing set for 3:00 p.m. on July 11, 2017. Dckt. 29.

DISCUSSION

No further pleadings have been filed since the June 6, 2017 hearing.

Debtor has demonstrated that the prior case was dismissed when unexpected medical issues caused Debtor to fall behind on payments. Now, Debtor intends to alleviate the pressure of making plan payments by marketing and selling his house and paying a mortgage on it in full. Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

47. **16-23496-E-13** **MICHELLE DORENKAMP** **MOTION TO MODIFY PLAN**
MJD-1 **Matthew DeCaminada** **5-24-17 [43]**

NO APPEARANCE AT JULY 11, 2017 HEARING REQUIRED UNLESS A PARTY BELIEVES THE COURT HAS MISSTATED THE AMENDMENT TO BE STATED IN THE ORDER CONFIRMING PLAN

Final Ruling: No appearance at the July 11, 2017 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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 24, 2017. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

Michelle Dorenkamp ("Debtor") seeks confirmation of the Modified Plan to account for different priority claim amounts, to bring Debtor current on plan payments, and to adjust the dividend paid to Chase Auto for Debtor's vehicle. Dckt. 43. The Modified Plan proposes plan payments of $695.00 for the remaining forty-eight months of the Plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 27, 2017. Dckt. 54. The Trustee states that the total amount paid into the Plan differs from Debtor's proposed plan payments. According to the Trustee's records, Debtor has paid $5,113.00 through June 2017, which is $515.00 less than required by the Modified Plan.

The Trustee notes that the Plan will pay claims as proposed if Debtor pays $695.00 per month for the remainder of the Plan. The Trustee does not oppose a correction in the order confirming.

DEBTOR'S REPLY

Debtor filed a Reply on July 6, 2017. Dckt. 57. Debtor does not oppose additional language in the order confirming to amend the total paid into the Plan through June 2017 to be $5,113.00 with monthly payments of $695.00 beginning July 25, 2017, for the remainder of the Plan.

RULING

The Modified Plan—as amended to correct the total paid into the Plan—complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on May 24, 2017—as amended to state that the total paid into the Plan through June 2017 is $5,113.00 with monthly payments of $695.00 beginning July 25, 2017, for the remainder of the Plan—is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

48. **15-24997-E-13 MET-2** | **DAVID/AMY POST** **Mary Ellen Terranella** | **CONTINUED MOTION TO MODIFY PLAN** **3-13-17 [57]**

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2017. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtor has filed evidence in support of confirmation. The Chapter 13 Trustee filed an Amended Response indicating non-opposition on June 28, 2017. Dckt. 106. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on March 13, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

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

49. 15-24997-E-13 MET-6 | **DAVID/AMY POST** **Mary Ellen Terranella** | **MOTION TO APPROVE LOAN MODIFICATION** **6-26-17 [101]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on June 26, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by David Post and Amy Post ("Debtor") seeks court approval for Debtor to incur post-petition credit. U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, as serviced by Caliber Home Loans, Inc. ("Creditor"), whose claim the Modified Plan provides for in Class 4, has agreed to a loan modification that will increase Debtor's trial period mortgage payment (approved by the court on April 18, 2017) from the current $1,493.88 per month to $1,494.53 per month. FN.1. The modification sets the unpaid principal balance at $355,718.35, with an interest rate of 2.75%, and a maturity date of March 1, 2057.

FN.1. The Modified Plan lists Nationstar Mortgage in Class 4, and the Motion pleads that a Notice of Mortgage Payment Change filed on November 10, 2016, shows that servicing of the loan was transferred from Nationstar Mortgage to Caliber Home Loans.

The Motion is supported by Debtor's Joint Declaration. Dckt. 103. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on June 28, 2017. Dckt. 108. The Trustee states that he has no basis to oppose the Motion.

RULING

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by David Post and Amy Post having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes David Post and Amy Post ("Debtor") to amend the terms of the loan with U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, as serviced by Caliber Home Loans, Inc. ("Creditor"), which is secured by the real property commonly known as 836 Flint Way, Vacaville, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 104).

50. 17-20997-E-13 GW-3 | **NATALIA JEFFS** / **Gerald White** | **MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTOR'S ATTORNEY**
6-13-17 [50]

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

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

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

The hearing on the Motion for Allowance of Professional Fees is continued to 3:00 p.m. on August 1, 2017.

Gerald White, the Attorney ("Applicant") for Natalia Jeffs, Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case. Applicant requests fees in the amount of $9,045.00 and costs in the amount of $324.00.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on June 20, 2017. Dckt. 56.

LACK OF TASK BILLING IN MOTION

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for

Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included is Applicant's raw time and billing records. Rather than organizing the activities in the Motion that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than twenty years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number, the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report that separates the activities into the different tasks.

The court continues the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Professional Fees filed by Gerald White ("Applicant"), Attorney for Chapter 13 Debtor having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion for Allowance of Professional Fees is continued to 3:00 p.m. on August 1, 2017. Applicant shall file and serve on the Chapter 13 Trustee and U.S. Trustee on or before July 20, 2017, a supplemental declaration and supporting documents as necessary, to provide the court, U.S. Trustee, and other parties in interest requesting copies of such supplemental pleadings, with an explanation of the fees requested and a task billing analysis that specifically groups the time and charges by the various task areas for such services.

51. **15-27198-E-13 MET-2** | **WILLIS MAHAFFEY** **Mary Ellen Terranella** | **MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTOR'S ATTORNEY 6-4-17 [35]**

Final Ruling: No appearance at the July 11, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2017. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Mary Ellen Terranella, the Attorney ("Applicant") for Willis Mahaffey, Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period July 28, 2016, through May 9, 2017. Applicant requests fees in the amount of $3,120.00.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on June 14, 2017. Dckt. 40.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including correspondence with Debtor and others, review of sales agreements and related motions, and court appearances. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

"No-Look" Fees

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 5. 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 REQUESTED

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

Motion to Sell Property: Applicant spent 9.6 hours in this category. Applicant did not foresee that Debtor's ex-wife would choose to short sell the residence that they co-owned together previously. Debtor's ex-wife was also in a Chapter 13, and the motions had to be coordinated between the two cases. That included correspondence with both Debtor and his ex-wife, preparation of the motion to sell along with declarations and exhibits, coordination with the Trustee, and appearance in court regarding the motion to sell.

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**
Mary Ellen Terranella	9.6	$325.00	$3,120.00
Total Fees for Period of Application			$3,120.00

FEES ALLOWED

The unique facts surrounding the case, including the increased correspondence required with Debtor and Debtor's ex-wife in drafting of the motion to sell, 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 $3,120.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $3,120.00

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 Mary Ellen Terranella ("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 Mary Ellen Terranella is allowed the following fees as a professional of the Estate:
>
> Mary Ellen Terranella , Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $3,120.00

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

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