

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 20, 2021 at 2:00 p.m.

1. [18-22773-E-13](#) **DEAN/MAUREEN MARLER** **MOTION TO INCUR DEBT**
[GEL-1](#) **Gabriel Liberman** **7-6-21 [44]**

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)©.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2021. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

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The Motion to Incur Debt is granted.

Dean Layne Marler and Maureen Yvette Marler (“Debtor”) seeks permission to refinance real property commonly known as 1511 El Cerrito Court, Yuba City, California, with a total financed price of \$291,005.00 and monthly payments of \$1,264.00 through Cornerstone Home Lending, Inc. over 30 years with a 3.25% fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Chapter 13 Trustee does not oppose to the terms of the refinancing so long as the Order states that proceeds are to be distributed directly to the Trustee in an amount to pay all creditors in full pursuant to the Trustee’s demand based on the confirmed plan. Trustee further asserts that any excess funds over and above the amount in the Trustee’s demand can be disbursed directly to the Debtor.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt filed by Dean Layne Marler and Maureen Yvette Marler (“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 Dean Layne Marler and Maureen Yvette Marler are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 47.

IT IS FURTHER ORDERED that the proceeds from the refinance shall first be disbursed directly to the Chapter 13 Trustee, who shall place in the loan escrow written demand for an amount he determines necessary to pay all creditors and expenses in full pursuant based on the confirmed plan.

After disbursement of the above amount directly from the loan escrow to the Chapter 13 Trustee, all remaining loan proceeds may be disbursed directly from escrow to the Debtor.

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)©.

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, creditors, and parties requesting special notice on June 23, 2021. By the court’s calculation, 27 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 Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Extend the Automatic Stay is granted.

Lee Ann Newton (“Debtor”), seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 2020-20745) was dismissed on May 20, 2021, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 2020-20745, Dckt. 82, May 20, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to 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 was unable to make her plan payments after her income was reduced over the summer months, and she stopped receiving unemployment insurance compensation. Dckt. 10. Debtor received just \$1,300.00 per month in income from renters in her home which was insufficient to make her plan payments. *Id.*

Trustee's Response

Trustee filed an Opposition on July 6, 2021. Dckt. 20. According to Trustee, Debtor has not provided a copy of the COVID-19 mortgage payment forbearance and therefore, the terms of and months covered by the forbearance are unknown. *Id.* Furthermore, although the present motion was set on the proper notice, the case was filed as an “incomplete filing” with the required documents not due until July 6, 2021. Thus, Trustee is unable to determine the merits of this motion, whether Debtor’s circumstances have changed or whether the case was filed in good faith. *Id.*

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)©.

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© 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 demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay. As noted by the Chapter 13 Trustee in his Response, Debtor failed to provide necessary and required information needed to assess Debtor’s chances of successfully prosecuting this case. However, on July 6, 2021, Debtor filed several key documents: Schedules A/B, C, D, Schedule E/F, G, H, I, and J. Dckt. 17. (Debtor filed Amended Schedule A/B and Schedule C on July 14, 2021. Dckt. 29.) Schedule I, filed under penalty of perjury, states that Debtor usually has a month income of \$3,875.82 but Debtor notes that during the summer months her income drastically changes to only \$1,4000 as she does not receive income over those

months. *Id.*, at p. 24. Debtor's Schedule J does not list home ownership payments; no mortgage payment, no real estate taxes or insurance or maintenance and repair. *Id.*, at p. 25. Debtor declares zero expenses for personal care products and services and medical and dental expenses. This does not seem reasonable.

Debtor also filed a Chapter 13 Plan. The Plan provides for \$100.00 monthly plan payments for two months, followed by \$2,300 plan payments for 58 months. Dckt. 18.

Debtor has not supplemented the record and filed a copy of the forbearance agreement.

Though there are some shortcomings, Debtor has provided an explanation of the stumbles in the prior case. Additionally, while the stay could expire as to the Debtor, the property of the estate would remain protected by the stay, precluding any foreclosure.

The Motion is granted and the stay extended as provided in 11 U.S.C. § 362(c)(3)(B), unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by Lee Ann Newton ("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 for all persons and purposes pursuant to 11 U.S.C. § 362(c)(3)(B), unless terminated by further order of the court or operation of law.

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)©.

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 10, 2021. By the court’s calculation, 40 days’ notice was provided. 14 days’ notice is required.

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

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The Objection to Confirmation of Plan is sustained.

Select Portfolio Servicing, Inc. as servicer for Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Owner Trustee of CSMC 2021-RPL1 Trust (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The debtor, Douglas Jaffe, (“Debtor”) fails to provide for the cure of pre-petition arrears due and owing to Creditor in the amount of \$2,831.75.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$2,831.75 in pre-petition arrearage. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

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

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

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

The Objection to the Chapter 13 Plan filed by Select Portfolio Servicing, Inc. as servicer for Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Owner Trustee of CSMC 2021-RPL1 Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 19, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on August 10, 2021, to be conducted in conjunction with Debtor’s Motion to Confirm a Modified Plan.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Josephine Wright (“Debtor”), is delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on May 24, 2021. Dckt. 65. Debtor’s counsel requests an evidentiary hearing and states that to the best of Debtor’s knowledge, Debtor is current on her plan payments. No testimony or other evidenced is provided in opposition to the Motion.

DISCUSSION

Delinquent

Trustee presents evidence that Debtor is \$886.00 delinquent in plan payments, which represents multiple months of the \$415.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing Debtor’s counsel acknowledged the defaults and reported that Debtor will prosecute a modified plan. The Trustee agreed to a continuance to allow Debtor to so prosecute the case.

Trustee's Status Report

On July 13, 2021 Trustee filed a Status Report informing the court that Debtor has filed a Motion to Modify the plan which has been set for August 10, 2021. Dckt. 76. Trustee notes that \$7,848.00 in plan payments are due. Moreover, Trustee will oppose the modified plan on the basis that Debtor has failed to file current Schedule I and J and that the Plan will exceed the number of months as allowed by the bankruptcy code (84 months) where no evidence has been presented that the delinquency is related to the COVID-19 pandemic.

Debtor's Modified Plan

Debtor filed a Motion to Confirm Modified Plan and a proposed Modified Plan on June 23, 2021. Dckts. 69, 70. The motion has been set for hearing on August 10, 2021 at 2:00 p.m.

Trustee requests the instant motion be continued to August 10, 2021 and be heard in conjunction with the Motion to Confirm the modified plan. *Id.*

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to **2:00 p.m. on August 10, 2021**, to be conducted in conjunction with Debtor's Motion to Confirm a Modified Plan.

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 27, 2021. By the court’s calculation, 54 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Angela Rusfeldt (“Debtor”) seeks confirmation of the Modified Plan to account for prior changes in income due to COVID that have now stabilized to pre-COVID levels and to address mortgage payments missed after mistakenly believing that the forbearance granted lasted through March 2021 instead of January 2021. Declaration, Dckt. 141.

The Modified Plan provides for payments of \$4,400.00 for 33 months, beginning June 25, 2021, and a zero percent dividend to unsecured claims totaling \$46,101.00. Modified Plan, Dckt. 145. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 23, 2021. Dckt. 147. Trustee opposes confirmation of the Plan on the basis that the plan is inconsistent with the prior plan and therefore, does not comply with 11 U.S.C. § 1325(a)(2).

DISCUSSION

Insufficient Information (Modified Plan is Inconsistent with Prior Plan)

Debtor has supplied insufficient information relating to the length of the plan and the post-petition arrears. 11 U.S.C. § 1325(a)(2) provides for confirmation of a plan if any fee, charge, or amount required by the plan, to be paid before confirmation, has been paid. Here, Debtor has proposed a plan that is lacking in compliance with the Bankruptcy Code.

Plan Length: On August 28, 2020, the Court confirmed a prior plan of 66 months, including a \$1,459.12 per month cure of post-petition arrears of Nationstar Mortgage in months 61 to 66. The proposed plan does not specify plan length but specifies 33 payments starting June 25, 2021, indicating a 52 month plan.

Post-petition arrears: Debtor specifies \$23,007.46 for Deutsche Bank, where Claim 8 shows \$19,197.10 arrears for Deutsche Bank referencing Nationstar Mortgage, a \$3,810.36 increase of the pre-petition arrears claim. Dckt. 145. The Chapter 13 Trustee notes that where a post-petition arrears do exist based on the forbearance notices, (Dckt. 80, and notice filed dated January 15, 2021), the Trustee is not opposed to a plan curing said arrearage but notes that the arrears appear higher than \$3,810.36. Moreover, Trustee paid some ongoing mortgage payments where the forbearance notices were filed provided for forbearance from April 2020 through September 2020, and April 1, 2020 through on December 1, 2020.

Debtor filed a Reply on July 13, 2021 addressing Trustee's objections and providing for clarifying amendments as follows:

1. Debtor's Plan is for 66 months. Due to a clerical error the terms was not stated in the plan and the Debtor requests that the term be provided for in the order confirming the plan.
2. Arrearage due to creditor Deutsche Bank is incorrect. The correct amount due is \$19,197.10, which is the same amount stated in the confirmed plan. Debtor requests that the correct amount be stated in the order confirming the proposed plan.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Angela 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 is granted, and Debtor's Modified

Chapter 13 Plan filed on May 28, 2021, as amended to provide that the Plan term is 66 months and the arrearage on the Deutsche Bank secured claim is \$19,197.10, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on May 12, 2021. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is XXXXX.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the Chapter 13 debtor, Foryst Hutchinson (“Debtor”), failed to attend the Meeting of Creditors held on May 6, 2021.

DISCUSSION

Failure to Appear at 341 Meeting

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

The Continued Meeting of Creditors was held on June 3, 2021, and Trustee’s Report indicates Debtor appeared and the meeting was concluded as to Debtor. Trustee’s June 4, 2021 Docket

Report. Trustee has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this Objection.

The Trustee reported that at the § 341 continued meeting there remained an issue with Debtor filing of tax returns, and the parties requested a continuance.

July 20, 2021 Hearing

As of the court's drafting of this pre-hearing disposition no other documents updating the court have been filed.

At the hearing **xxxxxxx**

THIS IS POSTED AS A TENTATIVE TO ALLOW THE PARTIES TO ADDRESS ANY ISSUES CONCERNING THE AMOUNT OF PRE-PETITION PAYMENTS TO APPLICANT THAT THE COURT COMPUTES RELATE TO THE ATTORNEY'S FEES REQUESTED

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of non-opposition. *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.

Chad M. Johnson, the Attorney ("Applicant") for Kristen Michelle Larsen, the Chapter 13 Debtor ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period of December 28, 2020, through June 15, 2021. Debtor and Applicant entered into a Chapter 13 Representation Agreement and Charge Authorization on January 26, 2021. Exhibit A, Dckt. 21. Applicant requests fees in the amount of \$3,327.00 and costs in the amount of \$385.36.

Trustee's Non-Opposition

The Chapter 13 Trustee filed a Non-Opposition to Motion for Interim Compensation and Expenses on July 20, 2021. Dckt. 25. The Trustee does not oppose the attorney fees and costs requested but the Trustee notes that Debtor's confirmed Plan states that the attorney was paid \$542.00 prior to filing of the case (Dckt. 4) but the Motion states that the attorney was paid \$900.00 for fees and expenses prior to the case being filed (Dckt. 18).

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s services for the Estate include general case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration and Preparation, and Completing Fee Motion: Applicant spent 9.5 hours in this category. Applicant prepared and filed the petition, Schedules, and other required documents. Applicant also attended hearings, and prepared and provided the Chapter 13 Trustee with supporting documentation prior to the meeting with creditors.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Chad M. Johnson	7.30	\$400.00	\$2,920.00
Tina Perez	2.20	\$185.00	\$407.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$3,327.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$385.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Fees		\$313.00
Credit Report		\$45.00
Postage		\$18.36
Printing & Envelopes		\$9.00
Total Costs Requested in Application		\$385.36

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$3,327.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First Interim Costs in the amount of \$385.36 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the costs

allowed by the court, after applying credit for the \$542.00 paid by Debtor to Applicant pursuant to the Chapter 13 Representation Agreement and Charge Authorization.

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

Fees	\$3,327.00
Costs and Expenses	\$385.36

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 Chad M. Johnson (“Applicant”), Attorney for Kristen Michelle Larsen, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Professional employed by Chapter 13 Debtor

Fees in the amount of \$3,327.00
Expenses in the amount of \$385.36,

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

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan, after application of the \$542.00 paid by Debtor to Applicant pursuant to the Chapter 13 Representation Agreement and Charge Authorization.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 10, 2021. By the court’s calculation, 50 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is ~~XXXXX~~.

The debtor, Ronald Lee Gregory (“Debtor”), seeks confirmation of the Modified Plan to cure a default in payments due to underestimated vehicle repair expenses and an increase in cost of living. Declaration, Dckt. 66. The Modified Plan provides for payments of \$200.00 per month for months 34 through 57, and a zero (0) percent dividend to unsecured claims totaling \$36,040.14. Modified Plan, Dckt. 65. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 14, 2021. Dckt. 73. Trustee opposes confirmation of the Plan on the basis that:

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

DISCUSSION

Error in Plan Form

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

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

Class 2 Interest Rate

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

The Parties agreed to continue the hearing to allow Debtor to further address these issues.

Trustee’s Status Report

Trustee filed a Status Report on July 13, 2021 informing the court that Debtor failed to make the June 2021 payment and this failure shows that there is no feasible plan. Dckt. 78.

July 20, 2021 Hearing

At the hearing **xxxxxxx**

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 8, 2021. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied.

The debtor, Lisa Lynn Moore (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,800.00 per month until completion of the Plan in month 60, and a zero percent dividend to unsecured claims totaling \$26,282.00. Amended Plan, Dckt. 134. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 28, 2021. Dckt. 149. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s declaration stating that her income has “increased a small amount” and “some of my expenses have changed (utility bills have gone up, cell phone bills have increased, etc)” conflicts with the amended schedules.
- B. Debtor does not specify whether she made Class 4 payments through and including May 2021, despite stating that the “Plan shall be considered current as of May 2021.”

DISCUSSION

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor states that her income has “increased a small amount,” and that the expenses have also increased. Debtor’s amended Schedule I lists gross income as \$4,575.36. Dckt. 136. Prior to the amendment, Debtor identified her gross income as \$4,961.49. Dckt. 106.

Debtor’s amended Schedule J reflects changes including: removal of the ongoing mortgage payment, electricity increased by \$25.00, phone by \$78.00 and pet supplies by \$75.00. Debtor decreased expenses include: medical, transportation and entertainment by \$50.00, and auto insurance by \$44.00. Debtor’s net income is now listed as \$2,797.33. However, in her declaration, Debtor states, “while my income has increased a small amount, some of my expenses have changed (utility bills have gone up, cell phone bills have increased, etc).” Therefore, the declaration conflicts with the amended schedules and the Trustee is not certain if the Debtor can make the payments under the Plan or comply with the Plan.

Moreover, Trustee asserts that in order to determine whether the plan is feasible, the Trustee needs to know when ongoing payments to the Class 1 creditor are going to begin. As stated in the plan, the treatment to and for Select Portfolio Servicing has changed from Class 4 to Class 1 since the Debtor filed her voluntary petition on February 21, 2019 but the plan does not specify whether Class 4 payments were made by the Debtor through and including May 2021, but it does state in the Nonstandard Provisions that, “Plan shall be considered current as of May 2021.” Dckt. 134.

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

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Lisa Lynn 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 Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

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

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)©.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 9, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

Pursuant to prior Order of the court (Dckt. 29), the Objection to Confirmation of Plan has been dismissed, **the matter is removed from the calendar.**

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

DISCUSSION

Trustee's objections are well-taken.

Not Best Effort

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

If the trustee or the holder of an allowed unsecured claim objects to the

confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

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

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

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

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

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

At the hearing the parties agreed to a continuance to allow Debtor to address these issues.

Trustee's Motion to Dismiss

On July 13, 2021 Trustee filed an Ex-Parte Motion to Dismiss Trustee's Objection seeking dismissal on grounds based on the changes Debtor's counsel has proposed in the order confirming submitted to the Trustee: \$532 for months 1 and 2, \$1,695 per month for months 3 and 4, \$387 per month for months 4 to 48.

The court granted Trustee's *Ex-Parte* Motion to Dismiss this Objection, with the order was entered on July 14, 2021. Dckt. 29.

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 4, 2021. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is ~~XXXXX~~.

The debtor, Scarlet Anne Bain (“Debtor”) seeks confirmation of the Modified Plan because she encountered unanticipated costs related to supporting her elderly father, and her dog’s heart condition. Declaration, Dckt. 38. The Modified Plan provides payments of \$225.00 per month for 6 months (the duration of the plan, beginning June 25, 2021), and a 4% dividend to unsecured claims totaling \$185,858.00. Modified Plan, Dckt. 39. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on June 23, 2021. Dckt. 44. Trustee opposes confirmation of the Plan on the basis that the Debtor did not file a supplemental Schedule I and J in support of the motions and therefore, Trustee is uncertain of Debtor’s ability to pay.

DISCUSSION

Failure to File Supplemental Schedules

The Chapter 13 Trustee asserts that without supplemental Schedule I and J, the Trustee is unable to ascertain Debtor's ability to pay, especially where the most recent Schedule I and J were filed on November 29, 2016. See Dckt. 1.

In her Reply, Debtor asserts that she filed updated income and expense schedules on July 9, 2021 showing her current budget and her ability to make the ongoing Chapter 13 Plan payments. Dckt. 49.

A review of the docket shows that Debtor filed Amended (not Supplemental documenting post-petition changes) Schedule I which states Debtor has a combined monthly income of \$4,891.55 with a special note stating that the figures as listed are average income over a 12-month period where Debtor (who is employed by the Sacramento City Unified School District) only gets paid 10 months out of the year. Dckt. 47. Debtor also filed Amended Schedule J which calculates \$4,673.00 in monthly expenses, leaving Debtor with a net monthly income of \$218.55. *Id.*

Debtor argues that the Trustee cites no other basis for opposition to the Motion to Modify Plan and Confirm Amended Plan and requests that the Court overrule the Trustee's Opposition and grant Debtor's Motion

Debtor filed "Amended" Schedules I and J, which date back to the November 2016 filing of this case. In the original Schedule I, Debtor stated having only \$3,469.24 in monthly income. Dckt. 1 at 28-29. With the Amended Schedule I, Debtor states under penalty of perjury that she actually has had income of \$4,891.95 a month since November 2016. Amended Sch. I, Dckt. 47 at 1-2. Thus, for the past fifty-six (56) months Debtor has had an additional \$1,400 in additional income heretofore unreported.

Debtor's "Amended" Schedules I documents that the financial information previously provided was substantially inaccurate. Possibly Debtor may argue "Supplemental, Amended," it's just "potayto, potahto," so who really cares. Well, that song concludes with "Let's Call the Whole Thing Off." ^{Fn.1.}

FN. 1. "Let's Call the Whole Thing Off,"

You like potato and I like potahto
You like tomato and I like tomahto
Potato, potahto, Tomato, tomahto.
Let's call the whole thing off

Ira Gershwin and George Gershwin, 1937.

As we know in the law, words have significance, and there is a legal difference between a "mere" supplemental schedule documenting post-petition changes and an amended schedule that dates

back to the filing and corrects an error in what was previously said under penalty of perjury.

In looking at the Debtor's expenses, there are some significant changes. These include Debtor increases her transportation expense by more than 100%, increasing it from (\$250) to (\$550); utilities by almost 100%, increasing from (\$90) to (\$175); cell phone by more than 466%, increasing from (\$45) to (\$255); clothing by 166%, from (\$75) to (\$200); personal care products and services by 60%, from (\$125) to (\$200).

While listing her adult sister as a dependent, no income information is provided concerning the sister and there are no contributions by Debtor's sister, such as making any contributions to the household expenses.

At the hearing, **XXXXXXX**

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, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 29, 2021. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

According to Trustee, Movant failed to serve the United States Attorney for the Internal Revenue Service for the Sacramento division. A review of Debtor's proof of service certificate, and the mailing matrix attached, shows that Debtor did not serve the Sacramento Division for the Internal Revenue Service as required by the local rules.

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 non-opposition. *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 ~~XXXXX~~.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Jason Wayne Teal ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on May 25, 2021. Dckt. 22.

At the initial hearing on the Motion to Confirm, which took place on June 8, 2021, counsel requested a continuance to complete the service on the Internal Revenue Service.

July 20, 2021 Hearing

As of the court's drafting of this pre-hearing disposition no documents updating the court have been filed.

At the hearing **xxxxxx**

13. [20-25442-E-13](#) MARLON/MICHELLE
[SLE-4](#) VALENZUELA
Steele Lanphier

MOTION TO SET ASIDE DISMISSAL
OF CASE
7-6-21 [48]

DEBTOR DISMISSED:

06/20/2021

JOINT DEBTOR DISMISSED:

06/20/2021

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Vacate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion to Vacate is granted, and the order granting the Motion to Dismiss (Dckt. 45) is vacated.

Marlon San Antonio Valenzuela and Michelle Gumobao Valenzuela ("Debtor") filed the instant case on December 4, 2020. Dckt. 1.

On May 18, 2021, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Motion to Dismiss the Case due to there being no plan pending and the Debtor failing to file an amended Plan and set for confirmation. Dckt. 40. On June 16, 2021, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 45. The ruling was posted as a final ruling (for which no appearance of counsel is required, but not prohibited if extraordinary circumstances existed that impaired the ability to file a responsive pleading) because Debtor did not file any opposition.

On July 6, 2021, Debtor filed the instant Motion to Vacate, claiming that the failure to timely confirm a Plan was an error on Counsel's office's part. Dckt. 48. Debtor asserts that Counsel did not have Trustee's Motion to Dismiss due to issues with his office email and calendar provider. *Id.* Debtor further assert that Counsel and Counsel's staff are actively working with their internet provider to troubleshoot the email issue. *Id.*

Debtor reminds the court that they have paid "nearly \$20,000.00" into their plan and the failure to propose a plan was not an error on the Debtor's part. *Id.*

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious.

12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The ground for the Motion to Dismiss was failure to file and confirm a plan. As a motion under Local Bankruptcy Rule 9014-1(f)(1), Debtor and Debtor's counsel were required to oppose the Motion in writing no later than fourteen days prior to the hearing. Instead, Debtor did not file an Opposition and let the court issue a final ruling without any argument.

Debtor's counsel filed a declaration explaining the particular circumstances related to the failure to address Trustee's Motion to Dismiss were due to excusable neglect on the part of Debtor's counsel. Dckt. 50. In his declaration, Debtor's counsel explains that due to internet issues at Debtor's counsel's office, counsel did not receive the motion or any other communications. *Id.* Counsel has been actively working on resolving the internet issues. Moreover, counsel points the court to Debtor having paid \$20,000 into their plan. *Id.* Finally, counsel testifies that a motion to confirm a proposed plan will be filed within seven days of the filing of the instant motion in order show good faith. *Id.*

The court recognizes that even attorneys and their staff are human beings. As such, human beings (even judges) are subject to making mistakes or have errors occur in the processes that they have in place for their offices and judicial proceedings. The question is not just whether a mistake occurred, but how counsel and the party responded. Here, they responded promptly and clearly identified the error and corrective steps taken. Counsel and Debtor have demonstrated in this case that they have been diligently prosecuting the case, and such past conduct indicates that such should continue in the future.

Therefore, in light of the foregoing, the Motion is granted, and the order granting the Chapter 13 Trustee's Motion to Dismiss (Dckt. 45) is vacated.

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

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

The Motion to Vacate filed by Marlon San Antonio Valenzuela and Michelle Gumobao Valenzuela (“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 order granting the Chapter 13 Trustee's Motion to Dismiss (Dckt. 45) is vacated.

they failed to include on Schedule F. Declaration, Dckt. 27, ¶ 4.

On July 6, 2021, Debtor filed an Amended Schedule E/F that lists a debt of \$180,000.00 owed to Nel Net, Inc for student loans and a debt of \$82,927.71 owed to the US Department of Education for student loans. Dckt. 29.

Income Tax Withholding

Trustee further alleges that Debtor have failed to report income tax withholding. Schedule I lists pension income in the amount of \$5,593.04, but Debtor fail to identify any income tax withholding or estimated tax payments on Schedule I or J, although the pay advice provided to the Trustee reflects debtor is withholding \$492.90. Dckt. 27, ¶ 5.

Decision

Reviewing the Schedules indicates that these two debtors are somewhat unusual for the common consumer debtors in this court. Both are highly educated and have jobs with significant responsibilities. These are no “least sophisticated consumers.”

On Original Schedule I, Debtor state under penalty of perjury having monthly wages of \$11,320 and co-debtor as an adjunct professor, with monthly wages of \$1,666. Debtor list tax, medicate and Social Security withholding of \$2,030 a month. Dckt. 19 at 21-22.

Debtor also list having additional pension and Social Security income of \$11,605 a month. *Id.* Debtor state having \$20,548 in monthly income after taxes and withholding.

On Schedule J Debtor state having necessary expenses of (\$16,707) a month. *Id.* at 24-25. The listed expenses include (\$1,100.00) for pre-petition student loans. *Id.* These expenses also include (\$617) a month for phone/cell phone/internet/cable.

This left Debtor with a projected on Schedule J income of \$3,840 to fund a plan.

Debtor’s proposed plan requests monthly payments of \$3,840 for the full 60 months of the proposed Chapter 13 Plan. Additional Provisions; Dckt. 12 at 8. Under the proposed plan Debtor are having to pay Planet Home Lending it’s (\$174,144) claim over the 60 months of the Plan at no interest. This requires monthly distributions of \$2,902.40, with 0% interest, on this claim. Chapter 13 Plan, Class 2; Dckt. 12 at 4. Debtor also restructures repayment of the (\$29,145) claim secured by Debtor’s Tesla, with 4.5% interest, with a monthly payment of \$507.82. *Id.*

Class 4 of the Plan has the Debtor making direct payments for the Service Portfolio Servicing SPS claim secured by Debtor’s home of \$7,260.00 and the Schools Financial Credit Union Claim, secured by a 2020 Toyota Prius with 100,000 miles on it of \$484 a month. Plan, Class 4; *Id.* at 4.

Debtor state having only \$1,600 in Class 7 unsecured claims which are to be paid a 100% dividend. *Id.* at 5.

The student loan debt is not provided for in the plan, whether as a Class 6 unsecured claim treatment other than in Class 7 or in the Additional Provisions.

No provision is made for paying taxes on \$139,800 in pension and Social Security Income (\$11,650 a month x 12 months), which are pyramided on top of \$155,832 wage income (\$11,320 + \$1,666 x 12 months) for which federal and state taxes need to be paid. Using the IRS Tax Tables (irs.gov) it appears that some of this additional income would be taxed at 24% federal taxes and 9.9% state taxes (ftb.ca.gov). This would require an additional \$47,900 in annual taxes, which reduces Debtor's monthly projected disposable income by \$3,949.35 (\$139,800/12 months).

Thus, it appears that Debtor's projected disposable income of \$3,840 is reduced to \$0.00 a month, with Debtor unable to fund the Plan. Even if the incremental tax rate on a portion is less, 22%, due to Debtor having more tax deductions, Debtor is unable to fund the plan (especially in light of Debtor stating that co-debtor's income is problematic on Schedule J).

At the hearing xxxxxxxx

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 28, 2021. By the court’s calculation, 53 days’ notice was provided. 14 days’ notice is required.

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

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The Objection to Confirmation of Plan is sustained.

BCMB1 Trust (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The full balance of the Creditor’s claim is understated.
- B. The proposed interest rate is too low.

DISCUSSION

Creditor’s objections are well-taken.

Failure to Provide Full Payment for a Secured Claim

Creditor asserts a claim of \$280,146.92 in this case. The Chapter 13 debtors', Michael Roland Stanford and Carol Ann Stanford ("Debtor"), Schedule D estimates the amount of Creditor's claim as \$174,144.00 and indicates that it is secured by a senior deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 2 claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1325(a)(5)(B)(ii) because it seeks to pay less than the full amount of Creditor's claim, which is secured by Debtor's residence and which will mature prior to the last payment due under the plan. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises

doubts about the Plan’s feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1325(a)(5)(B) because the value of the Property to be distributed to the Creditor is less than the allowed amount of the Creditor’s claim. Creditor asserts that the Debtor must therefore provide for the Creditor’s claim in full in the amount of \$280,146.92.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 0%. Creditor’s claim is secured by Debtor’s principal residence. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.25% risk adjustment, for a 4.50% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Good Faith in Filing the Bankruptcy Case, the Proposed Plan, and Prosecution of this Case

As the court has addressed in connection with the Trustee’s Objection to Confirmation these two debtors are not the usual less or least sophisticated consumer debtor. ^{Fn.1.} In one, debtor is currently an adjunct college professor and the other an audit manager for the State of California paid \$11,320.00 a month for his employment with the State. In addition, to their \$12,987.00 in monthly wage income, the two debtors have \$6,905.00 in pension income (the adjunct professor debtor having \$5,593.00 a month in pension income) and \$4,700.00 in Social Security. All told, Debtor has \$24,592.00 in employment, Social Security, and pension income monthly. These two debtors are highly educated, professional, and high income earners.

FN. 1. The term “least sophisticated consumer” is commonly used in drafting and structuring consumer protection legislation, such as the Federal Fair Debt Collection Act and Federal Fair Credit Reporting Act, and their California counterparts.

Debtor have the ability and sophistication to hire experienced counsel to represent them in these federal court proceedings. Debtor have employed an experienced bankruptcy attorney. These two

debtors appear to be of the type that not only can work effectively with legal counsel, but who might “overpower” consumer attorney counsel to press for what they want, not what the law allows.

BCMB1 Trust claim filed Proof of Claim 6-1 on June 16, 2021. Proof of Claim 6-1 is filed as a secured claim in the amount of \$282,783.91, for which the collateral is Debtor’s Granite Bay residence. Proof of Claim 6-1 states that the interest rate on the secured claim is 8.5%.

Proof of Claim 6-1 states that the entire (\$282,783.91), plus additional interest, is due in full on January 1, 2022, which is stated as the loan due date. POC 6-1, ¶ 9. The Deed of Trust attached to Proof of Claim 6-1 to show the security documents and perfect states that it was recorded on December 19, 2006.

Proof of Claim 4-1 was filed by Towd Point Mortgage Trust 2018-6, which asserts a claim secured by the Debtor’s Granite Bay residence. The secured claim stated in Proof of Claim 4-1 is in the amount of (\$991,936.40). The interest on the Towd Point secured claim is stated to be 5% per annum.

The Deed of Trust attached to Proof of Claim 4-1 to document the security interest for the Towd Point collateral has a recording date of January 12, 2005. Also attached to Proof of Claim 4-1 is a loan modification agreement for the Towd Point Mortgage claim which is dated May 14, 2021, which is after the recording of the Planet Home Lending Deed of Trust.

As the court addressed in connection with the Chapter 13 Trustee’s Objection to Confirmation, Debtor neglected to include any tax payments for the \$11,605.00 in pension and Social Security monthly income. This is \$139,260 in additional income on top of the two debtors’ \$12,987, which is \$155,844 in annual income (before deductions). It appears highly questionable whether Debtor can fund a plan with the required (by Debtor’s calculations) \$3,840.00 (based on Debtor paying 0.00% interest on Creditor’s secured claim).

Even if Debtor’s deductions can reduce the \$155,844 in wage income to \$100,000 in taxable income, then the federal tax rate would be 22% on \$71,050 and 24% on the remaining \$68,200 of the pension and Social Security income. The California incremental tax rate on the entire amount is 9.3%.
fn.2.

FN. 2. <https://www.irs.gov/instructions/i1040gi>,
<https://www.ftb.ca.gov/forms/2020/2020-540-booklet.html#2020-California-Tax-Rate-Schedules>.

A rough computation of the unaccounted for taxes is \$15,631 (22% federal tax portion), \$16,368 (24% federal tax portion), and \$12,951 (state tax), which total \$44,950 in annual additional income taxes. That averages \$3,746 a month (\$44,950/12 months). \$3,746 in month tax expense wipes out the \$3,840 in projected disposable income Debtor computes on Schedule I and is required (with Debtor paying 0% interest) on the .BCMB1 Trust claim.

It appears highly questionable about how Debtor presented such inaccurate financial information under penalty of perjury in the Schedules and proposed the Plan. Though this Objection filed by BCMB1 Trust was noticed under Local Bankruptcy Rule 9014-1(f)(1) and a written opposition required, none is offered by Debtor in support of how and why the Plan and case is being prosecuted in

good faith and the Certifications made by Debtor and Counsel pursuant to Federal Rule of Bankruptcy Procedure 9011 were accurate and in good faith.

The federal judicial process is not one in which the parties can play “fast and loose,” make factual statements under penalty of perjury that are knowingly inaccurate, and throw “legal stuff” against the wall, without regard to whether it is legally supported, to try and slip “stuff” by the court and abuse federal law. If it were determined that these two debtors engaged in such conduct, the bad faith and false statements under penalty of perjury might not only get the present case dismissed, but preclude Debtor from filing a subsequent to further try and abuse federal law and the federal courts.

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

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

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

The Objection to the Chapter 13 Plan filed by BCMB1 Trust (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 14, 2021. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained.

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

- A. The Chapter 13 debtor, Susan Marie Dean ("Debtor"), failed to provide tax returns.
- B. Debtor may not be able to make plan payments.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments

for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Infeasible Plan

Debtor may not be able to make payments under the plan or comply with the Plan. *See* 11 U.S.C. §1325(a)(6). Schedule I identifies that the Debtor receives support payments of \$1,060.00 and divorce settlement income of \$1,230.00. Debtor admitted at the Meeting of Creditors held on June 10, 2021, that she does not believe the divorce settlement income will continue and the support payment is likely to be reduced. 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 an order substantially in the following form holding that:

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The debtor, Jasmine Rae Smith ("Debtor"), seeks confirmation of the Modified Plan because a rent increase and the need to hire childcare during COVID-19 caused her to fall behind on her Chapter 13 Plan payments. Declaration, Dckt. 90. The Modified Plan provides:

1. Plan will be considered current with \$8,144.00 paid in through Month 26 (May 2021);
2. \$292.00 to be paid per month beginning in Month 27 (June 2021) through Month 30 (September 2021);
3. \$405.00 to be paid per month beginning in Month 31 (October 2021) through Month 52, the end of the plan; and
4. a 20% dividend to unsecured claims totaling \$17,000.00.

Modified Plan, Dckt. 88. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 29, 2021. Dckt. 94. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent under the terms of the proposed Modified Plan.
- B. Debtor has not filed a Supplemental Declaration pursuant to the court's request.
- C. Schedules I and J are filed as an Exhibit only.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$292.00 delinquent under the terms of the proposed modified plan, which represents one month of the \$292.00 plan payment. The Chapter 13 Trustee states that \$8,436.00 has come due through June 2021 (Month 27), and Debtor has paid to date a total of \$8,144.00. Dckt. 94. According to the proposed modified plan, payments are to be \$8,144.00 total paid in through May 2021 (Month 26), \$292.00 for months 27 through 30, then \$405.00 beginning in Month 31 through 52. *Id.* Debtor's last payment was posted on February 1, 2021, in the amount of \$690.00. *Id.* Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Missing Declaration

The Chapter 13 Trustee asserts that Debtor has not filed a Supplemental Declaration in support of the Motion to Modify pursuant to the Court's June 16, 2021, Civil Minutes. Trustee asserts that the Civil Minutes stated Debtor's Declaration in support of the Motion to Modify contained "expert legal opinion," and instructed Counsel to file a Supplemental Declaration for Debtor consistent with Federal Rules of Evidence 601, 602, and serve on Trustee's counsel.

A review of the docket shows that a Supplemental Declaration has not been filed to date.

Schedules I and J Filed Only as Exhibit

The Chapter 13 Trustee asserts that Debtor's Supplemental Schedules I and J are filed as an Exhibit only and are not otherwise identified on the Court's docket as an amended or supplemental schedule of expenses. This, Trustee argues, potentially makes it difficult for parties to find the Debtor's most recent budget on file with the Court.

Debtor filed Supplemental Schedules I and J on July 6, 2021. Dckt. 97. Thus, this objection is resolved in Debtor's favor.

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

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

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

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

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

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

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, 2021. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is overruled.

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

- A. The Chapter 13 debtor, Deborah O'Riley ("Debtor"), has failed to file income tax returns for 2018, 2019, and 2020.
- B. Debtor has failed to attach a statement showing the source of income listed on Schedule I.
- C. Debtor has failed to provide a detailed declaration explaining her family contribution.
- D. Debtor's interest in personal and real property is not clear.

DISCUSSION

Trustee's objections are well-taken.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2018, 2019, and 2020 tax years has not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee has "held open" the Meeting of Creditors to allow Debtor additional time to file her 2018, 2019, and 2020 tax returns. The continued creditor's meeting will be held August 12, 2021. *Id.* The Chapter 13 Trustee cannot assess the feasibility of the plan until he has had an opportunity to review the Debtor's tax returns. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Business Documents Required by Schedule I

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

Family Contribution Not Clear

In Schedule I, Debtor lists a \$641.00 contribution from family members, and elsewhere indicates in Schedule J a rental expense of \$731.00 as well as that some siblings live with her and pay utilities and perform house maintenance. Dckt. 1. The Chapter 13 Trustee contends that Debtor's family contribution is unclear and therefore, Debtor needs to provide a detailed declaration to explain Debtor's living situation and expenses. Dckt. 17.

Interest in Personal and Real Property Not Clear

Trustee asserts that Debtor has failed to provide necessary information about the ownership of property, and is arguably attempting to confirm a plan without complying, contrary to 11 U.S.C. §1325(a)(1). Dckt. 17.

Debtor schedules that she has a ½ interest with a sister in the real property located at 10076 Roadrunner Way, Redding, Ca, but she also checks the box that only she has an interest in that property. Dckt. 1, p. 11, Item 1.1. She does not name the sister, nor does she explain if they are tenants in common or joint tenants. Dckt. 17.

Debtor also schedules that she has a ½ interest with a brother in a 1997 Suntracker and that she has a ½ interest with a brother in a 1997 Carrier. She does not name the brother for either item, nor does she explain if they are tenants in common or joint tenants. Dckt. 1, p. 12-13, Items 4.1 & 4.2.

Debtor's Response

Debtor filed a Response addressing Trustee's objections as follows:

1. Debtor completed her 2018 tax return and will provide the 2019 and 2020 tax returns before the continued Meeting of Creditors on August 12, 2021.
2. Debtor has provided Trustee with a Grant Deed to the 10076 Roadrunner Way property and a certificate of the "carrier trailer and Suntracker boat."
3. Debtor has provided the names of family members who assist with utilities, repairs, and maintenance.
4. Debtor provided Trustee with income and expenses for the rental property.

Dckt. 21.

At the hearing, Trustee ~~xxxxxxxx~~

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), 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 ~~xxxxx~~.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 5, 2021. By the court's calculation, 50 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is ~~XXXXXXX~~.

On Q Financial Inc., its assignees and/or successors in interest ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Plan incorrectly lists Creditor's claim as a Class 4 when it should be listed as a Class 1 claim.
- B. The Plan is not adequately funded.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed

a timely proof of claim in which it asserts \$15,000.00 in pre-petition arrearage. Proof of Claim 8-1. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that because Debtor does not account for the approximately \$15,000 in arrearage, the plan is not adequately funded. Thus, Debtor's plan is not feasible. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, Debtor's counsel addressed the arrearage, reporting that this is part of a forbearance agreement, and Debtor is awaiting the final documents.

The Parties agreed to a continuance to allow for the documentation to be completed.

Notice of Mortgage Payment Change

On June 22, 2021, Creditor filed a Notice of Mortgage Payment Change. Commencing August 1, 2021, Debtor will be making mortgage payments of \$3,061.36. Docket Entry, Doc. (6).

July 20, 2021 Hearing

At the hearing, **xxxxxxx**.

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 2, 2021. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtor, Bobbie Lynn Bard (“Debtor”) seeks confirmation of the Modified Plan to cure default after becoming delinquent in plan payments due to COVID-19 related unemployment. Declaration, Dckt. 28. The Modified Plan provides for plan payments of \$316.00 per month for the remainder of the plan, and a one percent dividend to unsecured claims totaling \$27,915.14. Modified Plan, Dckt. 30. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 29, 2021. Dckt. 37. Trustee opposes confirmation of the Plan on the basis that Debtor obtained post-petition a retirement fund loan without leave of the court.

DISCUSSION

Failure to Obtain Court Approval to Incur Debt

Debtor entered into a Retirement Fund Loan agreement without leave of the court. This

unapproved transaction has impaired Debtor's ability to pay creditors. The impairment results in proposed plan payments of \$316.00 (\$299 less a month than under the confirmed plan). Moreover, creditors with unsecured claims would see their dividends fall from 3% to 1% under the terms of the proposed modified plan.

Debtor's Response

Debtor admits to taking out the retirement loan after becoming unemployed. Debtor asserts these funds were used to pay Debtor's day to day expenses until Debtor found another job. Debtor claims repayment of the loan will conclude August 2021. Debtor proposes to have the court order approving the plan modification to include a provision to increase plan payments by \$120.00 (to a total of \$436.00) a month starting September 2021 and continuing through the remainder of the plan.

A review of the docket confirms the Debtor did not seek leave from the court to enter into the Retirement Loan agreement. Debtor believes they can include the repayment of the loan as an expense and thus reduce the disposable income available to pay creditors. That is not correct. Debtor sought and was protected by the extraordinary relief provided by the bankruptcy code. Debtor proceeded to undermine the code by incurring debt without leave of the court.

At the hearing ~~xxxxxxx~~

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on June 22, 2021. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

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The Objection to Confirmation of Plan is sustained, and the Chapter 13 Plan is not confirmed.

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

- A. The Chapter 13 debtor, Derrick Johnson (“Debtor”), failed to appear at the § 341 Meeting of Creditors.
- B. Debtor has failed to provide business documents.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Appear at 341 Meeting

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

The Continued Meeting of Creditors was held on July 8, 2021, and Trustee's Report indicates Debtor did not appear. Continued Meeting of Creditors will be held on August 19, 2021.

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

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

At the hearing **xxxxxxx**

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor’s Attorney on April 28, 2021. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan is sustained and the Chapter 13 Plan is not confirmed.

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

- A. The Plan may not be the Chapter 13 debtor’s, Elisei Branusa (“Debtor”), best effort.
- B. Debtor may not have filed the case in good faith.
- C. Trustee is uncertain that Debtor can afford plan payments.

DISCUSSION

Trustee’s objections are well-taken.

Not Best Effort

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

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan proposes to pay a nine (9) percent dividend to unsecured claims, which total \$25,514.26, though Debtor lists \$1,100 per month for tax, medicare and social security deductions totaling \$13,200 a year, where the 2019 W-2 provided reflects \$10,462.91 for the year, a \$2,737.09 difference, or \$228.09 per month.

Moreover, Debtor has provided the Trustee pay advises which show a varying deduction for "401(k)" on bi-weekly pay stubs from \$124.42 on the pay advise dated September 4, 2020, to \$147.19 on the pay advise dated February 19, 2021. Trustee is uncertain as to what the 401(k) deduction is, when it will end, and where Schedule I shows no voluntary deduction, the Debtor appears able to increase the plan payment by about \$260.00 when the "401(k)" contribution ceases.

Good-Faith Filing

Trustee alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy code;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief;
and

11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

Here, Debtor purchased a 2019 Toyota Camry with a \$4,000 cash down payment on February 25, 2021, after consulting with and paying bankruptcy counsel \$4,000 cash on February 12, 2021. Debtor filed the petition March 12, 2021. Thus, Debtor purchased this relatively new vehicle within weeks of seeking the protection of this bankruptcy case.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee has reviewed the pay advise dated 2-19-2021 which shows overtime of \$573.17 and regular pay of \$1,880.00, not all of the pay advises the Trustee has received are legible, and the Trustee believes the overtime is still less than projected. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Briefing Schedule and Final Hearing

Debtor stated opposition grounds at the hearing and the court set a briefing schedule and final hearing for this Objection filed using the Local Bankruptcy Rule 9014-1(f)(2) procedure.

Trustee's Status Report

On June 29, 2022, the Chapter 13 Trustee filed a Status Report with the court noting that while Debtor has amended Schedules I and J, Debtor has not otherwise responded to Trustee's objections. Dckt. 25.

Debtor's Reply

Debtor's Counsel filed a Reply on June 29, 2021 addressing Trustee's objections as follows:

1. Regarding taxes and the 401-K loan, Debtor states that these deductions vary by regular hours and overtime worked per pay period.
2. Debtor purchased a 2019 Toyota Camry in good faith where Debtor's listed vehicle 1998 Subaru Legacy had many miles and required several repairs in the last 12 months. This being Debtor's only method of

transportation, Debtor decided to purchase a more dependable form of transportation for work.

3. Debtor has the ability to make his plan payments and copies of six months of legible pay stubs were sent to the Trustee on June 8, 2021.

Dckt. 27.

Debtor's Counsel merely argues that the 401-K Loan deduction varies on the regular hours and overtime, but no evidence is provided as to how or why such amount varies and how it is computed.

Debtor's Counsel argues that the purchase of the vehicle on the eve of bankruptcy was "in good faith" and argues factual issues for which no evidence is presented.

With respect to feasibility, Debtor's counsel argues that the Debtor can make the payments, but offers no evidence of the "facts" alleged. Debtor's counsel states that copies of various documents, which are excluded by Debtor from the record in this Contested Matter, show Debtor can perform the Plan. However, the court, which has to make that legal and factual determination, is not provided with any such evidence.

The Objection to Confirmation is sustained. The proposed Chapter 13 Plan does not comply with the requirements of 11 U.S.C. §§ 1322 and 1325.

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

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

The Objection to Confirmation filed by David Cusick, 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 sustained and the Chapter 13 Plan is not confirmed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 7, 2021. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is ~~XXXXXX~~.

The debtor, Forrest Sylvan Gardens (“Debtor”), seeks confirmation of the Modified Plan in order to account for an increase in medical expenses during the duration of the Plan after being hospitalized and placed on temporary disability. Declaration, Dckt. 39. The Modified Plan provides payments of \$980.00 per month for 5 months, followed by \$873.00 per month for 55 months, and a zero percent dividend to unsecured claims totaling \$28,584.00. Modified Plan, Dckt. 41. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Reply on June 29, 2021. Dckt. 43. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not provided sufficient explanation as to the illness and hospitalization.
- B. Debtor appears to be below median income.

DISCUSSION

Insufficient Information

Debtor has supplied insufficient information relating to their illness, hospitalization, and temporary disability to assist the Chapter 13 Trustee in determining the merit in increasing expenses and reducing plan payments. Debtor fails to report the general nature of the illness or how this will lead to an increase in expenses.

Failure to Meet Requirements Under § 1325(b)

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(b). According to Trustee, Debtor appears to be below the median state income and without more information, Debtor may not meet the requirements of § 1325(b). Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Bankruptcy is an intrusive process, but in which the court and other parties respect the privacy of the parties to the extent it does not impede the court in properly applying the law. If necessary, briefs and evidence addressing such privacy matters may be filed under seal.

Here, while making reference to an illness and hospitalization, Debtor does not provide testimony as to whether this is a one time hospitalization and done (such as possibly an auto accident) or an ongoing medical condition and treatment which may, but can be shown does not appear to unreasonably, impair Debtor's ability to prosecute the Plan in this case (such as surgeries and ongoing chemotherapy treatments).

This may be a situation where Debtor and counsel address this question with the Trustee and Trustee's counsel, providing clear and frank information concerning the medical issues outside the courtroom, and then the parties provide the court with a general explanation of the medical situation and their conclusions that it does not impair Debtor's ability to proceed with the Plan in this case.

At the hearing, **XXXXXXX**

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

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

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

~~_____ The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Forrest Sylvan Gardens ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2021. By the court’s calculation, 47 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Jason Peter Rupchock and Tiffanie Ann Rupchock (“Debtor”) seek confirmation of the Modified Plan to account for the changes in income and expenses resulting from changes in Debtor’s employment situation and the surrender of the Harley Davidson. Declaration, Dckt. 163. The Modified Plan provides the following:

1. Under Section 2.01, Debtor is to pay \$1,131.36 for 60 months,
2. however, according to the Nonstandard Provisions under Section 7, Debtor is to make payments of \$970.00 for the remainder of the plan, and
3. a 28 percent dividend to unsecured claims totaling \$72,534.79.

Modified Plan, Dckt. 164. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 29, 2021. Dckt. 166. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent under the proposed modified plan.
- B. The Modified Plan has conflicting payments in Sections 2.01 and 7.
- C. Plan does not properly account for attorney or administrative fees.
- D. Debtor has incorrectly marked their schedules "amended" and "supplemental."

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor are \$470.00 delinquent in plan payments, under the proposed plan. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Inconsistencies Within the Plan

The Chapter 13 Trustee notes that in the Debtor's modified plan Section 2.01 proposes plan payments of \$1,131.36, while Section 7 proposes plan payments of \$970.00. Moreover, Debtor were unclear as to what amounts have been paid through the plan as of May 31, 2021.

Attorney's Fees

Debtor's modified plan indicated Counsel did not receive any payment prior to the filing of the case. This is inconsistent with the Order Confirming (Dckt. 131) which indicates Counsel received \$120.00 as prior plan payments. In addition, the proposed plan includes \$0.00 payments towards administrative fees, where \$1,841.00 in attorney fees remain to be paid.

Supplemental Schedules I and J

Debtor have incorrectly marked their schedules as both amended and supplemental. There appears to be a change in the classification of some income in Schedule I as Debtor's income is now listed as unemployment income rather than social security 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 an order substantially in the following form holding that:

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

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

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

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

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, and on June 14, 2021. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained.

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

- A. The debtor, Rhoda Mason ("Debtor"), has failed to provide for a secured claim in their Plan.
- B. Debtor's Plan cannot be completed within 60 months as proposed.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C.

§ 1325(a)(6). Trustee alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor U.S. Bank National Association's matured obligation, which is secured by Debtor's business related property, as stated in the UCC Financing Statement (Proof of Claim 3, at 13). *See* 11 U.S.C. § 1325(a)(6). Creditor asserts a claim of \$41,483.23 in this case. Debtor's Schedule D fails to list the secured claim. The Plan fails to account for this secured claim specifically; although it is listed in Schedule F as a non-priority unsecured claim. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 99 months due to Debtor listing only \$238.00 as an expense for student loans but the Plan does not include a nonstandard provision stating the Debtor will pay her student loans directly. In addition, Debtor's Plan calls for a 49% dividends to Debtor's unsecured creditors. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the 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, and Chapter 13 Trustee on June 3, 2021. By the court's calculation, 47 days' notice was provided. 14 days' notice is required.

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

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The Objection to Confirmation of Plan is sustained.

U.S. Bank National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The debtor, Rhoda Mason ("Debtor"), fails to account for Creditor's secured claim.
- B. Debtor has failed to comply with FRBP 3012 and § 506(a).

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor alleges that the Plan violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's business related property, as stated in the UCC Financing Statement (Proof of Claim 3, at 13). Creditor asserts a claim of \$41,483.23 in this case. Debtor's Schedule D fails to list the secured claim. The Plan fails to account for this secured claim specifically although it is listed in Schedule F as a non-priority unsecured claim.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

Debtor has not complied with FRBP 3012 and § 506(a)

Creditor asserts Debtor has failed to value the secured claim and thus Creditor submits the full amount of its lien is secured (\$41,483.23 as of the petition date).

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

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

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

The Objection to the Chapter 13 Plan filed by U.S. Bank National Association ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2021. By the court’s calculation, 39 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is denied.

The debtors, Ted Katsinis and June A. Katsinis (“Debtor”) seek confirmation of the Modified Plan to cure default in plan payments and pay Class 1 and Class 7 creditors in full before the end of the 60 months with the sale of their residence. Declaration, Dckt. 47. The Modified Plan provides for payments of \$1,836.00 for 60 months, and a 100 percent dividend to unsecured claims totaling \$7,562.00. Modified Plan, Dckt. 48. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 29, 2021. Dckt. 52. Trustee opposes confirmation of the Plan on the basis that:

- A. The Chapter 13 debtors, Ted Katsinis and June A. Katsinis (“Debtor”), are delinquent on plan payments.
- B. The Modified Plan does not include an additional payment provision.

- C. Debtor are delaying selling their home without reason.
- D. There are inconsistent plan payments between the plan, motion, and declaration.
- E. The Modified Plan incorrectly lists the mortgage payment.
- F. Debtor have not filed supplemental Schedules I and J.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor are \$5,508.00 delinquent in plan payments, which represents multiple months of the \$1,836.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Modified Plan does not Include an Additional Payment Provision

The Court Order confirming filed 6-20-219 included a requirement for an additional payment of \$2,500.00 as part of the plan. *See* Dckt. 26. This payment is absent from the modified plan and Trustee requests this language be added to the order confirming.

Sale of Home

Section 7 of the plan states that Debtor will pay Class 1 arrearage in full and 100% to Class 7 creditors from the sale of Debtor's residence. Debtor claimed Creditors would be paid within the first year of the plan, that did not occur. The modified plan does not provide a date for the sale to occur or an explanation as to why Debtor keep extending the date for the sale.

Inconsistent Plan Payments

Debtor are inconsistent with the amount of the modified plan payment. Section 2.01, the Motion, and the Declaration list different amounts as the proposed plan payment.

Class 1 Mortgage Payments are Incorrect

The proposed modified Plan indicates the post-petition monthly mortgage payment is \$1,624.00. The actual mortgage payment is \$1,623.88. The confirmed plan also identified the mortgage payment as \$1,624.00. This was corrected in the order confirming with language stating, "Class 1 ongoing mortgage owed to Ocwen Loan Service is \$1,623.88, per month." The Trustee would have no objection if Debtor included the same language in the order confirming the modified Plan

Supplemental Schedules I and J

According to Trustee, Debtor have not filed Supplemental Schedules I and J in support of their proposed modified plan. Debtor have not sought to lower their plan payments, but Trustee considers the delinquency and the two years since the last filing of Schedules to be a basis for requiring Debtor to submit supplemental Schedules before confirming this modified plan.

Debtor's Response

On July 2, 2021 Debtor filed a Response addressing Trustee's objections as follows:

- A. Debtor assert that the Account Ledger from National Data Center shows Debtor provided a cashiers check for \$2,500 on April 9, 2019. The Debtor acknowledge their original proposal under the confirmed plan failed and that is why they are seeking the 180-day period. Debtor asserts they will be able to sell their heifers and meet their plan obligations within that time.
- B. Debtor propose to include the following language in the order confirming "Debtors paid an additional plan payment of \$2,500 on April 9, 2019. This shall be counted as an additional plan payment".
- C. Debtor asserts the sale of the home was frustrated by the COVID-19 pandemic. This is because Debtor, as an elderly couple, wanted to limit their contact with third-parties. Debtor claims a refinance was attempted but was unsuccessful due to Debtor's credit score and the condition of their manufactured home.
- D. Debtor state their motion inadvertently states a proposed plan payment of \$1,568.00 when the payment should be \$1,836.00 as reflected in the proposed plan.
- E. Debtor propose that the order confirming the modified plan state "Class 1 ongoing mortgage owed to Ocwen Loan Services is \$1,623.88, per month."
- F. Debtor agree to submit supplemental Schedules I and J in support of their proposed modified plan.

Dckt. 55.

A review of the docket shows that Debtor filed Schedules I and J. Dckt. 56. However, these are Janus-faced Schedules where Debtor have checked both the Amended Schedule box and the Supplemental Schedule box.

Moreover, Debtor are suggesting to pay off claims by the sale of their residence yet also explain that there are issues with the condition of the residence. Debtor do not explain how these issues will be addressed in order to accomplish a sale.

Decision

There are a number of issues concerning this Plan. What screams to the top of the list is Debtor's argument that Debtor really want to sell the house, but because of COVID cannot. One thing that has been demonstrated time and again in this court, and is commonly known, is that if a person has residential property to sell that is not in the San Francisco Bay Area, it sells fast and for top dollar.

Some are being sold without the buyer seeing the property personally, but relying on online photographs provided by the Realtors.

Debtor's Counsel argue that Debtor will not attempt to sell the property until they feel "safe." This could go on for years.

More significantly, interest rates have been at historic lows, and properties at historic highs in value. Interest rates are starting to tick up. Governmental budget deficits are growing. Inflation is roaring ahead, with a recent report that it has now increased over last year at the highest rate since 2008 (which is when we saw the Great Recession and the gutting of real property values).

Debtor may have valid health concerns, but those health concerns may cause dire financial losses for Debtor.

On the Amend-Supp Schedule I (Dckt. 56), Debtor state having \$2,388 in Social Security income, \$416 in pension income, and \$2,475 a month in income from a "Cattle Business." If Debtor has a "Cattle Business," that income information should be shown on line 8a. of Schedule I, not as "other monthly income" on line 8h.

On Amended Schedule A/B (Dckt. 21), Question 47, Debtor states they own 45 registered Angus Pairs (it is not clear if this is 45 cows/bulls, or 45 pairs, for 90 cows/bulls. These cows/bulls are valued on the Amended Schedule at \$112,500. On Amended Schedule A/B Debtor lists what appears to be cattle equipment.

On the Statement of Financial Affairs, Debtor state having a DBA for the Circle AK Ranch. Dckt. 1 at 40. However, on the Amend-Supp Schedule I Debtor does not include a gross income and expense statement for such business. Amend-Supp Schedule J does not include any expenses which appear to relate to a cattle business. Dckt. 56 at 4-5.

Additionally, the court has no idea what "necessary" expenses are being paid by the business. Over the years, the winner in necessary business expenses was the business paying for a Maserati for the Debtor to drive to "keep up appearances."

On Amended Schedule A/B, Debtor list the Kennefick Road Property to have a value of \$600,000. Dckt. 21 at 4. This is described as 40 acres of agricultural land with a manufactured or modular home. It does not appear that the value of this property rests in the manufactured or modular home, but in the dirt itself.

Proof of Claim 6-1 in the amount of (\$234,570.11) has been filed by Deutsche Bank National Trust Company, asserting that the claim is secured by the Debtor's real property and modular home. This is more than the (\$209,055) stated by Debtor on Schedule D. Dckt. 1 at 27.

Debtor are demonstrating an inability to market and sell the property as the fiduciary under the Chapter 13 Plan. Debtor can legitimately have COVID concerns, but those concerns are not preventing Debtor from operating a business generating net (without knowing what the business expenses are) profits of \$2,475 a month.

The proposed Plan does not comply with the requirements of 11 U.S.C. §§ 1322, 1325, and

1329. The Motion to Confirm the Modified Plan is denied.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Ted Katsinis and June A. Katsinis (“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.

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, parties requesting special notice, and Office of the United States Trustee on June 30, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Objection to Claimed Exemptions is xxxxxxx.

Creditor Cadles of West Virginia ("Creditor") objects to Cindy Ann Forgrave's ("Debtor") Claim of Exemption and requests the court disallow the \$577,000.00 homestead exemption. Relying on the testimony of Certified Appraiser Daniel R. Ketcham, Creditor claims that Debtor is only entitled to a homestead exemption in the maximum amount of \$453,020.83. Dckt. 40, at 4:20.

RELEVANT LAW

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

DISCUSSION

California Code of Civil Procedure § 704.730 provides, as of January 1, 2021, that the homestead exemption amount is the greater of the median sale price for a single family home in the county in which it is located or \$300,000. In the Motion Creditor concedes that Debtor may claim the higher January 1, 2021 exemption amount against Creditor's judgment lien that was recorded on December 15, 2020. Motion, Legal Analysis, Dckt. 40 at 3. The Chapter 13 Trustee in his Objection to Exemption also concedes that the exemption amount should be computed based on the median sale price for the preceding year. The issue of the applicable law to determine the amount of the homestead exemption is not before the court. The factual issues presented to the court relate to the value of the Property and the proper computation of the "countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption" for this Property in Nevada County. Cal Code Civ Proc § 704.730.

Asserted Value of the Property

On Schedule A/B Debtor asserts that the Fair Market Value of her home is \$650,000. Dckt. 1. On Schedule C Debtor claims an exemption of \$557,000.00 in the Property, citing to C.C.P. § 704.730. *Id.* Debtor thus asserting that the median sales price for homes countywide in Nevada County for 2020 was \$557,000.00.

Creditor objects that the median value of a single family home in Nevada County, where the Property is, has never been \$557,000.00 in the calendar year 2020, the year preceding Debtor's claim. Dckt. 40, Objection, at 4.

Creditor has provided the court with the Declaration of Daniel R. Ketcham. Dckt. 42. According to the Declaration filed under penalty of perjury, Mr. Ketcham is a Certified Appraiser with over 30 years of experience in Nevada County. He testifies that based upon his review of the historical data compiled by the California Association of Realtors, it is his opinion that the countywide median sale price for a single-family home in Nevada County as averaged over twelve months for 2020 was \$453,020.83. Dckt. 42, ¶ 4. Mr. Ketcham further testifies that based on his review of data reported by the MLS for Western Nevada County, the median sale price for a single-family home for 2020, averaged over 12 months, was \$441,729.16. *Id.*, ¶ 5.

Therefore, Creditor asserts that Debtor is only entitled to a Homestead Exemption in the maximum amount of \$453,020.83.

Debtor's Reply

Debtor filed a Reply on July 12, 2021 arguing that the plain meaning of the term "in the calendar prior" of C.C.P. § 704.730 refers to a specific month, rather than the median price averaged over twelve months. Dckt. 67, at 7:8-10. Thus, Debtor urges the court to use the median sales value for the month of December 2020, when the judgment lien was recorded. *Id.*, at 3:10.

Debtor cites the Trustee in arriving at a figure of \$503,000.00 as the median price of homes in Nevada County for December 2020.^{FN.1} *Id.*, at 3:10. Debtor assumes that this figure refers to a

monthly median sale price, but a review of the Trustee’s citation to geodataplus.com indicates that the data represents a “*yearly median*”. Dckt. 38, ¶ 12. Thus, Debtor has inadvertently contradicted his legal argument.

FN.1. Debtor is referring to valuations provided by Trustee in his Objection to Debtor’s Exemption, which is set to be heard on August 10, 2021. The court does not further refer to the information provided under that pleading.

DECISION

With respect to statutory construction, whether a California statute or federal law, the court first looks to the plain language of the statute and applies the law as written by the Legislature or Congress.

The statute plainly states:

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

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

C.C.P. § 704.730 (emphasis added.)

The statute tells the court to look to the prior year, not “a month in the prior year,” or the “last month of the year,” but says “in the prior year.”

Second, the court must be presented with the “median sale price for a single-family home in the calendar year.” The statute does not provide any special definition for the word “median.” California exemption law provides some specific definitions to be used in determining homestead exemptions in California Code of Civil Procedure § 704.710. A definition of the word “median” or “single family home” is not provided in that section.

“Median” is a mathematical term which is well known. Black’s Law Dictionary provides a definition of “median” as,

Located in or related to the precise midpoint in a range of values or quantities, such that half of them fall above the midpoint and half below.

MEDIAN, Black’s Law Dictionary (11th ed. 2019). Applying this definition, the statute requires the court to determine what is the value of the single family homes sold in 2020 for which half of those sold would be for a higher value and half of which were sold would be a lower value.

This definition is consistent with that provided in the Merriam-Webster Dictionary, in which “Median” is defined as “a value in an ordered set of values below and above which there is an equal number of values or which is the arithmetic mean of the two middle values if there is no one middle

number.” <https://www.merriam-webster.com/dictionary/median>.

The court must be presented with, and determine, what the Median sales price is for a single family home in Nevada County in 2020. This necessitates the parties providing the court with evidence of prices of all of the single family home sales in 2020 in Nevada County (or provide the court with credible testimony and properly authenticated, admissible evidence of a determination of such Median sales price of a single family home).

As for “single-family home,” for which a definition is not provided in the statute, Black’s Law Dictionary provides the following

single..... “Consisting of one alone; individual”

family..... “A group of persons connected by blood, by affinity, or by law, esp. within two or three generations”

home..... “A dwelling place”

Black’s Law Dictionary (11th ed. 2019).

Where Debtor can provide opinion as to values, in this case, Debtor would have to have knowledge of every single sale in Nevada City County for the year 2020 in order to determine the median sales price. Debtor provides no evidence as to the Median sale prices of single-family homes in 2020. Debtor does direct the court to arguments made by the Chapter 13 Trustee in his objection to the claim of exemption. Debtor argues that the court should determine that the Median sales price for a single-family home in Nevada County in 2020 was either \$503,000 or \$508,000. Reply, p. 2:4-7. Debtor states that it is “undisputed . . . and the median value in Nevada County was \$503,000.00, pursuant to the Chapter 13 Trustee findings and \$508,000.00 based on the evidence presented in the Objection at hand.”

In the opposition, which Debtor titles “Reply,” Debtor’s counsel argues that Debtor will provide her lay opinion based on a “belief” that:

the median value of properties in Western Nevada County
which supports an opinion of \$598,000.00 value on her home.

Id., ¶ 3. Further, Debtor will provide additional lay opinion testimony based upon a “belief” that:

the median value of properties in Western Nevada County
which supports a exemption of \$557,000.00.

Id., ¶ 4.

This lay opinion testimony is wrong on several counts. First, the statute does not specify that the exemption is computed based on the “median value of properties” in Western Nevada County, but the median sales price (not merely values) of single-family home in the county (the entire county) in the prior year.

Second, the testimony to be given does not appear to be testimony permitted under, or would be found credible by the court, the Federal Rules of Evidence. Lay witness opinion testimony is allowed only as follows:

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; **and**
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Fed. R. Evid. 701. Initially, it is stated only that Debtor has a "belief" as to the value of all the properties in part of Nevada County. Then, she is wanting to offer "expert," specialized knowledge and training testimony of an appraiser or a Realtor. Nothing is set forth that she has any specialized knowledge, nor that such "belief opinion" is rationally based on Debtor's perception.

In the Reply, Debtor's counsel argues that a "fact" in dispute is that the statute enacted by the California Legislature states that it is the median sales price for a single-family home "in the calendar year prior to the calendar year" that the exemption is claimed, and that the "fact" in dispute is that Debtor contends that such language means in the 'last month of the prior calendar year.'

This "dispute" is not a factual dispute, but one in which the court reads the plain language of the statute and makes a ruling of law. Here, the statute says the median price in the prior "calendar year," not the last month of the prior calendar year, not the month that the Debtor chooses in the prior calendar year, or the same month in the prior calendar year as the month in the current year where Debtor claims her homestead exemption.

Debtor's counsel's plain reading of this statute is stated in the Reply as:

Based on the Plain Meaning of the statute, the Prior year being 2020, and the Abstract arising in December of 2020, the Median value in December of 2020 being \$503,000, the exemption would be \$503,000.

Reply, p. 5:5-8; Dckt. 67. Such "plain language reading" of the statute is clearly incorrect and has the Debtor rewriting the law as written by the California Legislature.

**Evidence of Median Sales Prices For Single-Family Homes
in 2020, the Calendar Year Prior to Debtor's
Claiming of Exemption (Filing Bankruptcy)**

As reviewed above, Debtor relies upon the evidence presented by the Chapter 13 Trustee and Creditor as to the median sales price of homes in Nevada County in 2020. In Creditor's Expert Witness Declaration, he has obtained information from the California Association of Realtors for "single-family homes" (the term does not appear to be defined by the Association) and provides the court with monthly median sales price amounts. Declaration, ¶ 3; Dckt. 42. The Witness then adds together the monthly median amounts stated and then averages them out over the twelve months of 2020.

This averaging is not what is called for in the statute. The court must determine the median sales price for the entire year. It may be that in January \$367,000 median sales price is based on three homes sold. Then for December 2020, the \$508,000 median sales price may be based on the sales of 101 homes. To merely average in a lower or higher month that has significantly fewer sales distorts the median (in the middle) determination for the entire year. In Paragraph 5 of his Declaration, the Witness does the same averaging calculation, rather than a median calculation, with data from the Multiple Listing Service for Western Nevada County. In addition to providing merely an average based on monthly medians, it also is only for a portion of Nevada County.

As presented to the court, the court has not been presented with evidence to make the necessary factual determination of the median sales price for a single-family home in 2020.

In the Objection, Creditor seeks to have the average of 2020 monthly median sales price for single-family homes be determined to be \$453,020. Debtor argues for a homestead exemption of \$503,000 which is indicated as the December 2020 median sales price. This \$503,000 exemption amount is argued for by the Chapter 13 Trustee in his Objection to Claim of Exemption. Dckt. 36.

In his Declaration (¶ 3) the Creditor's Expert Witness shows the monthly median sales price for Nevada County, while averaging medians is not a proper calculation, it may provide a method for these parties to strike a rational, economic accord. If one assumes that in the second half of 2020 the real estate market went to new heights of buying craziness and that there were 10% more sales at higher prices, the "average" used by Creditor would be pulled up a bit:

January - June median sales total \$2,515,000, when divided by 6 months, averages \$419,177. Then for July - December, the median sales total \$2,920,500, which if increased by 20% equals \$3,212,550. Divide that by the later six months of the year, and that averages \$535,425.

Continuing with averaging the median, the two six month median averages total \$1,003,277, which then averages (dividing by 2) \$477,301.

Before the court can determine the amount of the homestead exemption, evidence of the median (not a mean average) of the sales price for single family homes for 2020 will have to be provided. It may well be that a common ground exists around \$480,000, which is something more than the Creditor advances and something less than what Debtor hopes to put in the barn. It swings about \$20,000 each way. The Parties and their counsel can consider what it is going to take to assemble the necessary evidence (Creditor being the objecting party) and the cost, versus putting this to be by agreement.

At the hearing, **XXXXXXX**

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

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

The Objection to Claimed Exemptions filed by Cadles (“Creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that **XXXXXXX**.

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 June 4, 2021. By the court's calculation, 46 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 hearing on the Motion to Avoid Judicial Lien is continued to ~~xxxxx~~, 2021.

This Motion requests an order avoiding the judicial lien of Jonathan Neil & Associates, Inc. ("Creditor") against property of the debtor, Cindy Ann Forgrave ("Debtor") commonly known as 12691 Angle Ct, Penn Valley, CA 95946, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$132,955.81. Exhibit A, Dckt. 18. An abstract of judgment was recorded with Nevada County on November 21, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$650,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$237,908.06 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$557,000.00 on Schedule C. *Id.*

Creditor's Opposition

Creditor opposes the Motion to Avoid Judicial Lien on the basis that:

- A. Debtor's claim of valuation is not supported by competent evidence;
- B. Debtor has apparently misrepresented to the court facts evidencing the true balances of any existing loans; and
- C. Remaining equity would leave sufficient funds to pay Creditor's lien.

First, Creditor contends that the motion and supporting declaration are devoid of any evidence that might support Debtor's "self-serving and conclusory statement that the Property is worth \$598,000.00." Dckt. 49, Opposition, 2:24-25. There is no appraisal supporting the alleged current value, no statement as to how the value was determined, and no reference to any outside source for a verification of value. *Id.* Creditor further questions Debtor's line of reasoning that "being a homeowner renders one qualified or competent to offer admissible evidence as to property valuation." *Id.*

Second, Debtor claims a mortgage balance in the amount of \$102,000.00; yet Creditor asserts that there is no evidence of any such outstanding voluntary lien on the Property and that Debtor has failed to submit recent statements of the loan balance. *Id.*, at 3:10-12.

Third, even admitting, for the sake of discussion, that Debtor's representations of the allowable homestead exemption and loan balance are accurate, there would be sufficient equity in the Property to satisfy Creditor's lien. *Id.*, at 3:13-15. On Zillow.com, the value of the Property is estimated at \$1,003,000.00. Dckt. 50, Ex. 1.

Debtor's Reply

Debtor contends that both the "Zillow report" and Creditor's declaration concerning the Zillow estimate are inadmissible hearsay. Dckt. 60. Debtor also explains that she determined the value of the Property by personally viewing it for defects and by accounting for the fact that it is a modular home that depreciates in value every year. *Id.* Debtor has testified to damages to the Property including leaks in the roof, water damages to the kitchen floor, the need for dry-wood replacement in the master bedroom, and leaks in the sky lights, which are also not squared, causing cracks in the wall. Dckt. 17, declaration, ¶ 9.

DECISION

As the owner, the Debtors' 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). While it is evidence of value, Debtor's opinion is the most ephemeral evidence of value for the residence. Nonetheless, evidence of value has been provided in the Debtor's opinion.

Debtor's Declaration states the following regarding the condition of the Property:

9. The property has a (3) bedroom, (2) bath modular (3) piece home which is deteriorating in value as the floors in the kitchen have water damages and needs replacement.

There are multiple leaks in the roof and it needs replacement.

The master bathroom needs floor and dry-wood replacement due to the water heater damages which continues to leak. The sky lights leak and are not squared correctly, causing cracks in the walls, which I estimate would be approximately \$40,000.00 to repair.

Declaration; Dckt. 17, at ¶ 9.

Creditor has come forward disputing Debtor's valuation and providing the court with copies of a real estate website. The copies are not accompanied by the declaration of an appraiser but that of Debtor's Counsel. Dckt. 50. In his declaration Counsel states that "the office ran a search for the Property," and that a true and correct copy of the printout has been included. There is no personal knowledge testimony nor does Counsel explain how this report survives the evidence rules on hearsay.

Currently pending before the court are two Objections to Exemption that relate to the property at issue. Until that is determined, the court is not going to proceed with this litigation that is dependent on that prior determination.

At the hearing **xxxxxxx**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Cindy Ann Forgrave ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Avoid the Judicial Lien is continued to **xxxxxxx**, 2021

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 June 4, 2021. By the court's calculation, 46 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 hearing on the Motion to Avoid Judicial Lien is continued to ~~XXXXXXX~~, 2021.

This Motion requests an order avoiding the judicial lien of Cadles of West Virginia LLC ("Creditor") against property of the debtor, Cindy Ann Forgrave ("Debtor") commonly known as 12691 Angle Ct, Penn Valley, CA 95946, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$282,628.05. Dckt. 23, Ex. B. An abstract of judgment was recorded with Nevada County on December 15, 2020, that encumbers the Property. *Id.* On May 25, 2021, Creditor filed Claim 2-1 for \$295,614.50, which includes the principal amount of the judgment plus accrued interest. Dckt. 32, declaration, ¶ 8.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$650,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$237,908.06 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$557,000.00 on Schedule C. *Id.*

Creditor's Opposition

Creditor opposes the Motion on the basis that:

- A. The value of the Property is greater than Debtor states;
- B. Liquidation costs should not be deducted to determine fair market value;
- C. Debtor's homestead is not fully impaired by Cadles' lien; and
- D. Creditor Jonathan Neil & Associates did not timely object to Debtor's claim of exemption.

In opposition to Debtor's valuation of the property, Creditor submitted a professional appraisal report by Daniel R. Ketcham, a certified real estate appraiser. Mr. Ketcham sets forth the fair market value of the Property, as of April 29, 2021, at \$800,000. Dckt. 57, ¶ 4. Mr. Ketcham in part bases his appraisal on the recent dramatic upward price trends in the area. Dckt. 57, Ex. 2, at 6. Since Debtor's purchase of the Property in May 2017 for \$625,000, overall market appreciation in Western Nevada County has been approximately 44.8%. *Id.*, at 4. However, in the appraisal report, Mr. Ketcham states under the heading "Extraordinary Assumption" that the client requested no interior inspection, because, reportedly, property ownership via legal counsel denied a request for an on-site inspection. *Id.*, at 3. Mr. Ketcham discloses that the use of this assumption might have affected results. *Id.* Debtor has testified to the existence of variegated and substantial damage to the interior of the home. Dckt. 60.

Second, Creditor opposes Debtor's attempt to discount the "costs of sale" from the fair market value of the Property. The court has preciously noted this issue:

In the notes to line 1.1 in Schedule A/B, Debtor states that the Property has a fair market value of \$650,000.00, which Debtor discounts down to \$598,000.00 after deducting 8% for the cost of sale. Debtor stating the current value of the Property on Schedule A/B under penalty of perjury is to state the value of the property, not the net sales proceeds.

Civil Minutes, June 29, 2021; Dckt. 45.

Third, Creditor argues that Debtor's homestead is not fully impaired by Creditor's lien. Assuming the FMV of the Property is \$800,000.00, and that Debtor's permissible homestead exemption is \$453,020.83 (the median sale price in Nevada County for 2020), Creditor shows that Debtor has sufficient equity to satisfy at least some of Cadles' lien, after accounting for the \$147,742.00 judicial lien of Jonathan Neil & Associates as well as the alleged \$102,000.00 consensual lien of Howard Allen Wood. Dckt. 55, at 7. Thus Creditor asserts there is sufficient equity to protect Cadles' lien as a secured claim in the sum of \$97,236.89. *Id.*

Fourth, Creditor alleges that Jonathan Neil & Associates failed to timely object to Debtor's claim of exemption and that accordingly the claim of exemption is good against this creditor. *Id.*, at 8. In the event that Jonathan Neil & Associates' judicial lien is avoided in its entirety, Creditor asserts that its judicial lien would be unavoidable in the sum of \$244,979.17 and avoidable in the sum of \$50,635.33. *Id.* In the alternative, Creditor requests the court to deny the Motion, finding that Cadles has a secured lien in the amount of \$97,236.89.

Debtor's Reply

Debtor asserts that her estimate of \$598,000.00 as the FMV of the Property is based on her lay opinion of the median value of properties in the county, although this statement contradicts Debtor's notes to line 1.1 in Schedule A/B, which explained that the \$598,000.00 figure was calculated by discounting 8% from the FMV due to "costs of sales." Dekt. 62, ¶ 3. Debtor also confusedly states that her belief of the median value of properties supports an exemption of \$557,000.00, while simultaneously adopting Creditor's calculation of median value of \$508,000.00 for use as her homestead exemption. *Id.*, at 2:4-6 and 3:20.

DECISION

As the owner, the Debtors' 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). While it is evidence of value, Debtor's opinion is the most ephemeral evidence of value for the residence. Nonetheless, evidence of value has been provided in the Debtor's opinion.

Debtor's Declaration states the following regarding the condition of the Property:

9. The property has a (3) bedroom, (2) bath modular (3) piece home which is deteriorating in value as the floors in the kitchen have water damages and needs replacement.

There are multiple leaks in the roof and it needs replacement.

The master bathroom needs floor and dry-wood replacement due to the water heater damages which continues to leak. The sky lights leak and are not squared correctly, causing cracks in the walls, which I estimate would be approximately \$40,000.00 to repair.

Declaration; Dekt. 17, at ¶ 9.

Creditor has come forward disputing Debtor's valuation and provides the court with the appraisal and Declaration of Daniel R. Ketcham. Mr. Ketcham testifies under penalty of perjury that in creating the appraisal he inspected the exterior of the Property, analyzed public data on the Property, gathered and analyzed market data with an emphasis on comparable sales and other factors. Declaration; Dekt. 57, at ¶ 3. After accounting for this information, Mr. Ketcham concludes that the fair market value of the Property as of April 29, 2021 is \$800,000. *Id.*, at ¶ 4. However, Mr. Ketcham does note that the appraisal does not include information as to the conditions of the interior of the Property.

Currently pending before the court are two Objections to Exemption that relate to the property at issue. Until that is determined, the court is not going to proceed with this litigation that is dependent on that prior determination.

At the hearing **xxxxxxx**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Cindy Ann Forgrave (“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 hearing on the Motion to Avoid the Judicial Lien is continued to **XXXXXXX**, 2021.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on June 9, 2021. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

The hearing on the Objection to Confirmation of Plan is continued to ~~XXXXX~~, 2021.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that Plan relies on Motions to Avoid Liens.

DISCUSSION

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

Objection filed by Creditor Cadles of West Virginia

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

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

Creditor's claim and seeks to avoid the judgment lien.

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

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

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

Decision

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

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

Creditor's information relating to the Trustee's Objection piqued the court's curiosity about what is being alleged concerning this real property. On Schedule A/B Debtor lists the residence in Penn Value of \$598,000 on Schedule A/B. Dckt. 1 at 13. However, in the notes corresponding with this listing, Debtor states that property has a Fair Market Value of \$650,000, which the Debtor discounts down to \$598,000 after deducting 8% for the cost of sale. Debtor stating the current value of the Property on Schedule A/B under penalty of perjury is to state the value of the property, not the net sales proceeds. Thus, we begin with a value of \$650,000.

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

On Schedule D, Debtor lists a secured claim in the amount of (\$102,000) which encumbers the Property with a deed of trust or mortgage. Presumably this predates Creditor's judgment lien.

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

includes forty-two (42) acres.

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

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

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

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

Trustee's Objections to Exemption Pending

Trustee notes that two objections to exemptions are pending, one for July 20, 2021 and one for August 10, 2021. Dckt. 51.

July 20, 2021 Hearing

Currently pending before the court are two Objections to Exemption that relates to the property at issue. Until that is determined, the court is not going to proceed with this litigation that is dependent on that prior determination

At the hearing, **XXXXXXX**

An order substantially in the following form shall be prepared and issued by the court:

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

The Objection to Confirmation filed by David Cusick, 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 hearing on the Objection to Confirmation is continued to **XXXXXXX**, 2021.

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on June 9, 2021. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

The Objection to Confirmation of Plan, as a supplement to the Chapter 13 Trustee’s Objection, is ~~XXXXX~~.

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

FINAL RULINGS

33. [19-25843](#)-E-13 JERLINE WALLACE CONTINUED TRUSTEE'S FINAL
Peter Macaluso REPORT AND ACCOUNT
2-16-21 [167]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

The Objection to Trustee's Final Report and Account is dismissed without prejudice.

Jerline Linda Wallace ("Debtor") and Charles H. Evans ("Creditor") having filed a Stipulation Re Compromise of Payment of Creditor Charles H. Evans' Unsecured Amended Claim, For Withdrawal of Objection to Trustee's Final Report and Account, and Consent to Discharge of Debtor Subject to the Court's Prior Order re Pursuit of Divorce Issues in State Court ("Stipulation"), which the court construed it in part to be an *Ex Parte* Motion to for Approval of Compromise and to Dismiss the pending Objection on June 23, 2021, Dckt. 187; the court having entered an Order approving the Stipulation, Dckt. 186; no prejudice to the responding party appearing by the dismissal of the Objection; Debtor and Creditor having the right to request dismissal of the Objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Charles H. Evans ("Creditor"); the Ex Parte Motion is granted, the Creditor's Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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

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

The Objection filed by Charles H. Evans ("Creditor") having been presented to the court, Creditor having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 187, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is dismissed without prejudice.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 26, 2021. By the court’s calculation, 55 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Myron Emmett Howe and Angela Marie Howe Name of Debtor (“Debtor”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on June 23, 2021. Dckt. 40. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 2, 2021. Dckt. 90. Trustee opposes confirmation of the Plan on the basis that:

- A. The Debtor is requesting the 84 month term allowed under the CARES Act but Debtor has not pleaded and provided evidence of material hardship directly or indirectly related to COVID-19.
- B. Debtor may not be able to make plan payments.

DISCUSSION

CARES Act

Debtor seeks to modify the plan and extend it to 84 months on the basis that they have been affected by the COVID-19 pandemic. According to Trustee, Debtor has not provided evidence that they have been affected directly or indirectly by the pandemic.

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic. The CARES Act provides protection to Chapter 13 debtors to extend a plan if the debtor shows that he has been directly or indirectly affected by the current health crisis. Though the Act does not provide an exact time line for when a debtor may take advantage of this relief, a debtor does not avoid his or her duty to diligently prosecute a bankruptcy case.

Here, Debtor indicates that they fell behind on plan payments due to the death of their son. Declaration, Dckt. 85. Unfortunately, Debtor fails to state how their situation was directly or indirectly affected by COVID-19. Though Debtor has experienced a tragedy, court is uncertain as to whether the Debtor's situation is at all related to COVID-19.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Trustee notes that Debtors are delinquent \$16,895.00. While Debtors allege changes to their situation, Debtor did not file supplemental Schedules I or J in support of their motion. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, counsel for the Trustee and counsel for the Debtor agreed to a continuance, indicating that they believe these issues can be resolved and the Plan confirmed.

Trustee's Reply

On July 13, 2021, Trustee filed a Response indicating he no longer opposed confirmation of Debtor's plan. Dckt. 99.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Paul Wayne Roberts and Pamela Lee Roberts (“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 18, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2021. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Chad M. Johnson, the Attorney (“Applicant”) for Stephen Wilfred Meyer and Paula Rana Meyer, Chapter 13 Debtor (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 13, 2020, through June 10, 2021. Debtor and Applicant entered into a Chapter 13 Representation Agreement and Charge Authorization on July 13, 2020. Exhibit A, Dckt. 36. Applicant requests fees in the amount of \$3,633.50 and costs in the amount of \$338.84.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include general case preparation and administration, and drafting and filing necessary motions. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration and Motion Drafting: Applicant spent 12.9 hours in this category. Applicant provided advice to client, prepared and filed the petition, supporting documents, and a new plan. Applicant attended the meeting fo creditors; reviewed proofs of claim; and prepared and filed necessary motions.

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
Chad Johnson	5.8	\$400.00	\$2,320.00
Tina Perez	7.1	\$185.00	\$1,313.50
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$3,633.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$338.84 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Fees		\$313.00
Printing & Envelopes		\$8.50
Postage		\$17.34
		\$0.00
Total Costs Requested in Application		\$338.84

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$3,633.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First Interim Costs in the amount of \$338.84 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the costs allowed by the court, after applying credit for the \$900.00 paid by Debtor to Applicant pursuant to the Chapter 13 Representation Agreement and Charge Authorization.

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

Fees	\$3,633.50
Costs and Expenses	\$338.84

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 Chad M. Johnson (“Applicant”), Attorney for Stephen Wilfred Meyer and Paula Rana Meyer, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Professional employed by Chapter 13 Debtor

Fees in the amount of \$3,633.50
Expenses in the amount of \$338.84,

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

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan, after application of the \$900.00 paid by Debtor to Applicant pursuant to the Chapter 13 Representation Agreement and Charge Authorization.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

The Motion to Avoid Lien is dismissed without prejudice.

Alejandro Rodriguez and Rosemarie Rodriguez (“Debtor”) having filed a Request to Withdraw Motion, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on July 13, 2021, Dckt. 78; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Department of Industrial Relations, Uninsured Employers Benefit Trust Fund (“Creditor”); the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Lien filed by Alejandro Rodriguez and Rosemarie Rodriguez (“Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 78, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Avoid Lien is dismissed without prejudice.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2021. By the court’s calculation, 54 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Donald Bryant (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on June 28, 2021. Dckt. 72. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Donald Bryant (“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 Chapter 13 Plan filed on May 27, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

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

39. [21-21243](#)-E-13 **DAVID/MELANIE CHAO** **MOTION TO CONFIRM PLAN**
[MMN-2](#) **Michael Noble** **5-18-21 [32]**

DEBTOR DISMISSED: 6/20/2021
JOINT DEBTOR DISMISSED:
6/20/2021

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

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

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

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

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

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 10, 2021. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtor, Thomas Godfrey (“Debtor”) seeks confirmation of the Modified Plan to catch up on delinquent payments and because Debtor’s income decreased and his monthly expenses increased. Declaration, Dckt. 31. The Modified Plan provides for payments of \$560.00 from June 25, 2021 until the end of the 60-month term, and a zero percent dividend to unsecured claims totaling \$30,000.00. Modified Plan, Dckt. 33. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S RESPONSE

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on June 23, 2021 indicating non-opposition to confirmation of the plan but notes the Debtor proposes in § 7.02 a monthly dividend of \$34.00 which appears in error as the remaining claim is \$4,085.45 plus interest. Dckt. 41. The Creditor will be paid in full due to the terms of §5.02 (c). *Id.*

Debtor filed a Response explaining that the monthly dividend of \$34.00 was a typo, and that the error can be addressed by the Order confirming the Plan including additional language stating that the monthly dividend paid to Class 2 creditor Consumer Portfolio Services shall be \$250.00. Dckt. 43.

Debtor having addressed Trustee’s concern, the Modified Plan, as amended, complies with

11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Thomas Godfrey (“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 10, 2021, as amended to state

The monthly dividend paid to Class 2 creditor Consumer Portfolio Services shall be \$250.00.

is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, Office of the United States Trustee on June 15, 2021. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Chad M. Johnson, the Attorney (“Applicant”) for Marvin Laroy Jenkins and Winifred Jenkins, Chapter 13 Debtor (“Client”), makes an Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 25, 2020 through June 15, 2021. Debtor and Applicant entered into a Chapter 13 Representation Agreement and Charge Authorization on December 3, 2020. Exhibit A, Dckt. 42. Applicant requests fees in the amount of \$3,479.00 and costs in the amount of \$421.92.

Trustee’s Non-Opposition To Motion for Interim Compensation and Expenses

Trustee does not oppose the attorney fees and costs requested in the instant Motion, but does note the following: Debtor’s confirmed Plan states attorney was paid \$542.00 prior to case the filing of the case (Dckt. 27, §3.05); however, the Motion states the attorney was paid \$900.00 for fees and

expenses prior to the case being filed (Dckt. 39). Dckt. 44.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,”

as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include case preparation, case administration, and the filing of applications and motions. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Preparation: Applicant evaluated the option of a bankruptcy filing and collected, reviewed, and filed the necessary documents.

General Case Administration: Applicant organized and sent the required documents to the Trustee, attended the Meeting of Creditors, and reviewed the proofs of claim as they came in.

Significant Motions and Other Contested Matters: Applicant filed an Application to Extend Deadline and a Motion to Confirm Amended Plan.

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
Chad Johnson	6.20	\$400.00	\$2,480.00
Tina Perez	5.40	\$185.00	\$999.00

	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$3,479.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$421.92 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$21.42
Printing & Envelopes		\$10.50
Court Fees		\$345.00
Credit Report Fee		\$45.00
Total Costs Requested in Application		\$421.92

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Interim Fees in the amount of \$3,479.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

Interim Costs in the amount of \$421.92 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the costs allowed by the court, after applying credit for the \$542.00 paid by Debtor to Applicant pursuant to the Chapter 13 Representation Agreement and Charge Authorization.

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

Fees	\$3,479.00
Costs and Expenses	\$421.92

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 Chad M. Johnson (“Applicant”), Attorney for Marvin Laroy Jenkins and Winifred Jenkins, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Professional employed by Chapter 13 Debtor

Fees in the amount of \$3,479.00
Expenses in the amount of \$421.92,

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

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan, after application of the \$542.00 paid by Debtor to Applicant for legal fees pursuant to the Chapter 13 Representation Agreement and Charge Authorization.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2021. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 G. Macaluso, the Attorney (“Applicant”) for Tanya Michelle Norfles, the Chapter 13 Debtor (“Client”), makes a Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 1, 2021, through April 12, 2021. The order of the court approving employment of Applicant was entered on April 13, 2020. Dckt. 74. Applicant requests fees in the amount of \$960.00.

Trustee does not oppose the fees requested. Dckt. 120.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

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

estate at the time they were rendered?

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

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s for the Estate include reviewing a Motion to Dismiss, meeting with client to formulate a new plan, and preparing and filing a Motion to Modify and a response to Trustee’s Motion to Dismiss. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

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

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 74. 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.

Motion to Dismiss: Applicant spent 0.85 hours in this category. Applicant reviewed Trustee’s Motion to Dismiss, prepared and filed a Response, and reviewed Trustee’s Ex-Parte Motion Dismiss.

Motion to Modify: Applicant spent 2.65 hours in this category. Applicant met with client to draft and sign a new plan and declaration, prepared and filed Motion to Modify and amended Schedules, reviewed ruling, and prepared and sent order to Trustee.

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 G. Macaluso	3.10	\$300.00	\$930.00
Legal Assistant	0.40	\$75.00	\$30.00
Total Fees for Period of Application			\$960.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including the need to file a modified plan in the wake of the COVID-19 pandemic, 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 \$960.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$960.00
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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 G. 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 G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by Tanya Michelle Norfles (“Debtor”)

Fees in the amount of \$960.00

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

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

43. [21-21767-E-13](#) **WAYNE CREEL AND JACKIE** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **JAYNES-CREEL** **PLAN BY DAVID P. CUSICK**
 Mikalah Liviakis **6-23-21 [29]**

Final Ruling: No appearance at the July 20, 2021 hearing is required.

The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on May 13, 2021, is confirmed.**

Counsel for the debtors, Wayne Martin Creel and Jackie De Lynn Jaynes-Creel (“Debtor”) shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 9, 2021. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 G. Macaluso, the Attorney ("Applicant") for Deanna Maria Torrez, 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 10, 2021, through April 12, 2021. Applicant requests reduced fees in the amount of \$500.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s for the Estate include meeting with client to formulate a new plan and filing a Motion to Modify. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

- (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys,

shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

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

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 51. 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. *Margules 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 a declaration by the Debtor in agreement to the fees, which are described in the following main categories.

Motion to Modify: Applicant met with client, prepared and filed a Motion to Modify, prepared the plan and declaration, appeared for hearing on the Motion, and sent order to Trustee.

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 G. Macaluso	2.35	\$300.00	\$705.00
Legal Assistant	0.40	\$75.00	\$30.00
Total Fees for Period of Application			\$735.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including the consequences of the COVID-19 pandemic on Debtor's plan, 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 reduced amount of \$500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David

Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$500.00
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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 G. 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 G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by Deanna Maria Torrez (“Debtor”)

Fees in the amount of \$500.00

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

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

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2021. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Anne M. Harper (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a statement of non-opposition on July 6, 2021. Dckt. 61. Moreover, Trustee does not oppose the Plan’s provision providing for attorney’s fees to be paid prior to priority claims. *Id.* The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Anne M. Harper (“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 4, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

46. [21-20582-E-13](#) ANNE HARPER
[AP-1](#) Joseph Canning
WELLS FARGO BANK, N.A. VS.

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
3-30-21 [15]**

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 30, 2021. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Relief from the Automatic Stay is denied without prejudice.

Wells Fargo Bank N.A. (“Movant”) seeks relief from the automatic stay with respect to Anne M. Harper’s (“Debtor”) real property commonly known as 179 East Tennys Drive, Benicia, California (“Property”). Movant has provided the Declaration of Rodney O’Neil Coaxum-Richardson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made one (1) post-petition payment, with a total of \$3,583.62 in post-petition payments past due. Declaration, Dckt. 18. Movant also provides evidence that there are ten pre-petition payments in default, with a pre-petition arrearage of \$35,327.99. *Id.*

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on April 26, 2021. Dckt. 26. Trustee asserts that Debtor is current in plan payments and that Trustee has disbursed the post-petition mortgage payments and as such Trustee does not believe that Debtor is post-petition delinquent as asserted by Movant.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 27, 2021. Dckt. 29. Debtor asserts that given the history of payments as discussed below, the Motion should be denied recognizing that Debtor has actively prosecuted her cases, made plan payments, and continued to address any defaults despite the challenges faced because of the pandemic.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$413,736.91 (Declaration, Dckt. 18), while the value of the Property is determined to be \$691,000, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(4)

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Here, Movant argues that a series of bankruptcy filings starting in 2015 affecting the Property shows Debtor's scheme to delay, hinder, or defraud Movant.

- A. Case No. 15-26661
 - 1. Filed: August 24, 2015
 - 2. Chapter 13
 - 3. Dismissal Date: January 22, 2018
 - 4. Reason for Dismissal: Delinquency

- B. Case No. 18-20627
 - 1. Filed: February 5, 2018
 - 2. Chapter 13
 - 3. Dismissal Date: December 23, 2020
 - 4. Reason for Dismissal: Delinquency and failure to file a new plan

- C. Case No. 21-20582
 - 1. Filed: February 20, 2021

2. Chapter 13
3. Dismissal Date: Instant Case

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation.

Here, the it is not clear that the case was filed with an intent to hinder or delay Movant from asserting its rights. Since 2015, Debtor has attempted to continue making payments to Movant. Even when her case would get dismissed, Debtor would again try to address her finances and confirm a plan and make payments. The pattern of the cases does not show that Debtor simply wants to live in the Property for free and stop a foreclosure. Debtor has continuously made payments even if at times she has a missed a few. Moreover, Debtor has also tried to address the arrearage by requesting a loan modification which Movant granted.

Further, the evidence presented shows that from February 5, 2018 through December 23, 2020, Debtor paid a sum totaling \$220,097.78 into Case No. 18-20627, of which Movant received a sum totaling \$28,367.79 toward the pre-petition arrearage claim of \$38,460.98, and a sum totaling \$101,408.22 in ongoing mortgage payments. In that case, Debtor defaulted in plan payments after being affected by the COVID-19 pandemic. Debtor in turn filed the instant case so that she could continue saving her home and pay Movant. Trustee has stated that she is current in plan payments and in post-petition mortgage payments.

In reviewing the prior cases, the court notes under the proposed Chapter 13 Plan Movant is to receive regular monthly post-petition payments of \$1,124.99 and a pre-petition arrearage cure of \$275.86. Proposed Plan, ¶ 3.07(c); Dckt. 3.

However, as the court addressed in ruling on the Movant's Objection to Confirmation, an issue exists whether Debtor has any reasonable financial ability to perform the plan, or whether the filing of bankruptcy cases is a long process where the Debtor "invests" (loses) hundreds of thousands of dollars in trying to save a property Debtor cannot afford.

At the hearing, with the agreement of the Parties motion was continued. Debtor reports that she will being filing amended or supplemental schedules and file a new plan.

June 8, 2021 Hearing

As of the court's drafting of this pre-hearing disposition, no further documents have been filed.

At the hearing counsel for the Movant reported Debtor has filed an amended plan and schedules that appear to indicate that she can make the plan payments. However, Movant argues that this has been the story told in the prior to cases.

Debtor's counsel reported that Debtor lost her job due to COVID, resulting in the prior case being dismissed. However, that job has been retained and Debtor asserts she can perform the Plan.

The court continues the hearing, to be conducted in conjunction with the hearing on Debtor's Motion to Confirm the Amended Plan. Debtor shall address prior to that hearing what additional provisions can be added to the Plan to insure that Debtor provides for the Plan payments to be paid first, and not merely create another default thinking that she can file a fourth bankruptcy case and create a composite Chapter 13 plan that spans more than a decade.

Motion to Confirm the Amended Plan

Debtor's Motion to Confirm the Plan was granted and the Amended Plan was confirmed on July 20, 2021. Creditor did not file an Opposition. The Plan provides for payments of \$3,583.62 to Creditor and a \$650 arrearage dividend. Dckt. 48.

July 20, 2021 Hearing

The court having confirmed the Amended Chapter 13 Plan by final ruling, this Motion is denied without prejudice.

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 Relief From the Automatic Stay filed by Wells Fargo Bank, N.A. having been presented to the court, the court having confirmed the Amended Chapter 13 Plan in this case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on June 23, 2021. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

The hearing on the Objection to Confirmation of the Plan is continued to 2:00 p.m. on August 17, 2021.

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that Debtor failed to provide proof of Social Security Number at the First Meeting of Creditors.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Provide Proof of Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

The continued Meeting of Creditors has been scheduled for August 5, 2021 at 1:00 p.m. Trustee requests the court continue the instant Objection to a date past the continued Meeting and enter an order denying confirmation of the plan if the Debtor fails to provide proof of social security at the Meeting.

The court continues the hearing on this objection to 2:00 p.m. on August 17, 2021.

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

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

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

IT IS ORDERED that the **hearing on the Objection to Confirmation of the Plan is continued to 2:00 p.m. on August 17, 2021.**

Final Ruling: No appearance at the July 20, 2021 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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 28, 2021. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Allowance of Professional Fees is granted.

Chad M. Johnson, the Attorney ("Applicant") for Jack Allen Elder and Rebecca Rene Elder, 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 April 2, 2021, through June 23, 2021. Debtor and Applicant entered into a Chapter 13 Representation Agreement and Charge Authorization on October 31, 2016. Exhibit A, Dckt. 113. Applicant requests fees in the amount of \$1,320.50 and costs in the amount of \$69.71.

Chapter 13 Trustee Reply

On July 8, 2021, the Chapter 13 Trustee filed a Response, identifying some issues in how the information was provided by Applicant for the fees requested and noting that the Plan in the remaining months will not be sufficiently funded to pay all of these additional fees.

For this Motion, Applicant has provided a sufficient (this time) explanation of the fees. The court notes that given the modest amount of fees at issue, Debtor, Debtor's counsel, and the Trustee may be able to squint in the final months of the plan, including a very short period after the sixtieth month during which they squint while the Trustee prepares his accounting, to fund the small shortfall. The costs and expense of modifying the plan, even if ex parte, may not warrant doing so for the modest amount of fees and apparent underfunded amount.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

Reasonable Fees

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

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

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s services for the Estate include drafting a Motion to Employ, a Motion to Sell, and a Motion for Fees. The court finds the services were beneficial to Client and the Estate and were reasonable.

“No-Look” Fees

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

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

...

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

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

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

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

by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 87. 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.

Motion to Employ: Applicant spent 1.5 hours in this category. Applicant spoke with the client, prepared the initial draft of the motion, communicated with the realtor, and finalized the motion for filing.

Motion to Sell: Applicant spent 3.3 hours in this category. Applicant communicated with realtor, Trustee and client, prepared the draft of motion, emailed the Chapter 13 Trustee, and reviewed

and filed the final motion.

Motion to Approve Fees: Applicant spent 1 hour in this category. Applicant prepared accounting, drafted the motion, and reviewed and filed the final motion.

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
Chad M. Johnson	1.50	\$350.00	\$525.00
Tina Perez	4.30	\$185.00	\$795.50
Total Fees for Period of Application			\$1,320.50

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$69.71 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Printing and Envelopes	.05 per page	\$25.85
Postage		\$43.86
Total Costs Requested in Application		\$69.71

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including Debtor's decision to sell their home leading to the filing of motions to sell, employ, and approval of fees, 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 \$1,320.50 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs & Expenses

Costs in the amount of \$69.71 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees	\$1,320.50
Costs and Expenses	\$69.71

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 Chad M. Johnson (“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 Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Professional Employed by Jack Allen Elder
and Rebecca Rene Elder (“Debtor”)

Fees in the amount of \$1,320.50
Expenses in the amount of \$69.71,

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

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

IT IS FURTHER ORDERED that if the Debtor, Chapter 13 Trustee, and their respective counsel determine that an order authorizing the payment of any of the modest projected shortfall in the Plan funding for paying these modest fees and expenses in full, rather than a “squint” resolution, such may be requested by simple ex parte motion (not to exceed two pages in length), with no declaration or other evidence required, and a proposed order lodged with the court.

The court determines the above procedure to be proper and reasonable in light of the very modest amount of fees and the projected shortfall.

49. [17-26579-E-13](#) **DAVID/CONNIE KELLER** **MOTION TO MODIFY PLAN**
[PGM-5](#) **Peter Macaluso** **5-31-21 [121]**
49 thru 50

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 31, 2021. By the court’s calculation, 50 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

The debtors, David Leroy Keller and Connie Jane Keller (“Debtor”) seek confirmation of the Modified Plan after facing unexpected expenses when their property was damaged by a storm. Declaration, Dckt. 124. The Modified Plan provides for plan payments of \$2,635.00 per month commencing June 25, 2021 for 41 months and a zero percent dividend to unsecured claims totaling \$21,403.54. Modified Plan, Dckt. 123. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on June 29, 2021. Dckt. 131. Trustee opposes confirmation of the Plan on the basis that Debtor has incorrectly calculated their post-petition arrearage under the proposed modified plan.

DISCUSSION

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee has been unable to make class 1 creditor Nationstar Mortgage LLC DBA Mr. Cooper installment payments for months December 2020 and February 2021, and a partial payment for January 2021. Trustee's accounting shows that the amount due for the unpaid installments is \$5,606.68 for the property located on 8164 Otium Ct Antelope, where the plan states only \$5,575.15 is due. Thus, Trustee is unable to fully comply with Section 3.07 of the Plan.

Debtor filed a Response agreeing with Trustee's assessment of the plan. Dckt. 134. Debtor request the order of confirming the modified plan include language stating "Post-Petition arrears to Nationstar shall be provided for in the amount of \$5,606.68, representing December 2020, February 2021 and an underpayment of \$10.51 for January 2021."

The suggested resolution by Debtor is appropriate.

Debtor addressing Trustee's concerns, the Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, David Leroy Keller and Connie Jane Keller ("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 31, 2021, as amended,

Post-Petition arrears to Nationstar shall be provided for in the amount of \$5,606.68,

is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 7, 2021. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Relief from the Automatic Stay is denied without prejudice.

Nationstar Mortgage LLC dba Mr. Cooper (“Movant”) seeks relief from the automatic stay with respect to David Leroy Keller and Connie Jane Keller’s (“Debtor”) real property commonly known as 8164 Otium Court, Antelope, California (“Property”). Movant has provided the Declaration of Mary Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made five post-petition payments, with a total of \$6,921.75 in post-petition payments past due. Declaration, Dckt. 110.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on May 24, 2021. Dckt. 113. Trustee asserts the following:

1. Debtor are delinquent under the confirmed plan in the amount of \$1,920.00 (less than one plan payment) and have paid \$103,671.52 in plan payments to the Trustee to date with the last payment of \$3,000.00 posted on May 3, 2021.
2. Creditor is included in Debtor’s confirmed plan as a Class 1 creditor. The filed Proof of Claim 4-1 in the secured amount of \$230,057.51 with

\$41,951.22 arrears. The Trustee has disbursed \$51,054.31 towards Debtor's post-petition ongoing claim and \$23,095.87 to the arrears portion of the claim to creditor Mr. Cooper, to date.

3. Trustee's records show that payments have been disbursed for the months of January, March, and May; and thus, based on the Trustee's records, the mortgage will only be post-petition delinquent two payments, representing December 2020 and February 2021.

The court notes that Trustee filed the same Response twice. The second one being filed on May 25, 2021 as Dckt. 118.

DEBTOR'S REPLY

Debtor filed a Reply on May 24, 2021 requesting the motion be denied on the basis that Movant has been paid \$51,054.31 for Class 1 ongoing mortgage payments, \$23,095.87 for Class 1 mortgage arrears, and \$17.66 for Class 1 post-petition mortgage arrears through the Plan. Debtor recognize they are delinquent but that they will be current before the hearing and once the default is cured Trustee will have the funds to make the applicable payments to Movant.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$177,772.05 (Declaration, Dckt. 110), while the value of the Property is determined to be \$300,000.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1)

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

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for

Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

On May 31, 2021 Debtor filed a Supplemental Declaration testifying that they are proposing a new plan that will cure the additional on-going mortgage payments and explaining they have been affected by COVID-19 and have encountered other medical issues. Dckt. 128. A review of the docket shows that Debtor filed a new plan and Motion to Confirm which has been set for hearing on July 20, 2021 at 2:00 p.m. Dckts. 123, 121.

Debtor's Modified Plan

Debtor's Modified plan was confirmed, where the plan accounts for on-going mortgage payments and the arrearage due to Creditor. Creditor did not oppose Debtor's plan.

July 20, 2021 Hearing

The court having confirmed the Modified Plan, the Motion for Relief is denied without prejudice.

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 Relief From the Stay filed by Nationstar Mortgage LLC dba Mr. Cooper having been presented to the court, the court having confirmed the Modified Chapter 13 Plan addressing the arrearage that is the subject of this Motion, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, and Debtor’s Attorney on June 21, 2021. By the court’s calculation, 29 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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, (“Objector”) objects to Baldo Tamayo’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on March 7, 2018. Case No. 18-21303. Debtor received a discharge on July 3, 2018. Case No. 18-21303, Dckt. 18.

The instant case was filed under Chapter 13 on May 14, 2021.

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 July 3, 2018 which is less than four years preceding the date of the filing of the instant case. Case No. 18-21303, Dckt. 18. 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. 21-21790), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

that need to be addressed. The court places this review at the start of the ruling to ensure that it is noted by the Parties, and doesn't get missed in placed somewhere deep in this ruling.

First, the Trustee notes that in the Application it is stated that the attorney was paid \$900 for fees and expenses prior to this case, but in the prior confirmed Chapter 13 Plan it states the attorney was paid \$542. The court in other applications has presumed that the \$900 figure included the Chapter 13 filing fee and pre-petition expenses. Going forward, Applicant needs to clearly state not only the aggregate of what was paid, but break it down into the retainer paid for the Chapter 13 case, and state the other amounts and the fees or expenses to which they have been used.

The Trustee notes that while a Task Summary Statement is provided as Exhibit B, it does not appear to be a "billing statement" not only showing the time entries at the time the legal service was provided, but a description of the services. Exhibit B, Dckt. 49. The first page of Exhibit B provides a Task Billing Breakdown. This is followed by line by line billings. An excerpt of these billing line items follows:

		Chad	Tina	
1/26/2021	Email re Appointment	Tina		NO CHARGE
1/28/2021	Initial Consultation	Chad		NO CHARGE
2/4/2021	Phone Call with Client	Tina	0.20	\$37.00
2/17/2021	Review Documents & Email Client	Tina	0.30	\$55.50
2/19/2021	Email with Client	Tina	0.10	\$18.50
2/19/2021	Review Documents Prepare Skeletal Petition	Tina	0.50	\$92.50
2/19/2021	Pulled Credit Report			\$45.00
2/22/2021	Court Filing Fee			\$313.00
2/23/2021	Fax to Trustee Sale Agent (Foreclosure)	Tina	0.10	\$18.50
3/1/2021	Email with Client	Tina	0.10	\$18.50
3/2/2021	Prepare Draft of Deficiency Documents	Tina	1.30	\$240.50
3/2/2021	Email with Client	Tina	0.10	\$18.50
3/3/2021	Review Updated Documents	Tina	0.20	\$37.00
3/3/2021	Email with Clients	Tina	0.10	\$18.50
3/3/2021	Update Draft of Def Docs	Tina	0.30	\$55.50
3/4/2021	Review Draft with Client	Chad	2.50	\$1,000.00
3/5/2021	Client Fax Received & Email	Chad	0.10	\$40.00
3/5/2021	Updated Plan and Emailed Client	Chad	0.20	\$80.00
3/5/2021	Filed Deficiency Documents	Chad	0.20	\$80.00
1/25/2021	Review Draft of Petition with Client	Chad	1.10	\$440.00
1/26/2021	Email with Client	Chad	0.20	\$80.00
1/27/2021	Email with Client	Tina	0.10	\$18.50
2/1/2021	Review Draft of Petition with Client	Chad	2.00	\$800.00

These are specific line items for specific legal services. Some additional information could be provided. Applicant and Trustee's counsel should "put their heads together" to see what additional information would be appropriate if necessary. There are no large blocks of time, such as "Client's Case.....6 hours." These entries appear to relate to discrete tasks for limited time periods.

REVIEW OF APPLICATION

Chad M. Johnson, the Attorney (“Applicant”) for James Oliver Dade (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 26, 2021, through June 15, 2021. Debtor and Applicant entered into a Chapter 13 Representation Agreement and Charge Authorization on February 2, 2021. Exhibit A, Dckt. 49. Applicant requests fees in the amount of \$5,316.00 and costs in the amount of \$374.72.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s services for the Estate include case preparation, general case administration, responding to an Objection to Confirmation, and the instant fee motion. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Preparation: Applicant spent 9.8 hours in this category. Applicant evaluated the option of a bankruptcy filing, collected and prepared the necessary documents for a bankruptcy case, reviewed and filed the required petition documents.

General Case Administration: Applicant spent 3.1 hours in this category. Applicant organized and sent the required documents to the Trustee, attended the Meeting of Creditors, and reviewed the proof of claims. These services are both required by the bankruptcy rules and necessary for a successful chapter 13 case.

Objection to Confirmation: Applicant spent 2.4 hours in this category. Applicant negotiated a resolution to the issue of unpaid pre-petition property taxes. This work allowed for the confirmation of the plan.

Fee Motion: Applicant spent 1.0 hour in this category. Applicant prepared and filed the application for fees due to having opted out of the fee guidelines.

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
Chad M. Johnson	10.7	\$400.00	\$4,280.00
Tina Perez	5.60	\$185.00	<u>\$1,036.00</u>
Total Fees for Period of Application			\$5,316.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$374.72 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Fees		\$313.00
Credit Report Fee		\$45.00
Printing and Envelopes	\$0.05	\$5.50
Postage	\$0.51	\$11.22
Total Costs Requested in Application		\$374.72

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$5,316.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 Trustee in a manner consistent with the order of distribution in a Chapter 13 case.

Costs & Expenses

First Interim Costs in the amount of \$374.72 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available in a manner consistent with the order of distribution in a Chapter 13 case.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

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

Fees	\$5,316.00
Costs and Expenses	\$374.72

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 Chad M. Johnson (“Applicant”), Attorney for James Oliver Dade, Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Chad M. Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M. Johnson, Professional employed by Chapter 13 Debtor

Fees in the amount of \$5,316.00
Expenses in the amount of \$374.72,

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

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

Final Ruling: No appearance at the July 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 20, 2021. By the court's calculation, 61 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

Pursuant to Order of the court (Dckt. 66), the hearing on the Objection to Proof of Claim Number 1 of The Bank of New York Mellon Trust Company, N.A. has been continued to 2:00 p.m. on September 14, 2021.

Tori Lynn Jones, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of The Bank of New York Mellon Trust Company, N.A. As Successor in Interest to all Permitted Successors and Assigns of Bank One, National Association as Trustee of the Green Point Manufactured Housing Contract Trust, Pass-Through Certificate Series 2000-3 ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$92,404.49. Objector asserts that in December 2018 Debtor received an insurance check in the amount of \$65,438.00 which Debtor forwarded to Ditech Financial, Inc., the mortgage holder at the time, and that this check satisfied the debt now claimed. Declaration, Dckt. 46.

On July 6, 2021 the parties filed an Ex-Parte Motion and Stipulation requesting the court continue the hearing on the instant Objection to 2:00 p.m. on September 14, 2021. Dckt. 61. The court granted the request on July 12, 2021 and the hearing on this Motion was continued. Dckt. 66.