UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 27, 2021 at 2:00 p.m.

1.	**20-24700-E-13** **WDR-1**	**WILLIAM REDDIN** **Timothy Hamilton**	**CONTINUED MOTION TO CONFIRM PLAN** **4-20-21 [98]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 20, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

The debtor, William Donald Reddin ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of $3,500. Amended Plan, Dckt. 101. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CREDITOR'S NON-OPPOSITION

James D. Price and Sharee E. Price ("Creditor Price") holding a secured claim filed a Statement of Non-Opposition on April 27, 2021. Dckt. 105.

CREDITOR'S NON-OPPOSITION

Rob Croswhite ("Creditor Croswhite") holding a secured claim filed a Statement of Non-Opposition on April 28, 2021. Dckt. 106.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on May 11, 2021. Dckt. 110. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor is delinquent in plan payments.

B. Debtor has included a non-standard provision that may not be needed but failed to check the box at section 1.02.

DISCUSSION

Nonstandard Provision

Debtor's Plan includes a Nonstandard Provision stating:

> Debtor will submit $3500 per month pursuant the Chapter 13 plan on file with the court. Both creditors, Croswhite and Price are now unsecured creditors pursuant to the payment to Croswhite by debtor of the secured portion of creditors claim. Debtor intends to satisfy both obligations to Croswhite and Price through submission of this Chapter 13 plan through the supervision and control by the trustee on a monthly basis the sum of $3500 to be distributed pursuant to the claims filed by the debtor's creditors Croswhite and Price.

Amended Plan, at p. 7. Trustee argues that he cannot assess feasibility where this nonstandard provision appears to be integral to the administration of the plan but Debtor failed to check the box at section 1.02. Trustee adds that non-standard provisions may not be needed for the plan.

Section 1.02 specifically states that

> If there are nonstandard provision this box must be checked __ A nonstandard provision will be given no effect unless this section indicates one is included in section 7 and it appears in section.

Id., at 1. Here, Debtor failed to check the box but included a nonstandard provision under section 7. Thus, this nonstandard provision will not be given effect.

Delinquency

The Chapter 13 Trustee asserts that Debtor is $19,500.00 delinquent in plan payments, which represents multiple months of the $3,500.00 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Review of Plan

The court's review of the Plan discloses that the following provisions for treatment of claims are left blank.

A. Section C – Secured Claims

1. ¶ 3.07 Class 1 Secured Claims - Defaults Cured Through Plan

   a. None

2. ¶ 3.08 Class 2 Secured Claims – Paid in Full Through Plan

   a. None

3. ¶ 3.09 Class 3 Secured Claims – Surrender of Collateral

   a. None

4. ¶ 3.10 Class 4 Secured Claims – Non-Default, Paid Outside of Plan

   a. None

B. Section D – Unsecured Claims

1. ¶ 3.12 Class 4 Priority Unsecured Claims

   a. None

2. ¶ 3.13 Class 6 Non-Priority Unsecured Claims – Paid Outside of Plan

   a. None

3. ¶ 3.14 Class 7 General Unsecured Claims – Paid Through Plan

   a. None

Chapter 13 Plan (not designated as an amended plan); Dckt. 101.

As identified by the Chapter 13 Trustee, Debtor has included an Addendum to the Plan which provides:

> Debtor will submit $3500 per month pursuant the Chapter 13 plan on file with the court. Both creditors, Croswhite and Price are now unsecured creditors pursuant to the payment to Croswhite by debtor of the secured portion of creditors claim. Debtor intends to satisfy both obligations to Croswhite and Price through submission of this Chapter 13 plan through the supervision and control by the trustee on a monthly basis the sum of $3500 to be distributed pursuant to the claims filed by the debtor's creditors Croswhite and Price.

Id. At 7.

As written, the Plan is blank, providing no distribution dividend for any claims – whether secured or unsecured. The Plan does provide for a $3,500.00 a month plan payment to be made by Debtor, for a total funding of $182,000. After payment of the Chapter 13 fees of $18,200, there would be $163,800.00 for distribution for creditor claims.

Two proofs of claim have been filed in this case. Second Amended Claim 1-3 filed by James and Sharee Price for a general unsecured claim in the amount of $114,037.90. Amended Claim 2-2 has been filed by Robert Croswhite for a general unsecured claim of $72,920.58. These are the only proofs of claim filed, which total $186,958.48.

The Plan being funded with $163,800.00 for distribution on creditor claims and there being $186,958.48, it appears that the Class 7 general unsecured claim treatment should state that it provides for a dividend of not less than 85%. As currently written, it does not provide for a minimum amount of dividend to be made on general unsecured claims.

While Debtor may in good faith be intending to provide in the Plan for payment in full of the unsecured claims, this Plan does not provide for such payments and does not bind Debtor to such a plan.

First, no additional provision is required. Rather, Debtor merely needs to complete the provisions of ¶ 3.14, stating that Debtor will provide for a 100% dividend on the $186,958.48 in unsecured claims. If Debtor intends to make a pro rata distribution based on funding of $3,500.00 for fifty-two (52) months, then ¶ 3.14 would state that a dividend of at least 85% would be paid through the Plan. No additional provision is required to provide for such treatment.

At the May 25, 2021 hearing, counsel for the Debtor reported that the Parties proposed for Croswhite to payback the $6,000.00 and that Debtor will cure the delinquency. The Parties agreed to a continuance for the final amendments to be documented, and a supplemental pleading identifying the amendments and a final version of the proposed plan to be drafted and filed as an exhibit in support of the present Motion.

Stipulated Terms

At the May 25, 2021 hearing, the Motion to Confirm the Amended Plan was continued to July 27, 2021, at 2:00 P.M. The Court ordered Supplemental Pleadings and final versions of the

Amended Plan to be filed as an exhibit and served before July 13.

On July 12, 2021, the parties submitted a Chapter 13 plan stipulated to by all creditors. The Stipulation provides the following:

1) Monthly plan payments of $3,500.00.

2) Attorneys Fees in the amount of $4,000.

3) 100% dividend to unsecured claims totaling $186,958.48.

4) Creditors Croswhite and Price are now to be treated as unsecured creditors.

5) Debtor will pay an additional $6,500.00 to the Chapter 13 Trustee within 60 days of the Plan's approval.

6) Debtor will make-up any deficiencies with regards to plan payments within 30 days of the court's acceptance of the plan.

7) Creditor Croswhite will pay $6,000 to the Chapter 13 Trustee within two weeks of Plan's approval. These payments represent payments received made by Debtor to Creditor in April and May 2021.

The parties having addressed the issues raised at the hearing and having worked together on a solution, and presenting a Stipulation addressing said issues, the Amended Plan, as amended by the Stipulation complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, William Donald Reddin ("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 Second Amended Chapter 13 Plan, attached to the Stipulation filed on July 12, 2021, (Dckt. 116), is confirmed.

IT IS ORDERED that Debtor shall file the Second Amended Chapter 13 Plan, which is attached to the Stipulation (Dckt. 116), as a separate document with a unique docket control number.

Debtor's Counsel shall prepare an appropriate order confirming the Second Amended Chapter 13 Plan, identifying the Second Amended Chapter 13 Plan by its unique docket control number in said proposed order, 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.

2. 17-26704-E-13 CYB-3 — SHERRY BERCU — Candace Brooks — MOTION TO INCUR DEBT — 7-13-21 [50]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 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, ----------.

The Motion to Incur Debt is granted.

Sherry Lynn Bercu ("Debtor") seeks permission to refinance real property commonly known as 4930 San Francisco Street, Rocklin, California, with a total refinanced amount of $329,467.00 and monthly payments of $2,045.15 to Finance of America Mortgage, LLC over thirty years with a 3.25% fixed interest rate.

According to the Estimated Settlement Statement, Debtor is to receive proceeds in the approximate amount of $1,438.89. Exhibit C, Dckt. 53, at 12. Debtor is agreeable to any proceeds being disbursed to the Trustee, but requests to receive up to $500.00 of the anticipated proceeds.

DISCUSSION

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 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 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 Sherry Lynn Bercu ("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 Sherry Lynn Bercu is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 53.
>
> **IT IS FURTHER ORDERED** that $500.00 of the proceeds be disbursed to Debtor, and the rest be disbursed to the Chapter 13 Trustee, David P. Cusick.

3. **17-20405-E-13 DBJ-11** **EFREN/ELIZABETH MEMORACION** **Douglas Jacobs** **MOTION FOR HARDSHIP DISCHARGE** **6-23-21 [221]**

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Office of the United States Trustee on June 23, 2021. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

Debtor filed a Certificate of Service which lists only 14 names. According to the Mailing Matrix generated through ECF, there are 89 recipients listed.

It appears that Debtor has presumed that if an attorney has appeared in a bankruptcy case in connection with one contested matter for a client, then the attorney is the agent for service of process for all contested matters in the bankruptcy case. That is not correct. The party in interest must properly be served. Federal Rule of Bankruptcy Procedure 9014(b) requires that service for a contested matter be made in the same manner as a summons and complaint as provided in Federal Rule of Bankruptcy Procedure 7004 and Federal Rule of Civil Procedure 4.

At the hearing, **xxxxxxx**

The Motion for Entry of Hardship Discharge has been set for hearing on the notice required y 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 Entry of Hardship Discharge is xxxxx.

Elizabeth Gastrock Memoracion ("Debtor") moves for entry of a hardship discharge on the grounds that co-debtor Efren Feliciano Memoracion is now deceased. Debtor argues that with Mr.

Memoracion's passing, Debtor can no longer effectively manage their business, make plan payments, and provide for herself. Declaration, Dckt. 224. Debtor is 69 years old and without the help of her husband she is struggling to make ends meet. *Id.*

APPLICABLE LAW

Section 1328(b) of the Bankruptcy Code states:

> Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if–
>
> > (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
> >
> > (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
> >
> > (3) modification of the plan under section 1329 of this title is not practicable.

The provisions of 11 U.S.C. § 1328(b) are written conjunctively and must all be satisfied to grant a hardship discharge. *See, e.g.*, *In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001). Debtor has the burden or proving each of those elements. *Spencer v. Labarge (In re Spencer)*, 301 B.R. 730, 733 (B.A.P. 8th Cir. 2003). "Unsubstantiated and conclusory statements" about a debtor's inability to afford plan payments anymore are insufficient when considering a motion for a hardship discharge. *See, e.g.*, *In re Dark*, 87 B.R. 497, 498 (Bankr. N.D. Ohio 1988).

Some courts have looked for a catastrophic event to justify a hardship discharge, but others have relied upon the plain meaning of 11 U.S.C. § 1328(b) to determine whether a "debtor is justly accountable for the plan's failure." *In re Bandilli*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). Determining whether a debtor is justly accountable is fact-driven, and some considerations include:

A. Whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;

B. Whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;

C. Whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;

D. Whether the intervening event or events are expected to continue in the

reasonably foreseeable future;

E. Whether the debtor had control, direct or indirect, of the intervening event or events; and

F. Whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id.

At least one court has found that an economic hardship (i.e., lost business revenue and increased expenses) is not the kind of event "such as death or disability which prevent[s] a debtor, through no fault of his or her own, from completing payments." *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991).

Sub-section 11 U.S.C. § 1328(b)(1) "requires that the circumstances leading to the debtor's failure to make payments be beyond the debtor's control." *In re Cummins*, 266 B.R. at 855. Such aggravating circumstances need to be "truly the worst of the awfuls—something more than just the temporary loss of a job or a temporary physical disability." *In re Nelson*, 135 B.R. at 307 (citation omitted).

The second portion of 11 U.S.C. § 1328(b) requires that unsecured claims receive no less than they would have through Chapter 7 liquidation. That is called the "best interests" test that is identical to Chapter 13 plan confirmation in 11 U.S.C. § 1325(a)(4). *In re Cummins*, 266 B.R. at 856 (citations omitted). If an unsecured claim would not receive a distribution through Chapter 7, then any payment from a Chapter 13 plan satisfies that requirement. *Id.* (citing *In re Nelson*, 135 B.R. at 308).

Finally, 11 U.S.C. § 1328(b)(3) requires that modifying the Chapter 13 plan not be practicable. Proposing a modified plan "is not 'practicable' if there is no source of income to fund the modified plan." *Id.* (citing *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984)).

The Ninth Circuit has instructed that "[n]othing in the Code compels a bankruptcy court to close, rather than dismiss, a Chapter 13 case when a debtor fails to complete [a] plan." *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 496 (9th Cir. 2015). Furthermore, "the availability of case closure does not eliminate a bankruptcy court's duty to ensure that a debtor complies with the Bankruptcy Code's 'best interests of creditors' test, 11 U.S.C. § 1325(a)(4), and the good faith requirement for confirming a Chapter 13 plan." *Id.* The Ninth Circuit found explicitly that a "bankruptcy court [had] properly conditioned permanent lien-voidance upon the successful completion of the Chapter 13 plan payments. If the debtor fails to complete the plan as promised, the bankruptcy court should either dismiss the case or, to the extent permitted under the Code, allow the debtor convert to another chapter." *Id.*

DISCUSSION

Debtor has demonstrated to the court that the elements of 11 U.S.C. § 1328(b) have been met. While some courts have required that a debtor face a catastrophe, that is not a requirement. In this case, however, there has been a clear catastrophe in Debtor's life that prevents Debtor from complying with and completing the Plan. The Motion is granted, and a hardship discharge under 11 U.S.C. § 1328(b) is

entered for Debtor 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 Hardship Discharge filed by Efren Feliciano Memoracion and Elizabeth Gastrock Memoracion ("Debtor") 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 granted, and the court shall enter a "hardship" discharge pursuant to 11 U.S.C. § 1328(b) for Efren Feliciano Memoracion and Elizabeth Gastrock Memoracion in this case based on the Plan as performed as of the July 27, 2021 hearing date on this Motion.~~

4. **21-20109-E-13 RPH-1** **LARRY/DEBRA JACKSON** **Robert Huckaby** **MOTION TO CONFIRM PLAN** **6-2-21 [57]**

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 2, 2021. By the court's calculation, 55 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 Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.

The debtor, Larry John Jackson and Debra Ann Jackson ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides plan payments of $2,500 for sixty months, and a zero percent dividend to creditors with unsecured claims. Amended Plan, Dckt. 59. 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 July 13, 2021. Dckt. 75. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has not provided business documents to Trustee.

B. There are no attachments to Schedule I for business or rental property gross receipts.

C. Debtor has failed to file a Motion to Value Collateral.

DISCUSSION

Failure to File Documents Related to Business

Debtor has failed to timely provide the Chapter 13 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 the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Failure to File Business Documents Required by Schedule I

The Chapter 13 Trustee argues that 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 the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Debtor's Reliance on Motion to Value Secured Claim

A review of Debtor's Plan shows that it relies on the court valuing the collateral of Les Schwab Tire Centers of California, Inc. Debtor has failed to file a Motion to Value Collateral of Les Schwab Tire Centers of California, Inc., however. Without the court valuing the collateral, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The 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 Chapter 13 Plan filed by the debtor, Larry John Jackson and Debra Ann Jackson ("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 Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

5. 21-20109-E-13 LARRY/DEBRA JACKSON
ANF-1
KEYPOINT CREDIT UNION VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-6-21 [65]

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

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

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, and Office of the United States Trustee on July 2, 2021. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion for Relief from 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.

The Motion for Relief from the Automatic Stay is xxxxx.

Keypoint Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Ford Truck Escape, VIN ending in 8387 ("Vehicle"). The moving party has provided the Declaration of Megan Pieracci to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Larry John Jackson and Debra Ann Jackson ("Debtor").

Movant argues Debtor has not made two (2) post-petition payments, with a total of $676.36 in post-petition payments past due. Declaration, Dckt. 68.

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 $15,692.59 (Declaration, Dckt. 68), while the value of the Vehicle is determined to be $15,700.00, as stated in Schedules A/B and D filed by Debtor.

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

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

11 U.S.C. § 362(d)(2)

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

At the July 20, 2021 hearing, Movant's counsel provided an oral addendum to the Motion, stating that the grounds for providing relief from the fourteen day stay is the Debtor's not providing proof of insurance.

Debtor's counsel appeared and reported that Debtor has cured the default in payments, but no evidence was presented to the court.

The court continues the hearing to 2:00 p.m. (Specially Set Time) on July 27, 2021, to be conducted in conjunction with the Debtor's Motion to Confirm a Chapter 13 Plan in this case. The proposed Chapter 13 Plan provides for Movant in Class 4 – direct payment by Debtor of a pre-petition claim not in default – for which the automatic stay is modified to allow Creditor to exercise its rights against its collateral in the event of a default.

Debtor's Proposed Plan

Debtor's Plan was denied after Trustee raised valid objections for its confirmation, namely that Debtor has failed to file documents related to the business and documents required by Schedule I, and Debtor has failed to file the Motion to Value the collateral of Les Schwab Tire Centers of California, Inc.

July 27, 2021 Hearing

At the hearing xxxxxxxx

6. **20-21211-E-13** **FELICIA HICKS** **MOTION TO MODIFY PLAN**
CDL-61521 **Colby Lavelle** **6-17-21 [74]**

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 Not 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 17, 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).

A review of the Certificate of Service shows that Debtor failed to serve the Internal Revenue Service and the United States Attorney as required under the local rules.

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, Felicia Lynn Hicks ("Debtor") seeks confirmation of the Modified Plan because Debtor has been furloughed from work, has not received IHSS payments as anticipated, and has had to help her ill mother with care and medical bills. Declaration, Dckt. 76. The Modified Plan provides monthly payments of $227.87, culminating with one monthly payment of $93.43 on February 2024, and a two percent dividend to unsecured claims totaling $31,085.89. Modified Plan, Dckt. 62. 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 July 13, 2021. Dckt. 84. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor failed to properly serve the Internal Revenue Service, the U.S.

Attorney's Office, and the Department of Justice.

B. Debtor has incurred a new debt without the Court's permission.

C. Debtor has not complied with Local Rule 9041-1 (c)(3).

DISCUSSION

Insufficient Notice

Federal Rule of Bankruptcy Procedure 2002(b)(2) requires twenty-eight days' notice "for filing objections and the hearing to consider confirmation of a . . . chapter 13 plan." FED. R. BANKR. P. 2002(b)(2). Debtor has failed to serve all parties in interest. Local Rule 2002-1(a) and (c) provide:

> (a) When listing a debt to the United States for other than taxes, the debtor shall separately list both the U.S. Attorney and the federal agency through which the debtor became indebted, as required by Fed. R. Bankr. P. 2002(j)(4). The address listed for the U.S. Attorney shall include, in parentheses, the name of the federal agency as follows:
>
> (c) In addition to addresses specified on the Roster of Governmental Agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:
>
> 1) United States Department of Justice
> Tax Division
> Civil Trial Section, Western Region
> Box 683, Ben Franklin Station
> Washington, D.C. 20044;
>
> 2) United States Attorney as specified in LBR 2002-1(a) above; and
>
> 3) Internal Revenue Service at the addresses specified on the Roster of Governmental Agencies maintained by the Clerk.

Per Debtor's Certificate of Service, the Internal Revenue Service was not properly served. That failure to
provide notice violates Federal Rule of Bankruptcy Procedure 2002(b).

Debtor filed a Response on July 21, 2021. Dckt. 87. Debtor seems to state that the Internal Revenue Service was properly served where the documents were filed to

> INTERNAL REVENUE SERVICE CENTRALIZED INSOLVENCY OPERATION PO BOX 7346 PHILADELPHIA PA 19101-7346.

Id., at 1.

Proper service to the Internal Revenue Service according to the local rules requires that Debtor serve the parties as listed above, which are:

1) United States Department of Justice
Tax Division
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044;

2) United States Attorney as specified in LBR 2002-1(a) above; and

3) Internal Revenue Service at the addresses specified on the Roster of Governmental Agencies maintained by the Clerk.

Thus, proper service has not been provided.

Amended Schedule J - Car Payment

Trustee notes that Debtor's Amended Schedule J reflects, on line 17a., a car payment of $385.00. This payment is not reflected in the plan and is not listed on the Schedule J filed with the petition.

A review of the Schedule J filed with the petition shows the original line 17a. reflected a car payment of $480. This was listed as a Class 4 claim on Debtor's confirmed plan. Dckt. 11. This was the lease payment for a vehicle, which creditor, Honda Financial, sought and was granted relief from the automatic stay. Dckt. 39. An amended Proof of Claim from Honda Financial shows that after the vehicle was sold at auction, Debtor's remaining balance on the lease was $2,985.77. Amended Proof of Claim 1-2.

At this point, the court is uncertain whether the Debtor purchased a new vehicle without leave from this court, or if the $385.00 payment on the Amended Schedule J is payment for the remaining balance on the Honda Financial lease.

In Debtor's Response (no testimony by Debtor as to these "facts"), Debtor explains that this expense is not new debt, "but rather a monthly amount the Debtor pays her mother for the use of the mother's vehicle. Debtor does not have a contract with her mother and as such, has not incurred any new debt." Response, ¶ 3.

These payments are made to a mother who is dependent on the Debtor and for whom Debtor is providing extensive care services. If counsel's statement that "Debtor does not have a contract with her mother, and as such, has not incurred any new debt" is true, then Debtor does not need to pay her mother $385 a month. Thus, based on Debtor's argument, Debtor is giving a $385 monthly gift to her mother rather than paying her debts.

Failure to Comply with Local Rule 9041-1 (c)(3)

The Debtor's use of "CDL-61521" as a docket control number does not comply with Local Rule 9014-1 (c)(3).

Debtor apologizes for the error in the docket control number and will make a conscientious effort to use the proper format going forward. Response, ¶ 4.

Proper service not having been provided to the Internal Revenue Service, 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, Felicia Lynn Hicks ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

7. **19-25022-E-13 MET-2** **EDUARDO MONTERROSA** **Mary Ellen Terranella** **CONTINUED MOTION TO MODIFY PLAN** **5-13-21 [87]**

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

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

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

The Motion to Confirm the Modified Plan is xxxxx.

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

1. payments of $3,550.00 commencing June 25, 2021, for 12 months,

2. followed by $4,810.00 per month for 51 months for a plan term of 84 months, and

3. a zero (0) percent dividend to unsecured claims totaling $221,723.00.

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

Debtor filed a Supplemental Document further modifying the proposed Plan. Dckt. 102. Debtor seeks to modify the secured claim of Ally Bank as follows: reclassify the claim from a Class 4 claim to Class 2A in order to account for post-petition arrearage in the amount of $5,559.09. Thus, the monthly plan payment will be $2,020.00 for 21 months and $4,865.00 for 63 months.

CHAPTER 13 TRUSTEE'S OPPOSITION

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

A. Insufficient service of Plan.

B. Debtor fails to explain why the interest rate is the contract rate.

C. Debtor will not be able to perform the plan as required.

D. The caption in the Motion states incorrect hearing information.

DISCUSSION

Insufficient Service

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

Interest Rate

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

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

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

Cannot Comply with the Plan

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

Incorrect Hearing Information

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

DEBTOR'S REPLY TO CHAPTER 13 TRUSTEE'S OPPOSITION

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

Insufficient Service

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

Interest Rate

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

Cannot Comply with Plan

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

Errors in Motion's Caption

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

In the response filed by Debtor on June 22, 2021, specific endeavors to address the Trustee's concerns and to "tweak" the Plan are discussed, and Debtor requests a continuance to accomplish such. The court continues the hearing to allow Debtor and Debtor's counsel to continue in their diligent prosecution of this case.

Second Supplemental Pleading

On July 2, 2021, Debtor filed a Supplemental Pleading further modifying the proposed Modified Plan in order to address the secured claim of Ally Bank and Trustee's Opposition to Motion to Modify and proposing the following:

1. Provide for the secured claim of Ally Bank as a Class 2A claim, in the amount of $36,447.74, with an interest rate of 8.25%, with monthly payments of $799.42, and for the post-petition arrearage amount of $5,559.09 to be paid, with monthly payments of $463.26.

2. The Class 2 claim of the Franchise Tax Board, in the amount of $4,101.00 shall be paid with interest at 5.00%, with monthly payments of $77.00.

3. Plan payments shall be $2,020.00 per month for 21 months, then $4,865.00 per monthly for 12 months, followed by $5,200.00 per month for 51 months.

Dckt. 114.

July 27, 2021 Hearing

Having now been through several versions of plan amendments, substantial service issues existing, and to avoid confusion, it appears that it is time to file a new final amended version of the plan, with a new motion to confirm.

At the hearing, xxxxx.

8. **18-22123-E-13 DEF-7 8 thru 9** | **ROBERT/KATHRYN PETERSON David Foyil** | **OBJECTION TO CLAIM OF ELSA SHEKELLE, CLAIM NUMBER 5 5-6-21 [86]**

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

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 6, 2021. By the court's calculation, 82 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 5 of Elsa Shekelle is xxxxx.

Robert Edward Peterson and Kathryn Martha Peterson, the Chapter 13 Debtor ("Objector") requests that the court partially disallow the claim of Elsa Shekelle ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $220,054.32. Objector asserts that the parties came to a settlement agreement through the Bankruptcy Dispute Resolution Program and a Judgement subject to a $38,776.68 credit if Debtor provides certain documents. Thus, Objector requests that Creditor's allowed claim be only in the amount of $78,115.52.

Trustee's Response

Trustee does not oppose the Objection but notes that Debtor has not provided or filed the releases that would entitle them to the credit they are requesting.

DISCUSSION

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

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

The Claim is asserted to be unsecured in the amount of $220,054.32. Objector asserts that the parties came to a settlement agreement through the Bankruptcy Dispute Resolution Program. Debtor asserts both parties signed the Bankruptcy Dispute Resolution Agreement. Objector also claims that when Debtor's attorney received the proposed judgement, there were additional terms and conditions inconsistent with the terms of the settlement.

Ultimately, the court entered a Judgement of Non-Dischargeability for Plaintiff in the amount of $114,341.70 (Judgment in the amount of $70,341.70 and $44,000 in Attorney's fees/costs). The Judgment is subject to a credit of $38,776.68, contingent upon Plaintiff's receipt of original notarized releases and full release of claims against/to Martha J. Voester Living Trust and Elsa Shekelle, Trustee from children of Defendants by Debtor.

As noted by the Trustee, Debtor seeks to obtain credit pursuant to the terms of the settlement agreement; yet Debtor has failed to file with the court the very documents which would prove that they are entitled to such credit.

At the hearing, xxxxxxxxx

~~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 Claim of Elsa Shekelle ("Creditor"), filed in this case by Robert Edward Peterson and Kathryn Martha Peterson, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection to Proof of Claim Number xx of Creditor is xxxxxx, and the claim is disallowed in its entirety / Describe Portion~~

~~Disallowed.~~

~~Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.~~

9. 18-22123-E-13 DEF-6 ROBERT/KATHRYN PETERSON David Foyil MOTION TO MODIFY PLAN 5-5-21 [80]

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 5, 2021. By the court's calculation, 83 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, Robert Edward Peterson and Kathryn Martha Peterson ("Debtor") seek confirmation of the Modified Plan to account for the judgment entered in the related adversary proceeding, Shekelle v. Peterson, et. al (2018-02121). Declaration, Dckt. 83. The Modified Plan provides for 59 payments of $700 for sixty months, followed by one payment of $89,268.00 (financed by the sale of Debtor's home), and a 100% dividend to creditors with unsecured claims totaling $78,115.52. Modified Plan, Dckt. 82. 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 July 13, 2021. Dckt. 98. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor's Schedule J reports mortgage expenses.

B. The Modified Plan is contingent on an Objection to Claim.

C. The Modified Plan calls for delay in the sale of Debtor's home

DISCUSSION

Inconsistent Mortgage Expenses

Trustee notes that Debtor's Schedule J lists additional mortgage payments of $400.00. Dckt. 79. However, Debtor's declaration states the expense was $231.46 but has increased to $400.00. Declaration, Dckt. 93. The Modified plan provides for payments of $231.48. However, the Trustee states the most recent Notice of Mortgage Payments Change (dated June 6, 2021) reports a monthly payment of $184.50.

At the hearing, xxxxxxx

Debtor's Reliance on an Objection to Claim

A review of Debtor's Plan shows that it relies on the court granting an Objection to the Claim of Elsa Shekelle reducing the balance to $78,115.52 after applying Debtor's credit. The Objection to claim is set to be heard on July 27, 2021. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

The court has sustained / overruled Debtor's Objection to Claim.

Feasability

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee notes that the Modified Plan's reliance on the sale of Debtor's home in month 60 might make the plan unfeasible. Trustee further notes Debtor is in month 39 of their plan. Trustee does not believe it is reasonable for creditors to have to wait 21 months before they receive payment.

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, Robert Edward Peterson and Kathryn Martha Peterson ("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.

10.	**20-25523-E-13 RPH-3**	**THOMAS EDWIN KNOERNSCHILD Robert Huckaby**	**MOTION TO CONFIRM PLAN 6-2-21 [62]**

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties as listed in the "Mailing List Attached". However, no such matrix was included or attached or filed. Thus, the court is unable to determine whether service was properly done.

At the hearing, xxxxxx

The Motion to Confirm the 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 Plan is denied.

The debtor, Thomas Edwin Matlock Knoernschild ("Debtor"), seeks confirmation of the Chapter 13 Plan. The Plan provides for $538.00 for the first 5 payments, then $648.50 for the remaining 55 payments. Plan, Dckt. 64. Furthermore, Debtor is paying the full balance claimed by the creditor, Consumer Portfolio Services ("Creditor"), without interest because Creditor is unsecured. *Id.* 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

OPPOSITIONS

Creditor's Opposition

Consumer Portfolio Services, Inc. ("Creditor") holding a secured claim filed an Opposition on June 21, 2021. Dckt. 70. Creditor opposes confirmation of the Plan on the basis that the interest rate proposed by Debtor at 3.25% is too low where the contractual rate of interest for Creditor's secured claim is 22%.

Chapter 13 Trustee's Opposition

The Chapter 13 Trustee, David Cusick, ("Trustee") filed an Opposition on July 13, 2021. Dckt. 74. Trustee opposes confirmation of the Plan on the basis that the debtor is delinquent in plan payments.

DISCUSSION

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 0.00%. Creditor's claim is secured by a 2015 Jeep Grand Cherokee, with a VIN No. 1C4RJFAG4FC844181. 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)). Creditor asserts that the contractual rate of interest for Creditor's claim is 22%. Thus, according to Creditor, Debtor "has not even attempted to apply the standard applied by the Supreme Court in *Till."*

Creditor offers no explanation or *Till* analysis for the court. No representative of Creditor came forward to provide testimony under penalty of perjury of any special factors that the court should consider in determining the interest rate.

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/delay adjustment. Creditor having only identified risk factors common to every bankruptcy case, being paid over the life of the bankruptcy plan, 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 Plan cannot be confirmed. *See* 11 U.S.C. § 1325(a)(5)(B)(ii). [Fn.1.]

The court notes that Creditor does not argue that the 3.25% interest rate leaves Creditor not adequately protected or creates any risk for which an enhancement to the prime rate should be made, but merely that Creditor did not feel properly "compensated" if it was paid on its loan with 3.25% interest.

The court notes that Creditor did not attach to Proof of Claim 1-1 a copy of the note, security

agreement, and accounting of the arrearage (including the reasonable costs and expenses added to the 22% interest).

At the hearing, **xxxxxxx**

FN. 1. Creditor's arguments concerning the interest rate raises several concerns, not only with the present Motion but other cases in which Creditor has a secured claim which must be provided for. Creditor proudly states its contract rate of 22%, in a decade-long era of sub-10% (and often sub-6%) interest rates. This causes the court to question whether Debtor was "financially competent" to enter into such a contact and whether such contract is void (at least as to the interest rate).

Creditor then makes reference to the risks inherent in the proposed plan to Creditor's legitimate economic interests under the Bankruptcy Code. Creditor states that the interest rate is "far below" the market rate. Actually, it appears that the 3.25% is much closer to the market rate than Creditors **22%**.

Creditor's collateral is a 2015 Grand Cherokee, which is now seven model years old. The rapid new car depreciation of the first three years has long since passed. As is well known, in 2021, used car values have increased rapidly, with one report being that used car values have increased **10.5%** from just May 2021 to June 2021.
https://www.businessinsider.com/price-of-used-cars-record-increase-june-2021-7

Delinquency

The Chapter 13 Trustee asserts that Debtor is $1,914.00 delinquent in plan payments, which represents multiple months of the $648.50 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The 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 Chapter 13 Plan filed by the debtor, Thomas Edwin Matlock Knoernschild ("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 Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

11. **18-20228-E-13 MWB-2** | **ROBERT/DONNA SEYMOUR** **Mark Briden** | **MOTION FOR COMPENSATION FOR MARK W. BRIDEN, DEBTORS ATTORNEY(S)** **6-24-21 [82]**

APPEARANCE OF MARK BRIDEN, ESQ., COUNSEL FOR DEBTOR, REQUIRED FOR THE JULY 27, 2021 HEARING

TELEPHONIC APPEARANCE PERMITTED

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 24, 2021. By the court's calculation, 33 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 notice given by Applicant is two (2) days short of what is required by the Federal Rules of Bankruptcy Procedure the Local Bankruptcy Rules for a motion for compensation exceeding $1,000. In light of substantial compliance with the notice requirements and the modest amount of fees, the court *sua sponte*, this time, shortens time to the thirty-three days notice given.

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

The Motion for Allowance of Professional Fees is denied.

Mark W. Briden, the Attorney ("Applicant") for Robert Cecil Seymour and Donna Rae Seymour, 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 of April 26, 2019, through June 21, 2021. The order of the court approving employment of Applicant was entered on May 31, 2018. Dckt. 50. Applicant requests fees in the amount of $2,160.00 and costs in the amount of $79.62.

Improper Pleadings,
Lack of Testimony, and
No Authentication of Exhibits

Applicant and the Debtor not only "cut the corner" on providing adequate notice, but have chosen to file pleadings that do not comply with the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Federal Rules of Evidence. Applicant has prepared a Motion which states with particularity the grounds upon which the relief is requested. Motion, Dckt. 82. Fed. R. Bankr. P. 9013.

However, no declaration has been filed by Applicant. A declaration must be filed separately from the motion. L.B.R. 9004-2(c),9014-1(d)(4). Applicant has had decades of experience practicing in the Eastern District of California and is well aware of these pleading rules.

Then, Applicant appears to have filed a version of what is permitted in state court as a "verified complaint." For a verified complaint in state court, a person may tag onto the end of the complaint a statement in which a person with personal knowledge of facts alleged in the complaint verifies and testifies to such facts. Cal. C.C.P. § 446. This is not testimony under penalty of perjury, but a pleading device which then requires an opposing party to provide a verified answer, rather than just a general denial.

While creating a "MoKnow" document, titling the Motion as being a "Motion. . . and Declaration Thereon," no declaration is provided. No testimony is made under penalty of perjury. Rather, at the end of the MoKnow, Applicant states he has personal knowledge and could testify (but is not here testifying) that the Statements are True and Correct. MoKnow, p.1:after line 28, 2:4-5; Dckt. 82.

The MoKnow makes no reference to any exhibits being filed in support. However, filed at Docket Entry 84 is a pleading titled "LIST OF EXHIBIT(S)." It is signed by Applicant, with only the Notation "RESPECTFULLY SUBMITTED." *Id*. (emphasis in original). The Exhibit is a listing of time and billing entries by Applicant.

However, the Exhibit is not authenticated as required by Federal Rules of Evidence 901 et seq.

The court has not been provided with any testimony in support of the Motion. Though a document titled EXHIBIT(S) has been filed, no reference is made to it in the MoKnow. Even if referenced, the EXHIBIT(S) have not been authenticated.

The court is presented with little more than a "note" from Applicant saying "pay me this." Given counsel's decades of experience, he clearly knows that one needs to provide credible evidence and that exhibits need to be properly authenticated, which this MoKnow does not do. That leaves two possibilities.

First, that Applicant acted knowingly, intentionally, and without regard for his duties and obligations (including the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011), and figured he could just slide this by the "good ol' boy" bankruptcy court. Given counsel's experience and the court's experience with having him appear in this court, that does not appear to be likely.

Alternatively, and what appears to be most likely, is that Applicant, busy with other work for his clients, offloaded this Applicant to a non-attorney, clerical person since it would be so "simple." That non-lawyer, clerical person prepared the pleadings, grabbed a state court pleading concept he or she was aware of, and slapped it together. Applicant, busy focusing on addressing other clients' immediate concerns, did not read the "simple" pleadings carefully, slapped his signature on them, and has his non-lawyer, clerical person let them fly.

Trustee's Non-Opposition

Trustee filed a Non-Opposition on July 12, 2021. Trustee does not oppose the fees but notes that Applicant's motion incorporates his declaration into the motion and that Debtor is delinquent in the amount of $2,318.84. Dckt. 86.

It appears that the Trustee fell into the "verified" trap and is treating the general statement "I have personal knowledge of the above and could testify at some future date, but am not now under penalty of perjury, as to specific facts," There is no "declaration" filed with or incorporated into the MoKnow.

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 additional services requested by Debtor after confirmation of the Plan, such as defense and representation of debtor in various Motions 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. 50. 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.

Motions to Dismiss: Applicant spent 3.9 hours in this category. Applicant prepared and filed Opposition to Trustee's Motion to Dismiss (DPC-1) and reviewed related motions; reviewed Trustee's Motion to Dismiss (DPC-2) and prepared and filed an Opposition and reviewed Trustee's related motion; and prepared the application for fees. Applicant also attended hearings.

Case Management: Applicant spent 3.3 hours in this category. Applicant corresponded with the Trustee and with client.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Mark W. Briden	7.2	$300.00	$2,160.00
Total Fees for Period of Application			$2,160.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $79.62 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$42.84
Court Call		$22.50
		$0.00
Total Costs Requested in Application		$65.34

The costs in the exhibits reflect a total of $65.34 in postage and court call fees. This is less

that the amount of $79.62 requested by Applicant through this Application. The court applies the fees as listed in the exhibit.

FEES AND COSTS & EXPENSES NOT ALLOWED

Though unfortunate, Applicant has not presented the court with evidence to establish a factual basis for the relief requested. While this may have been inadvertent, Applicant assigning the drafting and filing of the pleadings to a non-lawyer clerical staff member, that does not change the fact that grossly deficient pleadings, unsupported by evidence, have been filed. And Applicant has, by signing the pleadings, certified pursuant to Federal Rule of Bankruptcy Procedure 9011.

Applicant (or his non-attorney clerical staff member) puts the court in a very difficult position by filing such grossly deficient pleadings. If the court lets it slide for an attorney that the judge has known for almost 40 years, then there is the appearance of the "good ol' boy" network being re-established. It would appear that the judge only applies the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Federal Rules of Evidence to attorneys the judge does not favor. Clearly that is not the practice in this court – the Rules apply, and have been applied, to everyone.

In some situations where there is a minor shortfall in complying with the Rules and law, the court may continue a hearing to allow the movant/applicant to file supplemental pleadings. In situations where the "mistakes" are repeated, the court may deny the requested relief without prejudice, making the attorney start all over.

Then, in some situations where the pleadings are so grossly defective that they could not have been a mistake by the attorney, the relief is denied (and not without prejudice). These pleadings were prepared in the cool of Applicant's office, there being no deadlines imposed by another attorney (such as when an opposition to a motion has to be filed) or the court (such as a deadline for filing application for fees and expenses).

Applicant has presented the court with his (or his non-attorney clerical staff member's) best shot at the motion, supported by the best evidence that could be presented. Unfortunately, the MoKnow falls short and is not supported by any evidence (whether testimony or properly authenticated exhibits).

It does not give the court any pleasure in denying a motion for fees sought by a consumer attorney who has fought hard to keep his client's case and journey for bankruptcy relief moving forward. But to just give the fees based on the MoKnow would be a dereliction of the court's duty and create the appearance that the Rules don't really apply, "if youz one of the good ol' boyz."

While the court sincerely believes that Applicant did not, and would not, do so, this MoKnow, unsupported by evidence, creates such an appearance. If the court were under these circumstances to merely say, "oh, now that I caught this, file some supplemental pleadings," that could well be the green light to less scrupulous attorneys than Applicant to swamp the court with grossly deficient pleadings and see what they can get away with, because the only consequence is that when caught they only need to then do what is required by the law.

The Motion 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 for Allowance of Fees and Expenses filed by Mark W. Briden ("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 the Motion is denied and Mark W. Briden, Esq., counsel for Debtor, is not allowed any additional fees and costs for the period April 26, 2019, through June 21, 2021.

12.	**21-21638-E-13 MMJ-1**	**COREY/BRITTANIA GARCIA Jason Vogelpohl**	**OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE 5-26-21 [19]**

APPEARANCE OF MARJORIE M. JOHNSON, ESQ.
ATTORNEY FOR CAPITAL ONE AUTO FINANCE
REQUIRED FOR HEARING
TELEPHONIC APPEARANCE PERMITTED

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 26, 2021. By the court's calculation, 62 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor may not "cram down" the value paid to the creditor over the life of their Chapter 13 Plan when they purchase a vehicle for personal use within 910 days of filing bankruptcy.

B. The Plan fails to pay the applicable prime plus interest rate.

C. The Plan does not provide for equal monthly payments to Creditor.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Proof of Claim 5-1, Creditor asserts a claim of $5,775.07 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $3,700.00 and indicates that it is secured by a 2012 Chevrolet Volt Sedan 4D. (The court assumes there was a clerical error and that the vehicle listed as a 2012 Chevrolet Volt in light of the purchase contract attached to Proof of Claim 5-1 stating it is a 2013 Volt that secures Creditor's claim.) The Plan does not provide for treatment of this claim. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor May Not Cram-down

Creditor objects to the confirmation of the Plan on the basis that Debtor may not use 11 U.S.C. § 506 to limit the secured portion of a claim to the Collateral's value where Creditor has a purchase money security interest securing the debt that is the subject of the claim and the Collateral was purchased within 910 days of the petition. In other words, Creditor notes, when a debtor purchases a vehicle for personal use within 910 days of filing bankruptcy, they may not cram-down the value paid to the creditor over the life of their Chapter 13 Plan.

Looking at the Plan, it is not clear whether Creditor's claim is even included in the Plan. On Schedule D, Debtor does not list any creditor having a lien on the 2013 Volt. Dckt. 1 at 18-20.

However, on Schedule J Debtor states that there is a $100.00 a month payment to be made on an obligation secured by the Volt. *Id*., p. 49. No provision is made for paying such obligation directly to the Creditor in Class 4 of the Plan. Plan,

Interest Rate

Creditor objects to the confirmation of the Plan where Debtor's Plan does not provide for the claim and thus Debtor fails to pay the applicable prime rate plus interest rate. Creditor's claim is secured by a vehicle identified as a 2013 Chevrolet Volt Sedan 4D. 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. 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).

Plan Does Not Provide for Equal Monthly Payments

Creditor objects to the confirmation of the Plan on the basis that the Plan does not provide for equal monthly payments to the Creditor. The Bankruptcy Code requires that a Plan may be confirmed over an objection of a secured creditor only if the payments made under the Plan are "in equal amounts." 11 U.S.C. § 1325(a)(5)(B)(iii)(I). Creditor objects to the confirmation of the Plan to the extent that the Plan provides payments to Creditor on a *pro rata* basis. [Fn.1.]

FN. 1. In reading Creditor's Objection it is thin on any specifics with respect to the Plan treatment of its claim, and appears to be a "stock" Objection that identifies theoretical, possible, academic objections a creditor could make. However, there is nothing said about the actual proposed treatment of Creditor's claim.

The court notes that the Chapter 13 Trustee could identify that the Plan did not provide for Creditor's Claim and so stated in his Objection to Confirmation. Dckt. 25.

At the hearing, counsel for Creditor addressed the court's concerns, stating **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 Capital One Auto Finance, a division of Capital One, N.A. ("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.

13. 17-22651-E-13 WW-5 | **MARIO/CHRISTINE BORREGO** **Mark Wolff** | **CONTINUED MOTION TO MODIFY PLAN** **5-18-21 [112]**

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 Not 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 19, 2021. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

Movant did not provide sufficient notice. At the hearing, the court shortened to the time given based on the facts of this case.

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

The Motion to Confirm the Modified Plan is xxxxx.

The debtors, Mario Manuel Borrego and Christine Joy Borrego ("Debtor"), seek confirmation of the Modified Plan due to COVID-19 and Debtor Mario's reduction in income following an injury. Declaration, Dckt. 120. The Modified Plan provides for payments of $1,025.00 for 12 months to complete the plan beginning May 25, 2021, and a zero percent dividend for unsecured claims totaling $37,065.31. Modified Plan, Dckt. 115. 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 2, 2021. Dckt. 125. Trustee opposes confirmation of the Plan on the basis that:

A. The proposed plan fails the Chapter 7 liquidation analysis.

B. Debtor has failed to file supplemental Schedules I or J reflecting their current financial situation.

C. Debtor has failed to provide updated information on their dependents

D. Debtor has failed to turn over W-4 forms

E. There is a possible mislabeling of a 2(B) claim as a 2(A) claim

DISCUSSION

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt assets total $54,854.00; yet in the modified plan, Debtor proposes to pay unsecured creditors a zero percent (0%) dividend. Because liquidation of the non-exempt assets would lead to creditors with unsecured claims being entitled to at least one cent, Debtor's proposal to pay them zero percent fails the Chapter 7 liquidation analysis.

Feasibility

The Debtor included in their original expenses a $495.60 payment for retirement fund loans. The debt was supposed to be paid off in 36 months, and this is reflected in the fact that payments in Debtor's plans were to increase from $715.00 to $1,165.00 beginning on month 37 of the plan. In Debtor's amended Schedule J, Christine Borrego continues to budget $295.50 in retirement fund loan payments.

Debtors have also increased voluntary retirement contributions from $263.06 and $319.82 to $277.81 and $624.00 based on an increased income. Trustee opposes such increase due to Debtor providing zero dividends to creditors with unsecured claims.

Trustee notes that Debtor's Supplemental Schedule J reflect 2 dependents; a 25-year-old son and a 26-year-old daughter, who appear to be the same age as when original Schedule J was filed even though 4 years have passed. Debtors provide no information about these dependents, such as if they continue to reside in the home with the Debtor, or if they contribute financially in any way.

Trustee also notes that Debtor has failed to include language previously confirmed providing that Debtor is to provide Trustee with copies of any new W-4 forms prepared and/or submitted to their employer during the pendency of the Chapter 13 Plan.

Lastly, Trustee seeks clarification regarding a Class 2(A) stated as a purchase money security interest claim and a Class 2(B) claim regarding a 2010 Toyota Corolla both for the same amount but Trustee believes the double inclusion was an oversight.

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

At the hearing, counsel for the Debtor requested the hearing be continued to July 27, 2021.

Supplemental Pleadings

On July 7, 2021 Debtor filed Supporting Documents and Declaration of Mario Borrego. Dckts. 130, 131. Debtor proposes to increase the length of their Chapter 13 Plan by four months as authorized under the CARES Act to pay into their plan an additional $4,100.00.

In the Declaration, Debtor testifies that they have experienced difficulties related to COVID where both Debtors saw their working hours reduced and also had to account for major car repairs. Declaration, ¶¶ 2-3. Because of these issues, Debtor borrowed money from a retirement account to catch up on expenses and the Chapter 13 Plan. *Id.*, ¶ 4. Debtor understand that permission was required to obtain new debt but testify that they "had little choice" and will get court's permission if they need to incur any future debts while the case is pending. *Id.*, ¶ 5.

Trustee filed a Status Report on July 9, 2021 recommending approval of Debtor's proposed change extending the plan for another four months. Dckt. 133. Trustee notes that Debtor has explained the retirement debt and that they appear to have good cause for the loans. *Id.*, at ¶ 2. Further, Trustee is amenable to use a simpler alternative to W-4 forms and if the Debtor does not provide the forms, Trustee will seek to dismiss the case. *Id.*, at ¶ 3. Lastly, Trustee will consider his Opposition resolved as long as Debtor confirms in the order confirming the Plan that no claim is provided for in the plan as a Class 2(A) claim, and the two numeric entries in line 1 of the Class 2(A) table in the plan are hereby deleted.

July 27, 2021 Hearing

At the hearing, xxxxx.

14. **21-20859-E-13 JSO-1** **TERRY MAYS** **Jeffrey Oglivie** **MOTION TO CONFIRM PLAN** **6-22-21 [21]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 22, 2021. By the court's calculation, 35 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 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 Plan is denied.

The debtor, Terry Jo Mays ("Debtor"), seeks confirmation of the Chapter 13 Plan. The Plan provides for monthly payments of $2,400.00 for 3 months, followed by $2,933.00 per month for 45 months, and a 100% dividend to unsecured claims totaling $128,681.62. Plan, Dckt. 23. 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 July 6, 2021. Dckt. 27. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor's motion fails to state grounds with particularity.

B. Plan may not be Debtor's best effort.

DISCUSSION

Review of Minimum Pleading Requirements for a Motion

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

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

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

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

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

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

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

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

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

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

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

Grounds Stated in Motion

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

> A. Debtors hereby moves the court to confirm their First Amended Chapter 13 Plan.

That "ground" is merely a conclusion of law by Movant. Presumably, Movant believed that the court would make those conclusions, but the "grounds" cannot merely state the anticipated conclusions.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

Not Best Effort

The Chapter 13 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.

Trustee asserts that Debtor's Plan does not appear to provide for all the Debtor's projected disposable income. Furthermore, the Plan may not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtor may have significantly higher projected disposable income which is not being applied to make payments to unsecured creditors.

Schedule I: Debtor filed a second Schedule I on June 22, 2021 (Dckt. 25), which does not indicate if it is an amendment or a supplement to the previous Schedule I filed on March 11, 2021. Schedule I now indicates that Debtor's income has increased by $8,008.00 where the Debtor's income was originally listed as $13,725.00, making the current total $21,733.00. The Debtor has also dramatically increased the tax withholding to a much higher percentage rate, from $4,265.00 (~31%) to $9,754.00 (~44%). The Debtor has offered no explanation as to why the 13% jump in tax withholding is required or necessary. Debtor has also substantially increased the Voluntary Retirement Contribution from $1,373.00 to $2,586.00, which is an additional increase of $1,213.00 per month, and the only explanation offered is that she is 63 years old. See Dckt. 24.

Trustee asserts that they are unclear why such a large monthly amount is reasonable or necessary or even permitted at all. The Trustee is uncertain if the court will allow these substantial deductions in the Debtor's income, especially when these funds could be used to increase the Plan payment, by at least $2,856.00, and substantially decrease the Plan term, currently at 60 months.

Schedule J: The Debtor filed a second Schedule J on June 22, 2021. Dckt. 25. Like Schedule I, Debtor does not indicate if it is an amendment or a supplement to the previous Schedule J that was filed. Schedule J, now shows a significant increase in particular expenses and continues to allow monies to be placed in a savings account, as part of the monthly expenses. More specifically, item #6c for phone/cable, went from $259.00 per month to $349.00; item #14 for charity, increased by $633.00, going from $1,540.00 per month to $2,173.00. The Debtor had also included an allowance for the luxury in depositing funds in a savings account, in the amount of $150.00 (#21), to the detriment of paying off unsecured creditors sooner than 60 months.

Trustee is uncertain if the Court will agree with these significant increases in expenses, when these additional funds of $873.00 could be allocated as increased Plan payments and afford unsecured creditors the opportunity to be paid in less time and not have to wait the entire 60 months currently proposed.

Means Test: Debtor filed an Amended Official Form 122C-1 and Form 122C-2 on June 22, 2021. Dckt. 25. These forms indicate the Debtor is still above median income and a calculated monthly income on Form 122C-2 of $4,586.12.

In a 100% Plan, Trustee is uncertain that the court will confirm a plan where Debtor can take

60 months to pay creditors with unsecured claims in a significantly shorter amount of time given that Debtor has a significantly higher income and taking into consideration that Debtor's income could drop substantially in the distant future due to her profession and age.

Ruling

Debtor is a very fortunate individual who has substantial monthly income of $21,733. However, on Schedule I Debtor states having *bona fide*, good faith withholding for state and federal income taxes and Social Security of ($9,754.00) a month. This withholding is 45% of the gross income.

Debtor has no other income. The court cannot fathom, and Debtor does not explain, how he pays ($117,048.00) in state and federal income taxes and Social Security.

On Schedule J Debtor lists having monthly charitable contributions of $2,173.30. Schedule J, ¶ 14; Dckt. 25. On his statement of financial affairs Debtor states for his charitable contributions in the two years preceding the filing of his bankruptcy case, for those which total more than $600.00, Debtor states under penalty of perjury that only in 2020 did he have such contributions and they totaled $14,150.00, which is $1,179.00 a month, which is only 54% of the amount he has now built into Schedule J. Statement of Financial Affairs Question 14; Dckt. 1 at 34. No Charitable contributions which total more than $600.00 are stated for 2019.

The contributions made prior to the filing of the bankruptcy case and Debtor's history of charitable contributions before filing bankruptcy can easily be documented. Such contributions can be built into a new Plan.

On the Statement of Financial Affairs, in response to Question 15, Debtor states that he suffered "Loss of Retirement and Debts incurred do [sic] victimization/fraud." *Id*., p. 34. On Schedule A/B Debtor lists having "Potential claim for loss of funds due to scam Claimant unknown." Schedule A/B, Question 35; Dckt. 1.

Presumably, when Schedule A/B states "Claimant unknown," Debtor actually means "Identity of Wrongdoer Unknown," because it would appear that Debtor would be the "claimant" enforcing rights to recover the damages caused by the wrongdoer.

At the hearing, Debtor's counsel reported, **xxxxxxx**

The 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 Chapter 13 Plan filed by the debtor, Terry Jo Mays ("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 Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

15.	**19-27861-E-13 KSR-1 15 thru 16**	**EUGENIA RAKESTRAW Seth Hanson**	**MOTION TO ALLOW PROOF OF CLAIM 7-9-21 [31]**

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 July 10, 2021. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

The Motion to Allow Proof of Claim is granted.

Colb Trust, creditor with a secured claim ("Creditor") requests the court allow its late claim related to a judgment obtained in state court. Creditor argues that the claim was untimely filed because Debtor and the court failed to advise Colb Trust of the filing of the bankruptcy petition or advice of the proof of claim deadline.

The Claim is asserted to be unsecured in the amount of $90,527.84.

The Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case was February 28, 2020. Notice of Chapter 13 Bankruptcy Case, Dckt. 9. Creditor filed their Proof of Claim on February 8, 2021. Proof of Claim 18-1.

Trustee filed a Response first noting that neither creditor Colby Trust, nor Kirk Rimmer, Esq. nor Carl Dexter were listed within the Master Address List (DN 6) or the Certificate of Notice (DN 10). Dckt. 46. Trustee further adds that Trustee did not oppose Debtor's Objection to Creditor's Proof of Claim but notes that this motion may affect the result of that Objection. *Id.*

Trustee points out having failed to note through Debtor's Objection that Trustee has made disbursements to Creditor: $1,296.91 by check dated February 26, 2021, and $1,296.62 by check dated March 31, 2021, for a total of $2,593.23 paid to date. *Id.*

Review of Minimum Pleading Requirements for a Motion

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

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

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

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

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

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

> at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

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

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

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

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

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

Grounds Stated in Motion

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

A. Debtor and the Court failed to advise Colb Trust of the filing of the Bankruptcy petition by Debtor, or advise Colb Trust any proof of claim deadline.

B. Debtor failed to timely object to the Proof of Claim, and the Proof of Claim should be deemed allowed pursuant to 11 U.S.C. § 502(a) and Federal Rule of Bankruptcy Procedure 3002(c)(6)(A).

C. Colb Trust timely filed the Proof of Claim after it learned of the Debtor's filing of the Bankruptcy petition in the above titled case.

Those "grounds" are merely a conclusion of law by Movant. Presumably, Movant believed that the court would make those conclusions, but the "grounds" cannot merely state the anticipated conclusions.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are found in:

A. Declaration of Carl Dexter
B. The Notice of Motion;
C. Memorandum of Points and Authorities;
D. Exhibits; and
E. Request for Judicial Notice.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents, even though they may be filed as one document when not exceeding six pages. *See* Local Bankruptcy Rule 9014-(d)(4). The court has not waived that Local Rule for Movant.

DISCUSSION

According to Creditor, the proof of claim was filed once Creditor was aware of Debtor's bankruptcy case. Proof of Claim 18-1 states that the basis of the claim is

Judgmt 8-8-2008, renw'd 6-20-2018 Sac Sup Case No. 04AS03455

Proof of Claim at 2.

The Proof of Claim further states that the claim is unsecured with an annual interest rate of 10.00%. *Id.* Attached to the Proof of Claim is a copy of the Application For and Renewal of Judgment dated June 20, 2018 with a total renewed judgment, as of that date, of $78,811.34. *Id.*, at 4. The Proof of Claim also includes a document titled "Exhibit to Proof of Claim of Colb Trust in Bankruptcy of Eugenia Rakestraw Case No. 19-27861," which states the following:

> Judgment ("Judgment") was entered on August 8, 2008, in favor of Colb Trust and against Debtor Eugenia Ann Rakestraw in Sacrament Superior Court Case No. 04AS03445 in an sum equal to $39,763.34. The Judgment was renewed on June 20, 2018, in a sum equal to $78,811.34, pursuant to the attached filed application for and renewal of judgment ("renewed Judgment"). Interest on the Renewed Judgment accrued at the rate of ten percent per annum pursuant to California Code of Civil Procedure Section 685.010. Interest from June 20, 2018 (the date of the Renewed Judgment) to December 20, 2019 (the date of Debtor's

> bankruptcy filing) is a sum equal to $11,716.50. The total amount owed on the Renewed Judgment, including interest as of December 20, 2019 was equal to $90,527.84.

Exhibit, *Id.*, at 6.

Creditor argues that the court should allow the claim and find that the Proof of Claim was timely filed because Debtor failed to give notice of the claim and Creditor promptly filed its proof of claim after learning of the bankruptcy. Moreover, Debtor has filed to file a motion to augment its list of creditors as permitted under FRBP 1007(a)(5) in order to add Creditor.

Creditor first learned of Debtor's bankruptcy on December 7, 2020 and filed the Proof of Claim 63 days after learning of the filing. The Declaration of Carl Dexter, the trustee of the Creditor, states:

> 4. The first time that I, or to my knowledge, anyone associated with Creditor Colb Trust was aware that Debtor filed a Bankruptcy petition was on December 7, 2020, when I received a copy of a title report on real property commonly known as 1808 Glenmark Way, Roseville, California. That title report stated that Debtor had filed a Bankruptcy petition.

Declaration, ¶ 4; Dckt. 36.

Creditor asserts that pursuant to FRBP 3002(c) a creditor has 70 days after the petition date to file a proof of claim. Creditor filed the Proof of Claim within 70 days after learning of the Bankruptcy petition.

Creditor points the court FRBP 3002(c)(6)(A) which provides that a creditor can file a motion to file a claim after the expiration of the deadline if the court finds that ".... the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors; names and addresses required by Rule 1007(as)...." Creditor also points the court to *In re Vanderpol*, 606 B.R. 425 (Bankr. D. Colo. 2019), where according to Creditor "[the Court allowed a proof of claim to be filed after the initial claim deadline because the claim deadline under Federal Rules of Bankruptcy Procedure 3002(c)(6)(A) is extended when a debtor omitted a creditors[sic] address]."

Thus, the court turns to the rule and the cited bankruptcy court case. In that case, the debtor omitted the creditor by mistake in their creditor's matrix, which was timely filed. Debtor and creditor sought to address this issue. In reaching their decision, the court went beyond the rule's plain language, searched through legislative intent and the advisory committee's note to the 2017 amendment. When the court did not find any clarification through the process above, it lamented that the Tenth Circuit did not have any binding precedent on Rule 3002(c) which had been recently enacted. Thus, the court settled in providing its own interpretation, finding that,

> In the absence of such a precedent, this Court believes that the intent of Congress is best effectuated by reading this rule to apply whenever the debtor fails to timely file a full and complete Creditor Matrix. If the purpose of the rule is to provide the Court with discretion when a creditor's due process rights have been abridged,

> then this broader reading will support that goal. The fact that the extension remains discretionary and is only for a brief additional period of sixty days will keep the exceptions from swallowing the general rule imposed by a claims bar date.

In re Vanderpol, 606 B.R. 425, 432 (Bankr. D. Colo. 2019). The court is not persuaded that this reasoning would be applicable in the instant situation where Debtor purposely failed to list Creditor and the Mailing Matrix seems to have been timely filed. The court discusses FRBP 3002(c) below.

Creditor also argues that Debtor never timely objected to the Proof of Claim where local rule 3007-1(d)(3) provides that an Objection to a claim must be filed and served no later than 60 days after service of the Notice of Filed Claims. Though conceding that the 60 days in this case applies to the Notice filed on August 17, 2020, Creditor's proof of Claim was filed on February 8, 2021 and Debtor waited 120 days to filed its Objection, which was filed on June 8, 2021. Far more days than the 60 days afforded by Local Rule 3007-1(d)(3) had Debtor properly included Creditor in her schedules.

Decision

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Creditor is requesting the court grant relief for this untimely-filed proof of claim. Debtor has not filed an Opposition to this Motion but has filed an Objection to the Proof of Claim which has been set for the same hearing as the instant Motion.

As a preliminary matter, Creditor asserts that this Motion has been filed out of abundance of caution so that the court allow the Proof of Claim now, or *nunc pro tunc*. The court believes that what Creditor is seeking is "retroactive authorization" rather than *nunc pro tunc* authorization. The United States Supreme Court and the Ninth Circuit have noted that *nunc pro tunc* approval is not the proper name for seeking retroactive authorization of actions in a bankruptcy case. *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020); *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007).

Nunc pro tunc amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations "retroactive approvals," it is customary, but not necessarily correct, to refer to them generically as *nunc pro tunc* in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974–78 (9th Cir. 1995) (alternating between using *nunc pro tunc* and "retroactive approval" when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court). This long standing Ninth Circuit law was restated by the Supreme Court in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020).

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor's estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in "exceptional circumstances." *Atkins*, 69 F.3d at 974.

Application of The Law

Congress provides in 11 U.S.C. § 502(a) that a claim is deemed allowed if a proof of claim is filed, unless an objection is filed thereto. Congress does not set the dates and deadlines for filing proofs of claim or objections to proofs of claims.

The Supreme Court has stepped in with Federal Rule of Bankruptcy Procedure 3002 to provide some framework for the claims process. In relevant part, the Supreme Court directs:

> (c) Time for filing
> In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. But in all these cases, the following exceptions apply:
> . . .
> (6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim**, the court may extend the time by not more than 60 days from the date of the order granting the motion**. The motion may be granted if the court finds that:
>
> (A) the **notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses** required by Rule 1007(a); or
>
> (B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address.

Fed. R. Bankr. P. 3002(c)(6) (emphasis added). Thus, if the court concludes that the notice of the filing of the case was insufficient so the creditor could not reasonably file a claim, the court may extend the time. This request may be made before or after the original deadline for filing claims had expired.

With respect to filing an objection to claim, the Supreme Court provide in Federal Rule of Bankruptcy Procedure 3007(a)

> (a) Time and manner of service
> (1) Time of service
>
> An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing.

In this District, Local Bankruptcy Rule 3007-1(d)(3) requires that an objection to claim must be made within 60 days after the Notice of Filed Claims. The Local Bankruptcy Rule continues, stating:

> 4) Nothing herein shall prevent the debtor, the trustee, or any other party in interest from objecting to a proof of claim after the expiration of the deadline for objections specified in Subparagraph (d)(3) above. However, any objection filed after the expiration of that deadline shall not, if sustained, result in any order that the claimant refund amounts paid on account of its claim.

L.B.R. 3007-1(d) 4).

Here, Proof of Claim 18-1 was filed on February 8, 2021.

Setting Retroactive Deadline for Filing Proof of Claim For Creditor Who Did Not Receive Timely Notice of the Bankruptcy Case

As addressed above, the court may extend the time, retroactively, if the List of Creditors was not timely filed by the debtor. The language used by the Supreme Court in Federal Rule of Bankruptcy Procedure 3002(c)(6) is:

> notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a).

The "notice" is notice of the deadline to file proofs of claim. This Rule has to be consistent with the Due Process Rights of a creditor and before its rights are terminated, it has to have notice and a reasonable opportunity to exercise its rights.

In Federal Rule of Bankruptcy Procedure 3002(c)(6) it states that a debtor fails to timely file the "list of creditor's names and addresses" as required by Rule 1007(a):

> (a) Corporate ownership statement, list of creditors and equity security holders, and other lists.
>
> > (1) Voluntary case. In a voluntary case, the debtor shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms.

The names of each entity included or to be included on Schedules E and E/F shall be filed.

Creditor is not included on Schedules D or E/F. Dckt. 1. The litigation with Creditor is not listed on the Statement of Financial affairs. Stmt of Fin Affairs, Question 4; *Id*. Creditor is not listed on the Master Mailing List filed by Debtor. Dckt. 6.

In the Objection to Claim (Dckt. 20) Debtor clearly asserts that the $90,527.84 should not be allowed in this case because it was not filed timely. The Objection does not assert that notice was given to Creditor or the effect of not including Creditor on the Schedules and the Master Mailing List.

Debtor's Chapter 13 Plan in this case is a sixty (60) month plan in which the Debtor makes

monthly payments of $1,375.00. Dckt. 2. The $1,375.00 a month payments are to provide a 100% dividend to creditors holding general unsecured claims. Even if Creditor's claim is added in, there would still be approximately a 45% dividend to all creditors holding unsecured claims – including Creditor.

In looking at this situation, Debtor did not file the Master Mailing List as required by Federal Rule of Bankruptcy Procedure 1007, as Debtor did not include all of his creditors on Schedule E/F, nor on the Master Mailing list. While Debtor did file "a list" of creditors, Debtor failed to file a list that included all creditors to be included on Schedule E/F. The instruction at the top of Schedule E/F states:

> 4. **List all of your nonpriority unsecured claims** in the alphabetical order of the creditor who holds each claim. If a creditor has more than one nonpriority unsecured claim, list the creditor separately for each claim. For each claim listed, identify what type of claim it is. Do not list claims already included in Part 1. If more than one creditor holds a particular claim, list the other creditors in Part 3.If you have more than three nonpriority unsecured claims fill out the Continuation Page of Part 2.

Schedule E/F, ¶ 4; Dckt. 1 at 21.

Due to the deficient Schedule E/F and Master Mailing List, "notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim." The court grants the relief requested and authorizes the filing of Proof of Claim 18-1 on February 8, 2021. The court makes the relief retroactive to that date, and does not make Creditor file a new proof of claim within 60 days after the filing of this Order.

The court notes that allowing the filing of Creditor's Claim will not result in the Debtor incurring any additional cost or expense, with the exception of having to modify the minimum dividend to creditors holding general unsecured claims.

On the plus side, it allows Debtor to include this claim in the bankruptcy case and responsibly provide for making a *pro rata* distribution on Creditor's Claim. Looking at the other creditors with unsecured claims, two are in the approximate amount of $11,000, three are approximately $7,000, and the remaining eight unsecured claims are between $1,900 and $6,000. While including Creditor will cause the other creditors to take a haircut from the 100% dividend, it is just a "trim" financially and not a shaving.

The Motion is granted, and Creditor's Proof of Claim is deemed to have been timely filed within the retroactive deadline set by this court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Allow Proof of Claim by Colb Trust filed in this case by Colb Trust, creditor holding an unsecured claim ("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 the Motion is granted and the deadline for Creditor to file its claim, which is stated in Proof of Claim 18-1, is retroactively extended to and for sixty-days after February 1, 2021.

16. 19-27861-E-13 SLH-2 | **EUGENIA RAKESTRAW** **Seth Hanson** | **OBJECTION TO CLAIM OF COLB TRUST, CLAIM NUMBER 18** **6-8-21 [20]**

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

Local Rule 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, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 8, 2021. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 18 of Colb Trust as servicer for Carl Dexter is overruled.

Eugenia Ann Rakestraw, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Colb Trust, servicer for Carl Dexter ("Creditor"), Proof of Claim No. 18 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $90,527.84. Objector asserts that Creditor's Proof of Claim should be denied on the grounds that the Claim was not timely filed under Federal Rules of Bankruptcy Procedure 3002(c), which states that in a Chapter 13 case, "a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13." Objector asserts that the Claim was filed on February 8, 2021 and the non-government deadline to file a claim was February 28, 2020. Dckt. 20.

DISCUSSION

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

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Creditor opposes Debtor's objection on the basis that:

1. Debtor failed to include Creditor in her schedules, and consequently, no notice was given to Creditor regarding the bankruptcy filing of Debtor. Creditor filed their Claim "promptly" after learning of Debtor's bankruptcy filing.

2. Debtor's objection is not timely as it has occurred more than 60 days after the proof of claim was filed. See Local Rule 3007-1(d)(3). Debtor waited over 120 days to file the instant motion.

3. Concurrently heard with this motion is a motion by Creditor to allow Creditor's Proof of Claim to be deemed allowed because Creditor filed its proof of claim within 63 days of first learning of Debtor's bankruptcy filing.

The court has by separate order extended the time for Creditor to file its claim due to Debtor not having included Creditor on Schedule E/F and not included Creditor on the Master Mailing List as required by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure. The court incorporates here by this reference the Ruling on the Motion for leave to file late claim, DCN: KSR-1, sated in the Civil Minutes for the July 27, 2021 hearing on that Motion.

As discussed in the ruling on the Motion for leave to file late claim, the granting of that Motion allows the Debtor to productively address that claim in the Chapter 13 bankruptcy case. It allows Creditor to fairly share in the dividend paid on unsecured claims, and does not cause significant financial calamity on the other creditors with unsecured claims.

The Objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of Colb Trust, servicer for Carl Dexter ("Creditor"), filed in this case by Eugenia Ann Rakestraw Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 18 of Creditor is overruled.

17. **18-21488-E-13 CLH-12** **DANIEL/ALLISON BRENNAN** **Charles Hastings** **CONTINUED MOTION TO MODIFY PLAN** **4-30-21 [243]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2021. By the court's calculation, 53 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is xxxxx.

The debtors, Daniel Lawrence Brennan and Allison Lyn Brennan ("Debtor") seek confirmation of the Modified Plan due to a significant reduction in income as a result of the COVID-19 pandemic. Declaration, Dckt. 245. The Modified Plan provides for the following:

1. $1.00 for 1 month,
2. $5,000.00 for 13 months,
3. $5,450.00 for 13 months,
4. $252,672.94 for 1 month,
5. $5,450.00 for 3 months,
6. then $1,000.00 for 1 month,
7. $2,500.00 for 3 months,
8. 3,094.08 for 15 months,
9. then $3,644.08 for 29 months, and
10. a zero (0) percent dividend to unsecured claims totaling $7,740.73.

Modified Plan, Dckt. 246. 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 May 25, 2021. Dckt. 250. Trustee opposes confirmation of the Plan on the basis that:

A. Plan Payments to date are not correct.

B. Trustee is uncertain if priority creditors will object to Debtor's special provision regarding priority claims.

DISCUSSION

Plan Payments

According to Trustee, plan payments should be whatever has been paid to date and then $3,094.08 from May 2021 to May 2022, then $3,664.08 from June 2022. Trustee states that May 2021 is the 38th Month of the Plan, and the Plan payments through May 2021 total $399,772.94.

Trustee asserts that the Modified Plan should clearly provide just that the Plan payments through May 2021 total aggregate amount of $399,772.94, rather than a series of payments for a month or two at a time.

Priority Claims Provision

According to Trustee the plan would take 79 months to complete if Debtor were to pay priority claims in full. However, Debtor has added a special provision regarding priority claim where they state that "Any amount owing remaining on the priority claims following completion of the Plan will not be discharged and will remain due by the Debtors." Proposed Plan, Section 7, at 9. Trustee is uncertain if the relevant priority creditors object to the proposed plan.

The Trustee does not direct the court to any statutory provision concerning a Chapter 13 plan and the treatment of priority unsecured claims. The apparent provision could be 11 U.S.C. § 1322(a)(2), in which Congress specifies (emphasis added):

> § 1322. Contents of plan
>
> (a) **The plan**—
> . . .
> (2) **shall provide for the full payment**, in deferred cash payments, **of all claims** entitled to **priority** under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

This is discussed in Collier on Bankruptcy as follows:

> ¶ 1322.03 Payment of Priority Claims; § 1322(a)(2)
>
> Section **1322(a)(2) requires that every chapter 13 plan propose payment in full of all priority claims.** There are **only two exceptions** to this requirement.

> **First, the holder of the priority claim may consent to different treatment.** Second, if the priority claim is a domestic support obligation that has been assigned to a governmental unit, or is owed directly to a governmental unit, the debtor need not pay that obligation in full provided the plan provides that all of the debtor's projected disposable income over five years will be devoted to the plan. Otherwise, by virtue of section 1322(a)(2), the plan must propose that all allowed claims entitled to priority under section 507, including filing fees and allowed administrative expenses, wage claims, consumer debt claims, and tax claims, be paid in full.

8 Collier on Bankruptcy P 1322.03 (16th 2021) (emphasis added).

Debtor's Modified Plan states that there are $283,828.17 in priority unsecured claims. Mod. Plan, ¶ 3.12; Dckt. 246. These include priority unsecured claims of the California Franchise Tax Board and the Internal Revenue Service. Proof of Claim 1-3 and Proof of Claim 2-3. The court cannot identify any consents to incomplete payment of the priority claims having been filed in support of the present Motion and confirmation of the Modified Plan.

July 27, 2021 Hearing

As of the court's drafting of this pre-hearing disposition, no further supplemental pleadings or documents updating the court have been filed.

At the hearing, xxxx

18. **16-25089-E-13 DMD-9** | **MARK/JENNIFER GALISATUS** **Daniel Davis** | **MOTION TO MODIFY PLAN** **5-18-21 [95]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 18, 2021. By the court's calculation, 70 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 denied.

The debtors, Mark Timothy Galisatus and Jennifer Ellen Galisatus ("Debtor") seek confirmation of the Modified Plan to account for a previous plan default now that the easing of indoor dining restrictions, along with Debtor's "already robust pick-up and delivery service," will allow Debtor to make the monthly payments. Declaration, Dckt. 97. Furthermore, Debtors have acquired a second sandwich shop that has resulted in a "significant positive income that assures" their ability to make the plan payments for the duration of the original plan and the extended 6 months they are seeking through this Motion. *Id.*

The Modified Plan provides for monthly plan payments of $3,252.00 for the duration of the plan, and a zero percent dividend to unsecured claims totaling $144,459.81. Modified Plan, Dckt. 98. 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 July 7, 2021. Dckt. 103. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor are delinquent on Plan payments.

B. Debtor have not filed supplemental Schedules I and J.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is $16,966.00 delinquent in plan payments under the proposed plan, which represents multiple months of the $3,252.00 plan payment. The Chapter 13 Trustee asserts that extending the plan term to 66 months, without proposing a total paid in as of a certain date, does not catch up the delinquency but rather, adds six additional months of payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to File Supplemental Schedules I and J

Debtors have not filed Supplemental Schedules I and J in support of their current financial circumstances. Debtor's last Schedules I and J were filed in 2016 and reflected a combined monthly income of f $7,058.66 (Dckt. 27, Schedule I) and monthly expenses of $3,944.00 (Dckt. 17, Schedule J). The Chapter 13 Trustee further notes that Debtor have filed amended Form 122-C-1, which reflects an average monthly income of $12,773.00. Dckt. 99. The Trustee opposes Debtor's Motion to Confirm where it has been approximately five years since Debtors' last Schedules I and J were filed and it appears there has been a marked increase in income that was not disclosed and not paid into the case.

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 debtors, Mark Timothy Galisatus and Jennifer Ellen Galisatus ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

19. 21-20795-E-13 DBJ-3 | **TORRI JONES** Douglas Jacobs | **MOTION TO CONFIRM PLAN** 5-25-21 [48]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2021. By the court's calculation, 63 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The court notes that creditor The Bank of New York Mellon Trust Company N.A. requested special notice for NewRez LLC d/b/a/ Shellpoint Mortgage Servicing ("NewRez") and Tiffany & Bosco, P.A. Debtor's proof of service lists service of NewRez but not of Tiffany & Bosco, P.A. At the hearing, xxxxx

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

The Motion to Confirm the Plan is denied.

The debtor, Torri Lynn Jones ("Debtor") seeks confirmation of the Chapter 13 Plan. The Plan provides plan payments of $319.00 without the number of months stated, and a 67% dividend on unsecured claims totaling $3,693.00. Amended Plan, Dckt. 54. 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 July 13, 2021. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

A. Debtor has failed to provide business documents to Trustee.

B. The plan is over-extended and would take over 60 months to complete.

C. The filing date on the Amended Petition is incorrect.

D. Schedule J raises issues about the Debtor's ability to finance the plan.

E. Amount of attorney's fees already paid to Debtor's counsel is unclear.

F. Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

G. Plan Length was left blank.

DISCUSSION

Failure to File Documents Related to Business

Debtor has failed to timely provide the Chapter 13 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 the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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 83 months due to claims being filed for amounts higher than the Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to Amend Voluntary Petition

At the Meeting of Creditors, the Trustee requested the Voluntary Petition be amended to correct the filing date of the previous case and to include the Debtor's middle name. In the Amended Plan, Debtor included their middle name but failed to correct the filing date of the missing 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). The proposed plan payments are in the amount of $319.00 a month. In Schedule J, Debtor's monthly net income on Line 23c is listed as ($2,062.32). At the meeting of creditors, Debtor testified her gross income is greater than listed in Schedule I. Debtor filed an Amended Schedule J;

however, this still reflects a negative monthly income. Dckt. 34. It is unclear how Debtor expects to make the plan payments. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Attorney's Fee

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

Trustee is uncertain about amounts paid to Debtor's attorney prior to the filing of the Voluntary Petition. Until this matter is resolved, the Plan should not allow for more additional attorney fees absent a separate motion for attorney's fees.

Trustee objects to a "no look" fee in this case. Thus, counsel's fees will be reviewed under the standard loadstar analysis.

Nonstandard Provision Box

Trustee believes the Amended Plan needs to be amended further to include nonstandard provisions as they seem to be integral to the administration of the plan. There have been no filings to correct or clarify this. The Debtor has failed to comply with the mandatory form plan and Local Bankruptcy Rule 3015-1(a).

Failure to Comply with 11 U.S.C.§521(a)(3)

Debtor has failed to submit a valid Rights and Responsibilities of Chapter 13 Debtors and their Attorneys. Though Debtor filed a "Rights and Responsibilities of Chapter 13 Debtors and their Attorneys" on April 28, 2021, that document failed to include the attorney's original wet signature or the attorney's electronic signature. There have been no amendments filed and thus the Debtor has failed to comply with 11 U.S.C. §521(a)(3)

Plan Length Blank

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor has proposed a plan payment of $319.00 but has not proposed a plan length. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

The 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 Chapter 13 Plan filed by the debtor, Torri

Lynn Jones ("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 Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

20.	**20-23783-E-13 JGD-5**	**BRAD HAMILTON AND CHERISE WILLIAMS**	**MOTION TO SELL AND/OR MOTION TO PAY 7-13-21 [107]**

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 Not 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 13, 2021. By the court's calculation, 14 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Although Movant filed this Motion as an (f)(1) motion requiring written opposition, it was set for hearing on a 14-day notice. A Motion to Sell requires 35 days notice if written opposition is required or 21 days notice of the hearing, with parties in interest having until the day before the hearing to file an opposition. Fed. R. Bankr. P. 2002, 9006. A review of the docket for this case shows that no motion shortening time for this motion was filed or granted by the court.

The Motion to Sell Property has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is xxxxx.

The Bankruptcy Code permits Brad Alan Hamilton and Cherise Cathleen Williams, Chapter 13 Debtor, ("Movant") to sell property under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 6013 Semaphore Road, Portola, California ("Property").

The proposed purchaser of the Property is Dave Brinton, and the terms of the sale are:

A. Sales price of $155,000.00.

B. Close of escrow will occur thirty days after acceptance of the offer. (Provided the sale is approved by the bankruptcy court).

C. Debtor shall pay for a natural hazard zone disclosure report, buyer will pay for all other reports desired by the buyer.

D. Debtor shall pay for the cost of compliance with any other minimum mandatory government retrofit standards.

E. Buyers and Debtor shall pay escrow (Cal-Sierra Title Company) on a 50-50 basis.

F. Buyer and Debtor shall pay the title insurance on a 50-50 basis.

G. Debtor shall pay HCD fees for providing registration and title documents.

Trustee filed a Response on July 19, 2021 stating no opposition to the sale or to Debtor's request of the court approving employment of their broker through this motion to sell. Dckt. 111. Trustee notes that no declarations have been made in support of the sale. *Id.*, at 2.

Trustee also notes that the Motion does not state the treatment of any proceeds received from the sale but that the confirmed plan calls for some of the proceeds to be paid into the plan, to account for any Debtor's attorney's fees. *Id.* Lastly, Trustee notes that Debtor failed to file an Estimated Closing Statement but that they have a Listing Agreement and a Purchase Agreement.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it pays in full the secured claim of this creditor as provided by the plan in the time provided by the confirmed Chapter 13 Plan.

Approval of Broker's Employment and Commission

Movant requests that the court approv the employment and commission of broker Dickson Realty and its salesperson Doug Schroeder. Movant has filed with this Motion the Listing Agreement for their relationship with Broker. Exhibit 1, Dckt. 107. On July 20, 2021, Movant filed the Declaration of Doug Schroeder testifying as to his duties to market and sell the Property, and it establishes that he has no prior relationship with the Buyer. Dckt. 113.

Movant has estimated that a 2.5% broker's commission from the sale of the Property will equal approximately $3,875.00. As part of the sale in the best interest of the Estate, the court permits

Movant to pay the broker an amount not more than 2.5% commission.

Here, the Chapter 13 Debtor is exercising the powers of a bankruptcy trustee to sell property and to hire professionals to assist in that task. 11 U.S.C. § 1303. However, no motion to authorize the employment of a real estate professional pursuant to 11 U.S.C. § 327 has been filed and no order authorizing such employment has been entered. Without such an order, the Debtor exercising the power of a trustee to sell property of the estate and hire the professionals to do it, cannot pay a professional for assisting the Debtor in exercising the powers of a trustee.

Payment of Attorney's Fees

Movant has also requested that, pursuant to the confirmed Plan, fees in the amount of $3,730.00 remaining and owed to Debtor's Attorney pursuant to the court's order be paid from close of escrow. In this Chapter 13 case Debtor's Attorney has agreed to be paid fees by filing and serving a motion and supporting evidence as one would when obtaining approval pursuant to 11 U.S.C. § 329 and § 339, and the related Bankruptcy Rules. Amended Plan, ¶ 3.05; Dckt. 50. See also, Confirmation Order, p. 2:6-7; Dckt. 82.

No motion for allowance of fees has been filed by Debtor's Attorney. However, as wit the Realtor, Debtor's Attorney put in the prayer of the Motion to Sell that he be paid $3,730.00. Such fees have not been allowed or authorized by the court and cannot be paid to counsel merely because he asks for it.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court so that the sale can move forward immediately upon the court's order approving the sale.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and based on the Motion there would not be reason to grant such relief with this court "overruling" the Supreme Court's imposed fourteen (14) day stay.

However, casually mentioned in the introduction to the Motion is a reference to the First Amended Plan requiring that the sale of this Property be completed by August 1, 2021 – a mere five calendar days after the hearing on this Motion. (The first falling on a Sunday, Debtor could get another day.)

The court notes that the Debtor has been on a long and harrowing path in the prosecution of this case and addressing Creditor's claim. Civil Minutes, Dckt. 79. That Debtor took a short cut, didn't bother to state grounds with particularity tied to the relief being requested (the waiver of the fourteen day stay), and just proceeded as if Debtor was writing the laws and making the rules rather than Congress and the Supreme Court. This court will not allow the Debtor to self-inflict such damage on himself and the creditors in this case.

While not stated by Debtor, the court concludes that cause exists to waive the fourteen day

stay of enforcement arising under Federal Rule of Bankruptcy Procedure 6004(h) and make the court's order effective immediately.

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

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

~~The Motion to Sell Property filed by Brad Alan Hamilton and Cherise Cathleen Williams, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~IT IS ORDERED~~ ~~that Brad Alan Hamilton and Cherise Cathleen Williams, the Chapter 13 Debtor,~~ is authorized to sell pursuant to 11 U.S.C. § 363(b) to Dave Brinton or nominee ("Buyer"), the Property commonly known as 6013 Semaphore Road, Portola California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $155,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 2, Dckt. 109, and as further provided in this Order.

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

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

~~D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than 2.5 percent of the actual purchase price upon consummation of the sale. The 2.5 percent commission shall be paid to the Chapter 13 Debtor's broker, Doug Schroeder of Dickson Realty.~~

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

F. All net proceeds of the sale, after payment of the above authorized secured claims, costs, and expenses, shall be held by the Chapter 13 Trustee

pending further order of the court. The Debtor's Realtor may file a motion seeking retroactive authorization to be employ and for the allowance of the professional fees in the form of the real estate commission and fees (the court expressly authorizing the employment and allowance of professional fees and expenses in one motion).

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

FINAL RULINGS

21. 16-20605-E-13 DJC-6 — JAMES HURLEY — Diana Cavanaugh — MOTION TO MODIFY PLAN — 6-16-21 [103]

Final Ruling: No appearance at the July 27, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 16, 2021. By the court's calculation, 41 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, James Marven Hurley ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a statement of non-opposition on June 29, 2021. Dckt. 110. 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, James Marven Hurley ("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 16 , 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.

22. **19-25811-E-13 JMM-1** | **PAMELA JAMES** **Jeffrey Meisner** | **MOTION TO MODIFY PLAN** **6-8-21 [39]**

Final Ruling: No appearance at the July 27, 2021 hearing is required.

The Motion to Modify Plan is dismissed without prejudice.

Pamela R. James ("Debtor") having filed a Notice of Dismissal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on July 23, 2021, Dckt. 49; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 David Cusick ("the Chapter 13 Trustee"); the *Ex Parte* Motion is granted, the 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 Modify Plan filed by Pamela R. James ("the Debtor") having been presented to the court, the 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. 49, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Modify Plan is dismissed without prejudice.