UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 13, 2019 at 2:00 p.m.

1.	**19-23800-C-13 MC-1**	**EDITHA SANCHEZ Muoi Chea**	**MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC 7-25-19 [16]**

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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2019. 14 days' notice is required. That requirement was met.

The Motion to Value Collateral and Secured 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 Value Collateral and Secured Claim of OneMain Financial Group, LLC ("Creditor") is $10,442.00, and Creditor's secured claim is determined to have a value of $10,442.00.

The Motion filed by Editha Sanchez ("Debtor") to value the secured claim of OneMain Financial Group, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 18. Debtor is the owner of a 2013 Ford Edge ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,442.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a loan incurred on October 24, 2018 to secure a debt owed to Creditor with a balance of approximately $12,019.62. Proof of Claim, No. 5-1. Debtor asserts that the security interest is not a purchase money security interest because Debtor financed the initial purchase through Ford and later refinanced the loan through Creditor. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $10,442.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Editha Sanchez (("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of OneMain Financial Group, LLC ("Creditor") secured by an asset described as 2013 Ford Edge ("Vehicle") is determined to be a secured claim in the amount of $10,442.00 , and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,442.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

2.	**19-23703-C-13** **MMM-1**	**ROBERT/TONI BLANCHE** **Mohammad M. Mokarram**	**MOTION TO AVOID LIEN OF NEWPORT CAPITAL RECOVERY GROUP II, LLC** **7-22-19 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2019. 14 days' notice is required. That requirement was met.

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

~~**The Motion to Avoid Judicial Lien is granted.**~~

This Motion requests an order avoiding the judicial lien of Newport Capital Recovery Group II, LLC ("Creditor") against property of the debtors, Robert Blanche and Toni Blanche ("Debtors") commonly known as 2335 Tyrolean Way, Sacramento California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $17,495.42. Exhibit A, Dckt. 17. Debtors appear to assert that the an Abstract of Judgment was recorded and referenced to it as Exhibit B. However, the docket only reflects one exhibit having been filed in conjunction with the motion. Specifically Exhibit A, which appear to be an unrecorded abstract of judgement issued on March 18, 2014.

At the hearing Debtors addressed whether the Abstract of Judgment was recorded.

Pursuant to Debtors' Schedule A, the subject real property has an approximate value of $345,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $293,654.67 as of

the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Newport Capital Recovery Group II, LLC, California Superior Court for Sacramento County Case No. 34-2010-00091167, recorded on xxxx, 201x, with the xxxx County Recorder, against the real property commonly known as 2335 Tyrolean Way, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. **19-23516-C-13 DPC-1** **SEAN FRIES** **Gabriel Liberman** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-17-19 [14]**

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, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2019. 14 days' notice is required. That requirement was met.

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.

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

A. Debtor is delinquent $3,135.00 in plan payment with another payment due prior to the hearing. Debtor paid $0.00 into the plan.

DISCUSSION

Trustee's objections are well-taken. Debtor is $3,135.00 delinquent in plan payments, which represents one month's plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

the Plan is not confirmed.

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

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

4. **19-23327-C-13 DPC-1** **MATEO/EVA GALVAN** **Harry D. Roth** **AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-18-19 [27]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2019. 14 days' notice is required. That requirement was met.

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.

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

A. Debtors did not appear at the First Meeting of Creditors held on July 11, 2019. The Meeting was continued to August 8, 2019.

B. Debtors are delinquent in plan payments noting that Debtors need to pay $11,791.34 prior to the hearing. The Trustee states that so far Debtors have paid a total of $3,000.00 into the plan.

C. Debtors has not provided all required business documents including tax returns, profit and loss statements, bank statements, proof of license and insurance.

D. Debtors have not provided 60 days of employer payment advices.

E. Debtors have not provided proof that all required tax returns were filed or that not such return was required.

DISCUSSION

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

Debtor is $11,791.34 delinquent in plan payments, which represents multiple months of the $3,000.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

5. **19-22129-C-13 CCR-2** **BRIAN/SARA ROYER** **Mohammad M. Mokarram** **OBJECTION TO HOMESTEAD EXEMPTION** **7-8-19 [38]**

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 July 8, 2019. 28 days' notice is required. That requirement was met.

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

The Objection to Claimed Exemptions is sustained and the homestead exemption is disallowed for all amounts in excess of $100,000.00.

John Gajkowski ("Secured Creditor") objects to Brian Royer and Sarah Royer's ("Debtors") claimed homestead exemption to the extent it exceeds $100,000.00 under California law because Debtors have not shown they are entitled to the claimed amount of $175,000.00 pursuant to California Code of Civil Procedure § 704.780(a). The Debtors, in order to claim the exemption of $175,000 need to satisfy one of the three conditions outlined in California Code of Civil Procedure § 704.780(a)(3). First the one of the Debtors being over the age of 65, one of the Debtors being mentally of physically disabled and unable to earn a living, or over the age of 55 and earning under $35,000.00.

Here, Debtor's Schedules reflect that Sara Royer does not list any earned income and claims as an occupation "Disabled" on Schedule I and lists "Disability" as excluded other income on Form 122C-2. Dckt. 11.

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

The burden of persuasion, however, always remains with the objecting party. *Id.*

Prior Chapter 13 Case

Debtor Brian Royer commenced a prior bankruptcy case in this District, case No. 17-24774. In that case he stated on Schedule I that his then non-debtor spouse was employed as a clerk by Contra Costa County, with monthly income of $2,181.00. 17-24774; Dckt. 20 at 22. Debtor Brian Royer stated on Schedule I in the prior case that his monthly income was $9,002.50 and that he had been employed at that job for eleven (11) years. *Id.*

Moving to the Statement of Financial Affairs in the prior case, Debtor Brian Royer stated that as of the July 20, 2017 commencement of that place he had income of only $1 for 2017, only $1 for 2016, and only $1 for 2015. *Id.* at 26-27. Further, he left blank the income fields for his then non-debtor Spouse. *Id.*

However, on Form 122 C-1 Statement of Current Monthly Income in the prior case, Debtor Brian Royer stated that for the six monthly prior to the July 2017 filing of that case his average monthly income was $14,432 and that of his non-debtor Spouse was $2,0231. *Id.* at 34. This is grossly different than what is stated on the Statement of Financial Affairs and different from that stated on Schedule I.

In the prior Chapter 13 case was represented by bankruptcy counsel.

Schedules in Current Case

In the current case, Debtor's Spouse is now the Co-Debtor. On the Statement of Financial Affairs Debtor and Co-Debtor state under penalty of perjury that Co-Debtor has, and had for 2019 and the two prior years no employment income. Dckt. 11 at 29-30. This is inconsistent with Co-Debtor Sara Royer working for Contra Costa County in at least 2017 as stated by Debtor Brian Royer in his prior Chapter 13 case.

Disallowance of Homestead Exemption

Though provided notice and an opportunity to respond and provide evidence that Debtor and Co-Debtor qualified to assert the disability or age higher homestead exemption, nothing has been filed. A review of the Schedules and Statement of Financial Affairs in this and the prior Chapter 13 case, it appears that there is "creative," and not necessarily accurate stated by Debtors in filing bankruptcy.

At the hearing xxxxxxxxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by John Gajkowski ("Secured 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 Objection is sustained and the homestead exemption claimed by Brian Royer and Sara Royer, the Debtors in this case in the real property identified as 7722 Locke Road Vacaville, California, is disallowed for all amounts in excess of $100,000.00.

6.	**16-24732-C-13 PGM-1**	**GARY TOOLEY AND LINDA CATENA Peter G. Macaluso**	**OBJECTION TO CLAIM OF WELLS FARGO FINANCIAL NATIONAL BANK, CLAIM NUMBER 5 6-21-19 [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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 21, 2019. 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). That requirement was met.

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 5 of Wells Fargo National Bank is sustained and Proof of Claim No. 5, including any amendments thereto, is disallowed as a secured claim, and allowed only as a general unsecured claim.

Gary Tooley and Linda Catena, the Chapter 13 Debtors, ("Objector") requests that the court disallow the claim of Wells Fargo National Bank ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $1,126.78. Objector asserts that the Claim, filed on September 2, 2016, does not contain sufficient documentation to support its claim. Debtor refers the court to the claim which includes as an attachment a single page that appears to be a print out generated by Wells Fargo as a summary of the purported account.

CREDITOR'S NON-RESPONSE:

Creditor did not file a response to Objector's Objection, however, the court notes that on July 9, 2019, the Creditor filed an Amended Proof of Claim. Claim No. 5-2. The Creditor includes additional documents in support of its Amended Claim including the a credit application which appears to be signed by Debtors, the accompanying terms sheet, sales order sheet for the purchase of furniture from Beck's Furniture, and additional documents that appear to have been created in conjunction with purchase of furniture by the Debtors. *Id.*

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.

Objection Grounds

The Debtor states in the Objection that "The filed Proof of Claim No. 3 [sic] fails to include proof of security substantiating their secured claim." Objection, p. 2:8-9; Dckt. 20. Debtor provides a copy of Proof of Claim No. 5 as an exhibit. Dckt. 22.

Debtor is accurate that while the proof of claim states that Creditor is claiming a security interest in personal property consisting of "[unspecified] ITEMS PURCHASED FROM BECKS FURNITURE." Proof of Claim 5-1, p. 2 and 4. While making that statement nothing is provided as to why Creditor, Wells Fargo Bank, N.A., is claiming a security interest in unidentified "items" purchased from Becks Furniture.

The Objection is only as to whether the claim is secured, not as to the dollar amount. Debtor lists on Schedule E/F a creditor identified as "Wells Fargo Home Furnishings" as having an unsecured claim.

RULING

Debtor's Objection to Creditor's Claim initiated a contested matter under Federal Rule Bankruptcy Procedure (FRBP) 9014. Pursuant to FRBP 9014(c), this court may elect to apply FRBP 7015, incorporating Federal Rule of Civil Procedure (FRCP) 15, in contested matters concerning proofs of claims. Of import here, FRCP 15(a)(2), "Other Amendments," and (c), "Relation Back of Amendments," requires that the amending party obtain the opposing party's written consent or leave of court when filing an amendment. When an amended claim relates back to the original claim (*e.g.* does not assert a new claim) and is filed after an objection, it is akin to a party filing an amending pleading after a responsive pleading. Given that Creditor, in lieu of filing a response to the Objection to its claim, filed an amended claim that does not seek to change the purported claim, only provide additional proof of its claim, it is appropriate that Creditor seek permission from Debtor or leave from the court to file the amended claim. Absent permission of the Debtor, the Creditor is obligated to provide the court specific proof why it should be afforded leave to amend under FRCP 15, which this court notes "should be freely" given.

Creditor filed Amended Proof of Claim No. 5-2 attaching documentation which Creditor must believe addresses its security interest is attached. It may well be that in light of the modest amount of the claim, Creditor has sought to avoid any legal expense and depend upon the court to provide associate legal services to analyze the amended claim and argue for Creditor.

As Creditor is well aware, the court does not provide "for fee" legal services to the parties. The court does not advocate for one party and against another.

Amended Proof of Claim dumps on the court nine pages of handwritten and type documents. All but one of the documents which has some language relating to the granting of a purchase money security interest are unsigned by Debtor. The one signed document clearly provides that it's a purchase money security interest, not a general security interest for all obligations owed by Debtor. Amended Proof of Claim No. 5-2, p. 8. Nothing is provided with Amended Proof of Claim No. 5-2 showing that there is an unpaid purchase money obligation for the unidentified items to which the one signed form could apply.

The Objection to the secured claim of Wells Fargo Bank, N.A. is sustained and the claim is disallowed as a secured claim, with the claim allowed only as a general unsecured claim.

As the prevailing party, attorneys' fees, if any, sought by Debtor as the prevailing party, requests for prevailing party attorney's fees and costs by Objector shall be requested as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054, 9014.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Wells Fargo National Bank ("Creditor"), filed in this case by Gary Tooley and Linda Catena, the Chapter 13 Debtors, ("Objector"), the 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 the secured claim of Wells Fargo Bank, N.A. is sustained and the claim is disallowed as a secured claim, with the claim allowed only as a general unsecured claim.
>
> As the prevailing party, attorneys' fees, if any, sought by Debtor as the prevailing party, requests for prevailing party attorney's fees and costs by Objector shall be requested as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054, 9014.

7.	**19-24637-C-13** **PGM-1**	**JAMES/HEATHER OLIVER** **Peter G. Macaluso**	**MOTION TO EXTEND AUTOMATIC STAY** **7-26-19 [10]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.

James Oliver and Heather Oliver ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-23024) was dismissed on September 20, 2018, after Debtors did not may any required payments. *See* Order, Bankr. E.D. Cal. No. 18-23024, Dckt. 52. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtors' car was totaled and Debtor Heather Oliver was experiencing health issues. Debtors state that they have been able to get back on track with both bills and their health.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

8. **19-23341-C-13 DPC-1** **DEANNA ZAVALA Marc A. Carpenter** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-17-19 [17]**

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, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2019. 14 days' notice is required. That requirement was met.

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.

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

A. The Trustee is uncertain if Debtor can make all payments under the Plan because Debtor appears to have filed two Schedule J's (one appears to reflect the expenses of the non-filing spouse), Debtor states that she is making payment toward unscheduled debts of her non-filing spouse, and Debtor has not adequately addressed a change in Plan payment when the a car loan is paid in full during the life of the Plan.

B. Debtor stated at the Meeting of Creditors that Schedule F did not contain all debts.

C. Debtor does not disclose her middle name on the petition.

D. Debtor does not list the current occupation and length of employment for herself of the

non-filing spouse on Schedule I.

E. The Debtor's Plan states that due to Debtor's prior Chapter 7 case (No. 13-24500), Debtor is not entitled to a discharge at the end of the Chapter 13 Plan. However, the Trustee believes the Debtor may be entitled to a discharge because the prior Chapter 7 case was discharged on July 9, 2013, which is 5 years and 320 days prior to the filing of the present case on May 24, 2019.

DISCUSSION

Trustee's objections are well-taken.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Debtor has not provided a clear description of her expenses and indicated that she has not disclosed all of her debts. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. Additionally, Debtor's petition does not provide all requested information, including Debtor's middle initial and occupation.

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

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

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

9. **19-23242-C-13 PLC-1** **JAMES/ALICIA ANGELES** **Peter L. Cianchetta** **MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA AN IL CORP** **7-19-19 [17]**

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 Debtors, Debtor's Attorneys, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2019. 14 days' notice is required. That requirement was met.

The Motion to Value Collateral and Secured 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 Value Collateral and Secured Claim of xxxx ("Creditor") is $13,295.00, and Creditor's secured claim is determined to have a value of $13,295.00á.~~

The Motion filed by James Angeles and Alicia Angeles ("Debtors") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 19. Debtor is the owner of a 2014 Dodge Durango ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $13,295.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on November 7, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $21,752.77. Declaration, Dckt. 19. The court notes that Proof of Claim, No. 1-1 reflects a claim of $21,752.77 for a 2014 Dodge Durango and the claim is filed by Chrysler Capital and that Santander Consumer USA is listed as the Bankruptcy Representative.

The Motion seeks to value the secured claim of "Santander Consumer USA an IL Corp d/b/a Chrysler Capital." The Certificate of Service states that the Motion and supporting pleadings were served on the "creditor" whose claim is being valued as follows:

> By regular U.S. mail:
>
> C T Corporation System, Agent for Service of Process,
> Santander Consumer USA an IL Corp d/b/a Chrysler Capital
> 818 W 7TH ST STE 930 Los Angeles CA 90017
>
> By certified mail:
>
> Santander Consumer USA an IL Corp d/b/a Chrysler Capital
> Attn: Officer, a Managing or General Agent, or Agent for Service of Process
> Po Box 168088
> Irving, TX 75016

Dckt. 31.

Proof of Claim No. 1-1 states that the creditor is "Chrysler Capital." Proof of Claim No. 1-1, p. 1. Proof of claim No. 1-1 is signed by Amy Hudson, with a tile of "Bankruptcy Representative, for a company identified as "Santander Consumer USA an IL Corp d/b/a Chrysler C." *Id.*, p. 3. This is similar to the name included on the Certificate of Service, with it being expanded to include the word "Capital."

The Attachment to Proof of Claim No. 1-1 has a payoff itemization on a form with the name "Chrysler Capital" at the top of the page. Attachment to Proof of Claim No. 1-1, p. 1. On page 3 of the attachment there is an assignment form showing it being assigned to "Chrysler Capital."

The Certificate of Title included with the Attachment identifies "Chrysler Capital" as the lienholder. *Id.*, p. 5.

The last page of the Attachment is a Santander Consumer USA, Inc. Secretary's Certificate stating that Chrysler Group, LLC has granted a license authorizing Santander Consumer USA, Inc. a royalty free license to use the name "Chrysler Capital." *Id.*, p. 5.

~~Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $13,295.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

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

~~The Motion to Value Collateral and Secured Claim filed by James Angeles and Alicia Angeles ("Debtors")("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Name of Creditor ("Creditor") secured by an asset described as 2014 Dodge Durango ("Vehicle") is determined to be a secured claim in the amount of $13,295.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $13,295.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

10. 19-20548-C-13 RAH-1 — ZAKI/DIANA HADDAD — Richard A. Hall — OBJECTION TO CLAIM OF NABIH JALAL HADDAD, CLAIM NUMBER 8 — 7-10-19 [35]

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 , Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 10, 2019. 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). That requirement was met.

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 8 of Nabih Hadda is xxxx.

Zaki Haddad and Diana Haddad, the Chapter 13 Debtors, ("Objector") requests that the court disallow the claim of Nabih Hadda ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case to the extent is exceeds $39,001.00. The Claim is asserted in Proof of Claim No. 8 to be secured in the amount of $77,635.68. Objector asserts that certain payments made by Debtors were not properly credited or reflected in the Claim. Dckt. 37, Debtor's Declaration. Debtors filed copies of bank deposit slips in support of their assertion.

OPPOSITION OF CREDITOR:

On July 30, 2019, Creditor filed an Opposition stating that the payoff balance reflected in the Claim is accurate and disputing that the Debtors have provided evidence to contest the calculation. Dckt. 44. Creditor further states that the declaration coupled with the bank statements are insufficient to demonstrate that the payoff balance is incorrect.

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.

While the court notes that the bank deposit slips provided by Debtors do not match up exactly with the dates and fund amounts reflected in the proof of claim, the court does not have sufficient evidence to determine that Debtors claims are accurate. Debtors have not provided bank deposits for the payments that are reflected, in order to address the question the obvious issue that the date on the bank deposit slip would not necessarily match the date the funds are noted as received.

At the hearing the parties provided the court with additional evidence in support and/opposition to the contention that there are payments that are unaccounted for in the Proof of Claim....

Based on the evidence before the court, Creditor's claim is **xxxx**. The Objection to the Proof of Claim is **xxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Nabih Haddad ("Creditor"), filed in this case by Zaki Haddad and Diana Hadda, the 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 8 of Creditor is **xxxx**.

11. **19-24657-C-13 GEL-1** **MICHAEL/BRANDI SMIRL** **Gabriel E. Liberman** **MOTION TO EXTEND AUTOMATIC STAY** **7-26-19 [8]**

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 Debtors, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2019. 14 days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.

Michael Smirl and Bandi Smirl ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-21720) was dismissed on April 26, 2019, after Debtor did not make all requirement plan payments. *See* Order, Bankr. E.D. Cal. No. 18-21720, Dckt. 34,. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtors had unanticipated expenses related to their 1997 Honda Civil and water heater.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11

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

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

A. Why was the previous plan filed?

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

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

Debtor has sufficiently demonstrated the case was filed in good under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

12. **19-21860-C-13 MS-1** **LEONID/LYUDMILA BANAR** **Mark Shmorgon** **CONTINUED MOTION TO VALUE COLLATERAL OF FCI LENDER SERVICES, INC.** **3-26-19 [8]**

THRU #13

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

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 Debtors, Debtors' Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured 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.

The Motion to Value Collateral and Secured Claim of FCI Lender Services, Inc. ("Creditor") is xxxx.

PROCEDURAL HISTORY

The court granted Debtors' Motion to Value Collateral and Secured Claim on April 27, 2019. Order, Dckt. 30. The creditor, Partners For Payment Relief DE III, LLC, the lender for which Creditor acts as a loan servicer (collectively "Creditor"), filed its Motion to Vacate the Court's Order on April 29, 2019. Lender asked the court to reconsider its decision to grant Debtors' Motion to Value because it mis-calendared the opposition deadline for Debtors' Motion to Value. Dckt. 31 at p. 2:27-29. The court granted the Motion for Reconsideration on May 21, 2019, vacated is April 27 Order, and set a hearing on Debtors' Motion to Value for 2:00 p.m. on June 25, 2019. Parties filed additional briefs to address the merits of Debtors' Motion to Value.

DEBTOR'S INITIAL MOTION:

Initially on March 26, 2019, Leonid Banar and Lyudila Banar ("Debtors") filed their Motion to value the secured claim of FCI Lender Services, Inc. ("Creditor"). The Motion was accompanied by Debtor's amended declaration. Debtors are the owners of the subject real property commonly known as 8219 Villaview Drive, Citrus Heights, California ("Property").

CREDITOR'S OPPOSITION

On May 31, 2019, Creditor filed its Opposition to Debtors' Motion to Value Collateral. Dckt. 43. Creditor dispute Debtors' valuation of the subject Property. Where Debtors allege that the Property is worth $255,000.00, Creditor asserts that the Property is actually worth $282,500.00, providing $27,500.00 of equity over the senior lien holder for Creditor's lien to attach. Declaration, Dckt. 44 at Exhibit 3. In addition, Creditor raises objection to Debtors' proposed valuation. Creditor argues that Debtors are employed, respectively, as a Cobbler and a Housekeeper, and have no real estate experience upon which to base their proposed valuation. Creditor asked the court to deny Debtors' Motion to Value, or order a final hearing on the matter to allow Creditor to perform its own valuation on the Property.

In support of Creditor's stated valuation, the Creditor submits a Broker's Price Opinion ("BPO") dated April 10, 2019 valuing the property at $282,500.00. Creditor attempts to authenticate the BPO providing a sworn statement from Creditor's employee that the attached BPO is the report that the company ordered. However, no sworn statements are provided to authenticate the truth of the contents of the BPO.

DEBTOR'S RESPONSE

On June 7, 2019, Debtors filed their Response to Creditor's Opposition to Debtor's Motion to Value Collateral. Dckt. 49. Debtors' Counsel responded that because Debtors' have superior personal knowledge of the Property, Debtors' opinion of the Property's value is more reliable than Creditor's Broker's opinion.

Debtors' Counsel also takes issue with the BPO presented as evidence in support of Creditor's valuation, noting no declaration was filed by its author, and no information is provided as to the qualifications of its author. Additionally, Debtors' Counsel points out multiple defects with the Property that would ostensibly have an adverse effect on its valuation The defects include abnormal wear and tear caused by Debtors' eight children, non-permitted alterations to the Property, and needed repairs to the Property's roof and water pipes. According to a contractor's estimate submitted as evidence by Debtors' Counsel, repairing the roof and water pipes alone would cost at least $20,195.00. Dckt. 51 at Exhibit A. The expense of remedying these defects, argue Debtors' Counsel, would exceed the $24,237.29 of equity Lender claims based on its proposed valuation of the Property.

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

DISCUSSION

The parties offer conflicting evidence as to the value of the Property. Debtors seek to value the Property at a fair market value of $255,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The hearing is continued to allow the parties opportunity to conduct discovery.

DEBTORS' STATUS REPORT:

On August 6, 2019, Debtor filed a Status Report. Dckt. 65. The Report states that:

1. Creditor sent an appraiser to Debtor's home on August 3, 2019.

2. Debtors retained Steve C. Baker who conducted and in home inspection and produced a report.

3. Debtor's counsel e-mailed Creditor to obtain a status report swap.

Debtor's counsel states that at the time of the Status Report filing, no response has been received from Creditor.

At the hearing -------

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

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

> The Motion to Value Collateral and Secured Claim filed by Leonid Banar and Lyudila Banar ("Debtors") 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 Value Collateral and Secured Claim of FCI Lender Services, Inc. ("Creditor") is **xxxx**.

13. **19-21860-C-13 RDW-2** | **LEONID/LYUDMILA BANAR** **Mark Shmorgon** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY PARTNERS FOR PAYMENT RELIEF DE III, LLC** **5-9-19 [37]**

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

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, parties requesting special notice, and Office of the United States Trustee on May 9, 2019. By the court's calculation, 47 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is xxxx.

Partners For Payment Relief DE III, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. Debtor does not provide for Creditor's claim and Debtor has failed to provide evidence that Creditor is completely unsecured.

B. Creditor alleges that Debtor will not be able to afford the Plan. Debtor's Schedules show disposable income of $150.00 and a monthly plan payment of $150.00. Confirmation of the Plan would be impossible in the event Creditor's claim is included in the plan.

DISCUSSION

Creditor asserts a claim of $97,106.81 in this case. Debtor's Schedule D estimates the amount of Creditor's claim as $98,406.73 and indicates that it is secured by a second deed of trust on Debtor's residence. The Plan provides for treatment of this as a Class 2 claim, but (because Debtor asserts that it is subject to a claims valuation pursuant to 11 U.S.C. § 506(a)), proposes to pay a $0.00 monthly dividend on account of the claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

A review of Debtor's Plan shows that it relies on the court valuing the secured claim of FCI Lender Services, Inc. Debtor has filed a Motion to Value the Secured Claim of FCI Lender Services, Inc. Dckt. 8. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

JUNE 4, 2019 HEARING

At the June 4, 2019 hearing the Objection to Confirmation of Plan was continued to June 25, 2019 to permit the Debtor's Motion to Value Creditor's Claim to resolve.

The court further continues the hearing as Debtor and Creditor are conducting discovery as to the value of Creditor's collateral.

DEBTORS' STATUS REPORT:

On August 6, 2019, Debtor filed a Status Report. Dckt. 63. The Report states that Plan Confirmation was continued to allow resolution of the pending Motion to Value (Dckt. 30). Debtor notes that:

1. Creditor sent an appraiser to Debtor's home on August 3, 2019.

2. Debtors retained Steve C. Baker who conducted and in home inspection and produced a report.

3. Debtor's counsel e-mailed Creditor to obtain a status report swap.

Debtor's counsel states that at the time of the Status Report filing, no response has been received from Creditor and the Motion to Value has not been resolved.

At the hearing ------

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

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

The Objection to the Chapter 13 Plan filed Partners For Payment Relief DE

III, LLC ("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 the hearing on the Objection to Confirmation of Plan is **XXXX**.

14. **18-20570-C-13** **MATTHEW KENNEDY** **MOTION TO VACATE DISMISSAL OF**
18-2057 **Michael Hays** **ADVERSARY PROCEEDING**
DBJ-3 **6-6-19 [52]**

PASSALAQUA ET AL V. KENNEDY
ADVERSARY PROCEEDING CLOSED:
02/04/2019 AND DISMISSED:
01/15/2019

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, and Office of the United States Trustee on June 6, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Vacate is granted, and the order Dismissing the Adversary Proceeding (Dckt. 40) is vacated.

Denis Passalaqua and Patricia Passalaqua ("Plaintiffs") filed the instant adversary proceeding on May 1, 2018. Dckt. 1. An Answer was filed on May 30, 2018. Dckt. 8. A Settlement Agreement was filed with the court on December 20, 2018. Dckt. 33. As a result of the Settlement Agreement, Plaintiffs filed a Notice of Dismissal of Adversary Proceeding on January 14, 2019 and the court entered an Order Dismissing the Adversary Proceeding on January 15, 2019. Dckts. 38 and 40.

On June 6, 2019, Plaintiffs filed this instant Motion to Vacate, claiming Defendant-Debtor Matthew Kennedy did not comply with the required terms of the Settlement Agreement. Dckt. 52. Plaintiff stated that Defendant was supposed to pay Plaintiffs $15,000.00 within 120 days of the Settlement Agreement. While not in the four corners of the Settlement Agreement, Plaintiff alleges that the $15,000.00 was to be paid from the proceeds of the sale of Debtor's property located at 12390 Meridian Road, Chico, California.

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

APPLICABLE LAW

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

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

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

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

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

DISCUSSION

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

The court notes that Debtor's confirmed Plan does not reference the sale of Defendant's property and there is no Motion requesting an Order to Sell the subject property. The also notes that Plaintiff did not file a claim in the bankruptcy proceeding. Accordingly, the court construes the Settlement Agreement as reducing the pre-petition liability to a $15,000.00 non-dischargeable liability, per Subsection II of the Settlement Agreement. Dckt. 33.

Therefore, in light of the foregoing, the Motion is granted, and the order Dismissing the Case (Dckt. 40) is vacated to permit the Plaintiff to submit a proposed judgment consistent with the terms of the Settlement Agreement.

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 Vacate filed by Denis Passalaqua and Patricia Passalaqua ("Plaintiffs") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the order Dismissing the Adversary Proceeding (Dckt. 40) is vacated.

15.	**19-23581-C-13** **PGM-1**	**PETER/REBECCA DELGADO** **Peter G. Macaluso**	**MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL, INC.** **7-7-19 [15]**

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

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 Debtors, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral and Secured Claim of Ally Financial, Inc. ("Creditor") is xxxxx

The Motion filed by Peter and Rebecca Delgado ("Debtors") to value the secured claim of Ally Financial, Inc. ("Creditor") is accompanied by Debtor's, Peter Delgado's, declaration. Declaration, Dckt. 17. Debtor is the owner of a 2016 Toyota Tacoma ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $23,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor claims that the car has 75,000 miles, has scratches on the bed of the truck and on the grill and bumper, has stains on the seats, and the radio, transmission, and windows are not working properly.

CHAPTER 13 TRUSTEE'S RESPONSE:

On July 24, 2019, the Chapter 13 Trustee responded that he has no opposition to the requested relief. Dckt. 24.

CREDITOR'S OPPOSITION:

On July 30, 2019, Creditor filed an Opposition to Debtor's Motion to Value. Dckt. 26. Creditor disputes Debtor's valuation and assets that the value of the vehicle at the time of filing is $30,825.00 and

should be determined to fully secure it claims of $28,795.10. *Id.* Creditor's Opposition is accompanied by the declaration of Peter Milton. Dckt. 28. Peter Milton properly authenticates Exhibit D, a NADA online Report for a 2016 Toyota Tacoma with 75,000 miles valuing the vehicle at $30,825.00. Dckt. 27.

DEBTOR'S REPLY:

Debtor's Counsel filed a Reply noting that the Debtor provided his lay opinion regarding the value of the vehicle and identified several issues with the vehicle that would affect the valuation.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on December 26, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $28,437.00. Declaration, Dckt. 17.

At the hearing the parties addressed their stated valuations-----

~~Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $xxxx.xx, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

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

~~The Motion to Value Collateral and Secured Claim filed by Peter and Rebecca Delgado ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Ally Financial, Inc. ("Creditor") secured by an asset described as 2016 Toyota Tacoma ("Vehicle") is determined to be a secured claim in the amount of $xxxx.xx, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $xxxx.xx and is encumbered by a lien securing a claim that exceeds the value of the asset.~~

16. **19-23197-C-13 JHW-1** **CATHRYN HIGGS MCCOMBS Michael Hays** **OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE LLC 6-11-19 [22]**

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, the Chapter 13 Trustee creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2019. 14 days' notice is required. That requirement was met.

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.

TD Auto Finance, LLC ("Secured Creditor"), opposes confirmation of the Plan on the basis that:

A. Debtor's Plan provides for interest rate payments with respect to the loan associated with a 2014 Dodge Journey. Secured Creditor states that Debtor's Plan should provide for an interest rate of 7.5%, an adjustment of the national prime rate by two points. Creditor states that Debtor's tight budget and extension of the contract by 47 months present

DISCUSSION

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 5.00%. Creditor's claim is secured by a 2014 Dodge Journey. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the

formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 5.50%, plus a 1.25% risk adjustment, for a 6.75% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by TD Auto Finance, LLC ("Secured 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 Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

17. **19-23497-C-13 DPC-1** **MONICA ROBINSON** **Rick Morin** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-17-19 [14]**

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, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2019. 14 days' notice is required. That requirement was met.

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.

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

A. The Plan was provided on an incorrect form and is not in compliance with Local Rule 3015-1(a).

B. The Trustee questions whether the Plan is the Debtor's best effort because Schedule J lists an $800.00 expense for "Payments toward mother's credit card." Dckt. 1. Debtor stated at the Meeting of Creditors that she incurred a $30,000.00 debt on her mother's credit card, but no such claim was scheduled. Proposing to pay the debt associated with Debtor's mother's credit card appears to be unfair discrimination against the general unsecured creditors.

DISCUSSION

Trustee's objections are well-taken. Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay a debt associated with her mother's credit card through the Plan, an obligation that is not scheduled by Debtor, reducing the payments the general unsecured creditors should receive through the plan.

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

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

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

FINAL RULINGS

18. 19-23400-C-13 IBRAHEYMA ALHARK
DPC-1 Scott D. Hughes
7-17-19 [24]

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK

Final Ruling: No appearance at the August 13, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2019. 14 days' notice is required. That requirement was met

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

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed..

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed an Amended and corresponding Motion to Confirm on August 7, 2019. Dckts. 31 and 33. Filing a new plan is a de facto withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

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

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

19. 13-30387-C-13 TOG-1 SURENDRA JANAM Thomas O. Gillis MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC 7-8-19 [72]

Final Ruling: No appearance at the August 13, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2019. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against property of the debtor, Surendra Janam ("Debtor") commonly known as 5523 Bilby Road, Elk Grove, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,359.18. Exhibit A, Dckt. 75. An abstract of judgment was recorded with Sacramento County on October 12, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $200,00.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $311,600.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $5,359.18 on Amended Schedule C. Dckt. 78.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Surendra Janam ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Midland Funding, LLC, California Superior Court for Sacramento County Case No. 34-2012-00119460, recorded on October 17, 2012, Book 20121017 and Page 1667, with the Sacramento County Recorder, against the real property commonly known as 5523 Bilby Road, Elk Grove, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

20. **16-24274-C-13 MJD-7** **JARED VARNEY**
Matthew J. DeCaminada

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STUTZ LAW OFFICE, P.C. DEBTORS ATTORNEY(S) 6-27-19 [92]

Final Ruling: No appearance at the August 13, 2019 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2019. 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). That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Stutz Law Office, P.C., the law firm ("Applicant") for Jared Varney 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 March 21, 2019, through June 17, 2019. Applicant requests fees in the amount of $1,500.00 and costs in the amount of $0.00. Applicant notes that while there were 16.4 hours worked on the case, Applicant is only seeking compensation for 8.5 hours.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include 16.4 hours of work but only seeking payment for 8.50 hours of work, including reviewing previous attorney's filings, seeking approval to sell property, plan confirmation, and other administrative tasks. Dckt. 92. 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 and the Plan reflect that the Applicant elected to file a motion in accordance with 11 U.S.C. § § 329 and 330 and reflects that Applicant was paid $0.00 prior to the filing of the case. Dckts. 65 and 102.

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.

Administration: Applicant spent 2.3 hours in this category. Applicant reviewed prior attorneys work, met with client to draft new petition, amended filings, and corresponded with client about plan compliance.

Responding to Motion to Sell: Applicant spent 9.7 hours finalizing the Motion to Sell and employment of necessary persons.

Amended Plan: Applicant spent 3.2 hours in this category. Applicant prepared and filed the Amended Plan.

Fee Application: Applicant spent 1.2 hours in this category.

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**
Matthew DeCaminada	8.5	$275.00	$2,337.50
Total Fees for Period of Application			$ 1,500.00 (reduced rate requested)

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $0.00 pursuant to this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including a motion to value and an objection to claim raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $1,500.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $1,500.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Stutz Law Office, P.C. ("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 Stutz Law Office, P.C. is allowed the following fees and expenses as a professional of the Estate:
>
> Stutz Law Office, P.C., Professional Employed by Jared Varney ("Debtor")
>
> Fees in the amount of $1,500.00
> Expenses in the amount of $0.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.
>
> **IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

21. **18-26130-C-13 MJD-6** **PAUL/MICHELLE STANLEY**
Matthew J. DeCaminada

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STUTZ LAW OFFICE, P.C FOR MATTHEW DECAMINADA, DEBTORS ATTORNEY(S)
6-27-19 [81]

Final Ruling: No appearance at the August 13, 2019 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2019. 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). That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Stutz Law Office, P.C., the law firm ("Applicant") for Paul Stanley Jr and Michelle Stanley the Chapter 13 Debtors ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period March 5, 2019, through June 17, 2019. Applicant requests fees in the amount of $6,932.50 and costs in the amount of $0.00.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner,

trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

A. Were the services authorized?

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

at the time they were rendered?

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's for the Estate include 29.50 hours of work, including reviewing previous attorney's filings, reviewing the claims, one motion to value, an objection to claim, plan confirmation, and post-confirmation correspondence. Dckt. 81. 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 reflects that the Applicant elected to file a motion in accordance with 11 U.S.C. § § 329 and 330 and reflects that Applicant was paid $0.00 prior to the filing of the case. Dckt. 76.

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.

Administration: Applicant spent 10.6 hours in this category. Applicant reviewed prior attorneys work, met with client to draft new petition, amended filings, worked with client regarding his licencing, and corresponded with client about plan compliance.

Responding to Motion to Dismiss: Applicant spent 1.8 hours responding to the Trustee's Motion.

Motion to Value: Applicant spent 1.2 hours in this category. Applicant prepared and filed a Motion to Value Debtors vehicle.

Objection to Claim: Applicant spent 1.8 hours in this category. Applicant preparing and filing the Objection.

Amended Plan: Applicant spent 12.3 hours in this category. Applicant prepared and filed the Amended Plan.

Fee Application: Applicant spent 1.8 hours in this category.

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
Matthew DeCaminada	29.5	$275.00	$8,112.50

Total Fees for Period of Application	$ 6,932.50 (reduced rate requested)

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $0.00 pursuant to this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The unique facts surrounding the case, including a motion to value and an objection to claim raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of $6,932.50 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $6,932.50

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Stutz Law Office, P.C. ("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 Stutz Law Office, P.C. is allowed the following fees and expenses as a professional of the Estate:
>
> Stutz Law Office, P.C., Professional Employed by Paul Stanley, Jr. and Michelle Stanley ("Debtors")
>
> Fees in the amount of $6,932.50
> Expenses in the amount of $0.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as

counsel for Debtor.

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

22. 19-20803-C-13 PAULO/CLARA LIRA **MOTION TO CONFIRM PLAN**
TOG-2 Thomas O. Gillis **7-9-19 [34]**

Final Ruling: No appearance at the August 13, 2019 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2019. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1). That requirement was met.

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

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Pauo Lira and Clara Lira ("Debtors"), have provided evidence in support of confirmation. A Supplemental Ex Parte Motion to Dismiss Trustee's Objection to Confirmation has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), on July 30, 2019. Dckt. 49. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the debtor, Pauo Lira and Clara Lira ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Chapter 13 Plan filed on July 9, 2019, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13

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