

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

October 6, 2020 at 1:30 p.m.

ALL APPEARANCES MUST BE TELEPHONIC  
(Please see the court's website for instructions.)

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1. [20-23001](#)-C-13 BOB TRAN MOTION FOR RELIEF FROM  
[AP-1](#) Mikalah Liviakis AUTOMATIC STAY  
9-4-20 [[26](#)]  
JPMORGAN CHASE BANK N.A. VS.

**Final Ruling:** No appearance at the October 6, 2020 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 32 days' notice was provided. Dckt. 32.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion for Relief from the Automatic Stay is granted.**

JP Morgan Chase Bank, N.A. ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 2017 Subaru Forester (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent postpetition payments, and because the debtor's lease for the Property matured on September 16, 2019.

**DISCUSSION**

Upon review of the record, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is not

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making payments, and because the debtor's lease for the Property has matured.

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

No other or additional relief is granted by the 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 for Relief from the Automatic Stay filed by JP Morgan Chase Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Property, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Subaru Forester ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

No other or additional relief is granted.

2. [20-23615](#)-C-13 TOMMY/SARAH PARKER  
[PPR-1](#) Mikalah Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY QUICKEN LOANS, LLC  
8-21-20 [[16](#)]

**Final Ruling:** No appearance at the October 6, 2020 hearing is required.  
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**The Objection is overruled without prejudice.**

On September 24, 2020, the Movant filed an Ex Parte Motion to Dismiss. Dckt. 22. Federal Rule of Civil Procedure 41(a)(2), incorporated by Federal Rules of Bankruptcy Procedure 9014 and 7041, allows dismissal after a responsive pleading has been filed on terms the court considers proper.

The court finds withdrawal is warranted here. The Objection is overruled without prejudice, and the court removes this Objection from the calendar.

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

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

The Objection filed by Quicken Loans, LLC, having been presented to the court, the movant having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled without prejudice.

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f) (1) procedure which requires 35 days' notice. The Proof of Service shows that 42 days' notice was provided. Dckt. 46.

**The Motion to Confirm is ~~xxxxxxx~~.**

The debtor filed this Motion seeking to confirm the Second Modified Chapter 13 Plan (Dckt. 42) filed on August 25, 2020.

No party filed an opposition to the Second Modified Plan. However, on October 1, 2020, the debtor filed a document requesting further changes be incorporated into the Second Modified Plan. Dkt. 57.

Specifically, the debtor notes that she unintentionally omitted a \$9,132.36 settlement award from her schedules, \$7,998.41 of which she just received and \$1,910.17 she received prepetition. The debtor notes that the proceeds are non-exempt, and requests the Second Modified Plan be altered to include the \$7,998.41 as a separate lump sum payment.

At the hearing, ~~xxxxxxxxxxxxxxxx~~

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 filed by the debtor, Kathleen Marslek, 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 ~~xxxxxxxxxxxx~~

4. [20-23824](#)-C-13 RANDY/SAMANTHA SHUKER  
[ADR-1](#) Justin Kuney

MOTION TO VALUE COLLATERAL OF  
CONSUMER PORTFOLIO SERVICES,  
INC.  
9-5-20 [[27](#)]

Thru #5

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 31 days' notice was provided. Dckt. 30.

**The Motion to Value is ~~xxxxxx~~.**

The debtor filed this Motion seeking to value the portion of creditor Consumer Portfolio Services, Inc.'s ("Creditor") claim secured by the debtor's property commonly known as a 2007 Chevy Silverado (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was ~~xxxx~~. Declaration, Dckt. ~~xx~~.

**CREDITOR'S OPPOSITION**

Creditor filed an Opposition on September 21, 2020. Dckt. 35. Creditor argues that the value of the Property is \$12,118.00, based on review of NADA guide valuations.

**DISCUSSION**

The court notes that while Creditor argues the NADA valuation is \$12,118.00, it is actually a Kelley Blue Book Quick Value that was filed as Exhibit 1. Dkt. 36. And, that exhibit was not authenticated and is therefore not admissible evidence.

However, Federal Rule of Bankruptcy Procedure 9014(d) provides that testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding. Because there is a disputed material fact, the Contested Matter must be set for evidentiary hearing.

At the hearing, ~~xxxxxxxxxxxxxxxx~~

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 the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is **xxxxxxxxxx**

5. [20-23824](#)-C-13 RANDY/SAMANTHA SHUKER  
[GB-1](#) Justin Kuney

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
CONSUMER PORTFOLIO SERVICES,  
INC.  
8-25-20 [[19](#)]

**No Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dckt. 22.

**The Objection to Confirmation of Plan is XXXXXX**

Creditor Consumer Portfolio Services, Inc. ("Creditor") opposes confirmation of the Chapter 13 plan because it disputes the proposed valuation of its secured claim.

Because this Objection relies on the outcome of the debtor's Motion To Value (Dckt. 27), this hearing was continued.

At the hearing, XXXXXXXXXXXXXXXXXX

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 Consumer Portfolio Services, Inc., 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 Plan is XXXXXXXXXX

6. [18-27730](#)-C-13 JENNY VANG  
[MSM-1](#) Mohammad Mokarram

MOTION TO APPROVE STIPULATION  
FOR RELIEF FROM THE AUTOMATIC  
STAY  
9-2-20 [[42](#)]

**Final Ruling:** No appearance at the October 6, 2020 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dckt. 45.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion for Relief from the Automatic Stay is granted.**

Golden 1 Credit Union filed this Motion seeking relief from the automatic stay as to the debtor's 2013 Toyota Sienna.

The Movant, debtor, and Chapter 13 trustee have all stipulated to the relief sought. Exhibit 1, Dkt. 46.

Therefore, the Motion is granted.

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

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

The Motion for Relief from the Automatic Stay filed by Golden 1 Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Property, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Toyota Sienna ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 15 days' notice was provided. Dckt. 15.

**The Motion to Extend the Automatic Stay is granted.**

The debtor Michele Lynne Spahr ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on September 9, 2020, after Debtor fell delinquent in plan payments. Order, Bankr. E.D. Cal. No. 17-28079, Dckt. 46. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because debtor was new to living off SSDI income could not balance the payments with the budget. Debtor argues that now certain expenses have been reduced and SSDI income has stabilized, meaning she should be able to maintain payments.

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*,

No. 11-01278, 2011 Bankr. LEXIS 2443, at \*6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c) (3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

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

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 Michele Lynne Spahr 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.

**No Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 33 days' notice was provided. Dkt. 53.

**The Motion to Incur Debt is XXXX**

The debtor filed this Motion seeking authority to refinance debtor's existing mortgage. The new mortgage offered by Caliber Home Loans is in the principal amount of \$203,500.00, to be paid back over 30 years at 3% interest.

**WELLS FARGO'S NONOPPOSITION**

On September 10, 2020, creditor Wells Fargo Bank, N.A., filed a non-opposition. Dkt. 54. Wells Fargo requests the following language be added to the order granting the Motion:

The loan secured by a first lien on real property located at 8435 Crystal Walk Circle, Elk Grove, CA 95758 will be paid in full as of the date of the closing of the refinance and based on a non-expired contractual payoff statement received directly from Wells Fargo Bank N.A.

**TRUSTEE'S RESPONSE**

The Chapter 13 trustee filed a Response on September 22, 2020, which is ultimately also a non-opposition. Dkt. 56.

The trustee notes that the estimated closing statement filed with this Motion includes a HUD Hamp Loan in the amount of \$44,195.24 as well as a utility lien totaling \$1,537.69, which were not scheduled or provided for in the debtor's plan. The trustee also notes that the debtor is set to receive \$17,065.42 in excess funds from the refinance, and only \$12,261.00 is needed to complete the case.

The trustee requests that if the Motion is granted, the following language be included in the order:

a. The Refinance is approved provided all liens, if any, are paid in full in a manner consistent with the plan, notwithstanding relief of stay that has been entered.

b. The Trustee shall approve the escrow and title company to be used in connection with the transaction.

c. The Trustee shall approve the estimated closing statement to be prepared in connection with the refinance, and when approved, disbursement may only be made in accordance with the approved estimated closing statement.

**DISCUSSION**

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~

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 Incur Debt filed by the debtor Tina Marie Vaunhefflyunn 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 ~~XXXXXX~~

9. [17-22237](#)-C-13 KEVONNA BROWN  
[PGM](#)-4 Peter Macaluso

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTORS  
ATTORNEY(S)  
8-26-20 [[102](#)]

**Final Ruling:** No appearance at the October 6, 2020 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 41 days' notice was provided. Dckt. 107.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion for Allowance of Professional Fees is granted.**

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

Applicant requests additional fees, above the flat fee, in the amount of \$1,800.00. Applicant explains that a Chapter 13 plan was first confirmed June 15, 2017, and since that time counsel expended significant effort preparing modified plans.

#### **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;

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(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 prosecution of modified chapter 13 plans. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **"No-Look" Fees**

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

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

. . .  
(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing

chapter 13 debtors provided they comply with the requirements to this Subpart.

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 9. Applicant prepared the order confirming the Plan.

### **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has

considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. See *In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

#### **FEES AND COSTS & EXPENSES ALLOWED**

The unique facts surrounding the case raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,800.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by 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.

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

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

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

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

Peter G. Macaluso, Professional Employed by Kevonna Janae Brown ("Debtor")

Fees in the amount of \$1,800.00,

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

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

10. [20-21243](#)-C-13 NORMA WARD AND BLANCHE MOTION TO MODIFY PLAN  
[TLA](#)-1 CARBAJAL-WARD 8-31-20 [[28](#)]  
Thomas Amberg

**Final Ruling:** No appearance at the October 6, 2020 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 36 days' notice was provided. Dckt. 33.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion to Confirm is denied as moot.**

A review of the docket shows the debtor filed a new Modified Plan and corresponding Motion To Confirm on September 10, 2020. Dkts. 35, 39.

Filing a new plan is defacto withdrawal of the pending plan. Therefore, the Motion is denied as moot.

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

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

The Motion to Confirm filed by the debtors, Norma Jean Ward and Blanche Joyce Carbajal-Ward, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied as moot.

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dckt. 16.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor did not attend the 341 Meeting of Creditors on September 10, 2020.
2. The plan relies on a the court valuing the secured claim of One Main Financial, which has yet to be done.
3. Schedule I reflects that Debtor's monthly gross income is \$1,360.74. The Trustee reviewed the paystubs provided and calculated that the gross income is actually \$2,721.47 per month.
4. Debtor's Schedule J does not indicate any rental or housing expenses in an already lean budget
5. CarMax has filed a secured claim in the amount of \$26,484.66 for a 2017 Jaguar XE (Claim 1-1). Debtor's plan does not provide for this secured claim.
6. Debtor's 2019 Federal Income Tax Returns includes a Profit and Loss from Business as a Taxi Service. Debtor has not included her business income on her budget, or information on the Statement of Financial Affairs filed at the inception of the case

**DISCUSSION**

A review of the docket shows debtor attended the continued Meeting of Creditors on September 24, 2020.

However, all remaining grounds for objection appear to remain. The debtor has not carried her burden of proof to show the plan is feasible and proposed in good faith because an accurate financial picture has not been provided. The plan is also not feasible because it relies on the valuation of One Main Financial's secured claim, which has not been done.

Finally, it is unclear whether debtor is providing all her disposable income into the plan, as is required

Each of the above grounds is reason to deny confirmation. 11 U.S.C. § 1325(a)(3), (a)(6), & (b)(1)(B). Therefore, the Objection is sustained.

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, Russell Greer, 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.

12. [17-27350](#)-C-13 RICCY/TESSIE LABITORIA  
[PGM](#)-2 Peter Macaluso

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTORS  
ATTORNEY(S)  
9-16-20 [[151](#)]

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice where fees greater than \$1,000 have been requested. Fed. R. Bankr. P. 2002(a)(6). The Proof of Service shows that 20 days' notice was provided. Dckt. 155.

Because only 20 days notice was provided, the Motion shall be denied without prejudice.

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

Peter G. Macaluso, the Attorney ("Applicant") for Riccy Labitoria and Tessie Novales Labitoria, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees of \$1,500 in this case.

Applicant explains he substituted in to the case on March 26, 2020, in the place of Ted Greene, and prosecuted a modified plan.

However, as explained above, the Motion shall be denied without prejudice due to insufficient notice provided.

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

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

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

**IT IS ORDERED** that the Motion is denied without prejudice.

13. [18-22662](#)-C-13 RAJINDAR SINGH  
[RDG-1](#) Peter Macaluso

MOTION TO CONVERT CASE FROM  
CHAPTER 13 TO CHAPTER 7  
9-22-20 [[105](#)]

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dckt. 108.

**The Motion is granted, and the case is ~~XXXXXX~~**

The Chapter 13 Trustee filed this Motion to Convert arguing that cause for conversion exists based on a \$10,600 plan payment delinquency. Declaration, Dkt. 107.

Failure to maintain plan payments constitutes unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c).

However, 11 U.S.C. § 1307(c) further requires that the court determine whether dismissal or conversion is in the best interests of creditors and the estate.

No evidence or argument has been presented for why conversion is the better option here.

At the hearing, ~~XXXXXXXXXXXXXXXX~~

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 Convert the Chapter 13 case filed by the Chapter 13 Trustee, Russell Greer ("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 Motion to is granted, and the case is ~~XXXXXXXXXXXX~~

14. [20-23688](#)-C-13 LAURA/DONALD ENGLAND  
[KMM-1](#) Gary Fraley

OBJECTION TO CONFIRMATION OF  
PLAN BY HSBC BANK USA, NATIONAL  
ASSOCIATION  
8-18-20 [[14](#)]

Thru #15

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 49 days' notice was provided. Dckt. 17.

**The Objection to Confirmation of Plan is sustained.**

Creditor HSBC Bank USA, National Association, as Trustee for Wells Fargo Alternative Loan 2007-PA3 Trust ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan misstates the prepetition arrearage to be \$53,583.58 where that amount totals \$57,368.35.
2. Because the plan already commits \$4,375.00 of debtors' monthly \$4,375.88 in disposable income, the debtors do not have adequate funding to make the necessary increase in payments to cure the arrearage.

**DISCUSSION**

The plan at Section 3.02 provides that the Proof of Claim, and not the plan terms, control the amount of a claim. Dkt. 2. Creditor's Proof of Claim, No. 16, shows the higher arrearage amount of \$57,368.35.

Because the plan already commits virtually all of debtors' disposable income, it does not appear debtors have income to make increased payments required for the plan to be feasible. The court also notes that other contingent events are required for the plan's feasibility which have yet to occur, including valuation of secured claims.

Infeasibility is reason to deny confirmation. 11 U.S.C. § 1325(a)(6). Therefore, the Objection is sustained.

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 HSBC Bank USA, National Association, as Trustee for Wells Fargo Alternative Loan 2007-PA3 Trust, 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.

**Tentative Ruling:**

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dckt. 22.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan proposes valuing several secured claims, which has not yet been done.
2. The plan understates the prepetition arrearage owed to Wells Fargo Bank N.A.

**DISCUSSION**

The plan at Section 3.02 provides that the Proof of Claim, and not the plan terms, control the amount of a claim. Dkt. 2. Creditor's Proof of Claim, No. 16, shows the higher arrearage amount of \$57,368.35.

Because the plan already commits virtually all of debtors' disposable income, it does not appear debtors have income to make increased payments required for the plan to be feasible.

Infeasibility is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The plan also calls for valuing several secured claims, which process has not been finished. Because the plan is infeasible notwithstanding the secured claims being valued, a continuance is not necessary.

Therefore, the Objection is sustained.

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, Russell Greer, 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.

**Final Ruling:** No appearance at the October 6, 2020 hearing is required.  
-----

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dckt. 26.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

**The hearing on the Objection to Confirmation of Plan is continued to October 20, 2020 at 1:30 p.m.**

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor's plan provides for Santander Consumer USA as a Class 2 claim reduced to \$4,500.00 based on the value of its collateral. The Court has not entered an order on an appropriate motion to value that collateral.
2. Debtor testified at the 341 Meeting she is receiving \$457 every two weeks from unemployment, which income is not reported on Schedule I.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on September 29, 2020, noting the Motion To Value was filed and requesting a continuance. Dckt. 27.

#### **DISCUSSION**

In light of the debtor's request, the court will continue the hearing to October 20, 2020, to allow this Objection to be heard alongside the debtor's Motion To Value. The continuance will also allow debtor to file any Amended Schedules, if necessary.

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, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Objection to Confirmation of Plan is continued to October 20, 2020, at 1:30 p.m.

**Final Ruling:** No appearance at the October 6, 2020 hearing is required.  
-----

The Motion has been set on Local Rule 9014-1(f) (1) procedure which requires 28 days' notice. The Proof of Service shows that 39 days' notice was provided. Dckt. 30.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion to Dismiss is granted, and the case is dismissed.**

The debtor filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor's monthly disposable income is in the negative due to COVID-19, and no feasible plan can be proposed. The debtor notes that the case has not been previously dismissed.

11 U.S.C. § 1307(b) provides "On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter." The case here has not been previously converted.

Based on the foregoing, cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(b). The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, Russell Greer ("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 Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dckt. 15.

**The Motion to Extend the Automatic Stay is granted.**

Nilda Ann Vega ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on July 9, 2020, after Debtor failed to confirm a plan. Order, Bankr. E.D. Cal. No. 20-20089, Dckt. 42. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because debtor could not afford the payments with the mortgage going through the plan. Debtor explains that debtor has become current on mortgage payments now and only has to pay the unsecured debts through the plan.

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*,

No. 11-01278, 2011 Bankr. LEXIS 2443, at \*6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c) (3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

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

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

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 Nilda Ann Vega 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.