

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 17, 2020 at 1:30 p.m.

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

1.	19-27903 -C-13	TOUSSAINT/FELECIA	MOTION TO MODIFY PLAN
	TLA -1	WILLIAMS	9-29-20 [29]
		Thomas Amberg	

Final Ruling: No appearance at the November 17, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 49 days' notice was provided. Dckt. 35.

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 Modify Plan is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan 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 Modify filed by the debtors, Toussaint Diallo Williams and Felecia Darlene Williams, 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, the debtors' Modified Chapter 13 Plan filed on September 29, 2020 (Dckt. 33) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtors' counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

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 39 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. Paragraph 3.06 of Debtors' plan fails to state the monthly dividend payable for attorney fees.
2. The Internal Revenue Service has a proof of claim on November 4, 2020 with a secured amount of \$21,425.00. This claim has not been addressed in Debtors' Plan.

DISCUSSION

The trustee's Objection show the plan is not feasible. While \$2,000 in attorney fees are provided for, there is no actual provision for payment. Additionally, the plan does not provide for treatment of the IRS' secured claim, which totals \$21,425.00.

That 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 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.

3. [19-21515](#)-C-13 STACEY SANDRY
[MC-2](#) Muoi Chea

MOTION TO APPROVE LOAN
MODIFICATION
10-8-20 [[49](#)]

Final Ruling: No appearance at the November 17, 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 40 days' notice was provided. Dckt. 53.

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 Incur Debt is granted.

The debtor Stacey Elaine Sandry filed this Motion seeking authority to refinance her real property commonly known as 1866 Hawkhaven Way, Sacramento, California.

The new loan provides for the mortgage to be bifurcated into a \$240,248.61 first mortgage and \$96,285.66 second mortgage. The first DOT is at 3.5% interest for 30 years, and the second DOT is interest free, and due as a balloon payment on September 1, 2050.

By refinancing, the debtor's monthly payment is reduced from \$2,531.08 to \$1,859.12.

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

The court shall issue 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 Stacey Elaine Sandry 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 Stacey Elaine Sandry is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 52.

4. [20-24317](#)-C-13 STACIE PRADIE
[GEL](#)-1 Gabriel Liberman

CONTINUED MOTION TO VALUE
COLLATERAL OF REAL TIME
RESOLUTIONS, INC.
9-22-20 [[10](#)]

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 28 days' notice was provided. Dckt. 13.

The Motion to Value is ~~XXXXXX~~

The debtor filed this Motion seeking to value the portion of Real Time Resolutions, Inc.'s ("Creditor") claim secured by the debtor's property commonly known as 1460 Shirley Drive, Sacramento, California (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$483,755.33. Declaration, Dckt. 12.

The Creditor filed an Opposition on October 6, 2020, arguing there is equity to support its lien, and requesting a continuance to allow an appraisal. Dkt. 20. The parties filed a Stipulation on October 7, 2020, to continue the hearing to November 17, 2020. Dkt. 24.

DISCUSSION

Nothing has been filed since the prior hearing to indicate whether the dispute over the value of the Property has been resolved.

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 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 to Value is ~~XXXXXXXXXX~~

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 22 days' notice was provided. Dckt. 31.

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 has not provided a copy of her 2019 Federal and State tax returns.
2. The trustee has requested, and debtor has yet to provide, evidence substantiating her valuation of her residence and the total mortgage claim as of the filing date.
3. The debtor reports having an interest in real property located at 1460 Shirley Drive, Sacramento, California. The trustee has requested, and debtor has yet to provide, evidence substantiating her valuation of the property, debtor's interest in the property, and the total mortgage claim as of the filing date.
4. Debtor has admitted that she is owed back family support in a significant amount, which was not listed in her schedules. Debtor's plan is not proposed in good faith.

DISCUSSION

The present plan is not presently confirmable. The debtor has unsecured assets; has not provided copies of her 2019 tax returns, and has yet to fulfill her duty to cooperate by providing the trustee requested evidence as to her interests in real property.

That is reason to deny confirmation. 11 U.S.C. § 521(a)(1) & (e)(2)(A)(i); 11 U.S.C. § 1325(a)(1) & (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 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.

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 22 days' notice was provided. Dckt. 41.

The Objection to Confirmation of Plan is XXXXXX

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

1. Debtor Samantha Marie Shuker testified at her 341 Meeting of Creditors that she has obtained a new job and will earn approximately \$1,250.00 less than the amount of \$5,750.00 listed on Debtors' current Schedule I. No Amended or Supplemental Schedules were filed.
2. Debtors' plan provides for Consumer Portfolio Services, Inc. as a Class 2 claim and proposes to pay the value of the collateral securing that claim. Therefore the plan relies on the outcome of debtors' Motion To Value (Dkt. 27).
3. Although a copy of Debtors' 2019 tax returns were provided to the trustee, the returns provided were not signed and, Debtor Samantha Marie Shuker admitted at her 341 Meeting of Creditors that she does not remember filing her 2019 tax returns.

DISCUSSION

At the prior hearing, the parties requested a continuance to informally resolve the trustee's grounds for objection.

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 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 XXXXXXXXXX

Final Ruling: No appearance at the November 17, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 43 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 to Modify Plan is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan 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 Modify filed by the debtor, Royan Withers, 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, the debtor's Modified Chapter 13 Plan filed on October 5, 2020 (Dckt. 105) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

Thru #9

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 50 days' notice was provided. Dckt. 81.

No opposition has been filed.

The Motion to Incur Debt is ~~xxxxxx~~.

The debtor Gregoire Tonoukouin seeks retroactive authority to incur debt in the form of a retirement loan. The loan is in the amount of \$3,500, and was used to purchase a 2006 VW Beetle for debtor's daughter

The Motion argues that the 401k loan does not adversely affect creditors because it will not alter the treatment of creditors per each classification. The plan provides for a 0% dividend to unsecured creditors.

DISCUSSION

The debtor's argument is not well-taken. The plan presently provides for nothing to be paid to unsecured creditors, where the debtor apparently had money to pay. On its face it appears the confirmed plan was not actually debtor's best efforts, and may not have been proposed in good faith.

The debtor has not provided a legal basis for the Estate to give a gift of \$3,500 to the debtor's daughter.

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 Incur Debt filed by the debtor Gregoire Tonoukouin 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 ~~xxxxxxxxxxxxxxxx~~

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 50 days' notice was provided. Dckt. 86.

The Motion to Modify Plan is ~~XXXXXX~~

The debtor filed this Motion seeking to confirm the Second Modified Chapter 13 Plan (Dckt. 85) filed on September 28, 2020.

Creditor U.S. BANK, N.A., as trustee, filed an Opposition on October 16, 2020. Dkt. 93. The creditor notes that all plan payments are suspended through July 2020, and that no payments on its secured claim are proposed until August 2021. Creditor objects that the plan does not provide for equal monthly payments as required by 11 U.S.C. § 1325(a)(5); was not filed in good faith as required by 11 U.S.C. § 1325(a)(3); impermissibly modifies its claim in violation of as required by 11 U.S.C. § 1322(b)(2); and has not been demonstrated to be feasible as required by 11 U.S.C. § 1325(a)(6).

The debtor filed a Reply on October 27, 2020. Dkt. 95. The Reply argues that the debtor can fund his plan and increased payments without a refinance; that the debtor is making equal payments, which increase alongside disposable income increases; and that the plan has been filed in good faith.

DISCUSSION

It is unclear what the debtor's position is. The Reply argues that refinance of debtor's residence is not necessary. However, the plan relies on suspending payments for nearly a year while debtor seeks refinance.

What is clear is that the plan does not provide for equal monthly payments. The debtor's argument that the payments are both equal and later increasing is contradictory.

The court also notes that the debtor incurred a \$3,500 retirement loan without seeking the permission of the court in order to gift his daughter with a vehicle. Given the current state of the record, the debtor has not met his burden to show the plan has been proposed in good faith.

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 Confirm filed by the debtor, Gregoire

Tonoukouin, 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~~

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 58 days' notice was provided. Dckt. 45.

The Motion to Confirm is denied.

The debtors filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dckt. 43) filed on September 20, 2020.

The trustee filed an Opposition, and Supplemental Opposition (Dkts. 53, 57), opposing confirmation on the following grounds:

1. The debtors are \$7,856.71 delinquent in plan payments.
2. Debtors' Amended Disclosure of Compensation of Attorney for Debtors at Line 7 states that the agreed upon fee of \$4,000.00 excludes representation in relief from stay actions.
3. The plan provides for a \$2,841.83 post-petition payment on debtor's mortgage. But, the payment may be later increased if that creditor files a notice of payment change.
4. The plan provides for Lendmark Financial Services and Toyota Financial Services to be paid starting "in month 6" and receive payments for the "remaining 55 months of the plan." Based on this language, the trustee is unclear what the debtor considers month 1 of the plan.

DISCUSSION

The trustee's primary concern with the plan is feasibility. There is a payment delinquency, some of the plan language creates ambiguity of when certain payments are to be made, and the post-petition mortgage payment may increase resulting in inability to make payments.

The trustee also notes the Amended Disclosure of Compensation of Attorney for Debtors at Line 7 excludes representation in relief from stay actions. Such an exclusion conflicts with the Rights and Responsibilities executed.

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is denied, 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 Motion to Confirm filed by the debtors, Sushil Kumar and Angila Devi Kumar, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice. The Proof of Service shows that sufficient notice was provided. Dckt. 100.

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for the debtors Daniel Lee Blair and Euphrasia Blair, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

The Motion explains that counsel substituted in the place of former counsel on December 4, 2019. Since that time, counsel prepared and prosecuted two modified plans.

For those services, counsel seeks \$1,500 in fees.

APPLICABLE LAW

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

(F) whether the compensation is reasonable based on

the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Reasonable Fees

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

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

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable

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

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

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

"No-Look" Fees

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

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

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

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

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

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional

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

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

Lodestar Analysis

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

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. See *In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the

exclusive method)).

FEES ALLOWED

The unique facts surrounding the case, including preparation and prosecution of a modified plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,500.00 is 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 Applicant is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by Daniel Lee Blair and Euphrasia Blair ("Debtor")

Fees in the amount of \$1,500.00 as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that 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.

Thru #13

Final Ruling: No appearance at the November 17, 2020 hearing is required.

The Objection has been set on Local Rule 3007-1(b)(1) procedure which requires 30 days' notice. The Proof of Service shows that 69 days' notice was provided. Dckt. 72.

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 Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The debtor filed this Objection to Proof of Claim, No. 1, filed by Santander Consumer, USA ("Creditor"). The claim is stated to total \$7,050.00, and be fully secured by a 2006 Honda Ridgeline.

The debtor argues that Creditor's claim was discharged in debtor's prior case, No. 19-27237. The debtor explains that while the Creditor's claim was inadvertently not scheduled in that case, that because the case was a "no asset" case, the debt was still discharged.

The debtor also reports that the 2006 Honda Ridgeline was surrendered prepetition.

The Proof of Claim via a payoff itemization attachment reports that the claim is "based on In Rem claim, previous case discharged."

With the debtor having surrendered the 2006 Honda Ridgeline prepetition, the Creditor's basis for the claim is shown to be unfounded.

Based on the evidence before the court, the Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

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 filed in this case by the Chapter 13 trustee, Russell D. 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 to Proof of Claim Number 1 of Santander Consumer, USA is sustained, and the claim is disallowed in its entirety.

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 34 days' notice was provided. Dckt. 91.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm an Amended Chapter 13 Plan (Dckt. 90) filed on October 14, 2020.

The trustee filed an Opposition, and Supplemental Opposition (Dkts. 99, 103), opposing confirmation on the following grounds:

1. Debtor testified at his 341 meeting of creditors that he has not filed his 2019 Federal and State income tax returns.
2. The Trustee has filed an objection to the debtor's exemption of \$175,000.00 in his residence. Without the tax returns, the Trustee cannot complete his analysis regarding the debtor's income and whether the debtor is entitled to an exemption of \$175,000.00 pursuant to C.C.P. §704.730(a)(3)(C).
3. Debtor admitted that he is owed child support arrears in an amount over \$50,000.00. Debtor has failed to include the child support arrears due to him in his schedules.
4. The Non- Standard Provisions of Debtor's plan at 7.2 states that Debtor shall pay off his plan when he receives his Social Security Settlement which he expects to receive by July 2021. Debtor has testified that he applied for Social Security Disability 2 years ago and that the process has been stalled due to the Covid pandemic, and that the July 2021 date was based on information received from a prior attorney in his case.

DISCUSSION

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

The debtor also admitted he has unscheduled assets, including child support arrears due to him.

Additionally, the debtor has not shown the plan to be feasible given

a pending objection to debtor's exemptions, as well as insufficient information provided as to the debtor's anticipated Social Security Settlement.

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, 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 Motion to Confirm filed by the debtor, Derek Leroy Wolf, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

14. [19-27455](#)-C-7 BORIS TIBULSCHI AND OBJECTION TO CLAIM OF FORD
[RDG-1](#) GALINA TIBULSCAIA MOTOR CREDIT COMPANY, LLC,
Mark Shmorgon CLAIM NUMBER 31
9-15-20 [[77](#)]

CASE CONVERTED: 10/1/20

Final Ruling: No appearance at the November 17, 2020 hearing is required.

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 30 days' notice. The Proof of Service shows that 63 days' notice was provided. Dckt. 79.

The Objection to Proof of Claim is overruled as moot.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 31, filed by Ford Motor Credit Company, LLC, was filed late and should be disallowed.

However, the case was converted to Chapter 7 on October 1, 2020, and Chapter 7 trustee appointed.

Therefore, the Objection to the Proof of Claim is overruled 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 Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. 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 to Proof of Claim Number 31 of Ford Motor Credit Company, LLC, is overruled as moot.

15. [19-20857](#)-C-13 JOHN STANTON
[AP-1](#) Pauldeep Bains

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
9-28-20 [[61](#)]

BANK OF NEW YORK MELLON
TRUST COMPANY, N.A. VS.

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 50 days' notice was provided. Dckt. 62.

The Motion for Relief from the Automatic Stay is xxxxxx

Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I Trust ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's real property known as 5918 4th Avenue, Sacramento, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d) (1) because the debtor is delinquent in property taxes, and none of the borrowers on the note are residing at the Property as required.

DEBTOR'S RESPONSE

Debtor's counsel filed a Response on October 20, 2020. Dckt. 80. Debtor's counsel reports that there was a plan to pay the delinquent property taxes, but that the debtor passed away on August 4, 2020, before the payment could be made.

Debtor's counsel notes that the debtor's daughter has a pending motion seeking to substitute in as a representative, that the debtor is current on Plan payments, and that the debtor's family is seeking a reasonable time to sell the Property.

DISCUSSION

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 for Relief from the Automatic Stay filed by Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that xxxxxxxxxx

16. [19-20857](#)-C-13 JOHN STANTON
[PSB-3](#) Pauldeep Bains

MOTION TO WAIVE FINANCIAL
MANAGEMENT COURSE REQUIREMENT,
WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, CONTINUE CASE
ADMINISTRATION, SUBSTITUTE
PARTY, AS TO DEBTOR
10-1-20 [[69](#)]

Final Ruling: No appearance at the November 17, 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 43 days' notice was provided. Dkt. 73.

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 Omnibus Relief is granted.

The debtor's daughter Leslie Stanton filed this Motion seeking omnibus relief due to the passing of the debtor on John Luverne Stanton on August 4, 2020. Local Bankruptcy Rule 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

A Certificate of Death has been filed as Exhibit A. Dkt. 72. The debtor's daughter also filed her Declaration in support of the Motion, providing testimony that she will be able to make the Chapter 13 Plan payments while working to sell the debtor's residence to complete the plan. Dkt. 71.

DISCUSSION

Here, Leslie Stanton has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Leslie Stanton, as the daughter of John Luverne Stanton and as the successor's heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, John Luverne Stanton. The court grants the Motion to Substitute Party.

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 omnibus relief filed by Leslie Stanton 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 Name of Surviving Party is substituted as the successor-in-interest to John Luverne Stanton and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the certification requirement of 11 U.S.C. § 1328 for the debtor John Luverne Stanton is waived.

Final Ruling: No appearance at the November 17, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 70 days' notice was provided. Dckt. 58.

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 granted.

The debtor filed this Motion seeking to confirm the Second Amended Chapter 13 Plan (Dckt. 49) filed on September 7, 2020.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan 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 filed by the debtor, Tracy Lee Wood, Jr., 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, the debtor's Amended Chapter 13 Plan filed on September 7, 2020 (Dckt. 49) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

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 62 days' notice was provided. Dckt. 57.

The Motion to Confirm is ~~XXXXXXXX~~

The debtors filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dckt. 53) filed on September 7, 2020.

The Chapter 13 trustee filed an Opposition on October 5, 2020. Dkt. 58. The trustee opposes confirmation on the following grounds:

1. The debtors have not provided a copy of their most recent federal and state tax returns.
2. The Rights and Responsibilities has yet to be filed. Additionally, the plan indicates \$2,000 was paid in advance by the debtors, while the Disclosure of Attorney Compensation shows only \$1,800 was paid in advance.
3. The plan may not be debtors' best effort where the debtors have (1) failed to provide a monthly plan payment for August 2020, and (2) are ahead \$355.00 in payments.

DISCUSSION

A review of the docket shows that the Rights and Responsibilities has been filed showing \$4,000 to be paid in attorney fees, with \$2,000 of those fees paid already. Dkt. 61. However, the Disclosure of Attorney Compensation was not amended and still reports \$1,800 was paid in advance. Dkt. 1.

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 Confirm filed by the debtors, Jennifer A Kalinen and David Wayne Kalinen, 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 ~~XXXXXXXX~~

Final Ruling: No appearance at the November 17, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 43 days' notice was provided. Dckt. 113.

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 Modify Plan is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan 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 Modify Plan filed by the debtor, Rajindar Kaur Singh, 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, the debtor's Modified Chapter 13 Plan filed on October 5, 2020 (Dckt. 112) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

20. [20-24264](#)-C-13 JUAN LOPEZ AND ROSALINA OBJECTION TO CONFIRMATION OF
[RDG-1](#) MARTINEZ-MACIEL PLAN BY RUSSELL D. GREER
Peter Macaluso 10-26-20 [[30](#)]

Thru #21

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 22 days' notice was provided. Dckt. 33.

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

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

1. The debtors' non-exempt equity totals \$68,524.63 and non-priority general unsecured claims total \$28,540.08. Accordingly, Debtors' plan must pay 100% to general unsecured creditors, plus interest at the Federal Judgment Rate of .13%

2. Debtors' plan provides for Gregory Funding as a Class 1 creditor with a postpetition mortgage payment of \$1,213.83 per month. Gregory Funding has filed a proof of claim indicating a monthly post-petition mortgage payment of \$1,468.05, meaning the debtors' plan is not feasible.

3. Debtors' plan provides for Sacramento County Tax Collector as a Class 2 claim in the amount of \$28.11 to be paid at 18% interest a monthly dividend of \$15.00. The County of Sacramento has filed a proof of claim listing a secured portion of \$1,823.32, meaning the debtors' plan is not feasible.

DISCUSSION

The trustee's objections are well-taken. The proofs of claim filed by Gregory Funding and the Sacramento County Tax Collector show those secured claims are greater than scheduled, and Schedules I and J show no extra funds to make the plan feasible. Dkt. 1.

Additionally, in order to meet the liquidation test, the plan must pay 100% to unsecured claims, plus interest at the Federal Judgment Rate since non-exempt assets exceed unsecured claims.

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 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 ~~xxxxxxxx~~

21. [20-24264](#)-C-13 JUAN LOPEZ AND ROSALINA OBJECTION TO CONFIRMATION OF
[PPR-1](#) MARTINEZ-MACIEL PLAN BY CHAMPION MORTGAGE
Peter Macaluso COMPANY (NATIONSTAR MORTGAGE
LLC, DBA)
10-9-20 [[24](#)]

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 29 days' notice was provided. Dckt. 29.

The Objection to Confirmation of Plan is XXXXXX

Creditor Champion Mortgage Company ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that its claim is missclassified as a Class 2, where it should be Class 1.

DEBTOR'S REPLY

The debtors filed a Reply on November 10, 2020, consenting to reclassifying Creditor's claim to Class 1 via the order confirming the plan. Dckt. 37.

DISCUSSION

The parties are in agreement that the Creditor's claim should be treated as a Class 1.

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 Objection to the Chapter 13 Plan filed by XXXX, 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 xxxxxxxx

Thru #29

Final Ruling: No appearance at the November 17, 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 50 days' notice was provided. Dckt. 58.

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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Cach, LLC ("Creditor") against property of the debtors commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

A judgment was entered against the debtors in favor of Creditor in the amount of \$16,047.86. Exhibit B, Dckt. 26. An abstract of judgment was recorded with Sacramento County on June 8, 2020, that encumbers the Property. *Id.*

Pursuant to Debtors' Schedule A, the subject real property has an approximate value of \$292,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens total \$283,516.19 as of the commencement of this case. Proof of Claim, No. 16. Debtors have claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$11,907.28 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 Debtors' exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF CHAMBERS ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtors Laura Elizabeth England and Donald Lee England 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 Cach, LLC, California Superior Court for Sacramento County Case No. 34-2009-00062919, recorded on June 8, 2020, Book 20100608 and Page 0756, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.

23. [20-23688](#)-C-13 LAURA/DONALD ENGLAND
[FF-2](#) Gary Fraley

MOTION TO AVOID LIEN OF CHASE
BANK, USA, N.A.
9-25-20 [[28](#)]

Final Ruling: No appearance at the November 17, 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 50 days' notice was provided. Dckt. 59.

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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Chase Bank USA, N.A. ("Creditor") against property of the debtors commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

A judgment was entered against the debtor in favor of Creditor in the amount of \$11,511.26. Exhibit B, Dckt. 31. An abstract of judgment was recorded with Sacramento County on May 6, 2014, that encumbers the Property. *Id.*

Pursuant to Debtors' Schedule A, the subject real property has an approximate value of \$292,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens total \$283,516.19 as of the commencement of this case. Proof of Claim, No. 16. Debtors have claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$11,907.28 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 CHAMBERS ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtors Laura Elizabeth England and Donald Lee England 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 Chase Bank USA, N.A., California Superior Court for Sacramento County Case No. 34200800012697CLCLLGDS, recorded on May 6, 2014, Book 20140506 and Page 0463, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.

24. [20-23688](#)-C-13 LAURA/DONALD ENGLAND
[FF-3](#) Gary Fraley

MOTION TO AVOID LIEN OF
DICKINSON FINANCIAL, LLC
9-25-20 [[33](#)]

Final Ruling: No appearance at the November 17, 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 50 days' notice was provided. Dckt. 60.

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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Dickinson Financial, LLC ("Creditor") against property of the debtors commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

A judgment was entered against the debtors in favor of Creditor in the amount of \$2,468.43. Exhibit B, Dckt. 36. An abstract of judgment was recorded with Sacramento County on March 6, 2012, that encumbers the Property. *Id.*

Pursuant to Debtors' Schedule A, the subject real property has an approximate value of \$292,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens total \$283,516.19 as of the commencement of this case. Proof of Claim, No. 16. Debtors have claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$11,907.28 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 Debtors' exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF CHAMBERS ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtors Laura Elizabeth England and Donald Lee England 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 Dickinson Financial, LLC, California Superior Court for Sacramento County Case No. 34201100109261, recorded on March 6, 2012, Book 20120306 and Page 2165, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.

25. [20-23688](#)-C-13 LAURA/DONALD ENGLAND
[FF-4](#) Gary Fraley

MOTION TO AVOID LIEN OF
EMPLOYMENT DEVELOPMENT
DEPARTMENT
9-25-20 [[38](#)]

Final Ruling: No appearance at the November 17, 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 50 days' notice was provided. Dckt. 61.

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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of California Employment Development Department ("Creditor") against property of the debtorS commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

A judgment was entered against the debtorS in favor of Creditor in the amount of \$3,252.35. Exhibit B, Dckt. 41. An abstract of judgment was recorded with Sacramento County on September 6, 2017, that encumbers the Property. *Id.*

Pursuant to Debtors' Schedule A, the subject real property has an approximate value of \$292,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens total \$283,516.19 as of the commencement of this case. Proof of Claim, No. 16. Debtors have claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$11,907.28 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 CHAMBERS ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtors Laura Elizabeth England and Donald Lee England 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 the California Employment Development Department, California Superior Court for Sacramento County Case No. 34-2017-90016185, recorded on September 6, 2017, Document No. 201709060005, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.

26. [20-23688](#)-C-13 LAURA/DONALD ENGLAND
[FF-5](#) Gary Fraley

MOTION TO AVOID LIEN OF GCFS,
INC.
9-25-20 [[43](#)]

Final Ruling: No appearance at the November 17, 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 50 days' notice was provided. Dckt. 62.

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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of GCFS, Inc. ("Creditor") against property of the debtors commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

A judgment was entered against the debtors in favor of Creditor in the amount of \$7,551.29. Exhibit B, Dckt. 46. An abstract of judgment was recorded with Sacramento County on February 5, 2012, that encumbers the Property. *Id.*

Pursuant to Debtors' Schedule A, the subject real property has an approximate value of \$292,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens total \$283,516.19 as of the commencement of this case. Proof of Claim, No. 16. Debtors have claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$11,907.28 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 Debtors' exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF CHAMBERS ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtors Laura Elizabeth England and Donald Lee England 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 GCFS, Inc., California Superior Court for Sacramento County Case No. 34201100110333CLCLGDS, recorded on February 5, 2012, Book 20120206 and Page 0773, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.

27. [20-23688](#)-C-13 LAURA/DONALD ENGLAND
FF-6 Gary Fraley

MOTION TO AVOID LIEN OF
HOUSEHOLD FINANCE CORPORATION
OF CA
9-25-20 [[48](#)]

Final Ruling: No appearance at the November 17, 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 50 days' notice was provided. Dckt. 63.

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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Household Finance Corporation of California ("Creditor") against property of the debtors commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

A judgment was entered against the debtors in favor of Creditor in the amount of \$13,720.17. Exhibit B, Dckt. 51. An abstract of judgment was recorded with Sacramento County on May 19, 2009, that encumbers the Property. *Id.*

Pursuant to Debtors' Schedule A, the subject real property has an approximate value of \$292,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens total \$283,516.19 as of the commencement of this case. Proof of Claim, No. 16. Debtors have claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$11,907.28 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 CHAMBERS ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtors Laura Elizabeth England and Donald Lee England 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 Household Finance Corporation of California, California Superior Court for Sacramento County Case No. 34200800024972CLCLGDS, recorded on May 19, 2009, Book 20090519 and Page 0731, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.

Final Ruling: No appearance at the November 17, 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 50 days' notice was provided. Dckt. 64.

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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Kelkris Associates, Inc. ("Creditor") against property of the debtors commonly known as 7235 Larchmont Drive, North Highlands, California ("Property").

A judgment was entered against the debtors in favor of Creditor in the amount of \$27,656.52. Exhibit B, Dckt. 56. An abstract of judgment was recorded with Sacramento County on January 28, 2010, that encumbers the Property. *Id.*

Pursuant to Debtors' Schedule A, the subject real property has an approximate value of \$292,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens total \$283,516.19 as of the commencement of this case. Proof of Claim, No. 16. Debtors have claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$11,907.28 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 Debtors' exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF CHAMBERS ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtors Laura Elizabeth England and Donald Lee England 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 Kelkris Associates, Inc., California Superior Court for Sacramento County Case No. 34-2009-00043806, recorded on January 28, 2010, Book 20100128 and Page 1149, with the Sacramento County Recorder, against the real property commonly known as 7235 Larchmont Drive, North Highlands, 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.

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. Dkt. 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.