UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 4, 2018 at 3:00 p.m.

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1. **17-20921-E-13 JAD-1** | **STEFFANIE FLYNN-ADAMS** | **MOTION TO MODIFY PLAN**
Tamie Cummins | **10-23-18 [37]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 23, 2018. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

Steffanie Lynn Flynn-Adams ("Debtor") seeks confirmation of the Modified Plan to provide for the recently filed claim of Blue Shield and account for Debtor's reduced income. Dckt. 40. The Modified

Plan provides for $4,040.00 to be paid through October 5, 2018, and for payments of $248.00 to be paid in months 21-36. Dckt. 41. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response to the Motion on November 20, 2018. Dckt. 47. Trustee argues that the plan indicates payments of $248 beginning "10-25-18 (month 21)" should actually state "month 20" where the case was filed February 14, 2017.

DISCUSSION

Trustee's Response is well-taken. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed, with the caveat that Debtor shall make the necessary amendments correct the error in the Amended Plan discussed, *supra*.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Steffanie Lynn Flynn-Adams ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 23, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which includes the amendment providing that payments of $248.00 commence in month 20, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. **18-25929-E-13 DPC-1** **JEFFREY YOUNG** **Chad Johnson** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 11-7-18 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 7, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is overruled.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor admitted at the First Meeting of Creditors held on November 1, 2018 the he has not filed his tax returns (specifically 2017) for the 4 year period preceding the filing of the petition.

DEBTOR'S RESPONSE

Debtor filed a Response on November 27, 2018. Dckt. 26. Debtor states he filed his 2017 taxes on November 26, 2018. The Declaration of Chad Johnson testifies that Debtor's Counsel received a file-stamped copy of Debtor's 2017 tax returns and forwarded them to the Trustee. Dckt. 27.

DISCUSSION

Debtor has provided evidence indicating his 2017 taxes have been filed. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, 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 Objection to the Chapter 13 Plan filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, and Jeffrey Young's ("Debtor") Chapter 13 Plan filed on October 3, 2018, is confirmed. Counsel for Debtor 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 Chapter 13 Trustee will submit the proposed order to the court.

3.	**18-26136-E-13** **DPC-1**	**ALEXANDER/ROSA TORRES** **Jennifer Lee**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-7-18 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 7, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Alexander Torres and Rosa Hiliana Torres ("Debtor") are delinquent $1,100 in plan payments.

Trustee's objections are well-taken. Debtor is $1,100.00 delinquent in plan payments, which represents one month of the $1,100.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

4.	**18-25150-E-13** **LES-1**	**RICHARD GREENE** **Lucas Garcia**	**OBJECTION TO CONFIRMATION OF PLAN BY ARONOWITZ SKIDMORE LYON** **10-25-18 [37]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 25, 2018. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained, the Debtor having filed a First Amended Plan.

Creditor Aronowitz Skidmore Lyon, a Professional Law Corporation ("Creditor") filed a Joinder and Objection to Confirmation on October 25, 2018. Creditor seeks to join the Trustee's Objection to Confirmation. *See* Dckt. 33. Creditor asserts Debtor's proposed plan relies on lump sum proceeds generated by the sale of a partnership interest Debtor may not have and therefore should not be confirmed.

Noting that the Creditor did not provide any authority establishing a right to join its Objection to the Trustee's, the court set this matter for hearing December 4, 2018.

As stated in the hearing on the trustee's Motion, Richard Sterling Greene ("Debtor") filed a First

Amended Plan and corresponding Motion to Confirm on November 15, 2018. Dckts. 60, 64. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection to Confirmation is overruled as moot, and the plan is not confirmed.

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

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

5. **18-25851-E-13** **ROBERT HUNTER** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Peter Macaluso** **PLAN BY DAVID P. CUSICK**
10-30-18 [21]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on October 30, 2018. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan, filed by Debtor in pro se prior to obtaining counsel, on the basis that:

A. Debtor has not provided the Trustee with a tax return for the most recent pre-petition tax year or a written statement that no such documentation exists.

B. Debtor has not provided the Trustee with 60 days of employer payment advices.

C. Debtor is delinquent in plan payments, having paid $0.00 to date. The proposed plan calls for payments to be received not later than the 25th day of each month.

D. Debtor failed to submit documentation showing Debtor can make the plan payments. Debtor failed to provide a monthly payment plan or plan term. Debtor lists secured creditor Bayview Loan Servicing as a Schedule J expense; however, where Debtor indicated at the Meeting of Creditors that he is delinquent in payments that claim should be listed as a Class 1 and not an expense. Debtor failed to list a dividend to unsecured claims. Debtor lists on Schedule I Line 8h income from Uber and self-employment that should be listed on Line 8a. Finally, the claims of Nissan Motor and Mechanics Bank both appear on Schedule J, but should be provided as a Class 2.

E. Debtor failed to propose a dividend to creditors with unsecured claims. Furthermore, Debtor is married and has not included the spouse in the bankruptcy case. Claiming no exemptions, it appears Debtor fails the liquidation analysis.

DISCUSSION

Trustee's objections are well-taken.

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor is delinquent in plan payments (though no actual payment has been proposed, Debtor has not made any payments and therefore whatever a prospective payment would be, Debtor is delinquent). Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor lists several items of personal property on Schedule A/B that Debtor claims no exemption in on Schedule C. This is grounds to deny confirmation of the proposed plan.

Finally, Debtor's failure to fill out the plan completely and properly designate creditor's claims cause concerns about the feasibility of the plan. Debtor failed to provide a monthly payment plan or plan term; failed to list a dividend to unsecured claims; lists on Schedule I Line 8h income from Uber and self-employment that should be listed on Line 8a; and Debtor improperly lists the claims of Bayview Loan Servicing, Nissan Motor, and Mechanics Bank on Schedule J as expenses rather than providing for them through the proposed plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

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

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

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

6.	**18-26255-E-13** **DPC-1**	**REBECCA SCHLOSSAREK** **Mary Ellen Terranella**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-7-18 [19]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on November 7, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Debtor failed to appear at the November 1, 2018, Meeting of Creditors as required by 11 U.S.C. § 343. The Meeting was continued to November 29, 2018. Trustee notes Debtor should be aware of this requirement, being that this is Debtor's third bankruptcy case.

TRUSTEE'S STATUS REPORT

Trustee filed a status report on November 30, 2018. Dckt. 23. Trustee states that Debtor appeared at the continued Meeting of Creditors, but that new grounds for objection subsequently arose. Those grounds include the following:

1. Debtor is delinquent $2,690.00 in plan payments, which are required to be made the 25th day of each month beginning the month after the order for relief under chapter 13.

2. Debtor admitted at the Meeting of Creditors that Debtor's income listed on Schedule I is anticipated and has yet to be realized.

3. Debtor is not providing for the Class 1 claim of creditor Federal National Mortgage Association. That creditor filed a Proof of Claim in Debtor's prior case, no. 18-23531. While that creditor has yet to file a claim in this case, the are listed on Debtor's proposed plan. Dckt. 2.

DISCUSSION

Debtor is $2,690.00 delinquent in plan payments, which represents one month of the $2,690.00 plan payment. The Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Furthermore, because Debtor is delinquent plan payments, no payment is made to Class 1 creditor Federal National Mortgage Association with arrearages to be cured in the amount of $31,964.00.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6) Debtor has listed income on Schedule I that is merely anticipatory. Debtor's most recent case was dismissed for failure to make payments and because her Schedule I demonstrated an inability to pay. Order, Bankr. E.D. Cal. No. 18-23531, Dckt. 29, September 6, 2018. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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

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

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

7.	**18-25962-E-13 DPC-1**	**LEONARDO/FELY MERCURIO Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 11-5-18 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*Pro Se*) on November 5, 2018. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor is delinquent $641.67 under the proposed plan.

B. Debtor's proposed plan does not specify a plan term.

C. Debtor's plan payment is insufficient to pay all claims within the 60 month period allowed.

D. Debtor provides for SLS Servicing's claim as both a Class 1 and as an expense on Schedule J.

E. Debtor's plan proposes interest payments on SLS Servicing's Class 1 claim. Unless the note provides for interest on late payments or applicable non-bankruptcy law so provides, the creditor may not be entitled to interest under 11 U.S.C. § 1322(e).

F. Debtor lists on Schedule E the priority claim of the Internal Revenue Service. While this claim should therefore be listed as a Class 5, Debtor proposes to provide for the claim as a Class 1.

G. Debtor fails the liquidation test. Debtor's nonexempt equity totals at least $138,650.00 and Debtor proposes to pay a 0 percent dividend to unsecured claims. After Trustee's Objection to Exemption (Dckt. 42), Debtor's nonexempt assets may increase further.

H. Trustee is uncertain the Debtor has sufficient income to fund the plan. Debtor's expenses may be inaccurate. Debtor provides for the ongoing mortgage payment to SLS Servicing in the amount of $2,100. Debtor also only provide $50 for electricity/gas, $40 for telephone/cable, $30 for personal care, $300 for medical/dental expenses, $55 for transportation, $150 for life insurance, and $65 for vehicle insurance, and $200 for taxes.

I. Debtor failed to report the prior case filed by Co-Debtor Leonardo Mercurio on October 25, 2016.

J. Debtor failed to provides full legal names on the Voluntary Petition, listing only middle initials.

DEBTOR'S RESPONSE

Debtor filed a Response on November 20, 2018. Dckt. 34. The Debtor provides explanations for several of the proposed plan's shortcomings, states debtor does not oppose the Trustee's Objection to Confirmation, and requests the case remain open for plan amendments to be made.

DISCUSSION

Trustee's objections are well-taken. The deficiencies in Debtor's plan are numerous, and include failure to meet the Liquidation Analysis under 11 U.S.C. § 1325(a)(4); failure to make payments and be able to make payments, among other deficiencies affecting the court's perception of the plan's feasibility (*See* 11 U.S.C. § 1325(a)(6)); and failure to make payments within the 60 month term required by 11 U.S.C. § 1325(b)(4)(B).

Debtor has filed a Response indicating nonopposition to the Trustee's Objection. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

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

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

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

8. **18-25962-E-13 DPC-2** | **LEONARDO/FELY MERCURIO** **Pro Se** | **OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS** **11-5-18 [25]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*) on November 5, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

David Cusick ("the Chapter 13 Trustee") objects to Leonardo Merced Mercurio and Fely Duyanan Mercurio's ("Debtor") claimed exemptions as to Debtor's residence and a vacant lot under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure sections 703.140(b)(2)–(5) does not allow claiming 100% of

fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed.

The Trustee further objects on the basis that Debtor claims exemptions under California Code of Civil Procedure sections 703.140(b) and 704. In addition to the exemptions claimed on real property, Debtor claims exemptions in televisions, household goods, and a Ford Explorer pursuant to California Code of Civil Procedure sections 704.010 and 704.020. Debtor is not entitled to claim both sets of exemptions. C.C.P. § 703.140(a)(3). Because it is unclear which exemptions Debtor would choose (only being able to elect one set), all the claimed exemption must be disallowed.

The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

Debtor is attempting to prosecute this bankruptcy case in *pro se*. The fact that they might stumble in correctly stating their exemptions is not in and of itself horrific. The court notes that this is Debtor's third recent bankruptcy case. Chapter 13 Case No. 18-25067 was filed by Debtor in *pro se* on August 13, 2018, and dismissed on September 12, 2018. Debtor Leonardo Mercuiro filed an individual Chapter 13 case, No. 16-27089, on October 25, 2016, which was dismissed on February 1, 2017. It appears that Debtor's challenges in prosecuting this bankruptcy case in *pro se* may be greater than correctly completing Schedule C.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemptions for real property, televisions, household goods, and a Ford Explorer under California Code of Civil Procedure §§ 703.140(b), 704.010, and 703.020 are disallowed in their entirety.
>
> This is without prejudice to Debtor filing an Amended Schedule C to properly claim expenses as permitted under California law through the Bankruptcy Code.

9. **18-25674-E-13 JJC-1** **DESIREE JAMES** **Julius Cherry** **MOTION TO VALUE COLLATERAL OF HYUNDAI CAPITAL AMERICA** **10-26-18 [25]**

The Motion filed by Desiree Evelyn James on October 26, 2018, was filed twice, this second time in error, creating the appearance of two different matters for hearing. *See* Dckts. 25, 31. The court removes this calendar item, the Motion being set for hearing as Item 26 on the December 4, 2018 Calendar.

10. **18-25674-E-13 JJC-1** **DESIREE JAMES** **Julius Cherry** **MOTION TO VALUE COLLATERAL OF HYUNDAI CAPITAL AMERICA 10-26-18 [31]**

Final Ruling: No appearance at the December 4, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 25, 2018. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Hyundai Capital America ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $10,750.00.

The Motion filed by Desiree Evelyn James ("Debtor") to value the secured claim of Hyundai Capital America ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Hyundai Tuscon VIN ending in 3544 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,750.00 as of the petition filing date. [FN.1.] As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

FN.1. Additionally, Debtor argues Creditor incorporated non purchase money security interest debt into the new vehicle loan and that property in which Creditor has an interest is secured only by the purchase money security interest portion of the debt for collateral. However, Debtor does not elaborate on this argument and only requests the court value the Vehicle the Vehicle at its fair market value. Therefore, the Debtor has not provided the court with a basis for further adjustments to the value.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion on November 20, 2018. Dckt. 40. Trustee summarizes Debtor's Motion and supporting pleadings, the treatment of Creditor's claim in the proposed plan, and Proof of Claim, No. 8 filed by Creditor on October 16, 2018.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on August 30, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,398.31. Proof of Claim, No. 8. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $10,750.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Desiree Evelyn James ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Hyundai Capital America ("Creditor") secured by an asset described as 2015 Hyundai Tuscon VIN ending in 3544 ("Vehicle") is determined to be a secured claim in the amount of $10,750.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,750.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

11. **18-25674-E-13** **DESIREE JAMES** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Julius Cherry** **10-23-18 [21]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on October 23, 2018. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The hearing on the Objection to Confirmation of the Plan is XXXXXXXXX.

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

A. Debtor's plan does not have sufficient monies to pay the secured claim held by Hyundai Capital America in full. Debtor proposes to value that secured claim, but has not filed a motion to value collateral.

The Motion was filed and granted by final ruling on December 4, 2018. DCN: JJC-1.

B. Debtor failed to file a Business Budget detailing Debtor's business income and expenses. Schedule I lists $1,676.00 in net business income, but does not include an attachment providing gross income and a breakdown of business expenses. While Trustee has been informed Debtor is self employed, the detailed statement is still required by the Statement of Financial Affairs.

NOVEMBER 20, 2018 HEARING

At the November 20, 2018, hearing on the Motion the court noted Debtor's proposed plan relied on the Motion to Value Collateral of Hyundai Capital America. Because the feasibility of the proposed plan relies on the outcome of the Motion to Value, the court continued the hearing on this Motion to December 4, 2018, at 3:00p.m. to be heard alongside the Motion to Value. Order, Dckt. 45.

DISCUSSION

The court granted Debtor's Motion To Value (Dckt. 31) set to be heard the same day as this hearing. However, no supplemental pleadings have been filed indicating whether Debtor has filed a Business Budget detailing Debtor's business income and expenses.

At the hearing, **XXXXXXXXXXXX**.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that **XXXXXXXXXXXXXX**.

12.	**18-25075-E-13** **CAS-1**	**LAWRENCE HERTZOG** **Pro Se**	**AMENDED OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE** **10-31-18 [38]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 31, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Capitol One Auto Finance, LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the proposed plan fails to pay Creditor the full amount of its allowed claim, and that the plan provides insufficient interest.

Creditor shoe-horns into the Objection arguments that oppose Debtor's prospective attempts at valuing Creditor's collateral securing its claim. [FN.1.] The court construes this to be an argument as to the feasibility of the plan, where the proposed plan relies on a motion to value yet to be filed. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

FN.1. The court notes it is fortuitous for Creditor that the present Contested Matter is not one to determine the value of its collateral. Creditor's Exhibit C providing a valuation of the Vehicle describes only a private-party sale price, not a retail value. Exhibit C, Dckt. 40. Furthermore, there is no declaration or other evidence authenticating the valuation.

Creditor further objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5.00%. Creditor's claim is secured by a 2014 Dodge Ram. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 5.00%, plus a 1.25% risk adjustment, for a 6.25% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

13. **18-20885-E-13 PGM-2** **ANTHONY/WENDY GIANOLA** **Peter Macaluso** **MOTION TO CONFIRM PLAN** **10-30-18 [57]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 30, 2018. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied without prejudice.

Anthony Paul Gianola and Wendy Elaine Gianola ("Debtor") seek confirmation of the Amended Plan, which would be the first confirmed plan in this case. Dckt. 59. The Amended Plan provides for payments of $600 for 8 months, and $3,650.00 for 52 months. Dckt. 60. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 13, 2018. Dckt. 62. Trustee objects on the basis that the plan term may exceed 60 months because Debtor does not fully account for the Internal Revenue Service's claim amounting to $32,785.29, because Debtor is only paying $1,669.00 towards the Class 1 claim of Nationstar Mortgage (an amount not providing adequate protection), and because Debtor increased the unsecured dividend to 70 percent amounting to $45,275 to be paid out through the plan. Trustee further opposes confirmation of the proposed plan on the grounds that Debtor's Schedule J reflects only $600 in disposable income (far below the proposed monthly payment), and that Debtor has failed to file taxes for the 2014, 2015, and 2017 years.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Opposition on November 27, 2018. Dckt. 68. Debtor states that tax returns have been filed for 2014 and 2015, that Amended Schedules I and J were filed on November 15, 2018, and that Debtor requests that the Chapter 13 payment be increased to $4,075.0 in the order confirming plan to ensure payment to creditors under the terms of the proposed plan.

DISCUSSION

Despite Debtor's Reply, no evidence was filed supporting that claim that Debtor filed tax returns for 2014 and 2015. Filing of the returns 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).

Debtor filed Amended/Supplemental Schedules I and J on November 15, 2018. Dckt. 65. The Amendment removes the mortgage payment, modestly increases income, and increases other expenses to arrive at a disposable income of $4,527.12. Debtor's Declaration in support of the Amended Schedules explains some of the increased expenses as "new living situation," further explaining Co-Debtor Anthony Gianola moved to Seattle for a new job.

Debtor's explanation causes concern where there has been no or virtually no increase to expenses for electricity/heating/gas and water/sewer/garbage. Food and housekeeping costs have been reduced from $800 to $600. Transportation costs have been reduced from $600 to $375.

Furthermore, the Declaration characterizes several expenses as being increased that have actually been reduced or remained constant, including clothing ($200 to $150), personal care ($200 to $150), and heat/electric ($455.33, unchanged). Failure to provide accurate expenses suggests the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor also states it is waiting for the Internal Revenue Service to amend its claim, but has not provided evidence suggesting that any claim should be amended. Because the proposed plan does not account for the IRS' higher claim amount, the proposed plan would exceed the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and 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 the Amended Chapter 13 Plan filed by Anthony Paul Gianola and Wendy Elaine Gianola ("Debtor") having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

14. **17-23832-E-13** **HEIDI BAKER**
CLH-2 **Cindy Lee Hill**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HILL & MORRIS FOR CINDY LEE HILL, DEBTOR'S ATTORNEY
11-1-18 [51]

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

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

Sufficient Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 1, 2018. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion for Allowance of Professional Fees is granted.

Hill & Morris Attorneys at Law, the Attorney ("Applicant") for Heidi Eileen Baker, the Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The order of the court approving employment of Applicant was entered on September 6, 2018. Dckt. 43. Applicant requests fees in the amount of $2,450.00 and costs in the amount of $12.60.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include drafting motions to employ and a motion sell property of the estate. The Estate has $1,883.79 of unencumbered monies to be administered as of the filing of the application. Dckt. 56. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Cindy Lee Hill	7	$350.00	$2,450.00
Total Fees for Period of Application			$2,450.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $12.60 pursuant to this is application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	$0.05	$12.60
Total Costs Requested in Application		$12.60

TASK BILLING ANALYSIS

While Applicant does not provide a task billing analysis, she does state in Paragraph 5 of her Motion that the fees primarily relate to the hiring of a real estate broker and sale of Debtor's property. This is born out in a review of the gross billings statement.

Additionally, the Motion clearly contains a typographical error in the reference in the prayer to$11,045.36 in fees, with $2,462.60 being requested in this Motion.

The court grants the Motion and allows Applicant $2,450.00 in fees and $12.60 in expenses.

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 Allowance of Fees and Expenses filed by Hill & Morris Attorneys at Law, the Attorney ("Applicant"), Attorney for Heidi Eileen Baker, Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Cindy Lee Hill, counsel for the Chapter 13 Debtor, is allowed the following fees and expenses as counsel for the Debtor:
>
> Fees in the amount of $2,450.00
> Expenses in the amount of $12.60,
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available funds through the Chapter 13 Plan in a manner consistent with the order of distribution in the confirmed Chapter 13 Plan in this case.

15. **17-22651-E-13 WW-3** | **MARIO/CHRISTINE BORREGO** **Mark Wolff** | **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH SEDGWICK CLAIMS MANAGEMENT SERVICE, INC.** **11-2-18 [75]**

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2018. By the court's calculation, 32 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is denied without prejudice.

The Chapter 13 Debtors, Mario Manuel Borrego and Christine Joy Borrego ("Movant") request that the court approve a compromise and settle competing claims and defenses with Sedgwick Claims Management Services, the agent for Kaiser Foundation Hospital, ("Settlor"). The claims and disputes to be resolved by the proposed settlement is the future medical portion of Debtor's workers' compensation action.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court, with Movant receiving $50,000.00 in return for settlement of his future medical claims against Settlor (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 78)

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion on November 13, 2018. Dckt. 82. Trustee notes Debtor is delinquent under the Confirmed Plan, but does not otherwise oppose this Motion.

DISCUSSION

Factors For Consideration In Approving Settlement

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Review of Minimum Pleading Requirements for a Motion

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

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

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

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

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

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

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

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

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

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

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

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant relevant to the necessary analysis for approval of compromise are:

A. Debtor was injured while working at Kaiser Foundation Hospital in 2001.

B. Debtor has received temporary disability "on and off," for approximately three years.

C. Pursuant to the settlement at the time, Debtor received some temporary and permanent disability payments.

D. Debtor has continued to incur medical expenses relating to the injury.

E. Sedgwick Claims Management has contacted the Debtor about a proposed settlement of future medical expense claims.

F. Debtor is interested in accepting the proposed settlement related to his future medical. Debtor is interested in settling the claim because he continues to have issues and troubles getting approval for his treatment. There are substantial delays in receiving treatment due to the approval and appeal process. The approval process is cumbersome and Debtor has to wait to get treatment until proposed treatment plans are approved. Debtor wishes settle the claim so that he and his doctors can manage Debtor's treatment without getting each and every treatment, lab, test, medication, therapy, and device approved by Sedgwick, the claims manage for Kaiser Foundation Hospital. Dckt. 75, ¶ 7.

G. Debtor has discussed the possible settlement with his doctors and attorneys. Debtor has reviewed and discussed the cost of future care. Based upon his medical history, history of treatment, medications and other related care, Debtor estimates that he will be spending approximately $300.00 per month for medical care related to his injury. Based upon the anticipated medical

costs, settlement of the claim for future medical for $50,000.00 would give Debtor the funds to pay for his own medical costs out of pocket for the next 14 years. *Id.* at ¶ 8.

H. Debtor believes the settlement is in the best interest of all involved as Debtor will be able to manage his own care and there will be fewer delays and headaches dealing with Sedgwick. *Id.* at ¶ 9.

Nothing Provided in these "grounds" stated in the Motion assist the court in evaluating the acceptability of the compromise. Debtor has not discussed the probability of success in the litigation; any difficulties expected in collection; the complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; or the paramount interest of the creditors and a proper deference to their reasonable views.

Debtor here has chosen to just state Debtor's own interest in settling (difficulty receiving approval for treatment and costs covered for 14 years) and then leaves it to the court and judicial staff (rather than Debtor incurring the reasonable and necessary legal expenses) to determine whether the compromise here is in the best interest of the Estate and creditors.

This is troublesome not only because the court is left to guess what all benefits the Estate is receiving in return for settlement, but even more so because the court has no basis to consider what the Debtor could have gotten and is giving up by settling claims rather than pursuing them in court.

It appears from the Motion that the proposed settlement is to place $50,000 cash into the Debtor's hands today, not provide reimbursement for actual future medical expenses.

The court has not been provided with grounds or evidence to show that the $50,000 cash today is actually for medical expenses. It hasn't been shown that the compromise is reasonable.

At this stage, the Motion is too devoid of stated grounds and necessary analysis to be salvaged through oral argument or supplemental pleadings. The Motion is denied without prejudice.

Insufficient Notice

As stated, supra, 35 days' notice was required for this Motion. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Only 32 days' notice was provided. This constitutes independent grounds to deny the Motion.

CHAPTER 13 TRUSTEE RESPONSE

The Chapter 13 Trustee's response is merely that the Trustee requests that the Motion be considered.

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 Approve Compromise filed by The Chapter 13 Debtors, Mario Manuel Borrego and Christine Joy Borrego ("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 the Motion for Approval of Compromise is denied without prejudice.

16. **18-26402-E-13 MET-2** | **DENNIS/ROBIN COBB** **Mary Ellen Terranella** | **MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC. 11-7-18 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 7, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Santander Consumer U.S.A., Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $13,400.00.

The Motion filed by Dennis Samuel Cobb and Robin Karen Cobb ("Debtor") to value the secured claim of Santander Consumer U.S.A., Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Mercedes Benz C350 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $13,400.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in March 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $24,663.56. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $13,400.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Dennis Samuel Cobb and Robin Karen Cobb ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Santander Consumer U.S.A., Inc. ("Creditor") secured by an asset described as 2012 Mercedes Benz C350 ("Vehicle") is determined to be a secured claim in the amount of $13,400.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $13,400.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

FINAL RULINGS

17.	**17-27410-E-13** **MRL-3**	**PATRICIA ALEXANDER** **Mikalah Liviakis**	**MOTION FOR COMPENSATION FOR MIKALAH R. LIVIAKIS, DEBTOR'S ATTORNEY** **10-29-18 [37]**

Final Ruling: No appearance at the December 4, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 30, 2018. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Mikalah Raymond Liviakis, the Attorney ("Applicant") for Patricia Alexander, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period November 8, 2017, through October 29, 2018. Applicant requests fees in the amount of $1,425.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

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 drafting motions to sell real property and employ a realtor, and drafting this fee application. 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. 14. 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)).

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's services for the Estate include services relating to the sale of real property of the Estate. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Disposition: Applicant spent 3.8 hours in this category. Applicant performed services relating to the sale of real property of the Estate, including drafting a motion to sell and a motion to employ a realtor.

Fee Applications: Applicant spent 0.5 hours in this category, but is not seeking fees for this work performed. Applicant drafted the present Motion.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Mikalah Liviakis	3.8	$375.00	$1,425.00
Total Fees for Period of Application			$1,425.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,425.00 are approved

pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay the fees allowed by the court.

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

Fees $1,425.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Mikalah Raymond Liviakis ("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 Mikalah Raymond Liviakis is allowed the following fees and expenses as a professional of the Estate:
>
> Mikalah Raymond Liviakis, Professional employed by the Chapter 13 Trustee
>
> Fees in the amount of $1,425.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Trustee.
>
> The fees and costs pursuant to this Motion, and fees in the amount of $1,425.00 are approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **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 under the confirmed Plan.

18. **18-26334-E-13** **AMY EVERSON** **OBJECTION TO DISCHARGE BY**
DPC-1 **Marc Carpenter** **DAVID CUSICK**
10-25-18 [14]

Final Ruling: No appearance at the December 4, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 25, 2018. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Amy Everson's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on May 10, 2016. Case No. 16-23052. Debtor received a discharge on September 15, 2016. Case No.16-23052, Dckt. 14.

The instant case was filed under Chapter 13 on October 6, 2018.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on May 10, 2016, which is less than four years preceding the date of the filing of the instant case. Case No. 16-23052, Dckt. 16. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-26334), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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 Discharge filed by David Cusick, the Chapter 13 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-26334, the case shall be closed without the entry of a discharge.

19.	**17-20736-E-13 MRL-2**	**MICHAEL/KIMBERLY MACHADO Mikalah Liviakis**	**MOTION TO MODIFY PLAN 10-2-18 [40]**

Final Ruling: No appearance at the December 4, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 2, 2018. By the court's calculation, 63 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

Michael Frank Machado and Kimberly Gail Machado ("Debtor") seek confirmation of the Modified Plan to reflect reduced income from Debtor's closed business and increased expenses. Dckt. 42. The Modified Plan eliminates tax refund based payments under the Confirmed Plan, instead providing higher overall payments ($350 for 20 months and $390 for 16 months). Dckt. 43. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Michael Frank Machado and Kimberly Gail Machado ("Debtor") have filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on November 20, 2018. Dckt. 46. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on November 20, 2018. Dckt. 46. Trustee indicates non-opposition to the Motion, as the plan calculates mathematically.

PRIOR MOTION TO CONFIRM MODIFIED PLAN

The court heard Debtor's prior Motion to Confirm Modified Plan on September 18, 2018. Dckt. 23. At the hearing, the court noted that unexplained increases in expenses rose to meet increases to income in a way that seemed to deliberately keep the increased income from being put towards the plan. Civil Minutes, Dckt. 38. The court review the following changes in expenses:

Rent	From $1,545 to $1,631
Home maintenance, repair, and upkeep expenses	From $100 to $120
Utilities	From $200 to $262
Food and housekeeping supplies	From $400 to $660
Clothing, laundry, and dry cleaning	From $50 to $150
Personal care products and services	From $100 to $200
Medical and dental expenses	From $150 to $240
Transportation	From $320 to $380
Entertainment, etc	From $195 to $200
Health insurance	From $0 to $311
Vehicle insurance	From $148 to $150
Pet food and care	From $75 to $150

Id. The court concluded, noting that expense increased to meet increased income with a difference of only $1.00, that Debtor was not providing best efforts.

SUPPLEMENTAL SCHEDULES I AND J

Debtor filed Supplemental Schedules on October 2, 2018. Schedule J, Dckt. 44. The Supplemental Schedule J reflects the following changes to expenses:

Clothing, laundry, and dry cleaning	From $150 to $50
Personal care products and services	From $200 to $165
Entertainment, etc	From $200 to $195

Id. The Supplemental Schedule J also indicates Debtor expects an increase or decrease to expenses within the year after filing the Schedule J because:

> Reducing spending in entertainment/recreation and clothing. Debtor's father moved into the house on September 30th 2018. He has dimentia [sic] and requires full care. His only income is social security but he is not contributing to the household as of now due to his lack of mental awareness. Before moving in he

> was living in San Mateo, CA with Debtor's mother who passed away February 2017.

Id.

In Debtor's Motion and supporting Declaration, Debtor explains increases to certain expenses as follows:

> A. Utilities: We haven't noticed our habits change a whole lot in this category but we are finding that we are spending about $50 to $60 more. We don't have an energy efficient home so I think it would be difficult to reduce our spending much. Dckt. 42, at ¶ 13. a.

Debtor's here apparently concede that they do not know why expenses have actually increased, given their habits have remained constant.

> B. Food: Our food costs have gone up and will likely go up more because my stepfather moved in on September 30th, 2018 because he has dementia and limited income so he needs our care. When we stopped our business of raising pigs it affected our own food supply. We ate a lot of pork as part of our diet in the past because we had left-overs from the pork products that did not sell. Since we no longer have those we are spending more at the grocery store. *Id*. at ¶ 13. b.

> C. Pet Care: In the last year we are finding that we spend more food, which is based on age. The costs of veterinary visits has also increased. *Id*. at ¶ 13. c.

It is unclear what Debtor means in stating that age reflects increased cost of pet food. Possibly there are some dietary constraints that certain of Debtor's pets have suffered in increasing age. Nothing of that nature is clarified for the court.

> D. Medical & Dental Expenses: A lot of this expense is due to our age and that we are trying to take care of ourselves while getting older into our 60s. My husband has been dealing with cancer and this has some out of pocket expenses. Our dental costs have also gone up. *Id*. at ¶ 13. d.

> E. Health Insurance: We were able to find an affordable health insurance plan which we felt was necessary at our age. *Id*. at ¶ 13. e.

> F. Personal Care Products & Services: When we filed bankruptcy we cut back on our spending. When we started getting social security we increased our spending in this area.

Id. at ¶ 13. f.

DISCUSSION

While the Trustee does not oppose the Motion, it is not clear that the court's prior grounds for denying confirmation of the most recent Modified Plan (Dckt. 26) have been completely resolved. Debtor continues to lack an explanation for several increases to expenses, including home maintenance, and transportation.

Furthermore, some of Debtor's explanations are simply insufficient. Debtor indicates that energy use has remained constant, and they do not know why utility expenses have increased. Dckt. 42, at ¶ 13. a. Debtor states a significant factor in the $260 increase to food expense is Debtor's stepfather moving in, but does not explain why the stepfather, receiving income from social security, is not supporting himself. *Id*. at ¶ 13. b. Debtor also states medical and dental expenses have increased with age–while true that such expenses increase, Debtor could easily have written a sentence explaining what new medications or medical services are behind the $90 monthly increase. This is even more necessary where Debtor went from having no health insurance to a plan costing $311 monthly. Currently, without further explanation provided by Debtor, it appears the health plan should be significantly reducing the medical expenses which Debtor
indicates have actually risen significantly.

However, the court has the luxury of the Chapter 13 Trustee having investigated the finances, as well as to continuing to review the income (including contribution from family members) and expenses.

With the concurrence of the Chapter 13 Trustee, the court concludes that the proposed Modified Plan complies with the provisions of 11 U.S.C. §§ 1329, 1325, and 1322. The Motion is granted and the Modified 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 the Modified Chapter 13 Plan filed by Michael Frank Machado and Kimberly Gail Machado ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 2, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. **15-28741-E-13** **PAMELA MCGAUGHY** **MOTION TO MODIFY PLAN**
TLA-2 **Thomas Amberg** **10-4-18 [73]**

Final Ruling: No appearance at the December 4, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 4, 2018. By the court's calculation, 61 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Pamela Lynn McGaughy ("Debtor") has filed evidence in support of confirmation. David Cusick ("the Chapter 13 Trustee") filed a Response indicating non-opposition on November 20, 2018. Dckt. 83. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 4, 2018, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. **18-25141-E-13 BLG-2** | **BLAKE HARBIN** **Chad Johnson** | **MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 10-22-18 [29]**

Final Ruling: No appearance at the December 4, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, U.S. Attorney for the IRS, and Office of the United States Trustee on October 22, 2018. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of the Internal Revenue service ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Blake Harbin ("Debtor") to value the secured claim of the Internal Revenue Service ("Creditor") seeks to value Creditor's claim wholly unsecured. Debtor states under penalty of perjury that he used to operate a business in Alameda County, but that business ended in 2017. Declaration, Dckt. 31 at ¶ 3. Debtor no longer has any real or personal property in Alameda County. *Id.*

Creditor initially asserted its claim was secured by a tax lien in Debtor's property, 1714 Franklin St Ste 100 # 166, Oakland, California, in the amount of $51,595.00. Proof of Claim, No. 1-1. Creditor has since amended its claim to provide that it is entirely unsecured. Proof of Claim, No. 1-3.

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

DISCUSSION

Creditor's secured interest was in the form of a tax lien attaching to all of Debtor's property in Alameda County. Debtor no longer holding any interest in property in Alameda County, Creditor's claim is entirely unsecured. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Blake Harbin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the Internal Revenue Service ("Creditor") secured by a tax lien in all Debtor's real property in Alameda County, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. Debtor has no

interest in property in Alameda County and therefore the Creditor's claim is entirely unsecured.

22. **18-25141-E-13** **BLAKE HARBIN** **MOTION TO CONFIRM PLAN**
BLG-1 **Chad Johnson** **10-22-18 [23]**

Final Ruling: No appearance at the December 4, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on October 22, 2018. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is granted.

Blake Harbin ("Debtor") seeks confirmation of the Amended Plan, which would be Debtor's first confirmed plan in this case. The Amended Plan provides for payments of $4,250 for months 2-6, $5,150 for months 7-60, various dividends to specific creditors with secured claims, and a dividend to unsecured claims of 0 percent. Dckt. Amended Plan, Dckt. 28. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed an Opposition on November 14, 2018. Dckt. 37. Trustee opposes the Motion on the grounds that Debtor's Amended Plan relies on Debtor's Motion To Value the

Collateral of the Infernal Revenue Service. *See* Dckt. 29. Trustee argues that in the event that Motion is denied, the Debtor would not be able to make the proposed payments.

DISCUSSION

The court has granted Debtor's Motion to Value Collateral filed October 22, 2018. *See* Dckt. 29. The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Amended Chapter 13 Plan filed by Blake Harbin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on August 15, 2017, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to David Cusick ("the Chapter 13 Trustee") for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. **18-26164-E-13 DPC-1** **MARK/ROSEMARIE REINKING** **Seth Hanson** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-7-18 [18]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 20, 2018, hearing is required.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on September 28, 2018, is confirmed.**

Counsel for Mark Robert Reinking and Rosemarie De La Cruz Reinking ("Debtor") 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 Chapter 13 Trustee will submit the proposed order to the court.

24. **18-24772-E-13** **NICOLE JACKSON** **CONTINUED MOTION TO VALUE COLLATERAL OF BALBOA THRIFT & LOAN**
RAI-2 **Rafael Icaza** **9-5-18 [14]**

Final Ruling: No appearance at the December 4, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on September 5, 2018. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Balboa Thrift & Loan ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $2,200.

The Motion filed by Nicole M. Jackson ("Debtor") to value the secured claim of Balboa Thrift & Loan ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Pontiac G6 with 145,000 miles ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $2,200.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR'S OPPOSITION

Creditor filed an Opposition to the Motion on October 2, 2018. Dckt. 29. Creditor opposes the valuation provided by Debtor on the grounds it is "insufficient, inadequate and unjust." Creditor asserts a fair market value for the Vehicle of $4,874.00.

Creditor bases its valuation on a Kelly Blue Book value. *See* Exhibit 3, Dckt. 30. While Creditor asserts in its Opposition the Exhibit is "A true and correct of the pertinent page from the publication," Creditor has not provided testimony or other evidence authenticating the document or explaining how it is admissible (the document constituting hearsay). Furthermore, it is not even clear to the court the "pertinent" page has been filed; Exhibit 3 references a range of $3,327.00 to $4,874.00, but does not explain the various values in the range.

Creditor also contests the interest rate Debtor seeks in its proposed plan.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion on September 27, 2018. Dckt. 26. Trustee summarizes the Motion, treatment of Creditor's claim in Debtor's proposed plan (Dckt. 3), Debtor's Schedules (Dckt. 1), Creditor's Proof of Claim, No. 2, and Creditor's objection to Confirmation. Dckt. 22.

DEBTOR'S REPLY

Debtor filed a Reply to Creditor's Opposition on October 9, 2018. Dckt. 34. Debtor replies that Creditor's Exhibit 3 does not reflect a valuation based on the actual condition (including model and year) of the Vehicle. Debtor asserts further that its valuation is fair relative to the Kelly Blue Book value, considering ranges of trade-in-value Debtor attached along with its Declaration. Dckt. 35. Debtor replies finally that the interest rate of 5% is adequate.

CASE HISTORY

The court heard the Motion on October 16, 2018. At the request of the parties, the court decided to continue the hearing on the Motion to prepare for an evidentiary hearing. However, after post-hearing review the court determined neither party was prepared for a pre-evidentiary scheduling conference. The court Ordered further briefing on the Motion. Order, Dckt. 46.

Subsequently, Creditor filed an *Ex Parte* Motion to continue the hearing and extend the time for filing supplemental briefs on the Motion. The court granted that Motion and set the hearing for December 4, 2018, also extending time for the filing of supplemental briefs to November 27, 2018. Order, Dckt 52.

CREDITOR'S WITHDRAWAL OF OPPOSITION

On November 27, 2018, Creditor filed a Notice of Withdrawal of Response to Motion. Dckt. 57. In the Response, Creditor asserts pursuant to Local Rules (though it is not clarified what Local Bankruptcy Rule permits the withdrawal of an Opposition to a Motion) that it is withdrawing its Response to Motion to Value Collateral and taking the matter off calendar. The Response further notes Creditor accepts the Debtor's plan after further review. [Fn.1.]

FN.1. Creditor now states that after opposing the motion and arguing to the court that an evidentiary hearing was necessary, that "upon further review" Creditor accepts Debtor's plan. Federal Rule of Bankruptcy Procedure 9011(b)(2) provides that pleadings to the court are a certified representation that to the best of the person's knowledge, information, and belief, *formed after an inquiry reasonable under the circumstances*, that the claims, defenses and other legal contentions therein are warranted by existing law.

Violation of Federal Rule of Bankruptcy Procedure 9011(b) is grounds for the imposition of an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. FED. R. BANKR. P. 9011(c).

DISCUSSION

Debtor's Motion is seeking to value the secured claim held by Creditor. Creditor has "withdrawn" its opposition and no longer opposes the Motion. [Fn.2].

FN.2. As stated, *supra*, Creditor has not provided legal authority for the proposition it may withdraw a response to a motion, and then instruct the court to take the matter off the calendar. It is possible Creditor sees its "Notice Of Withdrawal" as a notice of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I). That rule applies only to plaintiffs in a matter. Furthermore, that section is only applicable where no answer or motion for summary judgement as been served. Where an answer has been filed, an order of the court is required to dismiss that matter. FED. R. CIV. P. 41(a)(2).

The lien on the Vehicle's title secures a purchase-money loan incurred on November 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $7,165.34. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $2,200, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Nicole M. Jackson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Balboa Thrift & Loan ("Creditor") secured by an asset described as 2009 Pontiac G6 with 145,000 miles ("Vehicle") is determined to be

a secured claim in the amount of $2,200, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $2,200 and is encumbered by a lien securing a claim that exceeds the value of the asset.

25. **17-25556-E-13 PGM-2** | **RICKY GREEN** **Peter Macaluso** | **OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 1 10-16-18 [37]**

Final Ruling: No appearance at the December 4, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on October 16, 2018. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 1 of Bank of America, N.A. is sustained, and the claim is disallowed in its entirety.

Ricky Green, Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $20,381.90. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the

balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date and charge off date was August 16, 2013. The date of last payment on the Statement of Account Information attached to the Proof of Claim states August 16, 2013.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 1 lists the charge off date as March 31, 2014. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

No payment or other transaction occurred after August 22, 2013. Thus, the four-year statute of limitations expired on August 22, 2018.

This bankruptcy case was filed on August 22, 2017—6 days after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety due to the statute of limitations expiring prior to the filing of the case. The Objection to the Proof of Claim 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 Claim of Bank of America, N.A. ("Creditor") filed in this case by Ricky Green, Chapter 13 Debtor ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 1 of Bank of America, N.A. is sustained, and the claim is disallowed in its entirety.

26. **17-25556-E-13** **RICKY GREEN** **CONTINUED MOTION TO DISMISS CASE**
DPC-2 **Peter Macaluso** **10-17-18 [42]**

Final Ruling: No appearance at the December 4, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 17, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is denied without prejudice.

David Cusick (the "Chapter 13 Trustee") seeks dismissal of the case on the basis that Ricky Green ("Debtor") is $2,235.00 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition to Trustee's Motion on October 31, 2018. Dckt. 46. Debtor argues an objection to claim has been filed as to the sole remaining creditor in this case, Bank of America, N.A. Therefore, Debtor requests the hearing on this Motion be continued to be heard alongside the objection.

The Opposition requests this Motion be continued to trail the hearing on his Objection to Claim scheduled on December 4, 2018. Presumably, the pending Objection has cured its earlier defects.

NOVEMBER 14, 2018 HEARING

At the November 14, 2018 hearing, the court noted Debtor's Schedules shows Debtor lists only two creditors in this case: "Hunt and Henriques," identified as Bank of America and "Sill and Associates." Civil Minutes, Dckt. 48. The total of the latter claim being only $1.00, the sole claim remaining in this case is the claim of Bank of America.

The court continued the hearing on the Motion to Dismiss to December 4, 2018, at 3:00 p.m. to be heard alongside the Objection to Claim of Bank of America (Dckt. 37), which if successful would disallow the claim of Bank of America. Order, Dckt. 49.

DISCUSSION

The court has sustained the Objection to Claim of Bank of America (Dckt. 37) and disallowed the claim in its entirety.

As no claims remain to be paid, the Chapter 13 Plan is completed.

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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

27.	**18-25962-E-13 MSK-1**	**LEONARDO/FELY MERCURIO Pro Se**	**OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN SERVICING, LLC 11-8-18 [29]**

The Court is Also Denying Confirmation on the Objection of the Trustee (for which Debtor has filed a statement of non-opposition)

Final Ruling Issued to Avoid Creditor Incurring Otherwise Unnecessary Expenses

Final Ruling: No appearance at the December 4, 2018 hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on November 8, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

Specialized Loan Servicing LLC ("Creditor"), opposes confirmation of the Plan on the basis that:
Leonardo Merced Mercurio and Fely Duyanan Mercurio's ("Debtor") proposed plan understates and therefore does not fully cure the arrears of their Class 1 claim. Creditor argues the proposed plan therefore must not be confirmed pursuant to 11 U.S.C. §§ 1325(5)(B)(ii) and (6). Creditor also notes the monthly post-petition listed on the proposed plan is incorrect.

Creditor's objections are well-taken. Debtor has listed Creditor's claim as a Class 1 but failed to provide for the full allowed amount as required by 11 U.S.C. §§ 1325(5)(B)(ii).

Furthermore, David Cusick the Chapter 13 Trustee has filed another Objection to Confirmation set to be heard the same day as this Objection. *See* Dckt. 21. As to that Contested Matter, Debtor has filed a Response indicating nonopposition to denial of confirmation of the plan. Dckt. 34.

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

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

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

28. **18-26762-E-13 MRL-1** | **PATRICIA PONCE** **Mikalah Liviakis** | **MOTION TO VALUE COLLATERAL OF FLAGSHIP CREDIT ACCEPTANCE, LLC** **11-1-18 [8]**

Final Ruling: No appearance at the December, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 2, 2018. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Flagship Credit Acceptance, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $10,000.00.

The Motion filed by Patricia Ponce ("Debtor") to value the secured claim of Flagship Credit Acceptance, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Nissan Versa ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $10,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in October 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $12,386. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $10,000.00, the

value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Patricia Ponce ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Flagship Credit Acceptance, LLC ("Creditor") secured by an asset described as 2015 Nissan Versa ("Vehicle") is determined to be a secured claim in the amount of $10,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

29. **15-23769-E-13 PLC-5** **COREY LEE COLEMAN** **Peter Cianchetta** **MOTION TO MODIFY PLAN** **10-24-18 [93]**

Final Ruling: No appearance at the December 4, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2018. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Confirm the Modified Plan is continued to to December 18, 2018 at 3:00p.m.

Corey Lee Christopher Coleman ("Debtor") filed this Motion To Confirm Modified Plan on October 24, 2018. Dckt. 93. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

On November 29, 2018, the parties filed a joint stipulation to continue th hearing to December 18, 2018 to be heard alongside a motion to approve loan modification (Dckt. 106) set to be heard that day Dckt. 112. [Fn.1] The court shall issue an Order continuing the hearing to December 18, 2018 at 3:00p.m.

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number when filing the Stipulation. That is not correct.

Counsel in this case has been reminded on numerous occasions of the requirement to file documents separately and not to reuse a DCN. Counsel is reminded that not complying with the Local Rules is grounds for the imposition of an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(c).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by Corey Lee Christopher Coleman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that hearing on the Motion to Confirm the Modified Plan is continued to December 18, 2018 at 3:00p.m.

30. **15-23769-E-13 PLC-6** | **COREY LEE COLEMAN** **Peter Cianchetta** | **CONTINUED MOTION TO DISMISS CASE 10-22-18 [89]**

Final Ruling: No appearance at the December 4, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 12, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to to December 18, 2018 at 3:00p.m.

Corey Lee Christopher Coleman ("Debtor") filed the instant case on May 8, 2015. Dckt. 1. A plan was confirmed on February 23, 2016, and an order confirming the plan was entered on March 8, 2016. Dckt. 77 & 80.

On September 12, 2018, David Cusick ("the Chapter 13 Trustee") filed this Motion to Dismiss the Case due to failure to make Plan payments. Dckt. 81. On October 10, 2018, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 86. The ruling was final because Debtor did not file any opposition.

On October 22, 2018, Debtor filed a Motion to Vacate, and Debtor's counsel submitted his Declaration stating that a new plan had been prepared along with a motion to confirm. However, Debtor's counsel was hospitalized for several days and was unable to execute the required documents.

After the initial November 6, 2018, hearing on the Motion, the court granted the Motion to Vacate dismissal, vacated the Order granting Trustee's Motion to Dismiss (Dckt. 81), and continued the hearing on the Motion to Dismiss to December 4, 2018. December 3, 2018 Amended Order.

STIPULATION TO CONTINUE HEARING

On November 29, 2018, the parties filed a joint stipulation to continue th hearing to December 18, 2018 to be heard alongside a motion to approve loan modification (Dckt. 106) set to be heard that day Dckt. 112. [Fn.1] The court shall issue an Order continuing the hearing to December 18, 2018 at 3:00p.m.

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number when filing the Stipulation. That is not correct.

Counsel in this case has been reminded on numerous occasions of the requirement to file documents separately and not to reuse a DCN. Counsel is reminded that not complying with the Local Rules is grounds for the imposition of an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(c).

APPLICABLE LAW

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

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

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles

when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

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

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

DISCUSSION

The court shall continue the hearing on the Motion to Dismiss is continued to December 18, 2018 at 3:00p.m.

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 filed by Corey Lee Christopher Coleman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS FURTHER ORDERED** that the hearing on the Motion to Dismiss is continued to December 18, 2018 at 3:00p.m.

31. **18-25871-E-13** **ROBERT KLEIN** **OBJECTION TO DISCHARGE BY**
DPC-1 **Joseph Angelo** **DAVID P. CUSICK**
10-10-18 [16]

Final Ruling: No appearance at the December 4, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 10, 2018. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, ("Objector") objects to Robert Klein's ("Debtor") discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on June 29, 2015. Case No. 15-21920. Debtor received a discharge on June 29, 2015. Case No. 15-21920, Dckt. 12.

The instant case was filed under Chapter 13 on September 17, 2018.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on June 29, 2015, which is less than four years preceding the date of the filing of the instant case. Case No. 15-21920, Dckt. 12. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 18-25871), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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 Discharge filed by David Cusick, the Chapter 13 Trustee ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 18-25871, the case shall be closed without the entry of a discharge.

32. **18-23379-E-13 GW-3** | **WILLIAM BATTILANA, II** | **Gerald White** | **MOTION TO EMPLOY REMAX GOLD AS BROKER** | **10-30-18 [110]**

Final Ruling: No appearance at the December 4, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ has been granted, no supplemental pleadings have been filed to set a compensation commission pursuant to 11 U.S.C. § 382, and this matter is removed from the calendar.

William Rudolph Battilana, II ("Debtor") seeks to employ ReMax Gold ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to sell real property of the Estate.

ORDER GRANTING MOTION

On November 7, 2018, the court issued an Order granting the Motion and authorizing the employment of Broker pursuant to the terms provided in the Agreement filed as Exhibit A, Dckt. 112. Order, Dckt. 123. The court further continued the hearing on the Motion to December 4, 2018, to consider whether grounds exist pursuant to 11 U.S.C. § 328(a) to adjust the six percent commission to be paid Broker as provided in the Listing Agreement and allow the fees as provided in 11 U.S.C. § 330.

Id. The court ordered that any supplemental pleadings be field and served on or before November 27, 2018. *Id.* No supplemental pleadings have been filed.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to this Motion on November 27, 2018. Dckt. 133. Trustee indicates nonopposition, and states that the Final Master Statement of Fidelity National Title shows a commission of $21,600.00 was paid to the Law Office of Gerald White to be held pending court approval of this Motion.

DECLARATION OF DEBTOR'S COUNSEL

Debtor filed the Declaration of Gerald White, counsel for the Debtor in this case, on November 28, 2018. The White Declaration indicates the Broker commission of $21,600.00 was paid to the Law Office of Gerald White to be held pending court approval of this Motion.

DISCUSSION

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

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 Employ filed by William Rudolph Battilana, II ("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 Employ having been granted and no further supplemental pleadings having been filed to set a pre-authorized fee pursuant to 11 U.S.C. § 328, the Motion is concluded.
>
> This is without prejudice to the professional employed, Abby Martinez, the real estate sales person or Broker-Associate of REMax Gold, from requesting compensation based on a percentage of the sale price of the real property when seeking the allowance of compensation pursuant to 11 U.S.C. § 330.

33. **13-29181-E-13 SPB-7** | **SAM/DAYNA CROWLEY** **Stanley Berman** | **MOTION TO AVOID LIEN OF UNIFUND CCR, LLC** **10-21-18 [109]**

Final Ruling: No appearance at the December 4, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor and Office of the United States Trustee on October 24, 2018. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Unifund CCR, LLC ("Creditor") against property of Sam White Crowley and Dayna Lee Crowley ("Debtor") commonly known as 12727 LaBarr Meadows Road, Grass Valley, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $19,027.19. An abstract of judgment was recorded with Nevada County on June 6, 2013, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $78,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $207,638.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $78,500.00 on Amended Schedule C. Dckt. 101.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Sam White Crowley and Dayna Lee Crowley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Unifund CCR, LLC, California Superior Court for Nevada County Case No. CL12-079228, recorded on June 6, 2013, Document No. 20130016172, with the Nevada County Recorder, against the real property commonly known as 12727 LaBarr Meadows Road, Grass Valley, 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.